



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

# ORDER M-749

Appeal M\_9500749

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 records relating to two investigations into allegations regarding events at a residential care facility for seniors (the facility). The investigations were conducted in 1993 and 1994. The request was made jointly by the President and Administrator of the facility.

The Police located 88 pages of records and, following notification of affected parties under section 21 of the Act, denied access to the records in full on the basis of the following exemptions under the Act:

- law enforcement - sections 8(1)(a) and (b) and 8(2)(a)
- right to fair trial - section 8(1)(f)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a).

The requesters appealed this decision.

A Notice of Inquiry was sent to the Police, the requesters (now the appellants) and seven individuals whose interests might be affected by disclosure of the records in this appeal (the affected parties). Representations were received from the Police, the appellants, and two of the affected parties.

The records at issue consist of two Police Occurrence Reports and Supplemental Reports, a Police Memorandum, a letter and attachments from an individual regarding the facility, letters from a number of other individuals regarding the facility, incident reports and a review of resident care conducted in December, 1994.

## DISCUSSION:

### DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

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.

I have reviewed the records and find that they contain the personal information of the appellants as well as that of other identifiable individuals.

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(a) of the Act, the Police have the discretion to deny access to an individual's own personal information in instances where certain exemptions, including sections 8(1)(a) and (b), would otherwise apply to that information. Sections 8(1)(a) and (b) state:

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.

Section 2(1) of the Act defines "law enforcement" as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The purpose of the exemptions contained in sections 8(1)(a) and (b) of the Act is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter or investigation is ongoing and second, that disclosure of the records could reasonably be expected to interfere with the matter or the investigation.

The Police indicate that the records at issue relate to two investigations conducted by the Police into allegations of fraud and elder abuse. The Police acknowledge that both of these investigations were concluded at one point. However, a subsequent coroner's investigation into a number of deaths at the facility has resulted in the reopening of these investigations. In this regard, the Police state that the Coroner has ordered that all the incidents at the facility be reinvestigated. The Police state further that the information contained in the two previously closed investigations forms part of the new investigation.

The appellants contend that to date, no proceedings have resulted from the two original investigations and that the investigations were closed. The appellants state further that the only ongoing investigation which they are aware of is the inquest investigation. The appellants submit that a coroner's investigation does not come within the definition of "law enforcement" as defined in the Act.

Previous orders of the Commissioner's office have considered whether matters arising in the context or under the auspices of the Coroners Act qualify as law enforcement matters. In the context of section 21(3)(b) of the provincial Freedom of Information and Protection of Privacy Act, which is equivalent to section 14(3)(b) of the Act (invasion of privacy), Inquiry Officer Donald Hale stated:

Section 2(2) of the Coroners Act states that the powers conferred on a coroner to conduct an inquest shall not be construed as creating a criminal court of record. In addition, the Coroner's Court is not a court or tribunal which is empowered to impose penalties or sanctions and its proceedings do not, therefore, meet the definition of a law enforcement proceeding under section 2(1) of the Act.  
(Order P-1027)

I agree with this interpretation, and find that it applies equally in the context of sections 8(1)(a) and (b). Moreover, I find that an investigation conducted or ordered by a coroner similarly does not meet the definition of "law enforcement" under section 2(1), insofar as it pertains to the role of a coroner under the Coroners Act. Accordingly, I find that an investigation conducted pursuant to the Coroners Act does not qualify as a law enforcement matter or investigation.

However, the Police also indicate that the allegations and subsequent investigation pertain to matters which fall under the Criminal Code. In this regard, the Police outline the duties and responsibilities of the Police which are found in section 42 of the Police Services Act, which include the prevention and investigation of crimes and other offences, and the apprehension of criminals and other offenders. In my view, regardless of the source of the direction to investigate, the authority of the Police to reopen and reinvestigate allegations concerning fraud and elder abuse is founded within their governing legislation. Accordingly, I find that the records at issue relate to a "law enforcement" matter or investigation. I am also satisfied that this matter and investigation are ongoing.

Having found that the records relate to an ongoing law enforcement matter or investigation, I must now determine whether the disclosure of the records could reasonably be expected to **interfere** with this matter or investigation.

The representations of the Police explain how disclosure of the information contained in the records could hamper or impede the effectiveness of the law enforcement matter and investigation. Based on the evidence provided by the Police I am satisfied that disclosure of the records could reasonably be expected to interfere with a law enforcement matter or investigation under sections 8(1)(a) and (b). The records are, therefore, properly exempt from disclosure pursuant to section 38(a) of the Act.

Because of the findings I have made, it is not necessary for me to consider the other exemptions claimed by the Police.

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_ April 10, 1996  
Laurel Cropley  
Inquiry Officer