



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

ORDER M-910

Appeal M_9600367

Ottawa_Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant was a passenger in an automobile which was involved in an accident with another vehicle. By her counsel, the appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Ottawa-Carleton Regional Police Services Board (the Police). The request was for copies of the police report concerning the accident, and the contents of the police file including witness statements, officers' notes and occurrence reports.

The Police identified a number of responsive records. Full access was granted to some records, while others were partly or fully withheld under the following exemptions in the Act:

- law enforcement -section 8(2)(a)
- discretion to refuse requester's own information - section 38(a)
- invasion of privacy - sections 14 and 38(b).

The appellant appealed the denial of access.

This office sent a Notice of Inquiry to the appellant and the Police. In response to this notice, only the Police submitted representations.

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. I have reviewed the records and I find that all of them contain information about an identifiable individual or individuals other than the appellant. In addition, some of the records also contain information about the appellant (which has been disclosed to her).

Where a record contains the personal information of both the appellant and other individuals, section 38(b) allows the institution to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Where, however, the record only contains the personal information of other individuals, section 14(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

In both these situations, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the

personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

Section 14(3)(b) indicates that:

A disclosure of personal privacy 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.

With regard to section 14(3)(b), the Police submit as follows:

The records at issue are the personal information of parties involved in an incident which was investigated by this police service. The information was collected for the sole purpose of interviewing all parties and ascertaining if criminal charges were warranted.

I accept this submission, which in my view supports the application of section 14(3)(b) to the information which remains at issue. Therefore, I find that this information was compiled and is identifiable as part of the investigation into a possible violation of law and the presumption in section 14(3)(b) applies.

As I have indicated previously, once a presumption is found to apply, the only way in which it can be rebutted is if it falls under section 14(4) or where section 16 is found to apply. This result is dictated by the findings of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767. I have not been provided with any information to substantiate the application of section 14(4) or 16 to the information at issue, nor is their application apparent from a review of the records.

Accordingly, I find that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. This information, where it appears in records which also contain personal information of the appellant (which the Police have disclosed) is therefore exempt under section 38(b). Where the information appears in records which do not contain the personal information of the appellant, it is exempt under section 14(1).

Because of the way I have dealt with this issue, it is not necessary for me to address the application of sections 8(2)(a) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____

John Higgins
Inquiry Officer

_____ March 18, 1997