



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

ORDER MO-1384

Appeal MA-000269-1

Peel Regional Police



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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records which contain information about the requester provided to the Police by an employee of Canada Post, and information collected by the Police when they visited the requester at her home on a specified date.

The Police granted partial access to the responsive records, and denied access to the remaining records on the basis of sections 14(1)(f)/38(b) of the *Act* (invasion of privacy). The Police identified section 14(3)(b) in support of this exemption claim.

The requester (now the appellant) appealed the Police's decision.

During mediation, the appellant narrowed the scope of her request to the identity of the Canada Post employee (the affected person) and notes reflecting the content of this persons discussion with the Police.

I initially sent a Notice of Inquiry to the Police. I tried unsuccessfully to locate the affected person, so I was unable to provide her with an opportunity to submit representations. I received representations from the Police, and sent the non-confidential portion of these representations to the appellant, along with the Notice of Inquiry. The appellant also provided representations.

RECORDS:

The record at issue in this appeal consists of excerpts from pages 6 and 7 of a police officer's notebook. It includes the name and telephone numbers of the affected person, and information which she provided to the Police concerning the appellant.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Clearly, the record contains the appellant's personal information, including her name, date of birth and phone number, as well as observations made by the affected person about the appellant which were being conveyed to the Police. I also find that the record contains the name and two telephone phone numbers of the affected person, which constitutes her personal information (section 2(1)(d)).

INVASION OF PRIVACY

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 an 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 discretion to deny the requester access to that information.

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 institution to consider in making this determination, and section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) (Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

In this case, the Police have cited the presumption in section 14(3)(b) in conjunction with section 38(b). These sections read:

- 38. A head may refuse to disclose to the individual to whom the information relates personal information,
 - (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

- 14(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (b) 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 notebook entries which constitutes the record in this appeal reflect a telephone call made by the affected person to the Police concerning the appellant. The Police state that the information was compiled as part of an investigation into "the mental state and well being of the appellant with the potential need to invoke the *Mental Health Act*", which was initiated as a result of the phone call received from the affected person. The Police make specific reference to section 17 of the *Mental Health Act*, and maintain that this

section “requires a Police Officer to investigate the circumstances where it is believed that an individual may have threatened or be attempting to cause bodily harm to themselves”.

In order to satisfy the requirements of section 14(3)(b), the information at issue must have been compiled as part of an investigation into a possible violation of law. The Police have not suggested that the appellant was engaged in any potential criminal activity, nor that the “investigation” undertaken by the Police after receiving the phone call related to a possible breach of the *Criminal Code* or any other law. Section 17 of the *Mental Health Act*, referred to by the Police, allows a police officer to take certain actions where there is reasonable cause to believe that an individual:

- has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
- has shown or is showing a lack of competence to care for himself or herself, and the police officer is of the opinion that the person is apparently suffering from a mental disorder of a nature or quality that likely will result in specified harms.

Section 17 of the *Mental Health Act* does not create an offence for the actions of individuals which may justify the involvement of the Police. The Police have provided no evidence to suggest the appellant’s behaviour harmed or threatened to harm any other person. Rather, it would appear that the Police decided to approach the appellant on the basis of possible harm she might inflict on herself. In my view, absent evidence to the contrary, the actions taken by the Police, under the apparent authority of the *Mental Health Act*, do not fall within the scope of section 14(3)(b) because, while they involve police officers, they do not involve or relate to “a possible violation of law”. This situation can be distinguished investigations undertaken by police services in situations involving a suspicious death, where possible foul play may have occurred. In those circumstance, it is often reasonable for a police service to conclude that there may have been “a possible violation of law”, specifically the *Criminal Code* of Canada.

Accordingly, I find that the personal information contained in the record was not compiled as part of an investigation into a possible violation of law within the meaning of section 14(3)(b).

The Police have provided no representations on the possible application of any of the factors favouring privacy protection under section 14(2). The Police do state that they did not consider seeking the affected person’s consent to disclose her personal information because they did not think it was the best interest of the affected person or the appellant to do so. The Police point out that:

When the police receive calls of this nature there is an expectation on the part of the caller that their identity will be protected.

This statement by the Police raises the possible relevance of section 14(2)(h) of the *Act*, which recognizes expectations of confidentiality as a factor favouring privacy protection.

The appellant's representations also do not address any of the factors listed in section 14(2) which favour disclosure and, as stated previously, the affected person could not be located by this Office.

Because this appeal involves a request under Part II of the *Act*, I am required to balance two competing interests under section 38(b) - the appellant's right of access to her personal information, and the affected person's right to privacy. In so doing, I find that the rights of the appellant in the circumstances of this appeal are more compelling, with one exception. Although the affected person was not able to substantiate the Police's view that she contacted them with an expectation that her identity would remain confidential, I find that this assumption is a reasonable one in the circumstances, and that this factor outweighs the appellant's right of access to this information. Accordingly, I find that disclosure of the affected person's name and phone numbers, as they appear on page 6 of the record, would constitute an unjustified invasion of her privacy, and qualify for exemption under section 38(b) of the *Act*. I also find that disclosure of all other undisclosed and responsive portions of pages 6 and 7, which consist of the appellant's personal information only, would not constitute an unjustified invasion of any individual privacy, and do not qualify for exemption.

ORDER:

1. I uphold the decision of the Police to deny access to the name and telephone numbers of the affected person that appear on page 6 of the record.
2. I order the Police to disclose the remaining responsive portions of pages 6 and 7 of the record to the appellant by **January 15, 2001**. I have attached a highlighted version of pages 6 and 7 with the copy of this order provided to the Police which identifies the portions that should **not** be disclosed.
3. In order to verify compliance with the terms of this order, I reserve the right to required the Police to provide me with a copy of the pages of records which are disclosed to the appellant pursuant to Provision 2, only upon request.

December 29, 2000

Tom Mitchinson
Assistant Commissioner