



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1100

Appeal M-9800003

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Toronto Police Services Board (formerly the Metropolitan Toronto Police Services Board) (the Police). The request was for access to information relating to a background check on the appellant conducted by the Police at the request of the appellant's employer. The appellant also sought access to the results of any criminal records checks.

The Police located records in response to the request, and provided partial access to them. Access was denied to the remaining records on the basis of the following sections of the Act:

- relations with other governments - section 9(1);
- invasion of privacy - sections 14(1) and 38(b);
- information published or available - section 15(a).

The appellant appealed the denial of access.

This office provided a Notice of Inquiry to the appellant and the Police. This Notice set out the issues to be adjudicated in this appeal. Because the records may contain the personal information of the appellant, the possible application of section 38(a) (discretion to refuse requester's own information) of the Act was also raised in the Notice. Representations were received from the Police only.

RECORDS:

The records or parts of records remaining at issue include: the Investigator's Check List; the Employment Investigator's Report as well as internal correspondence; information from the C.P.I.C. system; and other documents relating to the background check.

The Police have claimed that section 9(1) applies to pages 13, 16, 18, 19, 22 and 23, and that section 15(a) applies to pages 22 and 23. The Police claim that sections 14(1) and 38(b) apply to the remaining pages.

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 contained in the records and I find that only pages 13, 16, 18, 19, 22 and 23 contain the personal information of the appellant. The remaining pages contain the personal information of identifiable individuals other than the appellant.

Section 36 of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

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 the exemption in certain sections, including sections 9 and 15, would otherwise apply to the disclosure of that personal information.

**RELATIONS WITH OTHER GOVERNMENTS/DISCRETION TO REFUSE
REQUESTER'S OWN INFORMATION**

As I indicated above, the Police have claimed section 9(1) to withhold access to pages 16, 19, 22 and 23 and parts of pages 13 and 18. This section provides, in part:

A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c);
- ...

In order to deny access to a record under section 9(1), the Police must demonstrate that the disclosure of the record could reasonably be expected to reveal information which the Police received from one of the governments, agencies or organizations listed in the section **and** that this information was received by the Police in confidence.

The Police indicate that the information in pages 13, 16, 18, 19, 22 and 23 was received from other police forces or a ministry of the provincial government in response to a background check conducted of the appellant for employment purposes. The Police observe that some of the documentation in question (pages 18 and 19) clearly provides that it was being provided to them in confidence. The Police take the position that there exists an expectation of confidentiality with respect to information contained in the C.P.I.C. system (as found in pages 13 and 16).

Many previous orders have found that the information in the C.P.I.C. system is not to be disclosed by any other police organization or agency unless that agency inputted the information into the C.P.I.C. system originally (Orders M-794, M-826 and M-1004). I agree with the reasoning and conclusions reached in these orders and find that they are equally applicable in the circumstances of this appeal to pages 13, 16, 18 and 19.

With respect to the information in pages 22 and 23, obtained from the Ministry of Transportation database, I am satisfied that this information is not readily available to the general public and that the

Ministry had an expectation that the recipient police force would exercise caution in disclosing the contents of these pages. Therefore, I am satisfied that they were received in confidence from a ministry of the Government of Ontario.

Accordingly, I find that the requirements for section 9(1) have been met and the information in pages 13, 16, 18, 19, 22 and 23 is exempt under section 38(a).

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

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.

The Police submit that the information contained in the remaining records at issue in this appeal pertains to police investigations of other individuals into criminal activities. Having reviewed the records, I am satisfied that the information contained therein was compiled and is identifiable as part of investigations into possible violations of law (section 14(3)(b)) and disclosure of this information would constitute a presumed invasion of privacy. I find that neither section 14(4) nor 16 are applicable to this information. Accordingly, the remaining information is properly exempt under section 14(1) of the Act.

Because of the decisions I have made, it is not necessary for me to consider the application of section 15(a) to pages 22 and 23.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

_____ May 6, 1998

Laurel Cropley

Adjudicator

(formerly Inquiry Officer)