



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1097

Appeal M-9800032

Hamilton-Wentworth 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>

NATURE OF THE APPEAL:

The Hamilton-Wentworth 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 a specified occurrence report. The Police identified a three-page occurrence report as being responsive to the request and notified an individual whose interests may be affected by the disclosure of the record (the complainant). The complainant objected to the disclosure of any of the information in the report. The Police subsequently granted partial access to the requester.

The record relates to a complaint filed against the requester by a co-worker. The requester and the co-worker are also involved in an internal grievance process at the workplace. In response to the request, the Police disclosed to the requester his name, sex, date of birth, telephone number and workplace address as it appears on the record. The remaining information about the complainant and the substance of the complaint was withheld. The Police relied on the following provisions of the Act:

- law enforcement - sections 8(2)(a) and (c)
- discretion to refuse requester's own information -section 38(a)
- invasion of privacy - sections 14(1) and 38(b)

The requester appealed the decision to deny access. This office provided a Notice of Inquiry to the requester, now the appellant, the complainant and the Police. Representations were received from all parties.

DISCUSSION:

PERSONAL INFORMATION AND INVASION OF PRIVACY

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 record and I find that it contains the name of the complainant, his date of birth, residential telephone number, workplace telephone number and address. The record also contains the background and substance of the complaint against the requester. I find that this information constitutes the personal information of both the complainant and the requester. I note that in this particular record, the remaining information about the appellant is so intertwined with that of the complainant that it is not possible to sever one without disclosing the personal information of the other.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from a record if they determine that disclosing that information would constitute an unjustified invasion of another individual's 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) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy of the individual to whom the

information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information falls under section 14(4) or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

The Police submit that the presumptions in section 14(3)(b) and (g), and the factors in sections 14(2)(e), (f) and (h) apply in the circumstances of this appeal.

The appellant has provided extensive representations in support of his argument that he is not a threat to the complainant (section 14(2)(e)), that the information in the record may be inaccurate (section 14(2)(g)) and that he needs access to the information in order to recover his reputation and good will at his workplace.

The complainant submits that he does not want the record disclosed as he fears reprisal from the appellant for having brought this matter to the Police.

I will first consider the application of section 14(3)(b), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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.

I have reviewed the information in the record together with the representations of the parties. I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the record because the personal information was clearly “compiled” and is “identifiable” as part of an investigation into a possible violation of law (the Criminal Code).

I find that section 14(4) does not apply to the personal information in the record and the appellant has not raised section 16 of the Act. Accordingly, the withheld portions of the record are exempt under section 38(b) of the Act.

As I have indicated previously, the only way in which a finding under a section 14(3) presumption can be rebutted is if the personal information falls under section 14(4) or if section 16 of the Act applies. Therefore, while I understand the appellant’s situation and his intentions, I am unable to consider the section 14(2) factors which he has raised.

Because I have found the record to be exempt under section 38(b), it is not necessary for me to consider the application of the other exemptions claimed by the Police.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 30, 1998