



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

# **ORDER M-1028**

**Appeal M-9700178**

**Metropolitan Toronto 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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Metropolitan Toronto Police Services Board (the Police). The request was for access to all reports relating to the appellant's allegation that he had been assaulted by two police officers and a specific statement taken in connection with that occurrence.

The Police identified 20 pages of records, to which it denied access pursuant to sections 8(1)(a) and 8(1)(b) of the Act. The appellant appealed this decision.

A Notice of Inquiry was sent to the Police, the appellant and five individuals named in the records whose interests could be affected by the outcome of this appeal (the affected persons). As it appeared that the records also contained the personal information of the appellant, the parties were asked to address the possible application of sections 38(a) and (b).

Representations were received from the Police and the appellant.

## **RECORDS:**

At issue are 20 pages of records, comprising a general occurrence report (two pages) and a supplementary report (18 pages).

## **DISCUSSION:**

### **DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION/LAW ENFORCEMENT**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

Having reviewed the records, I find that they contain the personal information of the appellant, the officers complained about, and other identifiable individuals.

Under section 38(a) of the Act, the Police have the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 38(a) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information. [emphasis added]

The Police have exercised their discretion to refuse access to the records at issue under sections 8(1)(a) and (b). In order to determine whether the exemption provided by section 38(a) applies to the information in these records, I will first consider whether the exemptions in sections 8(1)(a) and (b) apply.

Sections 8(1)(a) and (b) state:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

The apparent purpose of the section 8(1)(a) and (b) exemptions is to provide the Police with the discretion to preclude access to records in circumstances where disclosure would interfere with an ongoing law enforcement matter or investigation.

The appellant submits that he was informed that no charges have been or will be laid in connection with the assault allegation. The records confirm that the investigation into the matter has apparently concluded. The appellant also complained about the incident to the Police Complaints Commission, and the Police have confirmed that this investigation has also concluded.

In view of the fact that these investigations are concluded, I find that neither the investigations nor the matter are ongoing, and disclosure of the records could not reasonably be expected to interfere with a law enforcement matter or investigation. Accordingly, these records do not qualify for exemption under sections 8(1)(a) or (b) of the Act.

## **INVASION OF PRIVACY**

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from the record if they determine 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.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of 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 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.

The Police have not made representations respecting the application of section 38(b). However, in my view, section 14(3)(b) is relevant in the circumstances of this appeal. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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.

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

Some of the records relate to the police officer’s interview and telephone conversation with the appellant and, therefore, contain information provided by the appellant to the Police. In Order M-444, former Inquiry Officer John Higgins found that non-disclosure of information which an individual originally provided to the Police 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.

In this case, as in the one considered by former Inquiry Officer Higgins, applying the presumption to deny access to the information which the appellant has provided to the Police would, according to the rules of statutory interpretation, lead to an “absurd” result. On this basis, I find that the presumption in section 14(3)(b) does not apply to the information provided by the appellant to the Police. I have also considered the factors in section 14(2) and all of the circumstances of this appeal and I find that disclosure of this information would not constitute an unjustified invasion of personal privacy. Section 38(b) does not, therefore, apply to the information supplied by the appellant to the Police on Records 1-9 and it should be disclosed.

I have reviewed the information contained in the remaining records and I find that the presumption in section 14(3)(b) applies to it as this information was clearly compiled and is identifiable as part of a police investigation into a possible violation of the law (the Criminal Code). As noted above, once a

presumption 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. I find that sections 14(4) and 16 are not applicable to this information. Accordingly, the remaining records are exempt under section 14(3)(b), and section 38(b) applies.

**ORDER:**

1. I order the Police to disclose Records 1-9 to the appellant by sending him a copy by **December 8, 1997** but not earlier than **December 3, 1997**.
2. I uphold the decision of the Police to deny access to the remaining records at issue in this appeal.
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 which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
November 3, 1997