



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

# **ORDER M-940**

**Appeal M-9700027**

**Hamilton-Wentworth Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Hamilton-Wentworth Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records relating to any contacts the Police may have had with other police forces, the National Parole Board, Corrections Canada and a number of other agencies concerning the appellant between January 1, 1984 and the date of the request. The appellant has been convicted of a number of sexual assaults and was sentenced to an indeterminate period of incarceration in November 1985.

The Police located a number of responsive records and granted the appellant access to some of them. Access to 41 pages of records was denied, in whole or in part, under the following exemptions contained in the Act:

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

The appellant appealed the Police's decision to deny access to the records. A Notice of Inquiry was provided to the appellant and the Police. Representations were received from the Police only.

## **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 information contained in the records and find that Pages 1-3, 5-20, 30, 43, 44 and 45 contain the personal information of the appellant and a number of other individuals. Page 4 contains only the personal information of two of the appellant's victims. Pages 21-29 and 31-42 contain only the personal information of a crime victim unrelated to any of the offences for which the appellant was convicted. The appellant was not involved in the police investigation which is documented in these pages.

### **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 the appellant and another individual, as is the case with Pages 1-3, 5-20, 30, 43, 44 and 45, 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 disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Where, however, the records contain only the personal information of other individuals, as is the case with Pages 4, 21-29 and 31-42, section 14(1) of the Act 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 14(1)(f) which permits disclosure if it "does not constitute an unjustified invasion of personal privacy".

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant to the appeal.

The Police submit that the presumption in section 14(3)(b) applies to all of the information in the records as it was compiled and is identifiable as part of investigations into possible violations of the Criminal Code by the appellant. It submits, therefore, that the disclosure of this information would result in a presumed unjustified invasion of the personal privacy.

I find that the presumption in section 14(3)(b) applies to all of the personal information in each of the records. In addition, I find that section 14(4) does not apply in the circumstances of this appeal and that the appellant has not raised section 16. Accordingly, the personal information contained in Pages 4, 21-29 and 31-42 is exempt under section 14(1). Similarly, the personal information contained in Records 1-3, 5-20, 30, 43, 44 and 45 is exempt from disclosure under section 38(b).

Because of the manner in which I have addressed the application of sections 14(1) and 38(b) to the records, it is not necessary for me to address the possible application of sections 8(2)(a), 8(2)(c) and 38(a) to them.

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_

May 21, 1997

Donald Hale  
Inquiry Officer