



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-348

Appeal M-9400272

Sault Ste. Marie Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Sault Ste. Marie Police Service (the Police) received a request from a reporter with a local newspaper for access to an internal discipline report concerning a named police officer. The record at issue is 15 pages in length and consists of the internal documents compiled by the senior officer who conducted the investigation. The Police rely on the following exemption in denying access to the record:

- invasion of privacy - section 14(1).

A Notice of Inquiry was provided to the appellant, the Police and the police officer who was the subject of the investigation. Representations were received from all parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information contained in the record, and I find that it satisfies the definition of personal information. In my view, the personal information is that of the police officer and other identifiable individuals. None of the personal information relates to the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information to any person other than the individual to whom the information relates, except in certain circumstances. One such exception is outlined in section 14(1)(f) of the Act as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy.

In its representations, the Police rely on the presumption set out in section 14(3)(b) of the Act to deny access to the report.

This provision states that:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Police submit that the record was compiled during the course of a law enforcement investigation under section 59(1) of the Police Services Act. The investigation was undertaken by a senior police officer who compiled the information contained in the record in order to determine whether the officer had violated the Code of Conduct set out in the Regulations under the Police Services Act. Sanctions may be imposed on a police officer following such an investigation and a subsequent decision taken by the Chief of Police, pursuant to the Regulations under the Police Services Act.

Based on the representations provided to me and my review of the record, I am satisfied that the record was compiled as part of an investigation into a possible violation of law. Accordingly, I find that the disclosure of the personal information in the record would constitute a presumed unjustified invasion of the personal privacy of other individuals under section 14(3)(b).

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption. The appellant has raised the consideration described in section 14(2)(a) in her representations. However, this consideration is insufficient to rebut a presumption which has otherwise been found to apply.

I have considered section 14(4) and find that none of the personal information contained in the record falls within the ambit of this provision. The appellant argues, however, that there exists a compelling public interest in the disclosure of the record and that the public interest override set out in section 16 applies.

Section 16 has two requirements which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure, and this compelling public interest must **clearly** outweigh the **purpose** of the exemption, as distinct from the value of disclosure of the particular record in question.

In undertaking this analysis, I am mindful of the fact that section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

The appellant submits that disclosure of the record is in the best interests of the public as police officers are

paid with taxpayers' money and, therefore, the community has a compelling right to determine whether the officer is serving the public according to the standards it sets and expects.

The appellant further submits that since the matter was listed on the agenda of a public meeting, the police officer's right to privacy is obviated. In my view, this factor is not dispositive in determining whether section 16 of the Act applies to the personal information contained in the record.

Having reviewed the record and considering all of the circumstances of this appeal, it is my view that there does not exist a **compelling** public interest in the disclosure of the personal information which would **clearly** outweigh the purpose of the section 14 exemption. The record is concerned with an internal discipline matter which does not relate to the use of public funds or police relations with the community. Accordingly, I find that section 16 does not apply and the personal information contained in the record is properly exempt from disclosure under section 14(1) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

July 12, 1994