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

ORDER M-976

Appeal M_9700136

Peel Regional Police Services Board

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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of any accident report, field notes and any witness statements relating to a specified occurrence in which a pedestrian was struck and killed by a car. The requester is the son of the accident victim. The Police located the requested records and denied access to them, in their entirety, claiming the application of the following exemption contained in the Act:

- invasion of privacy - section 14(1)

The requester, now the appellant, appealed the Police's decision to deny access to the records, which consist of 60 pages of witness statements, an occurrence/investigation report, internal police correspondence and police officers' notebook entries. During the mediation of the appeal, the Police disclosed three pages of records to the appellant. The appellant also advised this office that he was not relying on the "personal representative" provision in section 54(a) of the Act to exercise the deceased's right of access.

This office provided a Notice of Inquiry to the appellant and the Police. Representations were received from both parties.

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 records and find that the majority of them contain the personal information of the witnesses and the accident victim. In addition, Page 59 contains only the personal information of the appellant. Pages 11, 31 (which is the same as Page 39) and 60 contain the personal information of the appellant and the accident victim, while Pages 9, 10, 12 and 58 contain only the personal information of the victim.

INVASION OF PRIVACY

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 information 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 Highway Traffic Act or the Criminal Code).

The appellant submits that the consideration listed in section 14(2)(d) is relevant as the personal information relates to a fair determination of the appellant's rights, as well as those of the appellant's mother and the deceased's estate. As noted above, however, once a presumption under section 14(3) is found to apply to the personal information contained in a record, no factor or combination of factors listed in section 14(2) can operate to overcome the operation of the presumption.

However, Pages 9, 10, 11, 12, 31, 39, 58, 59 and 60 of the records contain information which relates only to the appellant and/or his father, who was the accident victim, and is clearly within the knowledge of the appellant. This information includes their names, address, telephone number and dates of birth.

Several previous orders of this office have considered whether information which an appellant is clearly aware of 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, or which was already within the knowledge of the 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 information which is within the knowledge of or was provided to the institution by the appellant would, according to the rules of statutory interpretation, lead to an "absurd" result.

In the circumstances of the current appeal, I am of the view that to apply the presumption in section 14(3)(b) to the personal information on Pages 9, 10, 11, 12, 31, 39, 58, 59 and 60, about which the appellant is clearly aware, would lead to an absurd result. Accordingly, I find that this presumption does not apply to the personal information contained in these pages.

However, because the presumption in section 14(3)(b) applies to the remaining information contained in the other 48 pages of records, I find that their disclosure would constitute an unjustified invasion of the personal privacy of the witnesses. In addition, I find that neither section 14(4) nor section 16 are applicable to this information. These portions of the records are, therefore, exempt from disclosure under section 14(1).

ORDER:

1. I uphold the decision of the Police to deny access to the records, with the exception of Pages 9, 10, 11, 12, 31, 39, 58, 59 and 60.

2. I order the Police to disclose Pages 9, 10, 11, 12, 31, 39, 58, 59 and 60 of the records to the appellant by providing him with copies by **August 28, 1997** but not before **August 25, 1997**.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant in accordance with Provision 2.

Original signed by: July 24, 1997
Donald Hale
Inquiry Officer