



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

ORDER M-553

Appeal M-9500005

Durham Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Durham Regional Police Services Board (the Police) received a request for copies of two named police officers' memo note-books for two specific dates. The request specified that the copies be provided as they appear chronologically in the note-books and that the officer who authored each note-book be identified. The request was made by counsel for the requester, who had been involved in an incident in which the Police were called.

The Police located records responsive to the request and, following third party notification pursuant to section 21 of the Act, granted partial access to them. Two individuals consented to the release of their personal information and this was disclosed to the appellant. Access was denied to portions of the records which contain the personal information of two other identifiable individuals (the affected persons) on the basis of the following exemption:

- invasion of privacy - section 38(b).

The Police indicated further that portions of the records were removed as non-responsive to the matter involving the requester.

In appealing the decision of the Police to withhold portions of the records, the appellant indicated that the request was for the complete contents of the officers' notebooks for the dates specified and that it should not have been limited to contents which related directly or indirectly to the matter pertaining to him. He also indicated that portions of one of the notebooks are illegible.

Prior to the Inquiry stage of the appeal, the Police provided a transcribed version of the illegible portions of the notebook in question to the appellant, and this part of the appeal is no longer at issue.

A Notice of Inquiry was provided to the Police and the appellant. Representations were received from the Police and the appellant's mother. The appellant's mother indicated that counsel was no longer representing her son's interests in this appeal and that she was now acting as his agent. In this regard, she provided a signed authorization from her son to that effect. For ease of understanding, I will refer to any information provided by the mother as being provided by the appellant.

In his representations, the appellant indicates that he seeks a review of the decision of the Police to deny access to portions of the records. With respect to the issue of non-responsive records, the appellant clarifies that he is only interested in records that relate to himself and the investigation pertaining to him. He is, therefore, not seeking access to all information contained in the records, but rather, only that which relates directly or indirectly to him.

PRELIMINARY MATTER:

REASONABLENESS OF SEARCH

During the mediation stage of this appeal, the appellant indicated to the Appeals Officer that more records should exist. This was, therefore, raised in the Notice of Inquiry as an issue. The Police have provided representations on this issue, and have included affidavits from the commanding officer of the two named officers and from the clerk analyst in the Freedom of Information Unit of the Police. The appellant's representations do not address this issue.

In approaching reasonableness of search issues in appeals, the Commissioner's office has recognized that an appellant is rarely in a position to **know** that records do, in fact, exist. An appellant is, therefore, asked to provide his or her reasons for believing that a record should exist. At the same time, the institution is asked to provide details of the search which it has conducted. Previous orders have described the standard of review that will be conducted by this office, generally, as follows:

Where a requester provides sufficient details about the records which he or she is seeking and the Police indicate that additional records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify responsive records. While the Act does not require that the Police prove to the degree of absolute certainty that such records do not exist, the search which the Police undertake must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

Upon consideration of the information provided by the parties, a conclusion will be made as to whether or not the search was reasonable in the circumstances of the appeal.

In this case, the appellant has provided **no** information with respect to why he believes that more records should exist, either through correspondence with this office or in his representations. In my view, the appellant has provided no reasonable basis for his claim, and I will not consider this issue further in this order.

DISCUSSION:

RESPONSIVE RECORDS

I have reviewed the records which have been provided to the Commissioner's office in relation to this appeal. They consist of 11 pages of police officers' notes. The first eight pages contain the notes of one of the identified officers and the last three pages come from the second officer's notebook. A copy of the cover page of each notebook has been included as the first page of each set of notes in order to identify the author.

The Police indicate that only portions of pages 1 (cover page), 3, 9 (cover page) and 11 contain information responsive to the request. In their representations, they have outlined their reasons for unilaterally narrowing the request to information pertaining to the appellant, however, it is no longer necessary to address this issue since the appellant has indicated that he is only seeking information directly or indirectly relating to himself

and/or the investigation regarding him.

The portions of the records that the Police indicate are non-responsive relate to matters that are outside the date parameters provided by the appellant (page 2) or relate to other matters the officers dealt with on the specified dates. None of the information which has been withheld as non-responsive relates directly or indirectly to the appellant or the matter pertaining to him.

The records at issue in this appeal, therefore, consist of portions of pages 3 and 11 which have been withheld pursuant to section 38(b) of the Act.

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 any identifying number assigned to the individual and 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. The records at issue relate to an incident involving the appellant and a number of other individuals. Accordingly, I find that they contain the personal information of the appellant and the other individuals identified in them. The portions of pages 3 and 11 which have been withheld contain the names, addresses and phone numbers of two affected persons, as well as other information pertaining to them, and constitutes the personal information of those individuals. The information which has been withheld is not the appellant's personal information.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

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

In their representations, the Police indicate that the information in the records was recorded by the Police during their investigation into an allegation of assault pursuant to the Criminal Code, and submits that the presumption in section 14(3)(b) (the information was compiled and is identifiable as part of an investigation

into a possible violation of law) applies to the information. The Police indicate further that charges were, in fact, laid and a criminal trial followed.

The appellant's representations simply reiterate that a review of the decision of the Police is requested to determine whether he is entitled to the personal information.

I have considered the representations and have reviewed the portions of the records at issue, and I make the following findings:

- (1) All of the information at issue in the records was compiled and is identifiable as part of an investigation into a possible violation of law, namely the Criminal Code, and accordingly, the presumed unjustified invasion of privacy in section 14(3)(b) applies.
- (2) Section 14(4) does not apply to the information, and the appellant has not claimed that section 16 of the Act applies in this appeal.
- (3) Disclosure of the personal information which has been withheld would constitute an unjustified invasion of personal privacy of individuals other than the appellant and is properly exempt from disclosure under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 27, 1995