



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-508

Appeal M-9400696

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 access to all information relating to the requester. The Police identified numerous records responsive to the request and granted partial access. The records relate to an assault complaint made against the appellant by the complainant, who is now deceased (the complainant). The charge against the requester was subsequently withdrawn by the Police.

The requester appealed the decision to deny access to the remaining records.

The records to which access has been denied, in whole or in part, are listed in Appendix "A" to this order.

The Police rely on the following exemptions to deny access to the records:

- invasion of privacy - sections 14(1) and 38(b).

The appellant also maintains that certain additional records should exist. Accordingly, the reasonableness of the search conducted by the Police is also an issue in this appeal. Finally, the appellant seeks to have some of his personal information on Record 3 corrected.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

RESPONSIVENESS OF RECORDS

Portions of Records 7, 15 and 18 (excerpts from police officers' notebooks) and Record 19 (confidential Crown envelope) have been withheld by the Police on the basis that they are not responsive to the request. I have reviewed the information at issue in conjunction with the request. In my view, the information relates to other police activities and is not related to the request. I agree with the Police that these portions of Records 7, 15, 18 and 19 are not responsive to the request and I will not consider them further in this appeal.

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 carefully reviewed the information in the records to determine if it contains "personal information" and, if so, to whom the personal information relates. I find that the records contain personal information and that it relates to the appellant and the complainant. I find that some of the personal information also relates to other identifiable individuals.

Section 2(2) of the Act provides that personal information does not include information about an individual who has been dead for more than thirty years. In the subject appeal, the complainant's death occurred within thirty years and, therefore, section 2(2) does not apply in the circumstances of this appeal.

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.

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 appellant submits that because the information that has been withheld relates to charges made against him, it is only fair that it should be disclosed to him. The appellant has indirectly raised fairness as an unlisted factor under section 14(2).

The Police submit that the presumptions contained in sections 14(3)(a) (medical history), 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law), 14(3)(d) (employment or educational history) and 14(3)(g) (personal recommendations or evaluations) apply to the personal information at issue.

I have reviewed the evidence before me and I make the following findings:

- (1) The personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). The presumption in section 14(3)(b) only requires that there be an investigation into a **possible** violation of law. The fact that the charge was subsequently withdrawn does not negate the applicability of section 14(3)(b). Accordingly, the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.
- (2) None of this information falls within the ambit of section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
- (3) Accordingly, the exemption in section 38(b) applies to the records at issue.

CORRECTION OF PERSONAL INFORMATION

The appellant states that the last sentence in the Supplementary Record of Arrest, Record 3, is incorrect. The appellant submits that the information is not based on facts and represents an opinion which is biased and could have resulted in a wrongful conviction. The appellant has forwarded a statement of disagreement to the Police.

The Police state that the information as recorded by the police officer was obtained from the complainant during the investigation.

Section 36(2) of the Act sets out the procedures to be followed when requesting correction to personal information. This section states:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Three requirements must be met in order for an institution to grant a request for correction of personal information:

1. the information at issue must be personal and private information; **and**
2. the information must be inexact, incomplete or ambiguous; **and**
3. the correction cannot be a substitution of opinion.

I have previously found that the information in the records contains the personal information of the appellant. The personal information relates to an assault charge made against the appellant and, in my view, is private in nature. Therefore, the first requirement of section 36(2) has been met.

In order to determine if the second requirement noted above has been satisfied, I must determine if the information is "inexact, incomplete or ambiguous".

In the circumstances of this case, the appellant disagrees with the police officer's version of his actions and statement. The basis appears to be that the police officer has not used the same word that the appellant used (in Record 9) to describe the

action resulting in the assault charge. In my view, the issue is one of semantics. The meaning attributed to the words used by the appellant and the police officer is close enough that I find that the sentence at issue is not inexact, incomplete or ambiguous. I note that the charge of assault would apply equally to the words used to describe the action by both the appellant and the police officer.

As the second requirement for the correction of this personal information under section 36(2) has not been met, I accept the position of the Police that this request for correction of personal information cannot be granted.

As I have indicated previously, the appellant has forwarded a statement of disagreement to the Police. Section 36(2)(b) provides that the appellant is entitled to require the Police to attach the statement of disagreement to Record 3. In their representations, the Police have agreed to do this. To my knowledge, this agreement has not been communicated to the appellant by the Police.

I, therefore, order the Police to attach the statement of disagreement to Record 3 and to provide the appellant with written confirmation of this.

REASONABLENESS OF SEARCH

The appellant believes that the following two records should exist: a copy of the Recognizance of Bail with notations by a named police officer and a statement given to the same officer by the appellant. In his representations, the appellant has clarified that the statement was given at 22 Division and not at Metro West Detention Centre.

In their representations, the Police reiterate their earlier position that the Recognizance of Bail is not in their files but that a copy may be obtained from the court. The Police have detailed the areas of search for the Recognizance of Bail and the statement by the appellant. With regard to the latter, the Police have provided me with copies of the entries from the named police officer's memo book for the period between April 10 and April 17, 1994 to show that no responsive entry exists. I have reviewed the copies of the memo book entries and have found no entries that would be responsive to the request.

Where a requester provides sufficient details about the records which he or she is seeking and where the Police indicate that such records do not exist, it is my responsibility to ensure that the Police have made a reasonable effort 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 their search was reasonable in the circumstances.

I have carefully reviewed the evidence before me and the representations of the parties. I am satisfied that the search conducted by the Police was reasonable in the circumstances of this appeal.

In summary, I have made the following findings:

- (1) that the portions of Records 7, 15, 18 and 19 which have been withheld from disclosure contain information that is not responsive to the request;
- (2) that the disclosure of the personal information in Records 1, 2, 3, 8, 9, 10, 12, 13, 14, 15, 16, 20 and 29, withheld in whole or in part, would constitute an unjustified invasion of the personal privacy of the complainant and other

identifiable individuals under section 14(3)(b) and, therefore, the exemption in section 38(b) applies to the records;

- (3) that the information in Record 3 does not qualify for correction under section 36(2) and the Police should provide the appellant with written confirmation that the statement of disagreement has been appended to the record and
- (4) that the search conducted by the Police for responsive records was reasonable in the circumstances of this appeal.

ORDER:

1. I uphold the decision of the Police.
2. I order the Police to attach the statement of disagreement to Record 3 and to provide the appellant with written confirmation of same.
3. I order the Police to give written notice of the statement of disagreement to any person or body to whom Record 3 has been disclosed in accordance with section 36(2)(c) of the Act.
4. In order to verify compliance with this order, I reserve the right to require the Police to provide me with copies of notices given pursuant to Provisions 2 and 3.

Original signed by: _____

_____ April 13, 1995

Mumtaz Jiwan
Inquiry Officer

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
1	Record of Arrest (part)	14(1)(f), 14(3)(b), (d)	exempt
2	Supplementary Record of Arrest (part)	14(1)(f), 14(3)(a), (b), (d), 38(b)	exempt
3	Supplementary Record of Arrest (part)	14(1)(f), 14(3)(b), 38(b)	exempt
7	Excerpt from police officer's memo book dated April 10, 1994 (part)	Not responsive	not responsive
8	Excerpts from police officer's memo book dated April 10, 1994 (part)	14(1)(f), 14(3)(a), (b), 38(b)	exempt
9	Excerpts from police officer's memo book dated April 10, 1994 (part)	14(1)(f), 14(3)(a), (b)	exempt
10	Excerpts from police officer's memo book dated April 10, 1994 (part)	14(1)(f), 14(3)(b)	exempt
12	Excerpts from police officer's memo book dated April 10, 1994 (part)	14(1)(f), 14(3)(b), (d), 38(b)	exempt
13	Excerpts form police officer's memo book dated April 10, 1994 (whole)	14(1)(f), 14(3)(b), (e), 38(b)	exempt
14	Excerpt from police officer's memo book dated April 10, 1994 (whole)	14(1)(f), 14 (2)(i), 14(3)(b), 38(b)	exempt
15	Excerpts from police officer's memo book dated April 10, 1994 (whole)	14(1)(f), 14(3)(b), 38(b), not responsive	exempt and not responsive
16	Excerpt from police officer's memo book dated April 10, 1994 (part)	14(1)(f), 14(3)(a), (b), (d), 38(b)	exempt
18	Excerpt from police officer's memo book dated April 10, 1994 (part)	Not responsive	not responsive
19	Confidential Crown Envelope (part)	Not responsive	not responsive
20	Confidential Crown Envelope (part)	14(1)(f), 14(3)(a), (b)	exempt
29	Anticipated Evidence of Witness (whole)	14(1)(f), 14(3)(a), (b)	exempt