



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-49**

## **Appeal M-910423**

### **Metropolitan Toronto Police**



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# ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

## **BACKGROUND:**

The Metropolitan Toronto Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information concerning the investigation of allegations of criminal conduct against the requester by a named individual (the affected person).

The Police responded to the request by providing access to parts of the record. Access to the severed parts of the record was denied pursuant to sections 8(1)(a) and (e), 8(2)(a) and (c), 12, 14 and 38 of the Act.

The requester appealed the decision to deny access.

The record consists of a Summons Application (two pages), and pages from police officers' notebooks (21 pages).

Mediation was not successful and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision was sent to the Police, the appellant and the affected person. Written representations were received from the Police only.

During the course of processing the appeal, the Police agreed to disclose more information to the appellant. The Police also withdrew its claim for exemption of the record under sections 8(1)(a), 8(2)(a), and (c), and 12, of the Act.

Having reviewed the record, I find that certain pages in the officers' notebooks contain notes made by police officers with respect to matters that are not responsive to the appellant's request. The following pages of the record, therefore, fall outside the scope of this appeal, and should not be released:

parts of 4 and 5; all of 6; parts of 8 and 9; all of 10 and 12; parts of 13 and 15; all of 16, 17 and 19; parts of 20 and 21; and all of 22 and 23

In addition, this appeal does not deal with the following pages which the Police has agreed to release to the appellant in their entirety:

3, 7, 11, and 18

Therefore, the pages or parts of pages of the record which remain at issue are:

parts of 1, 2, 4, 5, 8, 9, 13; all of 14; parts of 15, 20 and 21

## **ISSUES:**

The issues in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to any parts of the record.
- C. Whether the record qualifies for exemption under section 8(1)(e) of the Act.
- D. If the answer to Issue C is yes, whether the exemption provided by section 38(a) applies to the circumstances of this appeal.

## **SUBMISSIONS/CONCLUSIONS:**

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

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether the exemptions claimed apply, to ensure that the information in question falls within the definition of "personal information" as set out in section 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both.

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

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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,

...

- (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;

In my view, all of the information contained in the remaining parts of the record falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act, and relates to both the appellant and the affected person.

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

I have found under Issue A, that the remaining parts of the record contain the personal information of the appellant and the affected person. Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is under the custody and control of institutions covered by the Act. However, this right of access is not absolute. Section 38 provides a number of exceptions to the general right of access, including section 38(b), which reads as follows:

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 Police must look at the information and weigh the requester's right of access to his/her own personal information against other individual's right to the protection of their privacy. If the Police determines that release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives discretion to deny the requester access to his/her own personal information (Order M-22, Order M-28).

Subsections 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 Police specifically claims that section 14(3)(b) applies.

Section 14(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

The remaining parts of the record contain personal information received by the Police during the course of investigating allegations of criminal conduct involving the appellant. This information includes the name, address and statements of the affected person.

I am satisfied that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law and I find that the requirements for a presumed unjustified invasion of the personal privacy of the affected person 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 record does not contain any information that pertains to section 14(4).

Section 14(2) of the Act also provides a list of factors, which, if present, would be relevant in the determination of whether disclosure of the record would be an unjustified invasion of personal privacy. The appellant has not submitted any representations on this matter. Having carefully reviewed the record and the Police representations, in my view, none of the factors under section 14(2) which favour disclosure of the record are present in the circumstances of this appeal.

Therefore, I find that disclosure of the personal information contained in the record would constitute an unjustified invasion of the personal privacy of the affected person, and the remaining parts of the record qualify for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. The Police have provided representations regarding the exercise of discretion to refuse to disclose the exempt portions of the record, and I find nothing to indicate that the exercise of discretion was improper.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issues C and D.

## **ORDER:**

1. I order the Police to disclose to the appellant pages 3, 7, 11 and 18 of the record, in their entirety.
2. I uphold the Police's decision to deny access to the remaining parts of the record.
3. I order the Police to disclose the records outlined in Provision 1 above within fifteen (15) days of the date of this order and to advise me in writing, within five (5) days from the date on which disclosure was made. The notice covering disclosure should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5C 2V1.
4. In order to verify compliance with the provisions of this order, I order the Police to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ October 8, 1992