



Information and Privacy  
Commissioner/Ontario

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

# ORDER M-595

Appeal M\_9500075

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 Hamilton-Wentworth Regional Police Services Board (the Police) received a request for access to its files relating to a murder investigation. The requester is counsel to an insurance company which has denied a claim for death benefits by the widow of the murder victim. The Police located a large number of records responsive to the request and denied access to them based on the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a) and (b), 8(2)(a)
- right to a fair trial - section 8(1)(f)
- invasion of privacy - section 21(1)

The requester appealed the Police decision to deny access to the records. A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. The records at issue in this appeal consist of 9009 pages of documents, 517 photographs, 7 videotapes and 94 audio cassettes. The Police submit that an additional 6284 pages are comprised of records which fall outside the scope of the Act and are, accordingly, not at issue in this appeal.

I have examined the relevant provisions of the Criminal Code and a description of the records themselves. In a previous order, Assistant Commissioner Tom Mitchinson found that the doctrine of federal legislative paramountcy operates so as to exclude requests for records of this type from the scope of the Act. Assistant Commissioner Mitchinson came to the conclusion that, while the Code and the Act were not expressly contradictory on every count, they were nonetheless operationally incompatible with one another. I agree. Accordingly, I find that these 6284 pages of records fall outside the scope of the Act.

## DISCUSSION:

### INVASION OF PRIVACY

The Act defines personal information, in part, as recorded information about an identifiable individual. Having reviewed the records and the representations of the parties, I find that all of the records, with the exception of the photographs of firearms found in Box 1A File 36, media releases and press clippings in Box 1A File 38 and the weather documents contained in Box 4, contain the personal information of the deceased and various other identifiable individuals, including witnesses and suspects in the murder investigation. Further, I find that none of the records contain any personal information of the appellant or his client.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether or not disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(3) lists the types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Police submit that the presumption contained in section 14(3)(b) applies to all of the records at issue. This section states:

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;

I have reviewed the records at issue and the representations of the parties and, in my view, the presumption in section 14(3)(b) applies to the personal information contained in the records. This information was compiled and is identifiable as part of an investigation into a possible violation of law, namely the Criminal Code. Where one of the presumptions found in section 14(3) applies to the personal information found in the records, 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. I find that sections 14(4) and 16 have no application in the circumstances of this appeal.

Accordingly, I find that all of the records at issue in this appeal, with the exception of the records enumerated above which do not contain personal information, are exempt from disclosure under section 14 of the Act.

## **LAW ENFORCEMENT**

The records which are not exempt under section 14 of the Act consist of a seven page weather report, a document which interprets the data on the report, photographs of weapons, media releases from the Police and seven newspaper clippings relating to the murder, the investigation and the conviction of one of the accused persons.

Sections 8(1)(a) and (b) state that:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under sections 8(1)(a) or (b), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act.

The weather reports were prepared by Environment Canada and describe the weather conditions in Hamilton on the night of the murder. I find that records of this type do not qualify as "law enforcement" records within the meaning of the Act. Accordingly, their disclosure could not reasonably be expected to interfere with a law enforcement matter or investigation as contemplated by sections 8(1)(a) and (b).

The Police have not made any specific representations as to how the disclosure of the weapons photographs could interfere either with a law enforcement matter or an investigation. Nor have any representations been made concerning the application of these exemptions to the media releases and press clippings. In my view, it is unreasonable to expect that a law enforcement matter or investigation could be interfered with should these records be disclosed. Accordingly, they are not exempt from disclosure under sections 8(1)(a) or (b) of the Act.

The Police have also claimed the application of section 8(2)(a) to these records. In order for a record to qualify for exemption under this section, the matter to which the record relates must also first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act.

In addition, for a record to qualify for exemption under sections 8(2)(a) of the Act, the Police must satisfy each part of the following three part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

I have found above that the weather information records do not qualify as "law enforcement" records for the purposes of the Act. In addition, the weather reports were not prepared in the course of a law enforcement investigation or inspection. Rather, they were prepared by

Environment Canada, which is not an agency which has the function of enforcing and regulating compliance with a law. Accordingly, section 8(2)(a) does not apply to these records.

The weapons photographs, media releases and press clippings cannot be characterized as reports within the meaning of the Act. Accordingly, section 8(2)(a) has no application to these records.

### **RIGHT TO A FAIR TRIAL**

Section 8(1)(f) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

deprive a person of the right to a fair trial or impartial adjudication;

The Police have not provided any specific representations as to how the disclosure of the information contained in these records might reasonably be expected to deprive a person of a right to a fair trial. I find, therefore, that section 8(1)(f) of the Act has no application to them.

As no other exemptions have been claimed for the weather information, the weapons photographs, the media releases and the press clippings, they should be disclosed to the appellant.

### **ORDER:**

1. I order the Police to disclose the weather information found in Box 4, the weapons photographs found in Box 1A File 36 and the media releases and press clippings found in Box 1A File 38 to the appellant within twenty-one (21) days of the date of this order.
2. I uphold the decision of the Police to deny access to the remaining records.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

\_\_\_\_\_ September 22, 1995