



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

ORDER MO-1432

Appeal MA_000328_1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the police investigation of a motor vehicle accident. The requester represents an individual who was injured in the accident. The Police located the responsive records and granted access to them, in part. Access to the remaining portions of the records was denied pursuant to the following exemptions contained in the *Act*:

- facilitate commission of an unlawful act - section 8(1)(l);
- invasion of privacy - section 38(b), with reference to the presumption against disclosure in section 14(3)(b) (information compiled as part of an investigation into a possible violation of law) and the consideration listed in section 14(2)(g) (the information is unlikely to be accurate or reliable); and
- discretion to refuse requester's own information - section 38(a)

The requester, now the appellant, appealed the decision of the Police. During the mediation stage of the appeal, the Police notified four individuals [the affected persons] who are referred to in the records seeking their consent to the disclosure of their information to the appellant. One individual consented to the complete disclosure of his information, another agreed to partial disclosure, the third objected to the disclosure of any of his information and the fourth did not respond to the notification.

As a result, the Police disclosed to the appellant those portions of the responsive records for which consent had been granted. In addition, the appellant narrowed the scope of his request by indicating that he was no longer seeking access to those portions of the records which were not directly related to the Police investigation of the motor vehicle accident and those portions to which the Police had applied sections 8(1)(l) and 38(a).

As further mediation was not possible, the appeal was moved to the Adjudication stage. I decided to seek the representations of the Police initially and they made submissions, portions of which were shared with the appellant. The appellant also made submissions in response to the Notice which I provided to him.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual, or where the disclosure of the name would reveal other personal information about the individual.

I find that the record contains the names, addresses and telephone numbers of the affected persons, along with that of the appellant, thereby satisfying paragraph (d) of the definition of the term "personal information". In addition, I am satisfied that the information includes the name

of the appellant and the affected persons along with other personal information relating to them within the meaning of paragraph (g) of the definition.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF PRIVACY

Section 36(1) 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(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals, and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Divisional Court has stated that 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 a compelling public interest exists in the disclosure of the record, in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

In this appeal, the Police have relied on the presumption in section 14(3)(b) in conjunction with section 38(b). Section 14(3)(b) states:

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.

The Police submit:

The personal information gathered pertains to identifiable individuals named in the course of this investigation, for the purpose of determining whether a violation of law had, in fact, occurred. Only at the conclusion of an investigation can the officer determine whether a violation of law has taken place and proceed accordingly.

The appellant submits that there is no longer any law enforcement investigation or prosecution pending and that the disclosure of the information sought is required to ensure that all of the evidence relating to the circumstances surrounding the accident are presented to the court at the trial of the pending civil action brought by the appellant against the driver of the vehicle which struck her. The appellant argues that the production of this information is crucial to a proper determination of the issue of liability in that action. This submission gives rise to the possible application of the consideration listed in section 14(2)(d) of the *Act*.

I have reviewed the undisclosed portions of the remaining pages at issue and am satisfied that the personal information contained in them was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code* or the *Highway Traffic Act* (see for example Orders MO-1303, MO-1192, MO-1386). Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information. This presumption still applies, even if no charges had been laid or those charges have been disposed of (Orders P-223, P_237, P_1225 and MO-1414).

As noted above, none of the considerations or a combination of considerations under section 14(2) such as those referred to by the appellant can override the application of a presumption under section 14(3), as is the case in the present appeal.

The Police have also described the manner in which they exercised their discretion under section 38(b) not to disclose the remaining information. In the circumstances, I find that the Police have properly exercised their discretion under section 38(b) of the *Act* in deciding to withhold the information contained in the undisclosed portions of the records.

ORDER:

I uphold the decision of the Police to deny access to the records.

Original Signed By: _____ May 29, 2001
Donald Hale
Adjudicator