



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

ORDER M-901

Appeal M_9600298

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton 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 all police records relating to a specified assault incident. The requester was the victim and was injured during the assault. The Police located the records and notified those third parties whose interests may be affected by the disclosure of the records. Some of the third parties consented to the disclosure of their information while others objected. Some of the third parties did not respond to the Police notification. The Police granted partial access to the records. The requester appealed the decision to deny access to the remaining records.

The Police denied access to the remaining records, in whole or in part, on the basis of the exemptions contained in the following sections of the Act:

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

During mediation, the requester (now the appellant) narrowed the scope of the appeal to the names of suspects. Therefore, I will only consider the application of the exemptions claimed by the Police to this information in the records.

This office provided a Notice of Inquiry to the appellant and the Police. Because the information at issue can be interpreted as being the information of both the appellant and the suspects, the Notice of Inquiry raised the possible application of sections 38(a) and (b) (discretion to refuse requester's own information and invasion of privacy) of the Act. 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 records and find that they contain the personal information of the appellant 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 type 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 all other relevant circumstances.

The Police submit that the records were generated as part of an investigation into the assault incident. 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. The Police state that disclosure of the information would constitute a presumed unjustified invasion of personal privacy. The Police state that there is not sufficient evidence to lay criminal charges at this time but that this situation could change.

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 criminal charges have not been laid, 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)(a) and (b), sections 8(2)(a) and (c) and section 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ February 18, 1997