



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

Reconsideration Order R-970004

Appeal M-9700198

Order M-1036

Hamilton-Wentworth Regional Police Services Board



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BACKGROUND:

On November 19, 1997, I issued Order M-1036 which dealt with the decision by the Hamilton-Wentworth Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to deny access to records requested by the appellant. The Police claimed that these records qualified for exemption under sections 8(2)(a) and (c), 14(1), 38(a) and 38(b) of the Act. The records consist of a three-page "Occurrence Report", and a three-page "Memorandum" with 38 pages of attachments.

In Order M-1036, I upheld the decision of the Police not to disclose all information contained in the records pursuant to section 38(b) of the Act, with the exception of the name of the "Regional Solicitor" referred to on pages 2 and 3 of the Occurrence Report and page 1 of the Memorandum. The person referred to as "Regional Solicitor" was an affected person in the appeal. I found that the name did not satisfy the definition of personal information, nor did it qualify for exemption under either of the exemptions found in sections 8(2)(a) and 8(2)(c) of the Act. In addressing section 8(2)(c), I concluded:

With respect to section 8(2)(c), the Police state that the appellant has commenced civil proceedings against several individuals, and express concern that other people named in the records could also be subject to civil liability if their personal information is disclosed. I have already determined that the personal information of individuals other than the appellant is exempt under section 38(b), and therefore no longer at issue.

The Regional Solicitor expresses concern that civil legal proceedings against him would be commenced if his name is disclosed. As noted earlier, the Regional Solicitor's job title has already been disclosed by the Police. I find that any exposure to potential civil liability for the Regional Solicitor occurred at the time the Police responded to the appellant's request. The portions of the records disclosed at that time made the appellant aware of the role played by the Regional Solicitor. In my view, disclosure of his name would not increase this exposure, and I find that the name does not qualify for exemption under section 8(2)(c).

As a result, I ordered that the name of the affected person be disclosed to the appellant. The affected person has asked me to reconsider my finding under section 8(2)(c).

THE RECONSIDERATION REQUEST

The reconsideration policy of the Commissioner's Office provides as follows:

A decision maker may reconsider a decision where it is established that:

- (a) there is a fundamental defect in the adjudication process;
- (b) there is some other jurisdictional defect in the decision; or

- (c) there is a clerical error, accidental error or omission or other similar error in the decision.

A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the decision.

The affected person has asked me to reconsider my decision on the grounds that I made an accidental error in concluding that his name was necessarily used in conjunction with the title "Regional Solicitor" where it appeared in the records. He argues that this error may have resulted in my finding that section 8(2)(c) of the Act did not apply to his name.

I invited the affected person, the Police and the appellant to make representations as to whether I should reconsider my order. I also asked the parties to provide submissions on the substantive issue of the application of section 8(2)(c) in the event that I found that the affected person's request fell within the scope of the reconsideration policy. I received representations from the affected person and the appellant.

The affected person submits that the Police mistakenly used the term "Regional Solicitor" in conjunction with his name when completing their reports. He adds that the title is obsolete and was replaced several years ago by "Commissioner of Legal Services". The affected person has never held the position of Commissioner. He is employed in the Legal Services Department and holds the position of "Assistant Corporate Counsel", a title shared by seven other lawyers. The affected person submits that I mistakenly assumed that the title "Regional Solicitor" belonged to him, and relied on this error in reaching my decision that his name did not qualify for exemption under section 8(2)(c).

The appellant submits that the affected person's request does not fit within the terms of the reconsideration policy. The appellant argues that I did not make any typographical or other clerical error which has a bearing on my decisions. She also points out that a decision to reconsider is discretionary, and should only be made in exceptional circumstances.

Having reviewed all representations provided during the course of this appeal, I accept the position put forward by the affected person, and find that I made an accidental error in concluding that the affected person's name was used in conjunction with the title "Regional Solicitor". This error had a direct bearing on my finding that the affected person's name did not qualify for exemption under section 8(2)(c) of the Act. Therefore, the reconsideration request falls within the scope of the policy.

LAW ENFORCEMENT/DISCRETION TO DENY REQUESTER'S OWN INFORMATION

In Order M-1036, I found that the records contained the appellant's personal information, but that the affected person's name did not qualify as his personal information. I confirm these findings now.

Section 36(1) of the Act gives requesters a general right of access to their own personal information held by a government body. However, section 38(a) gives the Police discretion to deny access to a record containing a requester's own personal information where certain listed exemptions, including section 8, would otherwise apply. The Police claim that section 8(2)(c) applies in the circumstances of this appeal.

Section 8(2)(c) reads as follows:

A head may refuse to disclose a record,

that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability;

I am satisfied that the records were prepared in the course of a law enforcement investigation by an agency which has the function of enforcing and regulating compliance with a law.

With respect to section 8(2)(c), the Police state that the appellant has commenced civil proceedings against several individuals, and express concern that other people named in the records could also be subject to civil liability if their identity is disclosed.

The affected person expresses concern that civil legal proceedings against him would be commenced if his name is disclosed. He adds that the appellant has taken all possible forms of legal redress against any person who was involved in reporting, investigating and responding to concerns about the appellant's place of business, and feels that he will be similarly exposed if his name is disclosed.

In her original representations, the appellant states that section 8(2)(c) only applies if the individual has authored a document, or if the individual has been quoted or paraphrased. In her subsequent representations, the appellant adds that she has been aware of the identity of the affected person for some time, and that any exposure to civil liability occurred at the time the Police responded to the request.

I have difficulty in accepting the appellant's position. If the affected person's name is already known, I can see no reason for pursuing the appeal at this stage. I accept the evidence of the Police during the initial appeal, and the affected person during this reconsideration, that should the name be disclosed, there is a reasonable likelihood that the affected person will be added as a party to current or related litigation.

I find that disclosure of the name of the affected person as it appears on pages 2 and 3 of the Occurrence Report and page 1 of the Memorandum could reasonably be expected to expose the affected person to civil liability, in the circumstances of this appeal. This information satisfies the

requirements of section 8(2)(c), and therefore qualifies for exemption under section 38(a) of the Act, and should not be disclosed.

ORDER:

1. I rescind Order Provisions 1, 2 and 3 of Order M-1036.
2. I uphold the decision of the Police to deny access to the records.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ February 9, 1998