



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-264

Appeal M-9300478

Metropolitan Toronto Police Services Board



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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 all documentation related to the investigation of an assault against the requester. The request specifically referred to entries from the notebooks of the officers who conducted the investigation as well as copies of interview notes.

Pursuant to section 21(1)(b) of the Act, the Police notified two individuals who were interviewed by the Police with respect to the incident and whose interests may be affected by the disclosure of the information contained in the records. Neither individual responded to the notification.

The Police issued a decision granting the requester partial access to the records. Access was denied to nine pages of the record on the basis of the exemptions in sections 8(1)(i) and (l), 14 and 38(b) of the Act. The requester appealed the decision.

During mediation, the appellant agreed to limit the scope of the appeal to four pages of the record. Because sections 8(1)(i) and (l) had been claimed to apply to only those pages which are no longer at issue, I will not consider these sections in this order.

Further 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 the appellant. Representations were received from both parties.

The record at issue consists of those portions of pages 3, 4 and 11 which were not disclosed to the appellant and page 5 in its entirety. Pages 3, 4 and 5 are entitled "Supplementary Report". Page 11 is from a police officer's notebook. The information on pages 4 and 11 is essentially the same in that it records information provided by the two individuals who were interviewed by the Police.

ISSUES:

- A. Whether the record contains "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the record.
- C. If the answer to Issue A is yes, and the personal information relates solely to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to the record.

SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1) of the Act, in part, as follows:

"personal information" means recorded information about an identifiable individual, ...

The Police submit that page 3 contains the personal information of the appellant and other identifiable individuals. I agree with this characterization of the information at issue on this page of the record.

As far as the balance of the record is concerned, it is my view that it too contains "personal information". However, it is my view that it is possible to sever pages 4, 5 and 11 in accordance with the principles set out in section 4(2) of the Act. Once the "personal identifiers" of the individuals referred to in these pages are removed, I do not believe that there is a reasonable expectation that any individuals can be identified from the remaining information (Order P-230).

Accordingly, the balance of the information contained in these pages cannot be said to be about an **identifiable individual**. Therefore, it does not constitute "personal information" as defined in the Act and the mandatory exemption provided by section 14 of the Act cannot apply. As this was the only exemption claimed by the Police to deny access to pages 4, 5 and 11 these pages should be disclosed to the appellant in accordance with the highlighted copy of the record provided to the Freedom of Information and Protection of Privacy Co-ordinator of the Police with this order.

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

Under Issue A, I found that page 3 of the record contains the personal information of the appellant and other individuals.

Section 36(1) of the Act gives individuals a general right of access to 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 exceptions to this general right of access. Specifically, section 38(b) provides:

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 another individual's right to the protection of his/her privacy. If the Police determine that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the Police the discretion to deny the requester access to the personal information (Order 37).

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 another individual's personal privacy.

The Police submit that the presumption contained in section 14(3)(b) of the Act applies. This section states:

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 Police indicate that this information was compiled as part of their investigation into the circumstances surrounding the assault on the appellant. While the personal information noted on page 3 appears to be included in a statement given to the Police by the appellant, it is not clear whether it was provided to the Police by the appellant, or whether the Police located it themselves, acting on information provided to them by the appellant. In these circumstances, I am satisfied that the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established.

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 his representations, the appellant appears to be raising the application of section 14(2)(d) (that disclosure of the personal information is relevant to a fair determination of the rights affecting the person who made the request) to the facts of this case. Even if I were to find that section 14(2)(d) is a relevant consideration in the circumstances of this appeal, it would not be sufficient to rebut the section 14(3)(b) presumption. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies.

I have reviewed the representations of the Police on their exercise of discretion under section 38(b) in refusing to disclose to the appellant his own personal information. I find nothing improper in the manner in which that discretion was exercised and would not alter it on appeal.

Because of the manner in which I have dealt with Issue A, it is not necessary for me to consider Issue C.

ORDER:

1. I uphold the decision of the Police not to disclose page 3 of the record.
2. I order the Police to disclose pages 4, 5 and 11 of the record to the appellant in accordance with the highlighted copies of these pages provided to the Freedom of Information and Protection of Privacy Co-ordinator of the Police with a copy of this order. The highlighted portions should **not** be disclosed.
3. In order to verify compliance with this order, I order the Police to provide me with copies of pages 4, 5 and 11 disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ February 8, 1994