



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

## **ORDER M-873**

**Appeal M\_9600240**

**Ottawa\_Carleton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Ottawa-Carleton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of police records relating to a motor vehicle accident in which a pedestrian was injured. The requester represents the driver of one of the two vehicles involved. In particular, the requester sought access to the investigating officer's notes, diagrams, photographs, witness statements and supplementary reports.

The Police identified two pages, a Motor Vehicle Accident Report and an Accident Supplementary Report, as the records responsive to the request and determined that the interests of the driver of the second vehicle (the second driver) would be affected by disclosure of the information. Pursuant to section 21 of the Act, the Police notified the second driver who consented to the disclosure of his statement. The Police then granted partial access to the records and denied access to the remaining portions of the records under sections 8(2) and 14(1) of the Act. The requester appealed the decision to deny access to the remaining portions of the records. In this appeal, I will refer to the requester and his client, the driver, collectively and interchangeably as the appellant.

During mediation, the Police released two sets of numbers previously withheld from the Motor Vehicle Accident Report. These numbers represent the personal reference numbers assigned by the Police to the driver and his vehicle. The information in the records that remains at issue consists of two sets of such numbers relating to the second driver and information relating to the pedestrian.

This office provide a Notice of Inquiry to the appellant and the Police. As the records at issue contain information that relates to both the appellant and other individuals, the parties were asked to comment on the application of sections 38(a) and (b) of the Act. Representations were received from both parties.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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 information in the record and I find that the record contains the personal information of the appellant and other identifiable individuals, including the second driver and the pedestrian.

### **INVASION OF PRIVACY**

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this right.

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. Since the appellant has a right of access to his or her own personal information, the only situation under section 38(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

Sections 14(2), (3) and (4) 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. 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 information at issue was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code) and in this manner, the presumption in section 14(3)(b) applies. The Police submit that part of the withheld information relates to the injuries sustained by the pedestrian and therefore the presumption in section 14(3)(a) (medical condition or evaluation) also applies to this information.

The appellant submits that the disclosure of the withheld information is necessary in order to adequately defend the driver in a civil suit launched by the pedestrian. I agree that the factor contained in section 14(2)(d) is relevant in the circumstances of this appeal.

I have carefully reviewed the record and I find that the presumption provided by section 14(3)(b) of the Act applies to the personal information in the record. I find that the personal information was compiled and is identifiable as part of the investigation into a possible violation of law. 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. 767. Consequently, the application of section 14(2)(d) raised by the appellant cannot override or rebut the presumption I have found to apply. I also find that section 14(4) has no application in the circumstances of this appeal.

The appellant submits that a public interest exists in the disclosure of the information. The appellant points out that the party resisting disclosure (i.e. the pedestrian) is the same party who has launched civil proceedings against his client and it is for this proceeding that disclosure is required.

Section 16 of the Act states as follows:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

There are two requirements contained in section 16 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a compelling **public** interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

While I empathize with the position of the appellant, I cannot conclude that a compelling public interest exists in the circumstances of this appeal. Accordingly, I find that section 16 of the Act does not apply and the personal information is exempt from disclosure under section 38(b) of the Act.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ December 6, 1996