



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

# **ORDER MO-1232**

**Appeal MA-990024-1**

**Cornwall Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Cornwall Police Services Board (the Police). The request was for access to copies of records relating to the investigation of a charge of gross indecency against a named individual. The appellant is the victim of sexual assaults committed by his former school teacher, and he was requesting access to all records related to the investigation.

The Police denied access to the requested records pursuant to sections 8(1)(a), (b) and (f) and 8(2)(a) of the Act.

The appellant appealed the decision of the Police to deny access.

During mediation of the appeal, the Police withdrew their reliance on sections 8(1)(a), (b) and (f) and section 8(2)(a) of the Act and disclosed certain parts of records. The Police are now relying on section 38(b) of the Act, with reference to sections 14(2)(e), (f) and 14(3)(b), to deny access to the remaining records.

On comparing the severed copies of pages 2-8 which were disclosed to the appellant during mediation to the copies which were originally sent to this office on receipt of the appeal, I note that the information withheld in the last severance made by the Police on pages 2, 3, 4, 6 and 8 does not appear on the earlier copies of these records. On examination, this information appears to have been repeated from page 1. Accordingly, I will address the issue of the appellant's access to this information on page 1 only. As this was the only information severed from pages 2 and 4, these records are no longer at issue in this appeal.

The only other information severed from page 3 is CPIC information, which the appellant indicated he is not pursuing access to and page 3, therefore, is also no longer at issue.

Finally, the appellant's will say statement (pages 17-48) has been disclosed to him and, therefore, is no longer at issue in this appeal.

I sent a Notice of Inquiry to the Police, the appellant, the individual named in the appellant's request and three witnesses whose statements were included in the Crown Brief. Representations were received from the Police and two of the witnesses. One of the witnesses consented to the disclosure of his statement to the appellant.

## **RECORDS:**

The records at issue in this appeal consist of:

- Record 1 - General Occurrence Report dated March 19, 1996 (page 1, withheld in part)
- Record 5 - Supplementary Report dated October 17, 1997 (pages 5-6, withheld in part)
- Record 6 - Arrest Report dated December 9, 1997 (pages 7-8, withheld in part)
- Record 7 - Supplementary Report dated February 12, 1998 (page 9)
- Record 8 - Supplementary Report dated February 18, 1998 (page 10)

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- Record 9 - Crown Brief (pages 11-16 and 49-77)
- Pages 49, 50 and 51-77 are the Will Say statements of the three witnesses.

## **DISCUSSION:**

### **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 records and I find that Records 7 and 8 do not contain the personal information of the appellant, but do contain the personal information of other individuals. The remaining records all contain the personal information of the appellant and other identifiable individuals. The information severed from Records 1, 5 and 6 relates only to individuals other than the appellant. Within Record 9, pages 12, 15, 16 and 49-77 do not contain the personal information of the appellant, but do contain the personal information of the individual named in the appellant's request and other identifiable individuals, including the witnesses.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, a record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) prohibits an institution from releasing this information.

In both of these situations, 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Police submit that section 14(3)(b) applies to the information it withheld from disclosure. This section 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.

Records 1 and 5-8 are a General Occurrence Report, an Arrest Report and three Supplementary Reports prepared by the Police during their investigation of the appellant's complaint. I am satisfied that the personal information contained in these records was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the Criminal Code. Accordingly, I find that the presumption in section 14(3)(b) applies.

Although the Crown Brief is prepared for the prosecution of the violation of law and not the investigation of it, the materials in this Crown Brief are largely a reproduction of the information found in the investigative reports. Although reproduced in a different record for a different purpose, it is my view that the information is the same as that which was compiled as part of the investigation, and it is certainly identifiable as such. Accordingly, I find that the presumption in section 14(3)(b) also applies to Records 11-16.

The Will Say statements contained in the Crown Brief are transcriptions of interviews with the witnesses conducted by the Police during the investigation. I am satisfied that the personal information contained in these records was also compiled and is identifiable as part of the same investigation, and section 14(3)(b) applies.

Although the witness who provided the statement which is on page 50 consented to the disclosure of it to the appellant, his statement also contains personal information about another witness and the individual named in the appellant's request. The personal information about the witness who consented to disclosure is inextricably intertwined with the personal information of the others who have not consented to the disclosure of their personal information to the appellant. Accordingly, I must find that disclosure of this record would be an unjustified invasion of privacy, and section 38(b) applies.

I find that neither section 14(4) nor section 16 are applicable to the information at issue. Therefore, the personal information in Records 1, 5, 6 and 9 which relates to the appellant and other identifiable individuals is exempt under section 38(b), and Records 7 and 8 are exempt under section 14.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_  
September 2, 1999