



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-438**

## **Appeal M-9400479**

### **Town of Amherstburg 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 requester asked the Town of Amherstburg Police Services Board (the Police) for information regarding the number of overtime hours worked by staff on certain police programs.

The Police granted access to the materials sought with the exception of information pertaining to "the number of overtime hours paid and banked to the VIP program from its inception to December 1991". The Police made the decision to withhold this information based on the invasion of privacy exemption found in section 14(1) of the Act. The requester appealed this decision to the Commissioner's office.

A Notice of Inquiry was provided the requester/appellant, the Police and to a police officer who was the recipient of overtime pay under this program. Representations were received from the appellant and the Police only.

The records at issue in this appeal consist of nine pages of time sheets and two pages of notebook entries relating to the police officer. The acronym VIP is short for "Values, Influence and Peers". This is a program where police officers visit schools to educate students on such subjects as drug abuse and peer pressure.

## **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, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

In their representations, the Police indicate that only one member of the Amherstburg force received overtime pay under the VIP program during the time period in question. For this reason, they argue that the number of overtime hours worked constitutes recorded information about an individual. I agree with this submission. I must now determine whether, for the purposes of section 2(1) of the Act, this information also pertains to an **identifiable** individual.

The Police submit that, should the appellant receive access to the records, she will be able to associate the actual number of overtime hours worked with the named police officer. This is the case because, during the relevant period of time, there was only one police officer involved in the VIP program and this individual was well known in the Amherstburg community.

The appellant, for her part, states that she does not know which individual received overtime pay for participating in this police program.

In Order P-230, Commissioner Tom Wright stated that the provisions of the Act relating to the protection of personal privacy should not be read in a restrictive manner. He indicated that, if there exists a reasonable

expectation that the individual can be identified from information contained in a record, then such information qualifies as personal information under section 2(1) of the Act.

Following a careful review of the facts of this appeal, I find that, should the overtime information be disclosed to the appellant, there would exist a reasonable expectation that she could link this information to the police officer to whom it pertains. Based on the test outlined in Order P-230, therefore, I find that the records contain recorded information about an identifiable individual and, hence, personal information for the purposes of section 2(1) of the Act.

Section 14(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 14(1)(f) of the Act. This section provides that a government institution must refuse to release the personal information of another individual except if the disclosure does 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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of this nature.

If none of the presumptions outlined in section 14(3) apply, the government institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant to the appeal.

In their representations, the Police submit that the presumptions found in sections 14(3)(d) (employment history) and 14(3)(f) (finances or income of an individual) of the Act apply to protect the personal information from disclosure.

In relying on the section 14(3)(d) presumption, the Police submit that since the request spans a total of five years, the information sought may be likened to the "history of overtime" for the police officer with respect to this program. The appellant, on the other hand, relies upon the reasoning contained in Order M-35, which states that the actual number of hours worked by an individual does not constitute that person's "employment history" for the purposes of the Act.

With respect to the application of section 14(3)(f), the Police note that the appellant is a close relation to an employee of the force. On this basis, the Police submit that the appellant would be able to discern the overtime pay rates for police officers and thereby be in a position to calculate the incremental income earned by the police officer under the VIP program.

The appellant's position is that, since she is seeking the **aggregate** amount of both paid and banked overtime, she would not be able to deduce the actual additional income which the police officer received for this individual's participation on the program.

In their representations, the Police have not relied on any specific factors listed in section 14(2) of the Act which would favour the protection of the personal information at issue.

The appellant, however, puts forward an argument under section 14(2)(a) of the Act (disclosure of the information is desirable for the purpose of subjecting the activities of a government institution to public scrutiny). The appellant refers to a newspaper article which indicates that the VIP program will not receive further funding because of budgetary constraints. She submits that the public has the right to know the basis upon which this decision was made including information on how the Police funded various aspects of the program.

Finally, the appellant takes the position that the personal information should be released because the police officer has not formally stated that he objects to the release of the overtime records.

Based on the evidence before me, I have made the following findings:

- (1) I accept the conclusion reached in Order M-35 that the number of overtime hours worked by an individual does not fall within the definition of "employment history" for the purposes of the Act. The result is that the section 14(3)(d) presumption does not apply to the personal information at issue.
- (2) Since the appellant has asked for the overtime hours "paid and banked" under the VIP program, I find that disclosure of the contents of the records would not permit her to accurately deduce the incremental income earned by the police officer under the program. On this basis, I conclude that the release of the overtime information would not describe the individual's income or finances for the purposes of the section 14(3)(f) presumption.
- (3) While the appellant as a taxpayer has a legitimate right to be provided with information about the VIP program, I am not convinced that disclosing information about the number of hours worked by a particular police officer is desirable for the purpose of subjecting the activities of the Police to public scrutiny. I have also reached this conclusion based on the fact that only very modest sums were expended for overtime work over the five year span that this program was in place. The result is that the consideration outlined in section 14(2)(a) does not apply to the personal information at issue.
- (4) I further find that there are no other factors found in section 14(2) which would favour disclosure of the overtime information in this case.
- (5) Since the section 14(1) exemption is mandatory in nature, the fact that the police officer has not made submissions on whether or not his personal information should be disclosed does not weigh in favour of releasing the information. Rather, the responsibility falls on the Commissioner's office to weigh all the circumstances of the case to determine whether there exists an unjustified invasion of personal privacy.
- (6) In the absence of any considerations which support the release of this personal information and because section 14(1) is a mandatory exemption, I find that the disclosure of the contents of the

records would constitute an unjustified invasion of the police officer's personal privacy. This information must, therefore, not be released to the appellant.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

December 30, 1994