



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

# ORDER M-751

Appeal M\_9500772

Sudbury 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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## NATURE OF THE APPEAL:

The Sudbury Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to police officers' notes taken in relation to an investigation conducted by the Police involving the appellant.

The Police located 126 pages of responsive records and granted access in full to 50 pages, partial access to 74 pages and denied access in full to the remaining two pages. The Police relied on the following exemptions contained in the Act to deny access to those records which were not disclosed:

- law enforcement - sections 8(1)(a) and (c)
- invasion of privacy - sections 14 and 38(b)

The appellant appealed the decision to deny access.

During the mediation of the appeal, the parties agreed that some of the undisclosed information was not responsive to the request. In addition, the appellant provided a document signed by two individuals consenting to the disclosure of their personal information which may be contained in the records to the appellant. Having reviewed the records, I find that the information contained in Pages 192, 193 and 194 relates to these individuals and that it should be disclosed to the appellant. The information remaining at issue consists of the undisclosed portions of 70 pages of notes and one page in its entirety.

A Notice of Inquiry was provided to the appellant, the Police and eight individuals whose interests may be affected by the disclosure of the records (the affected persons). Because the records appeared to contain the personal information of the appellant, the Notice of Inquiry raised the possible application of section 38(a) of the Act (discretion to refuse requester's own information). Representations were received from the Police and all of the affected persons.

## 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. I have reviewed the information contained in the records and I find that it satisfies the definition of personal information. Each of the records contains the personal information of the appellant. In addition, the undisclosed portions of Pages 171, 172, 175, 176, 177 (in part), 180, 183, 184, 237, 317 and 320 also contain the personal information of other identifiable individuals.

One of the affected persons submits that the records contain his personal information as they contain references to him by name, giving his employer and a description of the services which he performed on behalf of his employer at the request of the Police. The other affected persons,

who are all Police employees, also argue that the records contain information which is properly characterized as their personal information within the meaning of section 2(1) of the Act.

It is my view that while Pages 160, 161, 162, 164, 177 (in part), 190, 246-297, 299-316, 318 and 319 contain information about the affected persons, these individuals were acting in their employment capacities at the time the records were created. As the information relates to the affected persons only in their capacities as employees of the Police or its service provider, I find that this information does not qualify as their personal information under section 2(1) of the Act and is not, therefore, exempt from disclosure under sections 14(1) or 38(b).

As no other exemptions have been claimed for the undisclosed information contained in Pages 160, 161, 162, 164, 177 (in part), 190, 246-297, 299-316, 318 and 319, it should be disclosed to the appellant.

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 another individual and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's 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. 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 can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is that section 16 of the Act applies to the personal information.

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

I have found that Pages 171, 172, 175, 176, 177 (in part), 180, 183, 184, 237, 317 and 320 contain the personal information of other identifiable individuals, as well as that of the appellant. The Police submit that the personal information contained in these pages was compiled as part of an investigation into a possible violation of law. Therefore, the Police submit that the disclosure of this information would result in a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.

Having carefully reviewed the representations and the records, I have made the following findings:

1. Pages 171, 172, 175, 176, 177 (in part), 180, 183, 184, 237, 317 and 320 contain information concerning an investigation into a possible violation of law. The disclosure of the personal information contained in these pages would, therefore, constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act. The information which is subject to the presumption relates only to individuals other than the appellant.
2. None of the personal information contained in the records falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
3. Accordingly, I find that the personal information contained in Pages 171, 172, 175, 176, 177 (in part), 180, 183, 184, 237, 317 and 320 is exempt from disclosure under section 38(b) of the Act.

I have attached a highlighted copy of Page 177 to the copy of this order which is provided to the Police's Freedom of Information and Protection of Privacy Co-ordinator indicating those parts of Page 177 which should **not** be disclosed.

Because of the manner in which I have disposed of this issue, it is not necessary for me to consider the application of section 8(1)(a) of the Act with respect to the undisclosed information on Page 172.

## **LAW ENFORCEMENT**

The Police claim that the undisclosed information on Page 167 is exempt from disclosure under section 8(1)(c) of the Act, which states:

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

reveal investigative techniques and procedures currently in use of likely to be used in law enforcement;

Other than stating that the "investigation required special investigative techniques", the Police have not provided me with any explanation as to the nature of the special investigative techniques or how disclosure of the information contained in Page 167 would reveal such techniques. I find that the Police have not provided me with sufficient evidence to substantiate the application of this exemption. Accordingly, Page 167 does not qualify for exemption under section 8(1)(c) of the Act, or section 38(a).

## **ORDER:**

1. I uphold the decision of the Police not to disclose the severed portions of Pages 171, 172, 175, 176, 177 (in part), 180, 183, 184, 237, 317 and 320.

2. I order the Police to disclose to the appellant the severed portions of Pages 160, 161, 162, 164, 167, 190, 192, 193, 194, 246-297, 299-316, 318, 319 and Page 177 in accordance with the highlighted copy provided to the Police's Freedom of Information and Protection of Privacy Co-ordinator with their copy of this order (the highlighted portions indicating those parts which are **not** to be disclosed), by sending the appellant a copy no later than **May 17, 1996** but not before **May 13, 1996**.
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 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ April 12, 1996