



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1670

Appeal MA-020312-1

Timmins Police Service



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 Timmins Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the entire Police record pertaining to the requester's son for the period May 31, 2001 to the date of the request. Because the son is under the age of 16 and the requester has lawful joint custody of him, the request is considered to have been made on behalf of the requester and her son, pursuant to section 54(c) of the *Act*.

The Police identified a number of responsive records, all of which relate to an investigation undertaken by the Police in response to an alleged abduction of the requester's son by her estranged husband. The husband was charged as a result of the investigation, but the criminal prosecution did not proceed.

The Police granted partial access to some records and denied access to the rest of them on the basis of the following exemption claims:

- section 38(a) in conjunction with section 8(2)(a) - law enforcement report
- section 38(b) in conjunction with section 14(3)(b) - invasion of privacy.

The requester, now the appellant, appealed the Police's decision.

During mediation, the Police confirmed that four individuals whose personal information is contained in certain records did not consent to disclose this information to the appellant.

The appellant also narrowed the scope of her request during mediation. She is no longer seeking access to any police officer notebook entries, and her request is now restricted to the portions of the Crown Brief Synopsis that have not already been disclosed, and the "will say" statements of three police officers and three witnesses.

Mediation was not successful in resolving the remaining issues, so the file was transferred to the adjudication stage of the appeal process. I initially sent a Notice of Inquiry to the Police and the three witnesses (the affected persons). The Police submitted representations in response. Two affected persons also responded, objecting to the disclosure of any personal information about them contained in the records. I then sent the Notice to the appellant, along with a copy of the Police's representations. The appellant responded with representations.

RECORDS:

The records that remain at issue are:

- the undisclosed portions of the Crown Brief Synopsis - pages 3-7
- "will say" statements of the three witnesses - pages 10-12, 31-34 and 49-51
- "will say" statement of three police officers - pages 13-15, 35-42 and 46-48.

DISCUSSION:

PERSONAL INFORMATION

Introduction

As noted earlier, the appellant, as a custodial parent of her minor child, is entitled under section 54(c) of the *Act* to stand in the place of her child for the purposes of her right of access to his personal information.

“Personal information” is defined, in part, to mean recorded information about an identifiable individual, including the personal opinions or views of the individual [paragraph (e)], the views or opinions of another individual about the individual [paragraph (g)], or 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 [paragraph (h)].

Crown Brief Synopsis

The Crown Brief Synopsis (the synopsis) summarizes the Police's involvement in the incident concerning the appellant's child that was investigated by the Police. I find that this information is about the child and the entire synopsis contains his “personal information”.

Certain portions of the synopsis contain information about the appellant, her relationship with her estranged husband and her role in the Police investigation of the alleged abduction. Some of these portions have already been disclosed to the appellant.

Other portions of the Synopsis contain information about the appellant's husband gathered by the Police during the course of the investigation. I find that these portions of pages 3-7 are about the husband and qualify as his “personal information” for the purposes of section 2(1) of the *Act*.

Still other portions of the Synopsis outline steps taken by certain police officers during the course of the investigation that do not relate to any identifiable individual. This information relates to professional activities undertaken by the police officers and does not qualify as their personal information and should be disclosed.

“Will-say” statements

The “will-say” statements (the will-says) all relate to the incident involving the appellant's child that was investigated by the Police. I find that this information is about the child and the entire content of all of the will-says contain his “personal information”.

Certain portions of the will-says contain information about the appellant and her role in the Police investigation of the alleged abduction. I find that these portions include her “personal information”.

The various will-says contain information gathered by the Police during the course of the investigation. Three of them are made by witnesses, and the other three by police officers. With the exception of certain portions of the three will-says made by the police officers, I find that all of the will-says contain the personal information of the husband. The exceptions consist of interactions between the various police officers and the appellant, which do not relate specifically to the criminal investigation, and contain her personal information only.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access. Under section 38(b) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where disclosure would constitute an unjustified invasion of another individual's personal privacy.

Section 38(b) of the *Act* introduces a balancing principle. The Police must look at the information and weigh the appellant's right of access to her own (and her son's) personal information against her husband's right to the protection of his privacy. If the Police determine that release of the information would constitute an unjustified invasion of the husband's privacy, then section 38(b) gives them discretion to deny the appellant access to her personal information.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) of the *Act* provide guidance to the Police in determining whether disclosure would result in an unjustified invasion of the husband's personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The Police identify the presumption in section 14(3)(b) as applicable in the context of this appeal. This section reads:

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 ...

The fact that criminal proceedings do not follow an investigation does not negate the applicability of subsection 14(3)(b). The presumption in subsection 14(3)(b) only requires that there be an investigation into a possible violation of law (Order P-242).

All of the records at issue in this appeal were compiled by the Police in the context of the Police's investigation into the alleged abduction of the appellant's child by her estranged husband. Clearly, this investigation concerned a possible violation of law, and the husband was in fact charged under the *Criminal Code*. As noted above, the fact that these charges were subsequently withdrawn has no bearing on the applicability of section 14(3)(b).

Accordingly, I find that, with the exception of certain portions of the synopsis that contain information provided by the appellant to the police during the investigation or were known to the appellant prior to and outside the context of the investigation, disclosing the personal information of the appellant's husband would constitute a presumed unjustified invasion of his privacy. However, in my view, denying the appellant access to the information provided by the appellant to the police during the investigation or known to the appellant prior to and outside the context of the investigation would lead to an "absurd" result, and these portions of the synopsis should be disclosed (see Orders M-444, MO-1196, P-1414 and PO-1686).

As far as the rest of the information in the will-says is concerned, 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) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Turning to the exercise of discretion under section 38(b), it is evident that the Police have reviewed the contents of the synopsis in an effort to provide the appellant with access to any portions that contain her own personal information, and protecting only the portions that relate directly to the investigation of the husband's actions in the context of alleged abduction. As a result of my findings in this order, the appellant will also receive additional portions of the synopsis as well as portions of some will-says that contain personal information of herself and her son and do not relate directly to the investigation. I find nothing improper about the approach taken by the Police in exercising discretion, and that the remaining portions of the synopsis and will-says qualify for exemption under section 38(b) of the *Act*.

As far as section 38(a) is concerned, I find that the portions of the synopsis and the will-says that do not qualify for exemption under section 38(b) clearly do not qualify as "reports" for the purpose of section 8(2)(a) of the *Act*, so section 38(a) has no application in the circumstances of this appeal.

In her representations, the appellant makes reference to certain provisions of the *Children's Law Reform Act* and court orders made in the context of custody arrangements involving her child and estranged husband. I would simply point out to the appellant that my findings in this appeal do not preclude her from exercising any rights she may have in other forums and under other legislation.

ORDER:

1. I order the Police to disclose those portions of pages 3, 4, 6, 14, 39, 46, 47 and 48 that do not qualify for exemption under sections 38(a) or 38(b) to the appellant by **August 26, 2003** but not before **August 19, 2003**. I have attached a highlighted version of these pages with the copy of this order sent to the Police identifying the portions that should be disclosed in accordance with this provision.

2. I uphold the decision of the Police to deny access to pages 5, 7, 10-13, 15, 31-34, 35-38, 40-42, 49-51, and the undisclosed portions of pages 3, 4, 6, 14, 39, 46, 47 and 48 not covered by Provision 1.
3. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the Police to provide me with copies of the records that are disclosed to the appellant.

Original Signed By: _____
Tom Mitchinson
Assistant Commissioner

_____ July 21, 2003