



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

ORDER M-855

Appeal M_9600114

Ottawa_Carleton Regional 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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The (husband and wife) appellants in this appeal are the owners of a residential property that was damaged by fire. Counsel for the appellants submitted a request for information on their behalf to the Ottawa-Carleton Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). In particular, counsel requested the names of witnesses, the witness statements and all other pertinent information relating to the incident (by file number).

The Police located records responsive to the request and notified seven individuals whose interests might be affected by disclosure of this information pursuant to section 21 of the Act (the affected persons). Some of the affected persons did not respond. Those that did respond objected to disclosure of their personal information. The Police subsequently denied access to the records on the basis of the following sections in the Act:

- law enforcement - sections 8(2)(a) and 8(2)(c)
- invasion of privacy - sections 14(1) and 38(b).

The Police also indicated that certain information had been removed from the records as it was not responsive to the request. The appellants' counsel appealed this decision.

I note that counsel has stated that his law firm was retained by the appellants' insurers to bring a subrogated claim in respect of the fire damage which was done to the appellants' home. However, the appellants have provided signed authorizations for the disclosure of their personal information to counsel which also indicate that he is acting on their behalf for the purposes of this access request. Accordingly, I am satisfied that counsel is representing the interests of the appellants in this appeal. For ease of reference, I will only refer to the appellants throughout this order.

The appellants have also provided this office with a consent form which was signed by their daughter who was a witness to the fire (and who was notified by the Police as an affected person). The form signed by the daughter authorizes the disclosure of her personal information to counsel.

In addition to the exemptions claimed above, the Police indicated that access to the requested information was also denied under section 32 of the Act. This section, which is found in Part II of the Act sets out those situations where disclosure of personal information is permitted. This provision is not relevant to an access request made under the Act, and the Police have agreed not to pursue it further.

This office provided a Notice of Inquiry (the NOI) to the Police, the appellants and five affected persons. As the records appeared to contain the personal information of the appellants, the NOI raised the application of section 38(a) (discretion to refuse requesters own information) to the records. In addition, the Appeals Officer wrote to the appellants' daughter to obtain confirmation from her that she is consenting to disclosure of the information to her parents.

Representations were received from the Police, the appellants and four affected persons. The appellants' daughter confirmed that she consents to the disclosure of her personal information to her parents.

During the inquiry stage, the Police identified additional records responsive to the request. These records consist of handwritten notes, witness statements, photographs of the damage caused by the fire, and a computer printout which duplicates certain portions of the information contained in two of the records at issue. As well, the following issues were clarified:

- With respect to their decision letter of March 8, 1996, the Police indicated that they incorrectly stated that some information was not responsive to the request. They confirmed that all of the information in the records is responsive and that it was considered in rendering their decision.
- The Police advised that their decision of March 8 also applied to the additional records identified above.
- The appellants advised the Police that they were not interested in receiving the photographs. These records are therefore not at issue in this appeal.
- The appellants confirmed with this office that they were not pursuing access to the computer printout, and accordingly, this record is not at issue in this appeal.
- Finally, the Police reconsidered their decision with respect to the witness statement provided by the appellants' daughter in light of her consent to its disclosure. This record was disclosed to the appellants and is no longer at issue in this appeal.

As the handwritten notes and witness statements were not identified in the NOI, the Appeals Officer invited the appellants and the Police to submit further representations regarding the application of the exemptions to them. The appellants did not submit further representations, but indicated that they would like their original representations to apply to the additional records. No additional representations were received from the Police.

As a result of the above, the records at issue in this appeal consist of the following:

- **Record 1** a one-page "General Occurrence/Arrest Report" with a five-page "Supplementary Report" attached
- **Record 2** a three-page "Identification Case Report" with a one-page follow-up
- **Record 3** a five-page "Supplementary Report"
- **Record 4** six pages of handwritten notes (a police officer's log)

- **Record 5** four witness statements.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act defines personal information, in part, as “recorded information about an identifiable individual”. I have reviewed the information contained in the records and make the following findings:

1. **Records 1, 3 and 4** contain the personal information of the appellants and other identifiable individuals, including the daughter and witnesses to the fire.
2. **Record 2** contains small amounts of the personal information of the appellants and their daughter.
3. **Record 5** contains the personal information of the appellants’ daughter and a number of other identifiable individuals. This record does not contain the personal information of the appellants.
4. Interspersed throughout the records are references and information about the Chief Fire Prevention Officer, the District Fire Chief and the appellants’ insurance agent. I find that these individuals were involved in the events surrounding the fire in their professional capacity. It has been established in previous orders that information provided by, or relating to an individual in a professional capacity or in the execution of employment responsibilities is not “personal information” within the meaning of the Act (Orders M-71 and M-108). Therefore, I find that the records do not contain the personal information of these individuals.

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION/LAW ENFORCEMENT

I found above that Records 1 - 4 contain the appellants’ personal information. Section 38(a) of the Act gives the Police the discretion to deny access to records containing a requester’s own personal information where certain listed exemptions, including section 8, would otherwise apply.

The Police claim that sections 8(2)(a) and (c) apply to exempt the information in all five records from disclosure. These sections state:

A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

Section 8(2)(c)

With respect to the section 8(2)(c) exemption claim, the Police have simply quoted the section and refer generally to their representations regarding the police investigation into the circumstances surrounding the fire. The onus of establishing that the discretionary exemption in section 8 has been met rests with the Police. In this regard, I find that the representations of the Police refer generally to the nature of all police investigations, albeit with particular emphasis on the specific parties and circumstances of this case. In order to meet their burden, the Police must provide some evidence that disclosure of any or all of the information contained in the records at issue could reasonably be expected to result in the harm contemplated by the section. In my view, the Police have provided insufficient evidence to support the application of this section. Accordingly, I find that they have not met the burden and section 8(2)(c) does not apply.

Section 8(2)(a)

In order for a record to qualify for exemption under section 8(2)(a) of the Act, the Police must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P-324]

In Order 221, Commissioner Tom Wright made the following comments regarding the word “report” found in section 14(2)(a) of the provincial Freedom of Information and Protection of Privacy Act (which is identical in wording to section 8(2)(a) of the municipal Act):

The word “report” is not defined in the Act. However, it is my view... to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I agree with this approach and adopt it for the purpose of this appeal.

In their representations, the Police submit that the investigations into the circumstances surrounding the fire were prepared by a police officer as defined in the Police Services Act, and were conducted to determine if an offence under the Criminal Code had been committed. The

Police again refer generally to the totality of information provided in their representations to support a finding that section 8(2)(a) applies.

I have reviewed the contents of Records 1 and 2. Although they are titled "Reports", I find that they contain a recording of the observations of the officers and the factual circumstances of the event. Record 4 is a running log of a police officer's activities regarding his investigation into the circumstances of the fire and Record 5 consists of statements provided by witnesses in which they describe their observations and/or actions relating to the event.

In my view, none of these four records (Records 1, 2, 4 and 5) contain any formal accounting of the results of the collation and consideration of information, and I find that they do not constitute a "report" for the purposes of section 8(2)(a), and thus do not qualify for exemption under this section.

I find that Record 3 contains a formal statement or account of the results of the collation and consideration of information, and thus qualifies as a report. I also find that the report was prepared in the course of a law enforcement investigation by the Police, an agency which has the function of enforcing and regulating compliance with a law, in this case, the Criminal Code. Accordingly, I find that Record 3 qualifies for exemption under section 8(2)(a) of the Act.

Having found that Record 3 contains the personal information of the appellants and qualifies for exemption under section 8(2)(a), I find that it is exempt from disclosure under section 38(a).

As I indicated above, Record 2 contains the personal information of the appellants and their daughter only. Neither section 14(1) nor 38(b) is applicable to information which relates solely to the appellants or their daughter, as she has consented to its disclosure to her parents. As I have found that Record 2 does not qualify for exemption under section 8(2)(a), and as no mandatory exemptions apply, it should be disclosed to the appellants.

INVASION OF PRIVACY

As I indicated above, Records 1, 3 and 4 contain the personal information of the appellants and other identifiable individuals. Record 5 contains only the personal information of individuals other than the appellants. As I have already found that Record 3 qualifies for exemption under section 8(2)(a) above, I will not consider it further in the following discussion.

Once a record is found to contain personal information of individuals other than the appellants, section 14(1) of the Act provides that this information shall not be disclosed unless one of the exceptions listed in section 14(1) applies. The only such exception which could apply here is section 14(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

However, where a record contains the appellants' personal information and the Police decide not to disclose all or part of the record to prevent an unjustified invasion of someone else's privacy, section 14 does not apply (Order M-352). In such a case, section 38(b) gives the Police the discretion to deny access where disclosure would be an unjustified invasion of privacy.

Therefore, for the records which contain the appellants' personal information (Records 1 and 4), I will decide whether section 38(b) applies. For the other record (Record 5), I will decide whether section 14(1) applies.

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 submit that the presumption in section 14(3)(b) applies to the personal information contained in the records. In addition, the Police claim that the personal information in the records is highly sensitive (section 14(2)(f)), and that the information in the witness statements was provided in confidence (section 14(2)(h)).

The appellants submit that they are seeking the information of the witnesses as this information is relevant to the issues in the legal action. Therefore, they argue that disclosure of the records is relevant to a fair determination of their rights (section 14(2)(d)).

These sections of the Act provide:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (f) the personal information is highly sensitive;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
- (3) 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 possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

I have reviewed the information contained in the records and I find that much of the information contained in Records 1 and 4 either pertains to the investigation of the fire scene or relates to the appellants or their daughter. This information is severable from information in these records regarding other identifiable individuals. I have highlighted those portions of Records 1 and 4 which contain information that would identify individuals other than the appellants or their daughter. As I indicated above, the exemptions in sections 14(1) and 38(b) are not applicable to the remaining information, and it should be disclosed to the appellants.

With respect to the highlighted portions of Records 1 and 4 and all of the information in Record 5, the Police have provided me with information regarding the investigation of this matter. I am satisfied that this investigation was undertaken to determine whether there were any violations of the law in connection with the fire. Accordingly, I find that the presumed unjustified invasion of privacy in section 14(3)(b) applies to this information.

Even if I were to find that the factor in section 14(2)(d) applied in the circumstances of this appeal, the Divisional Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 14(2) cannot be used to rebut the presumptions in section 14(3).

As I previously indicated, a presumption in section 14(3) may only be overcome by the application of section 14(4) or section 16 of the Act. The information does not fall within the types of information listed in section 14(4). The appellants have not raised the possible application of section 16, and I find that it does not apply.

Because the presumption in section 14(3)(b) applies, the exception in section 14(1)(f) has not been established for the record which does not contain the appellants' personal information (Record 5), and I find that this record is exempt under section 14(1). Similarly, for the records which do contain the appellants' personal information, the application of this presumption means that disclosure of the highlighted portions of Records 1 and 4 would be an unjustified invasion of personal privacy, and these portions of the records are exempt under section 38(b).

ORDER:

1. I order the Police to disclose to the appellants Record 2 in its entirety and the portions of Records 1 and 4 which are **not** highlighted on the copy of the records that is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order, by sending the appellants a copy of these records by **December 9, 1996** but not earlier than **December 4, 1996**.
2. I uphold the decision of the Police to withhold Records 3 and 5 in their entirety and the portions of Records 1 and 4 which are highlighted on the copy of these records sent to the Police with a copy of this order.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the portions of the records which are disclosed to the appellants pursuant to Provision 1.

Original signed by: _____

Laurel Cropley
Inquiry Officer

_____ November 4, 1996