



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-458**

**Appeal M-9400286**

**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 Metropolitan Toronto Police Services Board (the Police) received a request for all information related to certain incidents which occurred on August 19 and 20, 1991. The requester specifically sought access to any internal Police reports, the names of the officers involved, their notebooks, copies of any final reports as well as the name of the alleged informant whose information led to the events on those dates.

The Police advised the requester that the information he sought formed part of a complaint investigation which was then under review by the Public Complaints Commissioner (the PCC). At that time, the Police denied access to the records in their entirety pursuant to the following exemptions:

- law enforcement - sections 8(1)(a) and (b)
- right to a fair trial - section 8(1)(f)

The requester appealed.

A Notice of Inquiry was sent to the Police and the appellant. Since the type of records requested appeared to contain some of the appellant's personal information, as well as that of other identifiable individuals, the Notice of Inquiry raised the possible application of sections 38(a) and (b) of the Act. Section 38(a) gives the Police the discretion to deny the appellant access to his own personal information in cases in which certain other exemptions, including sections 8(1)(a), (b) and (f), apply. Section 38(b) provides an exemption relating to unjustified invasions of personal privacy which contain the appellant's own personal information.

The Notice of Inquiry also requested the Police to forward the responsive records to this office. The Police subsequently did so and also issued a new decision letter in which they provided the appellant with some information and indicated that other records did not exist. They also disclosed portions of 22 pages of general occurrence reports and officers' notebooks to the appellant. The Police denied access to the remaining parts of these documents on the basis of the following exemptions:

- law enforcement - section 8(1)(d)
- facilitate commission of an unlawful act - section 8(1)(l)
- invasion of privacy - sections 14(1) and 38(b)

The appellant submitted representations in response to the Notice of Inquiry and commented on the new decision letter issued by the Police. The appellant indicated that he wished to pursue the denial of access to portions of the records. Thus, the portions of the 22 pages which were not released to him constitute the records at issue in this appeal.

The appellant also claimed that more records existed. As this was the first time that matter had been raised as an issue, the appellant agreed that it would be pursued as a separate appeal. Accordingly, this order will only address the denial of access.

The Police did not submit any representations. Section 8(1)(l) is a discretionary exemption. This was the

only exemption claimed by the Police to apply to portions of Pages 1, 2 and 3 not disclosed to the appellant. I have reviewed this information and find that no mandatory exemptions apply. Accordingly, these pages should be disclosed to the appellant in their entirety.

## **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 parts of the records which are at issue. In my view, the portions of Pages 7, 9, 14, and 16 which are responsive contain the personal information of the appellant and other identifiable individuals. The only personal information contained on Pages 8, 11, 12, 15, 17 and 19-22 pertains to individuals other than the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

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

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits the Police from releasing this information.

In both these situations, 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.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Police claim that the presumption in section 14(3)(b) of the Act applies to the personal information which has not been disclosed. Although the Police have provided no submissions in this case, it is clear from my independent review of the records that the personal information was compiled and is identifiable as

part of an investigation into a possible violation of law. In particular, the investigation related to possible violations of the Criminal Code. I find, therefore, that section 14(3)(b) applies to this information.

Sections 14(4) and 16 do not apply in the circumstances of this case.

Accordingly, I find that disclosure of the personal information to which access has been denied would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Thus section 38(b) applies to exempt from disclosure those portions of Pages 7, 9, 14 and 16 which contain the personal information of both the appellant and other identifiable individuals. The personal information of individuals other than the appellant which is contained on Pages 8, 11, 12, 15, 17 and 19-22 is exempt pursuant to section 14(1) of the Act.

**ORDER:**

1. I uphold the decision of the Police to deny access to the undisclosed portions of Pages 7, 9, 11, 12, 14, 15, 16, 17 and 19-22.
2. I order the Police to disclose Pages 1-3, in their entirety, to the appellant.
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 2.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_  
February 8, 1995