



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

ORDER M-793

Appeal M_9600093

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 copies of the tapes or transcripts of the 911 calls the requester had made to the Police. The calls were made over a period of time on the same date and relate to an incident which occurred at the requester's place of employment.

The Police located the portions of the 911 tapes which contain the requester's calls and denied access to the information on the tapes on the basis of the following exemptions in the Act:

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

The requester (now the appellant) appealed the decision of the Police. A Notice of Inquiry was sent by this office to the Police and the appellant. Representations were received from both parties.

The record at issue in this appeal consists of one side of a tape cassette to which the Police have transferred the portions of the 911 tapes in question. The cassette contains the recordings of the five calls made to the Police by the appellant.

DISCUSSION:

PERSONAL INFORMATION

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 listened to the tape. The calls made to the 911 line all relate to an incident regarding an unwanted guest at the appellant's place of employment. Subsequent to the calls being made, the unwanted guest died. The Police acknowledge that the records contain the personal information of the appellant. The Police indicate further that although this other individual (the deceased) is not mentioned by name in the records, her death attracted considerable media attention which resulted in release of her name as well as other information about her in the press. Therefore, the Police submit that the deceased is identifiable and the record contains her personal information.

I find that the calls all contain the personal information of the appellant. Moreover, I agree with the Police that the deceased is identifiable in the circumstances of this appeal, and I find that the record also contains her personal information.

Section 2(2) of the Act provides that personal information does not include information about an individual who has been dead for more than thirty years. As the deceased's death occurred within thirty years, section 2(2) does not apply in the circumstances of this appeal.

I also note that in transferring the recordings of the 911 calls to the tape cassette, the Police have identified the call taker for each call. I find that this information appears in the context of these individuals' employment responsibilities and falls outside the scope of personal information.

In summary, I find that the records contain the personal information of the appellant and the deceased.

INVASION OF PRIVACY

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 a 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.

The Police state that the disclosure of the information contained in the record would be a presumed unjustified invasion of personal privacy under sections 14(3)(a), (b) and (g). In addition, the Police submit that the factors in sections 14(2)(f) and (i) are relevant with respect to this information. These sections provide:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (f) the personal information is highly sensitive;
 - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) 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;
 - (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

However, the personal information withheld from the tape of the appellant's 911 calls to the Police, was provided to the Police by the appellant herself. In Order M-713, Inquiry Officer Anita Fineberg dealt with a record which contained the transcript of a 911 call made to the Police by the appellant in that appeal. She made the following comments regarding this information:

Past orders of the Commissioner's office have found that non-disclosure of information which was originally provided to the Police by the requester would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (Orders M-384, M_444, M-613 and M-646). In this case, as in those previous orders, applying the presumption to deny access to the information which the appellant herself provided to the Police would, according to the rules of statutory interpretation, lead to an "absurd" result.

I agree fully with this conclusion. On this basis, I find that the presumptions in sections 14(3)(a), (b) and (g) do not apply to the information provided to the Police by the appellant. Having considered all of the circumstances of this appeal, I find that disclosure of this information would not constitute an unjustified invasion of personal privacy, and section 38(b) does not apply.

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

As previously indicated, 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.

Section 38(a) of the Act gives the Police the discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. The Police claim that sections 8(2)(a) and (c) apply to the record.

In order to determine whether section 38(a) applies to this information, I will first consider whether the record qualifies for exemption under sections 8(2)(a) or (c). These sections provide:

A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

In order for a record to qualify for exemption under these two sections, the matter to which the record relates must first satisfy the definition of "law enforcement" as defined in section 2(1) of the Act. The record is a tape of calls made to the Police for police assistance in removing an unwanted guest from the premises. In my view, this clearly relates to the policing function of the Police and thus qualifies as "law enforcement" within the meaning of section 2(1) of the Act.

With respect to section 8(2)(a), the representations of the Police detail their law enforcement functions, but do not specifically address whether or not the record constitutes a "report".

The word "report" is not defined in the Act. Based on previous orders, however, for a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

As I indicated above, the record contains a tape recording of a call made by the appellant for police assistance. In my view, this type of record does not contain any of the elements of a "report" within the meaning of section 8(2)(a) of the Act. Accordingly, the record is not exempt under this section.

With respect to section 8(2)(c), the police submit that although the appellant is the person who made the call, they are concerned that she could be the subject of civil liability. The Police indicate further that they may also be subject to civil liability in this case should the information in the record be disclosed. The Police do not elaborate on these claims, however, and in my view, these submissions are insufficient to establish that disclosure could reasonably be expected to expose any person to civil liability.

Accordingly, I find that the record does not qualify for exemption under section 8(2)(c). As I have found that neither section 8(2)(a) nor (c) applies to the record it is, therefore, not exempt under section 38(a). As no other exemptions apply to the record, it should be disclosed to the appellant.

ORDER:

1. I order the Police to disclose the information contained in the cassette to the appellant by sending her a copy of the cassette on or before **July 4, 1996**.
2. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record which is disclosed to the appellant in accordance with Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 19, 1996