



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

FINAL ORDER MO-1734-F

Appeal MA-030143-1

Guelph Police Service



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DISCUSSION:

On December 1, 2003 I issued Order MO-1720-I which disposed of the substantive issues in an appeal of a decision of the Guelph Police Services Board (the Police) to deny access to certain requested records. I upheld the decision of the Police not to grant access to the records on the basis that they were exempt from disclosure under the discretionary exemption in section 38(b) of the *Act*. The Police did not, however, provide any submissions as to the manner in which they exercised their discretion not to disclose the records under section 38(b). As a result, in Provision 2 of Order MO-1720-I I ordered the Police to:

. . . consider the exercise of discretion under section 38(b) of the *Act* with respect to the undisclosed portions of Records 6, 7, 8 and 9 and to provide me with representations as to the factors considered in doing so by **December 22, 2003**.

The section 38(b) exemption is discretionary and permits the Police to disclose information, despite the fact that the information could be withheld. On appeal, the Commissioner's office may review the decision of the Police to determine whether they exercised discretion and, if so, to determine whether the Police erred in doing so. However, this office may not substitute its own discretion for that of the Police [section 43(2)].

This office may find that an institution erred in its exercise of discretion where, for example:

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

In that event, the Commissioner's office may send the matter back to the institution for a re-exercise of discretion, based on proper considerations [Order MO-1573].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that:
 - information should be available to the public;
 - individuals should have a right of access to their own personal information;
 - exemptions from the right of access should be limited and specific;
 - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking their own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

I have received representations from the Police regarding the manner in which they exercised their discretion not to disclose the records to the appellant under section 38(b). The Police indicate that they disclosed all of the information in the records to the appellant with the exception of certain facts concerning an earlier, unrelated investigation and the names of those who were interviewed during the investigation that is the subject of the records. The undisclosed information is, in the opinion of the Police, highly sensitive. In my decision in Order MO-1720-I, I found that the undisclosed information fell within the ambit of the presumption against disclosure in section 14(3)(b) of the *Act*.

Having reviewed the reasons and rationale provided by the Police for exercising discretion under section 38(b) of the *Act*, I find nothing improper. The Police have taken the particular circumstances of this case into account in exercising discretion in favour of protecting the privacy of the individuals who were interviewed by the Police respecting a suspected break and enter at the appellant's property. I am satisfied that the Police exercised their discretion, and that they did not err in doing so by taking into account irrelevant considerations, failing to take into account relevant considerations, or in any other respect. Accordingly, I uphold the decision of the Police to withhold the information.

ORDER:

I uphold the decision of the Police to deny access to the withheld information.

Original signed by: _____
Donald Hale
Adjudicator

December 24, 2003 _____