



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-253

Appeal M-9300443

Metropolitan Toronto Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of "memorandum books" maintained by several police officers pertaining to certain occurrences in which the requester was involved.

The Police located the relevant excerpts from the officers' notebooks and provided the appellant with partial access to these records. The requester's appeal to the Commissioner's office is limited to the decision of the Police not to disclose the first word of line three on page FI0087 of one of the records. This word was withheld pursuant to section 38(b) of the Act.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and to the appellant. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the record contains any "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the record contains the personal information of the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the record contains any "personal information" as defined in section 2(1) of the Act.

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

"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,

- (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.

I have reviewed the record at issue which is composed of four pages of notes which the Police have labelled as pages FI0084 to FI0088. In my view, this record as a whole contains recorded information about the appellant and another named individual and, thereby, qualifies as the personal information of both these individuals within the meaning of section 2(1) of the Act.

ISSUE B: If the answer to Issue A is yes, and the record contains the personal information of the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.

In my discussion of Issue A, I found that the individual record containing the single word which has been withheld from disclosure includes the personal information of the appellant and another identifiable individual. Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 provides a number of exemptions to this general right of access. One such exemption is found in section 38(b) of the Act, which reads:

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 personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that the release of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 38(b) gives the Police the discretion to deny the requester access to the personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal

information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 an individual's personal privacy.

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 rely on the application of section 14(3)(b) of the Act to raise the presumption that the disclosure of the record at issue would constitute an unjustified invasion of personal privacy.

Section 14(3)(b) of the Act 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.

The information at issue in this appeal was compiled by the Police in the course of their investigation of a possible violation of The Criminal Code. Accordingly, I find that the presumption afforded by section 14(3)(b) of the Act applies. The only way in which a section 14(3) presumption can be rebutted is if the personal information at issue falls under section 14(4) of the Act or where 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 (Order M-170).

I have considered section 14(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies. Accordingly, I find that as the presumption described in section 14(3)(b) of the Act has not been rebutted, the disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of an individual other than the appellant. The record is, therefore, properly exempt from disclosure.

Section 38(b) is a discretionary exemption giving the Police the discretion to refuse to disclose personal information to the person to whom it relates. I have reviewed the representations of the Police, and I find nothing to indicate that the exercise of discretion was improper in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ January 26, 1994