



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2281**

**Appeal MA07-219**

**Niagara Regional Police Services Board**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Niagara Regional Police Service (the Police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

All reports since the year 2000 at the address of the applicant [the requester].

The Police located the responsive records and applied the discretionary exemptions in sections 38(a) of the *Act*, in conjunction with section 8(1) (law enforcement), and 38(b) with reliance on the presumption at section 14(3)(b) (investigation into violation of law), to deny access to portions of the records.

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

At mediation, the Police confirmed that section 38(a) of the *Act*, in conjunction with section 8(1), has been applied only to exempt from disclosure certain police codes found in the record.

As no further issues could be resolved at mediation, the appeal was moved to the adjudication stage of the process.

I sought the representations of the Police, initially, and sent them a Notice of Inquiry setting out the issues and facts at appeal. The Police provided representations.

I then sent a Notice of Inquiry to the appellant along with a complete copy of the Police's representations. The appellant also provided representations.

## **RECORDS:**

The records at issue consist of the undisclosed portions of reports, described as follows:

<b>Number</b>	<b>Type of Report</b>	<b>Exemptions Claimed</b>
1	Welfare Check Report – February 11, 2002	38(a) and (b)
2	Welfare Check Report – August 7, 2006	38(b)
3	Mental Health Apprehension Report – October 8, 2006	38(b)
4	Assistance Report – July 20, 2000	38(a) and (b)
5	Damage Report – December 13, 2001	38(a) and (b)
6	Mischief Report – December 27, 2003	38(a) and (b)
7	Neighbour Dispute Report – September 11, 2005	38(a) and (b)
8	Mischief Report – October 28, 2006	38(b)
9	Information Report – July 22, 2000	38(a)
10	Information Report – January 29, 2003	38(a)
11	Assist Fire Department Report – February 7, 2003	38(a)

12	Phone Calls Report – October 28, 2004	38(a)
13	Information Report – June 10, 2005	38(a)

## DISCUSSION:

### PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual, and

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Police submit that the personal information relates to the appellant, his family and other individuals. The personal information consists of the names of the individuals, their addresses, telephone numbers, dates of birth, and statements made by them about the appellant and his family. The appellant submits that the information relates only to himself and his family.

From my review of the records I find that the information at issue consists of personal information as defined in paragraphs (a), (b), (c), (d) and (g) of the section 2(1) definition of personal information. The personal information is about the appellant, his wife and son and two individuals. The Police have disclosed much of the appellant’s personal information and the

information remaining at issue consists of information concerning the other individuals or statements made by these individuals about the appellant.

## **PERSONAL 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 exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met.

If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The information at issue does not fit within these paragraphs.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). The Police submit that the presumption in section 14(3)(b) applies, as the information was compiled and is identifiable into possible violations of law. The Police were investigating possible domestic assaults, damage to property, *Mental Health Act* apprehensions, assaults, mischief, harassing phone calls, breach of probation and harassment. Section 14(3)(b) reads as follows:

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;

I find that the presumption in section 14(3)(b) applies to the undisclosed information in Records 4 to 8. These records are all incident or occurrence reports setting out the details of the Police’s investigations into various possible violations of the *Criminal Code*, involving the appellant, his wife and son and other individuals.

Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. Section 14(4) does not apply in this appeal and the appellant has not raised the application of section 16. As such, subject to my discussion on the Police’s exercise of discretion, disclosure of the information at issue in the Records 4 to 8 is presumed to constitute an unjustified invasion of personal privacy of the identifiable individuals other than the appellant and is exempt under section 38(b).

Regarding Records 1 to 3, the incidents detailed in these reports are different from those discussed above in Records 4 to 8. In Records 1 to 3, the Police were attending the appellant’s home to determine whether the appellant posed a danger to himself. These situations appear analogous to those referred to by former Assistant Commissioner Tom Mitchinson in Order MO-1384 where he found that information compiled by the Police in accordance with their legislated authority under the *Mental Health Act* did not fit within the section 14(3)(b) presumption. However, in the circumstances of this appeal and because of my finding under section 14(2) below, it is not necessary for me to review the possible application of section 14(3)(b) to Records 1 to 3.

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b) [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

While the Police do not specifically address the factors in section 14(2), they do mention the sensitive nature of the personal information that has been withheld from the appellant. As such, I will consider the application of section 14(2)(f). This section reads:

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,

the personal information is highly sensitive;

To be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518].

The appellant did not provide representations on this issue.

The information that has been withheld from the appellant is the personal information of other individuals (home addresses, phone numbers and a date of birth) as well as statements made by these individuals about the appellant. From my review of the records and the nature of the possible relationship between the appellant and these individuals, I find that disclosure of the personal information of these individuals could reasonably be expected to cause significant

personal distress to these individuals. I am supported in my finding by past orders of this office (Orders M-1146 and PO-2636-I) which have found that disclosure of an individual's home address and/or home telephone number in combination with the individual's name would provide sufficient information to enable a requester to identify and locate the individual. Accordingly, I find that the individuals' addresses, phone numbers and birth date are highly sensitive in the circumstances and the factor in section 14(2)(f) weighs heavily in favour of non-disclosure.

Similarly, I find that the factor in section 14(2)(f) weighs in favour of the non-disclosure of the statements made by these individuals about the appellant. These statements contain highly sensitive opinions about the appellant and considering the possible relationship of these individuals to the appellant, I am satisfied that disclosure of this personal information could reasonably be expected to cause significant personal distress to these individuals.

From my review of the factors in section 14(2), the representations of the Police and the information at issue, I find that the only relevant factor to be considered favours non-disclosure. Accordingly, in the circumstances, disclosure of the undisclosed personal information in Records 1 to 3 would constitute an unjustified invasion of the personal privacy of the individuals and should not be disclosed under section 38(b), subject to my finding on the Police's exercise of discretion below.

## **LAW ENFORCEMENT**

The Police have denied access to their "ten-codes" and "900 codes" in all of the records, under section 38(a) in conjunction with section 8(1)(l).

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

Section 8(1)(l) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime;

Where section 8(1)(l) uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The Police cite prior orders of this office in support of their submission that disclosure of the “ten-codes” and “900 codes” could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

This office has issued many orders regarding the release of police codes and has consistently found that section 8(1)(l) applies to “ten-codes” (for example, see Orders M-93, M-757, MO-1715 and PO-1665) as well as other coded information such as “900 codes” (see Order MO-2014). These orders adopted the reasoning stated in Order PO-1665 by Adjudicator Laurel Cropley:

In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

I too would adopt Adjudicator Cropley’s reasoning and apply it here. I find that disclosure of the “ten-codes” and “900 codes” in the reports could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime and as such I find that section 38(a) in conjunction with section 8(1)(l) applies to these codes, subject to my finding on the exercise of discretion below.

### **EXERCISE OF DISCRETION**

The sections 38(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

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

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

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 his or her 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
- the historic practice of the institution with respect to similar information

The appellant did not provide representations on the Police's exercise of discretion.

In support of its position that it exercised its discretion properly, the Police submitted that with respect to the "ten-codes" and "900 codes" under section 38(a), the appellant did not express a need for this information, nor is this information personal. In addition, the Police noted that it has a historic practice and law enforcement reasons for severing this information which outweigh the appellant's right to receive such information.

In regard to section 38(b), the Police note that it was the personal information of other individuals which was severed from the reports. The Police submit that they considered the appellant should have the right to his own personal information and attempted to release as much of the information without breaching the privacy of other individuals. In addition, the Police



attempted to balance the appellant's right to access against the other individual's rights to the protection of their privacy. The Police also considered that some of the information was sensitive in nature. Finally, the Police state that they were unaware of any sympathetic or compelling need on the appellant for the information.

From my review of the Police's representations on its exercise of discretion, and the information withheld, I am satisfied that the Police took into account relevant considerations and did not take into account irrelevant considerations. Accordingly, I find that the Police properly exercised its discretion under both sections 38(a) and (b) of the *Act* and I uphold their exercise of discretion.

**ORDER:**

I uphold the Police's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ February 26, 2007