



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

ORDER M-966

Appeal M_9700111

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted an eight-part request to the Metropolitan Toronto Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records relating to two assaults on the appellant. Specifically the appellant asked for the following:

1. written police reports filed by two named police officers on July 30, 1992, regarding an assault by the requester's husband on the requester on July 29, 1992, and copies of pictures taken of the requester's face on July 30, 1992;
2. written reports filed by two named police officers concerning the requester's domestic situation on January 23, 1996 and the seizure by the police of her husband's gun;
3. personal information regarding a domestic assault on the requester by her husband on February 5, 1996, all police reports filed by two named police officers, and copies of pictures taken of the requester's back on February 9, 1996;
4. police reports by two named police officers concerning the arrest of the requester's husband relating to the assault on the requester on February 9, 1996;
5. police record of interview with the requester's husband on February 9, 1996 (police officers named);
6. information concerning the requester's 911 telephone call on April 18, 1996 regarding breach of bail by her husband and corresponding reports by a police officer;
7. personal information regarding the telephone call made by the requester on December 24, 1996, regarding her husband, and written report filed by the police officers who came to the requester's home and advised her to go to a shelter with her children; and
8. written report of a telephone call placed on January 5, 1997 by the requester's husband in which he attempted to file a missing person's report concerning the requester leaving her home on December 28, 1996 to go to a shelter with her children.

The Police located records responsive to the request and denied access to them, in part, based on the exemptions in sections 14(1) and 38(b) (invasion of privacy). In addition the appellant was advised where she could obtain the requested photographs (which she subsequently obtained), and that there were no occurrence reports for parts 7 and 8 of her request, but that police officer's memorandum books would be provided. The Police also identified information in the records

(portions of the police officers' memorandum books), which was not responsive to the request. The requester appealed the denial of access.

During the mediation of this appeal it was confirmed with the appellant that the only records at issue in the appeal would be those that are responsive to parts 2, 3, 4 and 5 of her request. At this time, the appellant also raised the question as to whether more records exist (reasonableness of search).

In addition it was confirmed with the appellant that parts of the police officers' memorandum books which were not responsive to the request would not be at issue in this appeal. It was also confirmed with the appellant that information pertaining to her husband such as his name, address, date of birth, and place of work would not be at issue in the appeal. I have highlighted in green, on the copies of the records which are being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order, those portions of the records which are not responsive to the request or are no longer at issue.

The records at issue in this appeal consist of occurrence, supplementary and property reports, and police officers' memorandum notebooks totalling 26 pages. These pages are numbered from 5 _ 25 and 27 - 31.

This office sent a Notice of Inquiry to the appellant and the Police. Representations were received from the Police only.

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 with the exception of page 21, the records all contain the personal information of the appellant and her husband. Page 21 contains the personal information of the husband only.

Where a record contains the personal information of both the appellant and another individual, 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 another individual, 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) states 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.

In reviewing the records, I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly “compiled” and is “identifiable” as part of an investigation into a possible violation of law (the Criminal Code).

However, a large portion of the records contains information which is about or was/would have been provided by the appellant, or of which she is clearly aware, such as the address and marital status she shared with her husband. This information is found on pages 5, 8 - 10, 13, 15, 16 - 17, 18, 19 - 20, 27, 29 and 31.

Several previous orders of this office have considered whether information that an appellant was previously aware of, or which was provided to or received from an appellant by an institution, should be subject to a presumption against non-disclosure (Orders M-384, M-444, M-613, M_847 and P-1263). All of these orders deal with fact situations analogous to the present case in that the information at issue was the personal information of both the appellant and other individuals.

These orders found that non-disclosure of personal information which was originally provided to the institution by an appellant would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. They determined that applying the presumption to deny access to the information which the appellant provided to the institution would, according to the rules of statutory interpretation, lead to an “absurd” result.

In Order P-1414, I found that, in certain circumstances, this reasoning is equally applicable to information which was provided by others, or was obtained by the institution (in that case, the OPP), in the presence of the appellant.

In the circumstances of the current appeal, I am of the view that to apply the presumption in section 14(3)(b) to those portions of the records which contain information which is about or was/would have been provided by the appellant, or of which she is clearly aware, would lead to an absurd result. Accordingly, I find that this presumption does not apply to the information provided by the appellant, or which was provided in her presence, in these pages.

Accordingly, only the information which I have highlighted in yellow, on the copies of the records which are being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order, are exempt from disclosure under section 14(1) (page 21 only) and section 38(b) of the Act.

I find that neither section 14(4) nor section 16 are applicable to the information which is highlighted in yellow.

REASONABLENESS OF SEARCH

In communications with the Appeals Officer, the appellant indicated that she believed more records relating to the incidents referred to above should exist. In particular, she believes that memorandum books for two named police officers who arrested her husband exist. It is not clear whether the arrest occurred in February of 1996 or 1997. In addition, the appellant believes that a written report of her injuries stemming from the incident which occurred on February 5 (1996 or 1997) should exist.

With respect to the memorandum books, the Police submit that the information which the appellant is now seeking relating to the 1997 date never formed part of the initial request. In the event that the date was incorrectly cited and the appellant is actually referring to the incident which occurred in 1996, the Police submit that the appellant did not request the officers' memorandum book notes. Rather, the appellant requested only the occurrence reports for the incident.

I agree with the Police in this regard. In my view, regardless of the date of the occurrence, the appellant's request specified only written reports of the incidents referred to in each part. Therefore, the Police were not required to conduct a search for the officers' memorandum books.

With respect to a written report of the appellant's injuries, the Police indicate that page 20 of the record mentions injuries suffered by the appellant. This information was disclosed to her. The Police go on to describe the steps taken to search for responsive records. They indicate that the Centralized Occurrence Processing System was checked to get the occurrence numbers for the occurrence reports and the reports were then retrieved. The Police indicate that the record retention for Occurrence Reports and Records of Arrest is five years, and submit that all requested records responsive to the request were located and processed accordingly.

Having considered the Police's representations, I am satisfied that the search which was conducted to locate responsive records was reasonable in the circumstances. Accordingly, this part of the appeal is dismissed.

ORDER:

1. I uphold the decision of the Police to withhold the information which is highlighted in green and in yellow on the copies of the records which are being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order. This highlighted information should **not** be disclosed to the appellant.
2. I order the Police to disclose to the appellant the remaining information in the records by sending her a copy of this information on or before **August 5, 1997**.
3. The Police's search for responsive records was reasonable and this part of the appeal is dismissed.
4. In order to verify compliance with the provisions 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: _____
Laurel Cropley
Inquiry Officer

_____ July 15, 1997