



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1499**

**Appeal MA-010206-2**

**Ottawa Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Ottawa Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of two police reports relating to him.

The Police did not respond within 30 days as stipulated by the *Act* and the appellant appealed their deemed refusal. Appeal MA-010206-1 was opened to deal with this appeal. The Police subsequently issued a decision and the deemed refusal appeal was closed.

In their decision, the Police indicated that they had located the two reports and denied access to them on the basis of sections 8(2)(a) (law enforcement report) and 38(a) (discretion to refuse requester's own information), and 38(b) (invasion of privacy) with reference to the presumption in section 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law).

The appellant appealed this decision and appeal MA-010206-2 was opened to address the issues arising from the access decision.

During mediation, the appellant indicated that he was not interested in obtaining "particulars" about himself, such as his name, address, date of birth, and so on. Rather, he wanted to know what was said about him.

Also during mediation, the Police issued a supplementary decision (within the 35 day time frame for claiming new discretionary exemptions) in which they added the exemptions in sections 8(1)(a) and (b) (interfere with a law enforcement matter or investigation) to those already claimed. In discussions with the mediator, the Police also expressed the view that the records and the matter to which they relate are highly sensitive (section 14(2)(f)).

Mediation could not be effected and the appeal was moved into inquiry. I decided to seek representations from the Police initially, and sent them a Notice of Inquiry setting out the facts and issues on appeal. The Police provided submissions in response. I sent the non-confidential portions of them to the appellant along with a copy of the Notice. The appellant also submitted representations in response to the Notice.

## **RECORDS:**

The records at issue consist of two General Occurrence Reports (Records 1 and 2), an interview report (Record 3) and two witness statements (Records 4 and 5).

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Personal information is defined, in part, as "recorded information about an identifiable individual".

The Police indicate that the records at issue contain identifying information about another individual (the affected person), such as name, address, gender, etc. as well as other information about this individual's personal circumstances. The Police indicate further that the records contain information about other identifiable individuals in their professional capacity, but express concern that identification of these individuals would provide the appellant with sufficient information to be able to locate the affected person.

In his representations, the appellant has provided considerable detail regarding his involvement with the affected person and his reasons for seeking the information at issue. With respect to information about individuals in their professional capacity, he states:

Prior to December 5, 2000, I had familiarity with all of the key people involved with the [affected person] so I can probably guess who made these complaints as well as the allegations themselves now without even seeing them. Which of them said what in the reports isn't as important as what has been said.

Previously, I was aware of only records 1 and 2. It seems that there are some documented observations or assessments of me provided by Ministry or other authorities that support the [affected person's] false allegations. I think that the interpretations provided in your report indicate that they should not be interpreted as personal information insofar as what is said about me or my actions.

The appellant concludes:

The fact is that I am obsessed, but not with the [affected person], as the police would have you believe. I am driven by the desire to protect and restore my reputation, and to provide for my family by protecting my job.

I am also infuriated about the way the Ministry personnel, and now the police, keep "turning up the heat" on me simply because I had refused to be quiet and go away.

It is absurd that I stand accused of being the type of man that I tried to protect the [affected person] from – a sexual predator. In addition, I am now accused of being a "stalker". I don't think that a few chance encounters in ten months fits the popular image of this type of person but the police are willing to charge me for this on the word of an emotionally and mentally unstable habitual liar ...

In reviewing the records, I find that they all contain the appellant's personal information in that they all pertain to complaints made to the Police about him. The records also contain the personal information of the affected person, including the particulars of her identity and the circumstances around her involvement with the appellant and the complaints made against him. The information that has been provided by individuals in their professional capacity primarily relates to both the appellant and the affected person and is so intertwined as to be unseverable. Based on the representations submitted by the Police and the appellant, I find that even to disclose the identities of these individuals (which I agree does not constitute their personal

information in the circumstances) would reveal the affected person's personal information in that disclosure would identify who the affected person has been in contact with and may very well reveal her location.

## **INVASION OF PRIVACY**

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 requester and other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Section 38(b) of the *Act* introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the Police determine that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives them the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) 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 Police 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 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption. [See Order PO-1764]

If none of the presumptions in section 14(3) applies, the Police must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The Police have relied on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act* and the factor listed under section 14(2)(f) of the *Act*. These provisions state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(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;

***Section 14(3)(b)***

The Police state that the information at issue was collected and compiled and is identifiable as part of an investigation into a possible violation of law, in particular, section 264(1) of the *Criminal Code* (criminal harassment/stalking). The Police acknowledge that no charges have been laid to date with respect to this matter. Their representations suggest, however, that this matter is or may not be over.

The appellant states:

It seems that the phrase “identifiable as part of an investigation into a possible violation of law” may be interpreted to represent any document created by the police or law enforcement agency for any reason whatsoever. I personally find this to be broad to the extreme and has potential of allowing the police to hide any information they collect.

... I don't know what constitutes an “investigation”. My assumption is that a police officer would inform a potential defendant that he is being investigated and for what infraction, prior to any kind of questioning so that he may decide to refrain from answering potentially incriminating questions or exercise his right to have a lawyer present. This was not done in my case. If my assumption is true then the records in question are not part of an investigation and therefore should not be exempted under this section.

The records clearly document the involvement of the Police in investigating complaints made about the appellant's conduct with respect to the affected person. Moreover, they are clearly identifiable as being created and/or compiled as part of this investigation. The appellant's dispute with the manner in which the Police conducted their investigation is beyond the scope of my jurisdiction and should be addressed in another forum. I am satisfied, however, that the records at issue were compiled and are identifiable as part of an investigation into a possible violation of law. Moreover, the fact that no criminal proceedings were commenced against the

appellant does not negate the applicability of subsection 14(3)(b). The presumption in subsection 14(3)(b) only requires that there be an investigation into a possible violation of law (see, for example, Order P-242).

The appellant refers to a number of factors and circumstances which he submits support a finding in favour of disclosure of the records, including *inter alia* the threat to his current and future employment prospects as a result of these investigations and a fair determination of his rights (section 14(2)(d)). With respect to this latter factor, the appellant indicates that he is seeking the information in order to determine whether there exist possible grounds for criminal charges against the individuals who have made allegations against him. However, as I indicated above, the factors and circumstances under section 14(2) cannot rebut the presumption in 14(3)(b). On this basis, I find that disclosure of the records at issue would constitute a presumed unjustified invasion of the affected person's personal privacy.

I find that neither section 14(4) nor 16 applies to the information at issue in the circumstances of this appeal.

In exercising their discretion not to disclose the records at issue under section 38(b), it is apparent that the Police have taken into consideration the nature of the offence being investigated, the age of the affected person, the appellant's persistence in pursuing this matter and the affected person's safety. Documentary evidence submitted by both the Police and the appellant with their representations supports the exercise of discretion in favour of non-disclosure. In my view, the Police have taken appropriate considerations into account in the exercise of their discretion and it should not be disturbed on appeal. Accordingly, I find that the records at issue are exempt under section 38(b) of the *Act*.

Because of the findings I have made in this order, it is not necessary for me to consider the other exemptions claimed by the Police.

**ORDER:**

I uphold the decision of the Police to withhold the records from disclosure.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_  
January 11, 2002