



ORDER M-1096

Appeal M-9800025

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/Téloc: 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, now the Toronto Police Services Board (the Police). The request was for access to a copy or transcript of a telephone call(s) received by the Police in the late evening of September 16, 1997 or early morning of September 17, 1997, from a specific residence in Scarborough, Ontario. The appellant and one other person were arrested on that date at that location, and the appellant provided the name of the individual he believes made the call.

The Police refused to confirm or deny the existence of any record which would respond to the request, applying the provision found in section 14(5) of the Act. The appellant appealed the decision of the Police.

A Notice of Inquiry was sent to the Police, the appellant and the individual named in the request. Representations were received from the Police and the individual named in the request.

RECORDS:

The appellant believes that if a responsive record exists, it would be a 911 tape of the telephone call in question.

ISSUES:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

The Police rely on section 14(5) to refuse to confirm or deny whether any record responsive to the appellant's request exists. This section states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the appellant the right to know whether a record exists, even if one does not.

For this reason, in relying on section 14(5), the Police must do more than merely indicate that the disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. The Police must establish that the disclosure of the mere existence or non-existence of the requested record would convey information to the requester, the disclosure of which would constitute an unjustified invasion of personal privacy (Order M-328).

An unjustified invasion of personal privacy can only result from the disclosure of personal information. Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

Records of the nature requested, if they exist, would contain information about whether the identified individual had called to report a possible violation of law. Therefore, this individual could be a potential witness. I find that such information, if it exists, would qualify as the personal information of the identified individual.

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 personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant in the circumstances of the case.

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 (section 14(3)(b)). In my view, if records responsive to the request exist, access to them would be denied as they would fall under this presumption. Records of this type are not among those listed in section 14(4) and the appellant has not raised the possible application of section 16. Therefore, I find that disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy.

Having determined that the disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy, it is now necessary to determine whether disclosure of the mere existence or non-existence of responsive records would also constitute an unjustified invasion of personal privacy.

I find that the disclosure of the existence or non-existence of records of the sort requested would reveal personal information about an identifiable individual, specifically, whether or not that individual has been or is involved in a law enforcement matter in some capacity. In my view, such disclosure, would constitute an unjustified invasion of the personal privacy of the identified individual.

Therefore, I am satisfied that the Police have established the requirements for the application of section 14(5) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ April 28, 1998