



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

ORDER M-723

Appeal M_9500398

Sudbury Regional Police Services Board



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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 the current administrative instruction manual and records related to allegations of abuse made by a named individual against the requester. In particular, the requester sought access to general occurrence reports, arrest and supplementary reports and witness statements. In addition, he requested copies of all police officers' notes taken while present in his residence, surveillance probe recordings from his residence and all monitored telephone conversations from his residence or vehicles and the authorization for such monitoring.

The Police identified the records responsive to the request and granted access in full to ten pages and the administrative manual. The requester appealed the denial of access to the remaining records.

During mediation, the appellant agreed that the police officer's notes were already part of the records at issue in another appeal. He also agreed that the surveillance records and transcripts and wiretap application records were excluded from the scope of the appeal.

The record that remains at issue in this appeal consists of 111 pages of supplementary reports, arrest detail reports and witness statements, withheld in whole or in part. All of the pages relate to the allegations of sexual abuse made against the appellant by the named individual (the complainant). The Police relied on the application of the following exemptions to deny access to the records:

- law enforcement - sections 8(1)(a) and 8(2)(a)
- invasion of privacy - section 14(1)(f) and 38(b)

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from the Police. The appellant notified this office that he wished to rely on the information that he has previously provided to this office in Appeal Numbers M-9500270 and M-9500164.

PRELIMINARY ISSUE:

THE RAISING OF ADDITIONAL DISCRETIONARY EXEMPTIONS LATE IN THE APPEALS PROCESS

Upon receipt of the appeal, this office provided the Police with a Confirmation of Appeal notice. This notice indicated that the Police had 35 days from the date of this notice (i.e. August 14, 1995) to raise additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

Subsequently, in their representations received on January 17, 1996, the Police raised the application of the discretionary exemptions provided by sections 8(1)(d) and (e) and section 13

of the Act. The deadline for raising additional discretionary exemptions expired on August 14, 1995.

It has been determined in previous orders that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise new discretionary exemptions not claimed in its original decision letter.

In Order P-658, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption(s) is claimed late in the appeals process, a decision-maker has the authority to decline to consider the discretionary exemption(s). I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

The Police have provided no explanation for the delay in raising the additional discretionary exemptions. In my view, a departure from the 35-day time frame is not justified in the circumstances of this appeal and I will not consider the application of sections 8(1)(d) and(e) and section 13 in this order.

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, 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 information in the record. In my view, it relates to the appellant, the complainant and other identifiable individuals and therefore, constitutes the personal information of the appellant and these other 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 an 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 requester 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 requester access to that information. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his or her own personal information, the only situation under section 38(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's 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 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 Police 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.

As requested by the appellant, I have reviewed his submissions in Appeal Numbers M-9500164 and M-9500270. The issues in those files were different and therefore, I find that his submissions in those files are not relevant to the issues in the subject appeal.

In their representations, the Police acknowledge that the record contains the personal information of the appellant and other individuals and submit that disclosure of this information would violate the privacy of the other individuals involved.

The Police submit that personal information was compiled as part of an investigation into allegations of sexual abuse. The Police submit that the personal information is therefore identifiable as part of an investigation into a possible violation of the Criminal Code and that the presumption in section 14(3)(b) applies. I am satisfied that the personal information satisfies the presumption in section 14(3)(b) of the Act.

The personal information does not fall within section 14(4) and the appellant has not claimed that there is a public interest in the disclosure of this information under section 16. Accordingly, I find that disclosure of the withheld pages or portions thereof, would result in an unjustified invasion of the personal privacy of the other individuals named on these pages. Section 38(b) thus applies to the record.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 5, 1996