



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1000

Appeal M-9700162

Hamilton-Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request from a company under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to investigation reports and notes relating to an April 1996 incident which occurred in a building owned by the company. The incident involved a seven year old child who fell from an apartment window.

The Police denied access to the responsive records based on the following sections of the Act:

- invasion of privacy - sections 14(3)(a) and (b), 14(2)(e), (f) and (h)
- law enforcement - sections 8(2)(a)and(c).

The requester (now the appellant) appealed this decision to the Commissioner's office. This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

The records at issue consist of a two-page occurrence report and four pages of a police officer's notebook.

DISCUSSION:

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

I find that the records at issue qualify as the personal information of individuals other than the requester.

The appellant argues that the record should be routinely disclosed as is the case with motor vehicle accident reports. Although this is not the type of record before me, I note that a number of previous orders have involved requests for motor vehicle accident reports. Where these reports have contained the personal information of an individual other than the requester, they have not been routinely ordered disclosed [Orders M-927, P-1044].

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. When one of the presumptions in section 14(3) is found to apply to the personal information 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. A presumed unjustified invasion of personal privacy cannot be rebutted by factors listed in section 14(2).

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 in the circumstances of the case.

The appellant also submits that the information is needed because of the potential of a law suit against the owner of the building. The appellant states that because the incident involves a child, the six-year period under the Limitations Act does not start to run until the child has reached his 18th birthday. The appellant states that if a law suit is launched when the child is 18, the memory of any witnesses will have dimmed, putting the owner at a disadvantage.

This could be interpreted as a reference to section 14(2)(d). Section 14(2)(d) is a factor weighing in favour of disclosure when the personal information is relevant to a fair determination of the rights of the person who made the request. I may only consider this section if I do not find that disclosure of the information would be a presumed unjustified invasion of personal privacy.

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)).

The Police state that whenever a police officer is sent on a call there is a potential for a violation of law. The Police submit that when a child is involved in an accident the officer must make sure that there is no foul play, abuse or neglect involved. The officer must check the premises for any signs that the fall was something other than accidental.

In this case, the fall was determined to be accidental. However, in my view, the Police are only required to demonstrate that an investigation into a possible violation of law took place in order to bring the records which were compiled and are identifiable as part of the investigation within the ambit of the presumption in section 14(3)(b) [Orders P-223 and P-237].

Based on the submissions of the Police and my review of the records, I find that the personal information was compiled and is identifiable as part of an investigation into a **possible** violation of law, the Criminal Code. In addition, I find that the exceptions contained in section 14(4) have no application in the present appeal. The appellant has not claimed the application of section 16. Therefore, I find that the disclosure of the information contained in the records would constitute an

unjustified invasion of the personal privacy of the affected persons and the records are properly exempt under section 14(3)(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ September 11, 1997