



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

ORDER M-799

Appeal M_9600021

Orillia Police Services Board



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NATURE OF THE APPEAL:

The former Orillia Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of statements of nine named individuals located in a specific police investigation file. The Police denied access to records relating to four of the individuals pursuant to sections 8(1)(a), 8(1)(f) and 14 of the Act, and advised the requester that responsive records relating to the remaining five individuals do not exist. The requester appealed the decision to deny access, and argued that there is a compelling public interest in the disclosure of the records.

A Notice of Inquiry was sent to the Police, the appellant and 3 of the individuals whose statements were requested by the appellant (the affected persons). Because it appeared that certain records also contained the personal information of the appellant, sections 38(a) and (b) were included as issues in the Notice. Representations were received from the Police, the appellant and two of the affected persons.

There are seven records at issue in this appeal:

1. Letter from Affected Person A's solicitor to the Crown Attorney
2. Letter from Affected Person A's solicitor to the investigating police officer
3. Letter from Affected Person A's solicitor to the Crown Attorney
4. Statement of Affected Person A
5. Statement of Affected Person B
6. Supplementary Police Report regarding statement of Affected Person C
7. Supplementary Police Report containing statements of Affected Persons A and B

In their representations, the Police withdrew their reliance on section 8 of the Act, and indicated that parts of Records 6 and 7 can be disclosed. In his representations, Affected Person A consented to the disclosure of Record 1, and Affected Person B consented to the disclosure of his personal information.

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. Having reviewed the records, I find that Records 1, 3 and 4 contain the personal information of Affected Person A only, Record 5 contains the personal information of Affected Person B only, Record 2 contains the personal information of the appellant and Affected Person A, Record 6 contains the personal information of the appellant, Affected Person A, Affected Person B and other individuals, and Record 7 contains the personal information of the appellant, Affected Person A and Affected Person B.

With respect to Records 2, 6 and 7, 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 other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has 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/her own personal information, the only situation under section 38(b) in which he/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 privacy.

Where, however, the record only contains the personal information of other individuals, as is the case with Records 1, 3, 4 and 5, section 21(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy."

Sections 21(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 21(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 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Police must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

Affected Person A has consented to the disclosure of Record 1 and Affected Person B has consented to the disclosure of any personal information relating to him, which is found in Records 5, 6 and 7. Accordingly, I find no possibility of an unjustified invasion of privacy arising through disclosure of this information, and neither exemption applies. I order the Police to disclose Records 1 and 5 to the appellant in their entirety, and the personal information of Affected Person B which is found in Records 6 and 7. I have highlighted this information on the copy of Records 6 and 7 sent to the Police with this order.

As section 38(b) is a discretionary exemption, the Police may exercise discretion in favour of disclosure even if the disclosure would be an unjustified invasion of another individual's privacy. The Police have indicated in their representations that they have exercised their discretion in favour of disclosing parts of Records 6 and 7, and these parts of the records should also be disclosed to the appellant.

What remains at issue is the personal information of Affected Person A, which appears on its own in Records 3 and 4, and appears together with personal information of the appellant in Records 2, 6 and 7. Record 6 also contains personal information of other individuals.

I am satisfied that the personal information contained in these records was compiled and is identifiable as part of an investigation into a possible violation of law. The appellant does not contend that disclosure is necessary to prosecute the violation or to continue the investigation and, in fact, the Police confirm that the charges which were laid are not being proceeded upon. Accordingly, I find that disclosure of the personal information would constitute an unjustified invasion of personal privacy under section 14(3)(b) of the Act. Since section 14(4) of the Act is not at issue in this appeal, I find that Records 3 and 4 are exempt under section 14 of the Act, and Record 2 and the remaining parts of Records 6 and 7 are exempt under section 38(b) of the Act.

PUBLIC INTEREST IN DISCLOSURE

Section 16 of the Act states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [Emphasis added.]

In order for section 23 of the Act to apply to a record, two requirements must be met. First, there must be a **compelling** public interest in the disclosure of the record, and second, this interest must **clearly** outweigh the **purpose** of the exemption which otherwise applies to the record.

The appellant has asked me to recognize a public interest in "this sordid affair", and has included background information and documentation about the incident which led to the charges. I have reviewed this information carefully, but the arguments presented by the appellant are not, in my view, sufficiently compelling to outweigh the purpose of the exemptions I have found to apply. Accordingly, I find that section 16 of the Act is not applicable.

ORDER:

1. I order the Police to disclose Records 1 and 5 to the appellant in their entirety, and the personal information of Affected Person B which is found in Records 6 and 7. I have highlighted this information on the copy of Records 6 and 7 sent to the Police with this order.
2. I order the Police to disclose the parts of Records 6 and 7 referred to in its representations in respect of which it withdrew its exemption claim under section 38(b) of the Act to the appellant.
3. I uphold the decision of the Police not to disclose Records 2, 3, 4 and the remaining parts of Records 6 and 7.
4. I order the Police to disclose the information referred to in Provisions 1 and 2 of the order by sending a copy to the requester by **August 9, 1996** but not before **August 2, 1996**.

5. In order to verify compliance with the provisions of 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 Provisions 1 and 2.

Original signed by: _____ July 4, 1996
Holly Big Canoe
Inquiry Officer