



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

ORDER M-908

Appeal M_9600359

Michipicoten Township Police Services Board



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NATURE OF THE APPEAL:

The Michipicoten Township Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information regarding an incident involving the requester's wife. The Police located a number of records and granted access to 23 pages, either in whole or in part. The Police denied access to ten pages of records in full, as well as parts of five pages, relying on the following exemptions contained in the Act:

- law enforcement - sections 8(1)(b) and (d)
- solicitor client privilege - section 12
- invasion of privacy - section 14(1)
- discretion to refuse requester's own information - section 38(a)

The requester, now the appellant, appealed the Police's decision. During mediation, the parties agreed that the sole issue to be considered in this appeal would be whether two witness statements identified by the Police as responsive to the request are exempt from disclosure under the Act. The Police are relying on sections 8(1)(d), 14(1) and 38(a) with respect to these records.

This office provided a Notice of Inquiry to the appellant and the Police. Because the records appeared to contain the personal information of the appellant and other individuals, the Notice of Inquiry also invited the parties to make representations on the possible application of section 38(b) of the Act (invasion of privacy). Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

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 records and find that they contain the personal information of the appellant, his wife and other identifiable individuals.

INVASION OF PRIVACY

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this general right of access.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the Police to withhold information from the record if they determine that disclosing that information would constitute an unjustified invasion of personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Disclosing the types of

personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it. If none of the presumptions in section 14(3) apply, the Police must consider the factors listed in section 14(2), as well as other relevant circumstances.

The Police submit that the records were generated as part of the investigation into the incident involving the appellant's wife. The Police state that the information in the records was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code. Accordingly, the Police submit that the disclosure of the information would constitute a presumed unjustified invasion of personal privacy. The appellant was charged by the Police as a result of the investigation. The charges were later withdrawn when further evidence was obtained.

I have reviewed the records and I am satisfied that the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established. In my view, the fact that the criminal charges against the appellant were withdrawn does not in any way negate the application of the presumption under the Act. Section 14(4) does not apply in the circumstances of this appeal and the appellant has not raised the application of section 16. Accordingly, the personal information in the records is properly exempt under section 38(b) of the Act.

Because of the findings I have made above, it is not necessary for me to consider the application of sections 8(1)(d) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ March 12, 1997