



Information and Privacy
Commissioner/Ontario

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

ORDER M-528

Appeal M-9400742

Hamilton-Wentworth Regional 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 appellant submitted a request to the Hamilton-Wentworth Regional Police Services Board (the Police). In the request, the appellant sought access to copies of photographs of the K-9 and Motorcycle Patrol Units of the Police. The Police identified two photographs as responsive to this request. The appellant, who runs a "search and rescue" operation, sought the two photographs in order to display them in his office.

One of the records is a photograph of the K-9 Unit that shows five officers with their dogs together with the Inspector and Superintendent of the Mountain Police Station. The other is a photograph of the Motorcycle Patrol Unit that shows nine officers with their motorcycles. They are part of the 38 photographs displayed in the front lobby of the Central Police Station in Hamilton to promote recruitment into the force.

The Police decided to deny access to the photographs, based on the following exemptions in the Act:

- endanger life or safety - section 8(1)(e)
- law enforcement - section 8(2)(a)
- invasion of privacy - section 14(1).

The appellant filed an appeal of this decision. During the mediation stage of the appeal, the Police indicated that they are no longer relying on section 8(2)(a), and accordingly it is not at issue in this case.

A Notice of Inquiry was sent to the Police and the appellant. Representations were received from the Police only.

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. One of the items expressly included in this definition is "information relating to the **race**, national or ethnic origin, age, **sex**, sexual orientation or marital or family status of the individual" (emphases added). Given that these photographs indicate the race and sex of the individuals depicted, I find that they contain the personal information of those individuals.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Section 14(1)(f) provides an exception to the application of this exemption if disclosure 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 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.

The appellant did not provide representations. In his letter of appeal, the appellant argues that he should be granted access because he has received similar records from other police forces in Canada and the United States. In my view, this evidence is not relevant to the question which I must decide in this appeal, namely, whether or not these particular records are exempt from disclosure under the Act. Moreover, even if I found this evidence to be relevant, I am of the view that this is not a factor favouring disclosure under section 14.

It could also be argued that the fact that the photographs are displayed in the front lobby of the Central Police Station is a factor favouring disclosure. However, the records at issue are part of a display of thirty-eight photographs. In that context, they cannot be removed from the wall or taken away for private study by members of the public. In my view, that context differs significantly from a situation in which a member of the public is given access to copies whose use is not subject to the limitations inherent in the lobby display. In the circumstances of this appeal, I find that the presence of these photographs in the lobby display is not applicable as a factor which favours disclosure.

Therefore, I find that no factors favouring disclosure of these photographs have been established. Accordingly, the exception provided by section 14(1)(f) (permitting disclosure where it would not constitute an unjustified invasion of personal privacy) has not been established, and I find that the exemption in section 14(1) applies.

Because I have found that the records are exempt under section 14(1), it is not necessary for me to consider the application of section 8(1)(e).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
John Higgins
Inquiry Officer

_____ May 17, 1995