



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

# **ORDER M-1006**

**Appeal M-9700157**

**Brockville Police Services Board**



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## **NATURE OF THE APPEAL:**

The Brockville Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information related to the Police investigation of a specified assault incident which took place at a named establishment. The Police denied access to the responsive records on the basis that the records were law enforcement reports (section 8(2)(a)). The requester appealed the decision to deny access.

The responsive records consist of a general occurrence report, a supplementary report, police officer's notes, witness statements, victim's statement, medical release form, incident and dispatch details and CPIC printout. The records relate to a complainant's allegation that he was assaulted by four individuals employed by the named establishment, where the incident allegedly took place.

The requester, now the appellant, represents the liability insurers for the named establishment and the four employees.

This office provided a Notice of Inquiry to the appellant, the Police, the four employees and two other individuals referred to in the records. Because the records appear to contain personal information, the parties were asked to make submissions on the application of sections 14 and 38(b) of the Act. Representations were received from the appellant only.

The Police have relied on the discretionary exemption contained in section 8(2)(a) to withhold access to the records. As I have indicated previously, no representations have been received from the Police. Consequently, I will not consider the application of section 8(2)(a) to the records. However, where a record appears to contain personal information and the institution has not raised the mandatory exemption in section 14, the Commissioner has an inherent obligation in the interest of privacy protection, to review the record to determine whether the mandatory exemption applies. Accordingly, I will consider the application of sections 14 and 38(b) to the records at issue.

## **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 in the records and I find that it relates to the complainant, the four employees and other identifiable individuals and constitutes their personal information.

### **INVASION OF PRIVACY**

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 appellant 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 all other relevant considerations.

The appellant indicates that his clients are facing a civil suit launched by the complainant and the information in the records is required to prepare for defence. In this way, the appellant has indirectly raised section 14(2)(d) - fair determination of rights.

As I have indicated previously, the records relate to an allegation of assault made by the complainant against the named establishment and four of its employees. I have conducted an independent review of the personal information in the records.

I note that pages 21 and 22 consist of a statement given to the Police by one of the employees, represented by the appellant. Page 18 consists of a police officer's notes regarding this employee's statement. Numerous orders of the Commissioner have stated that to deny information about an appellant or another individual which was originally supplied by that appellant would lead to an "absurd result" (Orders M-993 and M-976). This principle applies to the pages 18, 21 and 22. These pages should be disclosed to the appellant.

In my view, the personal information in the remaining records clearly falls within the presumption in section 14(3)(b). I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code. I find that sections 14(4) and 16 do not apply. As indicated previously, a finding of a presumption under section 14(3) cannot be rebutted by the consideration of a factor(s) under section 14(2). Accordingly, I find that disclosure of this information would constitute an unjustified invasion of personal privacy and the exemption in section 38(b) applies.

In addition, I find that the personal information that I have found to be exempt under section 38(b) is so intertwined, it cannot be severed in accordance with section 4(2) of the Act.

## **ORDER:**

1. I order the Police to disclose pages 18, 21 and 22 to the appellant by sending him a copy on or before **October 31, 1997** but not earlier than **October 27, 1997**.
2. I uphold the decision of the Police to deny access to the remaining records.

3. I reserve the right to require the Police to provide me with a copy of the pages disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ September 26, 1997