



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-444

Appeal M-9400406

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a request under the Act to the Metropolitan Toronto Police Services Board (the Police), for the following information:

- (1) all information in the Police file under his name, and
- (2) the names of all individuals who have requested access to the contents of his file and the names of all individuals to whom such access has been granted.

The Police denied access to these records on the basis that they do not exist. After a telephone conversation with the appellant, in which the appellant indicated that he had been interviewed by the Police in connection with a specified investigation, the Police located three records relating to this interview and granted partial access to each of them. These records consist of a Supplementary Report, which records the interview of the appellant conducted by the Police, and two handwritten statements written and signed by the appellant. The Police do not view these records as responsive to item (1) because they were not in a police file under the appellant's name. The Police rely upon the following exemption to deny access to the parts of these records which were not disclosed:

- invasion of privacy - section 14(1).

The appellant has appealed this denial of access. He also maintains that additional records exist, which raises the issue of whether the Police conducted a reasonable search for records in the circumstances of this appeal.

A Notice of Inquiry was sent to the appellant and the Police. Representations were received from both parties. Because the records which were partly withheld from disclosure appear to contain the appellant's personal information, the Commissioner's office raised the possible application of section 38(b) of the Act. That section provides an exemption relating to unjustified invasions of privacy for records which contain the requester's own personal information.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where 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 three records identified by the Police. In my view, all of them contain the appellant's
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personal information. In addition, all of these records contain personal information pertaining to several other individuals.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

As previously noted, the records consist of a Supplementary Report, which records an interview of the appellant conducted by the Police, and two handwritten statements written and signed by the appellant. The only information in these records which has not been disclosed consists of the names of several individuals supplied by the appellant to establish his reputation, or his whereabouts at the time of the crime which the Police were investigating. In two cases, access was also denied to the job titles of the named individuals.

A number of previous orders have held that the disclosure of personal information relating to an individual other than the requester, in circumstances where the person requesting the information had originally supplied it to the government organization, would not result in an unjustified invasion of personal privacy.

For example, in Order M-384, Inquiry Officer Laurel Cropley held that the disclosure of personal information in a police officer's notebook, which related to someone other than the requester, but which the requester had provided to the officer, would not be an unjustified invasion of privacy. I agree with Inquiry Officer Cropley's interpretation and adopt it for the purposes of this appeal. The circumstances of this appeal are similar to those in Order M-384, and I find that disclosure of the severed information in the records would not constitute an unjustified invasion of personal privacy. Accordingly, the exemption in section 38(b) does not apply to it.

In my view, this is sufficient to dispose of the matter. However, the Police have raised the possible application of the presumptions in sections 14(3)(b) and (d). These provisions state:

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
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possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- (d) relates to employment or educational history;

The undisclosed information to which section 14(3)(d) might be expected to apply consists of the job titles of two named individuals. The employers of these individuals are also identified, although that information was disclosed. It was established in Order P-235 that an individual's name, job title, and the identity of his or her employer does not constitute that person's employment history for the purposes of section 21(3)(d) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 14(3)(d) of the Act. I agree with this view and, for this reason, I find that section 14(3)(d) does not apply to this information.

Turning to the presumption in section 14(3)(b), the evidence shows that the undisclosed information was compiled and is identifiable as part of an investigation into a possible violation of law (namely, a murder investigation) and for that reason, it might be expected that the presumption in section 14(3)(b) would apply.

However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

It is possible that, in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization. However, in my view, this is not such a case. Accordingly, for the reasons enumerated above, I find that the presumption in section 14(3)(b) does not apply. In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to the information at issue in the records.

Section 14(1) of the Act is also not available to exempt this information from disclosure, since the records in which the information appears also contain the personal information of the appellant (Order M-352). Therefore, the withheld information in the records should be disclosed to the appellant.

REASONABLENESS OF SEARCH

As previously noted, the appellant also maintains that records responsive to parts (1) and (2) of his request, as described above under "Nature of the Appeal", should exist.

Where the requester provides sufficient details about the records which he is seeking and the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge their obligations under the Act, the Police must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

In their representations, the Police submit that, with respect to part (1) of the request, "... a thorough search of computerized police data banks (C.P.I.C., MANIX, COPS and CNI) uncovered **no** records whatsoever in the [appellant's] name ...".

The appellant's representations allude to a complaint he filed against a Police Officer in 1986. He believes that the Police must have records pertaining to this complaint. However, in my view, the wording of the request, which related to the appellant's "police file" and individuals who requested or received access to it, cannot reasonably be construed as including this type of information. Rather, in my opinion, the request relates to police investigations involving the appellant, and this is precisely the sort of information which the Police did, in fact, search for. I am not prepared to permit the appellant to expand or clarify the scope of his request at this stage of his appeal.

If the appellant wishes to have the Police search for records relating to his complaint, he will have to make a specific request to the Police for that information. This is consistent with the wording of section 36(1)(b) of the Act, which sets out the obligations of requesters who are seeking access to their own personal information. This section states:

Every individual has a right of access to,

any other personal information about the individual in the custody or under the control of an institution **with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.** [emphasis added].

I find that the actions of the Police in attempting to locate records responsive to part (1) of the request were reasonable in the circumstances. In view of the fact that they did not locate any "police files" relating to the requester, it would not be logical to search for information regarding individuals who asked for, or received, access to those files. Accordingly, I also find that the actions of the Police in attempting to locate records responsive to part (2) of the request were reasonable in the circumstances.

ORDER:

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1. I order the Police to disclose the withheld portions of the records at issue to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
2. In all other respects, I uphold the decision of the Police.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
John Higgins
Inquiry Officer

January 17, 1995