



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

ORDER MO-1181

Appeal MA-980193-1

Brantford Police Services Board



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NATURE OF THE APPEAL:

A request was made to the Brantford Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records relating to any police activity or calls to the Police concerning a specific street address. The request was made on behalf of a named restaurant and indicated, on the request form, that it was a request for general records. The Police located 23 pages of records and granted access in full to the first page. The Police granted partial access to pages 2 - 5 and denied access to the remaining pages, all on the basis of sections 8(2) (law enforcement) and 14(1)(f) (invasion of privacy). The decision issued by the Police was addressed to the restaurant's representative at this individual's home address. For the purposes of this appeal, I will refer to the restaurant's representative as the appellant.

The appellant appealed the decision of the Police.

This office sent a Notice of Inquiry to the appellant and the Police. In reviewing the records at issue, I noted that they pertain to matters arising between the appellant and other individuals. Although the request was phrased as a general records request, ie. for information relating to the address at which the restaurant was located, and was made in the name of the restaurant, the totality of the correspondence and the nature of the records themselves would appear to indicate that the request was being made in the name of the restaurant and its representative in his personal capacity. Accordingly, the Notice of Inquiry raised the possible application of sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) to the records at issue.

Representations were received from the Police. In their representations, the Police indicate that upon further review, they are prepared to disclose Records 6, 10 and 15 in full. I have reviewed these three pages and am satisfied that they do not contain the personal information of any identifiable individuals. Therefore neither section 14(1) nor section 38(b) are applicable with respect to these three pages. Accordingly, they are no longer at issue in this appeal. As the Police do not indicate whether these pages have been released, I will order them to do so.

RECORDS:

The records at issue comprise the withheld portions of pages 2 - 5 and pages 7 - 9, 11 - 14 and 16 - 23. These pages consist of incident reports and event details. The only information which has been withheld from pages 2 to 5 is the names of individuals other than the appellant who were involved in the incidents reported in these pages.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The records relate to an incident involving the appellant and other identifiable individuals (the affected persons) arising out of a property dispute. I find that they contain the

appellant's personal information as well as the personal information of the affected persons referred to in the records.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from the record if it determines 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.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the 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 at issue falls under section 14(4) of the Act 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.

Section 14(3)(b) states that:

A disclosure of personal privacy 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 indicate that they were involved in the matter between the appellant and the affected persons for the purpose of conducting an investigation into alleged threats and other criminal activity. The Police submit that although they determined that many of the allegations were unsubstantiated, the investigation was conducted by them to determine whether there had been any violations of law. On this basis, the Police submit that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law.

In reviewing the records, I note that the police attended at the particular address in response to a call that a break and enter was in progress. I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly "compiled" and is "identifiable" as part of an investigation into allegations of criminal activity on the part of the appellant and the affected persons. I am satisfied that this investigation was conducted with a view to determining whether there was a possible violation of law. The presumption may still apply, even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225).

I find that neither section 14(4) nor section 16 are applicable to the personal information at issue in this appeal. Accordingly, the withheld information is properly exempt from disclosure under section 38(b) of the Act.

ORDER:

1. I uphold the decision of the Police.
2. I order the Police to disclose Records 6, 10 and 15 to the appellant by providing him with a copy of these pages on or before **January 27, 1999**.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ January 7, 1999