



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-22

Appeal M-910361

Windsor Police Service



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ORDER

BACKGROUND:

The Windsor Police Service (the institution) received the following request under the Municipal Freedom of Information and Protection of Privacy Act (the Act):

The information [requested] would:

- include all reports, complaints, records of telephone conversations, police visits; that is everything that refers to [the requester] directly or indirectly.
- cover the period from approximately Feb. 6/87 until the present, July 29, 1991.
- concern my handicapped uncle's [a named individual] residency in, eviction from, and my affiliation with the Windsor Association for the Mentally Retarded (W.A.M.R.), now named Windsor Community Living Support Services (W.C.L.S.S.). Since I am Committee of my uncle ..., I would like anything that bears his name.

The institution advised the requester that disclosure of the records "may affect the interests of a third party." In accordance with section 21(1)(b) of the Act, the institution notified two individuals of the request, and solicited their views as to whether the records should be disclosed.

Subsequently, the institution informed the requester that partial access to a one page document titled "Accused Suspect Report", dated August 22, 1990 (two copies), and total access to a one page document titled "Supplementary Report", dated August 23, 1990 (two copies), and two documents, one page each, identified as "Information of Informant", dated August 9, 1988 and August 2, 1988, had been granted. Access to the remainder of the records was denied pursuant to sections 8(1)(a), 8(1)(c), 8(2)(a), 14(3)(b), 14(3)(h), 38(a) and 38(b) of the Act. In addition, the requester was informed that, with respect to the third part of her request, no record of any correspondence between the institution and the Windsor Community Living Support Services existed.

The requester appealed the institution's decision to deny access to the records relating to the first two parts of her request.

The Appeals Officer obtained and reviewed a copy of the records. They consist of 23 pages and are described as follows:

1. "Investigation Report", dated June 11, 1991 - two pages

2. "A.T.O." record, dated July 29, 1991 - one page
3. Complaint form, dated June 13, 1991 - one page
4. Complaint form, dated June 13, 1991 - one page
5. "General Occurrence Report", dated August 22, 1990 - two pages
6. "Accused Suspect Report", dated August 22, 1990 - one page
7. "Supplementary Report", dated August 22, 1990 - one page
8. "Supplementary Report", dated August 23, 1990 - one page
9. "Statement", not dated - one page
10. "Statement", not dated - two pages
11. "General Occurrence Report", dated August 22, 1990 - two pages (identical to Record 5)
12. "Accused Suspect Report", dated August 22, 1990 - one page (identical to Record 6)
13. "Supplementary Report", dated August 22, 1990 - one page (identical to Record 7)
14. "Supplementary Report", dated August 23, 1990 - one page (identical to Record 8)
15. "Information of Informant", dated August 9, 1988 - one page
16. "Information of Informant", dated August 2, 1988 - one page
17. "General Occurrence Report", dated August 2, 1988 - one page
18. "Statement", not dated - two pages

Records 8, 14, 15 and 16 have been disclosed to the appellant in their entirety and Records 6 and 12 have been partially disclosed. Records, 11, 12 and 13 are duplicates of Records 5, 6 and 7, respectively.

Attempts to mediate this appeal were not successful. Accordingly, a Notice of Inquiry was sent to the appellant, the institution, and the two persons who had been notified of the request by the institution (the affected parties), enclosing a report prepared by the Appeals Officer. The purpose of this report is to assist the parties in making their representations to this office concerning the subject matter of the appeal.

Written representations were received from the institution, the appellant and the affected parties.

PRELIMINARY MATTER:

In her representations, the appellant submitted the following as one of her reasons for appealing the institution's decision:

I then was prompted to appeal [the institution's] refusal to give full access as I noted specifically missing from the file the matter of a bomb threat called into [a specified address] on Sunday (or Saturday(?)), Sept. 30/90, was missing ... a Police Officer appeared at my door around 2:15 p.m. on Sun., Sept. 30/90 to confront me and my mother with our alleged involvement ... Since I am well aware of this accusation, I wanted to see exactly what [information] are on file.

Upon reviewing the records which have been supplied to this office by the institution as representing those records which are responsive to the appellant's access request, I note that there are no records which relate to the incident described by the appellant.

The original request was for access to all records pertaining to the appellant in the custody or control of the institution for the time period "covering Feb. 6/87 until the present, July 29, 1991". Therefore, if records of the nature described by the appellant exist, in my view, they would be responsive to her original access request. Based on the information provided by the appellant I am satisfied that there may be records in the custody or control of the institution which have not been identified as responsive to the appellant's original access request. However, so as not to delay this matter unnecessarily, I will render my decision respecting the records which have already been identified and for which a decision has been made by the head. I order the institution to conduct a search for additional records which would be responsive to the appellant's original request, and issue a decision under the Act respecting any records which relate to the incident described by her.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. Whether the records qualify for exemption under section 8(1)(a) of the Act.
- C. Whether the records qualify for exemption under section 8(1)(c) of the Act.
- D. Whether the records qualify for exemption under section 8(2)(a) of the Act.
- E. If the answer to Issue A and Issue B, C, and/or D is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.
- F. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"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,
- ...
- (d) the **address, telephone number**, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except if they relate to another individual,
...
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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;

[Emphasis added.]

The records contain information relating to the ethnic origin, date of birth, sex, marital status, occupation, employment location, address, telephone number, and name of the appellant, complainants and witnesses. In my view, this information, where it appears, qualifies as personal information of the individual to whom it relates. The records also contain information relating to statements and/or allegations of complainants and witnesses which, in my view, qualify as the personal information of both the appellant and other identifiable individuals. Information relating to the investigating officers and type and date of occurrence does not qualify as personal information for the purposes of the Act.

ISSUE B: Whether the records qualify for exemption under section 8(1)(a) of the Act.

The institution submits that section 8(1)(a) of the Act applies to Records 1-4, 9 and 10. Section 8(1)(a) reads:

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

interfere with a law enforcement matter;

Section 8(1)(a) of the Act is similar in wording to section 14(1)(a) of the provincial Freedom of Information and Protection of Privacy Act. I considered the meaning of the phrase "could reasonably be expected to" in the context of section 14(1)(a) of the provincial Act in Order 188, dated July 19, 1990:

It is my view that section 14 of the Ontario Act similarly requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.

In its representations, the institution indicates that the matter which lead to the creation of Records 1-4, 9 and 10 was inactive at the time of the appellant's request, but was still an open matter pending the development of more evidence.

In my view, the apparent purpose of the section 8(1)(a) exemption is to provide a head with the discretion to preclude access to records in circumstances where disclosure would interfere with an ongoing law enforcement matter. In view of the length of time this investigation has been inactive and the nature of the information contained in the records, I am not satisfied that disclosure of Records 1-4, 9 and 10 could reasonably be expected to interfere with a law enforcement matter. Accordingly, I find that these records do not qualify for exemption under section 8(1)(a) of the Act.

ISSUE C: Whether the records qualify for exemption under section 8(1)(c) of the Act.

The institution submits that section 8(1)(c) of the Act applies to Records 2-4. Section 8(1)(c) reads:

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

reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

In Order 170, dated May 25, 1990, Inquiry Officer Professor John D. McCamus considered the interpretation of section 14(1)(c) of the provincial Freedom of Information and Protection of Privacy Act, which section is equivalent to section 8(1)(c) of the municipal Act. Professor McCamus stated:

In order to constitute an "investigative technique or procedure" in the requisite sense, it must be the case that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that the particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure and according that the technique or procedure in question is not within the scope of the protection afforded by section 14(1)(c).

I concur with Professor McCamus' interpretation of section 14(1)(c), and adopt it for the purposes of section 8(1)(c) and this appeal.

In its representations, the institution submits that Records 2-4 reveal an investigative procedure which is generally only known to law enforcement and a particular field of specialists, and is not widely known to the public.

I have reviewed the records and, in my view, the investigative technique or procedure is not one which is particular to law enforcement. In addition, I am not satisfied that disclosure of this investigative technique or procedure would hinder or compromise its effective use. Accordingly, I find that Records 2-4 do not qualify for exemption under section 8(1)(c).

ISSUE D: Whether the records qualify for exemption under section 8(2)(a) of the Act.

The institution submits that section 8(2)(a) of the Act applies to Records 1-4, 9 and 10. Section 8(2)(a) reads:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In Order 200, dated October 11, 1990, I considered the meaning of the word "report" in the context of section 14(2)(a) of the provincial Freedom of Information and Protection of Privacy Act:

... it is my view that in order to ... be a report, a record must consist of **a formal statement or account of the results** of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

Because section 14(2)(a) of the provincial Act is identical in wording to section 8(2)(a) of the municipal Act, the meaning given to the word "report" in Order 200 can also be applied to the word "report" in section 8(2)(a) of the municipal Act.

In my view, Records 1-4, 9 and 10 are not "reports" for the purposes of section 8(2)(a) of the Act. The records consist of observations and recordings of fact, and do not qualify for exemption under section 8(2)(a).

Because the answer to Issues B, C and D is no, it is not necessary for me to consider Issue E.

ISSUE F: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

The institution submits that section 38(b) applies to all of the information withheld from disclosure. Under Issue A, I found that the records contain the personal information of the appellant and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access is not absolute; section 38 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, section 38(b) of the Act states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

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

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 an individual other than the requester. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The institution specifically relies on the application of section 14(3)(b) respecting Records 1-5, 6 (in part), 7, 9-11, 12 (in part), 13, 17 and 18 and section 14(3)(h) for Record 11 to raise the presumption that disclosure of the records at issue would constitute an unjustified invasion of personal privacy.

Sections 14(3)(b) and (h) of the Act read as follows:

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;
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

I have reviewed the circumstances under which the records at issue were created by or supplied to the institution. I am satisfied that the personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have been established, I must then consider whether any other provisions of the Act come into play to rebut this presumption. Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In my view, the records at issue in this appeal do not contain information relevant to section 14(4).

The appellant, in her representations, raised the consideration of section 14(2)(d) of the Act, which states:

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 relevant to a fair determination of rights affecting the person who made the request;

The appellant submits that she should have access to any information withheld from her to "set the record straight" respecting any allegations which have been made about her and to take whatever steps are open to her to rectify the matter. She indicates that this matter is having a direct impact on her and her uncle for whom she is attempting to obtain appropriate care.

In dealing with this issue, I have carefully considered the provisions of section 14(2), the records at issue, and the representations of the parties. While I understand the appellant's concerns, I find that the presumption raised by section 14(3)(b) of the Act has not been rebutted. Therefore, it is not necessary for me to consider the application of section 14(3)(h).

In the circumstances of this appeal, I am of the opinion that disclosure of the information relating to the ethnic origin, date of birth, sex, marital status, occupation, employment location, address, telephone number, name and statements or allegations of the complainants and witnesses contained in the records would constitute an unjustified invasion of the personal privacy of the affected persons and other individuals identified in the records and, therefore, qualify for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. The institution has provided representations regarding the exercise of discretion to refuse to disclose the information at issue and I find nothing to indicate that the exercise of discretion was improper.

ORDER:

1. I uphold the head's decision to deny access to Records 9, 10 and 18 and the severed portions of Records 6 and 12.
2. I order the head to disclose portions of Records 1-5, 7, 11, 13 and 17 in accordance with the highlighted copy of the records which is being forwarded to the institution with this order within 15 days of the date of this order.
3. I order the head to conduct a search for records which relate to the incident described by the appellant in her representations and which would be responsive to the appellant's original access request, and issue a decision respecting this part of her request within 30 days of the date of this order.
4. I order the head to advise me in writing within five days of the date on which the disclosure referred to in Provision 2 of this order and the date on which the decision referred to in Provision 3 of this order was made. These notices should be forwarded to my attention, c/o

Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

5. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2 of this order, upon request only.

Original signed by: _____
Tom Wright
Commissioner

_____ June 17, 1992