



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

ORDER M-969

Appeal M_9600410

Niagara Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

The appellant owns a licensed private investigation agency (the agency). On October 2, 1996, one of the agency's investigators had parked an agency vehicle on a roadway. The appellant states that, when returning to the vehicle, the investigator saw that it was blocked by two vehicles and two civilians. The investigator radioed the agency and arrangements were made to pick him up a short distance away from the scene. Another individual, who was not part of the agency, placed a telephone call to the Niagara Regional Police Service and as a result, three police officers and a dog were dispatched to investigate.

NATURE OF THE APPEAL:

As a result of the incident I have just described, the appellant submitted a request to the Niagara Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act, for the following records:

1. A transcript of the 911 call or the transmission that brought the presence of the vehicle to the attention of police.
2. A transcript of the dispatcher's notification to officers, and the exchanges that followed in relation to this matter.
3. The identity of the officers who responded.
4. Copies of any reports that may have been prepared in relation to this matter.
5. Copies of the notebook entries of the officers who attended.
6. Transcripts of the telephone conversation between a named individual and the police dispatcher taking place shortly after 4:00 p.m. October 2nd, and between the requester and the police dispatcher at approximately 4:15 p.m.

In their decision letter, the Police granted access to the information sought in part 3 of the request. They also granted access to the tape of the conversation between the appellant and the police dispatcher, which relates to part 6.

The Police also identified taped versions of the conversations referred to in parts 1 and 2, and denied access to them under sections 14(1) and 38(b) of the Act (which are exemptions relating to the invasion of personal privacy). With respect to parts 4 and 5, the Police denied access because responsive records do not exist.

The appellant filed an appeal of this decision to deny access. In his letter of appeal, he also explained that, in his view, written police reports and officers' notes relating to the above described incident should exist, raising the issue of whether the Police conducted an adequate search for records.

This office sent a Notice of Inquiry to the appellant, the Police and two individuals associated with the telephone call to the Police (the complainants). Only the Police submitted representations.

After the Notice of Inquiry was issued, the Police located additional records, consisting of notations in the notebooks of three police officers and an Incident History. The Police granted access to the notations responsive to the request, and denied access to the Incident History under sections 14(1) and 38(b). The Police also denied access to non-responsive portions of the pages of the officers' notebooks.

The appellant later indicated that he wishes to appeal the decision to deny access to the Incident History, but does not wish to pursue the non-responsive portions of the officers' notebooks.

To summarize, the issues in this appeal are:

- whether the tape recording of the 911 call and the dispatcher's exchanges with police officers are exempt under section 14(1) or 38(b);
- whether the Incident History is exempt under section 14(1) or 38(b); and
- whether additional responsive records exist.

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 address, telephone number, fingerprints or blood type of the individual, and the individual's name if 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 recording of the 911 call and the dispatcher's conversations with police officers, and I have reviewed the Incident History. The information in the records reveals the nature of the complaint, and also sets out the names, address and telephone number of the complainants and other information about the complainants' activities. The dispatcher's conversations also contain references to Police activities in relation to another address. I find that all of these items are the personal information of individuals other than the appellant. This finding applies to the 911 call in its entirety, and to parts of the conversation between the dispatcher and police officers. It also applies to parts of the Incident History.

I find that the remaining references to identifiable individuals in the records, including the appellant, relate to the normal performance of professional duties and do not constitute personal information.

INVASION OF PRIVACY

The discretionary exemption in section 38(b) can only apply to records which contain the personal information of the requester and another individual or individuals. Because I have found that the records only contain the personal information of individuals **other than the**

appellant, section 38(b) cannot apply. In this situation, the “invasion of privacy” exemption to consider is the mandatory exemption in section 14(1) (Order M-352).

Section 14(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it “does not 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 institution 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 institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The Police submit that disclosure of the personal information in the records would result in a presumed unjustified invasion of the personal privacy of the affected individuals under section 14(3)(b) of the Act. This provision states:

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, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Police submit that they were investigating a possible violation of law in response to the allegation of certain criminal offences raised by the 911 call. In the circumstances, I am satisfied that the Police were investigating a possible violation of law. No charges resulted from this investigation, but the presumption refers to the investigation of a **possible** violation of law, and does not require criminal charges to have been laid or proceedings to have been commenced (Orders M-395 and P-613).

Therefore, I find that disclosure of the personal information in the records, all of which relates to individuals other than the appellant, would be a presumed unjustified invasion of personal privacy under section 14(3)(b).

Section 14(4) does not apply in the circumstances of this case and the appellant has not argued that there is a compelling public interest in disclosure of this personal information pursuant to section 16 of the Act.

Therefore, I find that the exception in section 14(1)(f) has not been established, and the personal information in the records (i.e. the taped 911 call in its entirety, parts of the taped conversation between the dispatcher and the officers, and parts of the Incident History) is exempt under section 14(1). I also find that the remaining information is not exempt. I have edited the tape of the dispatcher’s conversations with police officers to remove the exempt information. I have also highlighted the exempt information in the Incident History on a copy of this record. I will

provide copies of both the edited tape and the highlighted Incident History to the Freedom of Information and Privacy Co_ordinator for the Police with a copy of this order.

REASONABLENESS OF SEARCH

In his letter of appeal, the appellant writes that he has “difficulty accepting that three officers and a tracking dog could respond to a call and no reports would be prepared nor would any notes be made”.

The Police submit that the search for responsive records was conducted by the Freedom of Information and Privacy Co-ordinator and her assistant.

As noted earlier, during the inquiry stage of this appeal, the Police located responsive notations in the notebooks of three police officers.

The Police have also explained why no reports exist with respect to the incident described by the appellant, as follows:

A computer search was undertaken for information regarding this call based on the information provided by the requester. An incident number was located and the relevant computer generated record, known as an Incident History, was obtained. The Incident History lists activities relevant to the call as recorded by the police communicator. The Incident History indicates that the responding officers concluded their investigation with their judgement indicating that no report was required. This is recorded on the Incident History by the code “NOR”.

Niagara Regional Police Service General Order OPS-041, section 4.1 states: “When the member finds an incident to be of a minor nature which requires no report to be submitted, that member shall: (a) Advise the dispatcher NO REPORT is to follow.

Where a requester provides sufficient details about the records he or she is seeking, and the Police indicate that such a record does not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

In view of the information provided to me, I find that the search for records responsive to the request in the circumstances of this appeal was reasonable, and this part of the appeal is dismissed.

ORDER:

1. I uphold the decision of the Police to deny access to the taped conversation between the complainant and the Police, in its entirety, and to parts of the taped conversations

between the police dispatcher and police officers, and parts of the Incident History. I have highlighted the exempt information in the Incident History on a copy of this record which is being sent to the Freedom of Information and Privacy Co-ordinator for the Police with this order. I have also removed the exempt information from the tape of the dispatcher's conversation with police officers, and a copy of this edited tape is also being sent to the Co-ordinator with this order.

2. I order the Police to disclose the parts of the Incident History which are **not** highlighted on the copy of this record which is being sent to the Co-ordinator with this order, and a copy of the edited tape of the dispatcher's conversations with police officers, by sending these records to the appellant by **August 22, 1997** but not earlier than **August 18, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
John Higgins
Inquiry Officer

July 18, 1997