



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2001

Appeal MA-040329-1

Ottawa Police Services Board



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NATURE OF THE APPEAL:

The Ottawa Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to information relating to a fatal motor vehicle accident, which occurred at a racetrack. The requester's counsel stated in a letter that her client was the deceased's wife and seeks access to the following information:

A copy of the entire file relating to the investigation into the accident (police accident report, officer's notes, any accident investigation reports, witness statements, etc.)

In their decision letter, the Police granted partial access to the requested records. They denied access to certain records and parts of records and cited sections 8(1)(l), 14(1)(f) and 14(3)(b) of the *Act*. The requester (now the appellant) appealed the Police's decision to this office.

The Police sent the mediator assigned to the file a copy of the records at issue and an index of records that specified which sections of the *Act* it had applied to particular records. In addition to the sections that were cited in the decision letter sent to the appellant, the index of records also cited section 38(b) as a basis for denying access to certain records.

During the course of mediation, the Police stated that they had mistakenly claimed the exemption in section 8(1)(l) for certain records but were in fact claiming section 8(1)(i). The mediator informed the appellant's counsel of this change.

The mediator further explained to the appellant's counsel that the Police had severed some parts of the records because they were "non-responsive" (i.e., they relate to other incidents that are not responsive to the appellant's request). The appellant's counsel stated that her client was not seeking access to such information. Consequently, the non-responsive parts of these records are no longer at issue in this appeal.

The records and parts of records that were not disclosed by the Police consist of witness statements and general occurrence reports. The mediator attempted to notify five affected parties to inquire whether they would consent to the disclosure of these records. The results were as follows:

- One of the affected parties consented to the disclosure of his personal information, including his witness statement.
- Two of the affected parties refused to consent to the disclosure of their personal information, including their witness statements.
- A letter to one affected party was returned to this office unopened.
- We were unable to contact one affected party.

The Police issued a supplementary decision letter that granted the appellant access to the records relating to the affected party who had provided consent.

No further mediation was possible, and the appeal was moved to adjudication. I sent a Notice of Inquiry to the Police and four affected parties and invited them to submit representations on the issues in this appeal. I received representations from the Police and one affected party. I then sent a Notice of Inquiry and the representations of the Police to the appellant's counsel, who submitted representations on behalf of her client.

In some circumstances, section 54(a) of the *Act* permits the personal representative of a deceased individual to exercise the rights of the deceased, including access rights, under the *Act*. The appellant does not claim that this section applies in this case, and given that the appellant is not the personal representative of the deceased, it is clear that section 54(a) does not apply.

RECORDS:

The records and parts of records remaining at issue in this appeal consist of witness statements and general occurrence reports compiled by the Police.

<u>Page Number</u>	<u>Record</u>	<u>Exemption Claim</u>
2-6	Witness statements	section 14(1)
13	Witness statement	section 14(1)
16 (severed part)	General occurrence report	section 14(1)
17	General occurrence report	section 14(1)
18 (severed part)	General occurrence report	section 14(1)
20	General occurrence report	section 14(1)
21-25, 27-31	General occurrence report	sections 14(1) and 38(b)
34-36	General occurrence report	section 14(1)
38-40	General occurrence report	sections 14(1) and 8(1)(i)
44-46	General occurrence report	sections 14(1) and 8(1)(i)
47-48	General occurrence report	section 14(1)
49 (severed part)	General occurrence report	section 14(1)
50 (severed part)	General occurrence report	section 14(1)
51 (severed part)	General occurrence report	section 14(1)
52-55	General occurrence report	section 14(1)

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The Police submit that the records contain the personal information of individuals who witnessed the accident and other individuals who were interviewed during the investigation into the accident. In particular, they submit that, "The names, dates of birth, race, origin, contact information and employment history is considered personal information and is listed in the records at issue in this appeal."

I have reviewed the records and parts of records that remain at issue and find that they contain "personal information," as defined in section 2(1) of the *Act*. Two pages of the general occurrence reports (pages 29 and 30) contain a small amount of personal information of the appellant and her son, along with the personal information of other individuals. The undisclosed parts of the remaining pages consist of the personal information of the deceased and the witnesses to the accident.

In her representations, the appellant agrees that the records contain personal information. However, she states that she is not seeking the names, dates of birth, race, origin, contact information or employment history of the witnesses. She further submits that she is seeking the witness statement relating to the motor vehicle accident and suggests that any personal information could be removed (i.e. severed) from the records. In my view, severing this information would not change the fact that, with the exception of the information about the

appellant herself, the remaining information would still constitute the personal information of identifiable individuals other than the appellant, and in particular, that of the deceased.

INVASION OF PRIVACY

Sections 14(1) and 38(b)

Section 14(1) of the *Act* is a mandatory exemption. Where a requester seeks records containing the personal information of another individual, the exemption in section 14(1) prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The section 14(1)(f) exception permits disclosure of personal information if doing so does not constitute an unjustified invasion of personal privacy. The Police claim that section 14(1)(f) applies in the circumstances of this appeal.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. However, section 38 provides a number of exceptions to this general right of access. Under section 38(b), where a record contains the personal information of both the requester 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.

I will consider whether the mandatory exemption in section 14(1) applies to the records and parts of records that contain the personal information of individuals other than the appellant. I will also consider whether the discretionary exemption in section 38(b) applies to pages 29 and 30 of the records, which contain a small amount of personal information of the appellant and her son, along with the personal information of the deceased.

I will deal first with the appellant's personal information found on pages 29 and 30. Disclosure of a requester's own personal information cannot be an unjustified invasion of another individual's personal privacy. It is therefore not exempt under section 38(b), and as no other exemption is claimed for it, I will order it disclosed.

In analyzing the remaining information under both sections 14(1) and 38(b), the factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would constitute an unjustified invasion of personal privacy under section 14(1)(f).

The Police claim that section 14(3)(b) applies to the records and parts of records remaining at issue in this appeal:

14.(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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 Ontario Divisional Court has stated that if any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In their representations, the Police submit that the information in the records was compiled by members of the Ottawa Police Service during an investigation into allegations that an offence under the *Criminal Code* or the *Highway Traffic Act* may have been committed. I have reviewed the records and parts of records at issue, and I accept this submission. I am satisfied that the personal information in the records was compiled for and is identifiable as part of an investigation into a possible violation of law.

In her representations, the appellant submits that section 14(3)(b) does not apply to the records and parts of records claimed by the Police:

... the Police have failed to discharge the burden of proving that the witnesses’ statements fall within the scope of the section 14(3)(b) presumption. In the alternative, the appellant states that charges were never laid following this Police investigation as the motor vehicle collision was deemed accidental. The appellant further states that disclosure of personal information in the witnesses’ statements would not constitute an unjustified invasion of personal privacy under section 14(3)(b), since the statements are solely facts pertaining to the deemed accident. The appellant states that none of the witnesses were personally involved in the motor vehicle accident, and have not been charged in their personal capacity under the *Criminal Code* or the *Highway Traffic Act*. Based on the foregoing, the appellant states that no section 14(3) presumption applies, and that the appellant’s rights to the information outweigh a possibility of unjustified invasion of personal privacy.

I do not accept the appellant’s submissions on this issue. The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law. It does not require that criminal proceedings have been commenced against an individual or individuals. Consequently, whether charges were laid against any individuals, including the witnesses to the accident, is not relevant in determining whether the section 14(3)(b) presumption applies to the personal information in the records and parts of records claimed by the Police (Order P-223). I find that section 14(3)(b) applies to the personal information of individuals other than the appellant in the records.

In her submissions, the appellant also makes several references to the application of section 14(2) of the *Act*, which requires an institution, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, to consider all relevant circumstances, including those listed in subsections 14(2)(a) to (i). In particular, she submits that sections 14(2)(b) and (d) apply to her request for information, and that in addition, her right to be made aware of the exact cause of her deceased husband's fatal injury will help in obtaining some closure and determining whether to pursue legal action.

Section 14(2)(b) of the *Act* requires an institution to consider whether access to the personal information may promote public health and safety. Section 14(2)(d) requires an institution to consider whether the personal information is relevant to a fair determination of rights affecting the person who made the request.

As noted above, the Divisional Court ruled in *John Doe* that once a section 14(3) presumption has been established, it may *only* be rebutted by the criteria set out in section 14(4) or by the "compelling public interest" override in section 16. It cannot be rebutted by either one or a combination of the factors set out in section 14(2). I have already found that the section 14(3)(b) presumption applies in the circumstances of this appeal. Consequently, the appellant cannot rely on sections 14(2)(b) and (d) as a basis for finding that disclosure would not be an unjustified invasion of personal privacy.

I find that sections 14(4) and 16 do not apply to the personal information of individuals other than the appellant in the records. Because section 14(3)(b) applies, I find that, subject to the "absurd result" discussion below, disclosure of the personal information of individuals other than the appellant in the records would constitute an unjustified invasion of personal privacy. The records are therefore exempt under section 14(1), except pages 29 and 30, which are exempt under section 38(b).

Absurd Result

There is a small amount of personal information of the appellant's son, along with the personal information of the deceased, on pages 29 and 30 of the general occurrence reports. Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323]. The absurd result principle has been applied if the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

In my view, the personal information of the appellant's son is clearly within her knowledge. Consequently, it would be absurd and inconsistent with the purpose of the section 38(b) exemption not to release this information. I find that section 38(b) does not apply to it, and as no other exemption has been claimed for this information I will order that it be disclosed. I recognize, however, that this is not the information that the appellant is seeking in her appeal.

The appellant further submits that it would be absurd to withhold at least one of the witness statements because the appellant was at the scene of the accident and some of the information is clearly within her knowledge:

The appellant is aware of the identity of at least one of the witnesses, the owner of the racetrack ... The appellant further states that his statement with respect to the racetrack is/should be considered public knowledge, since the [racetrack] is ... open to the public.

I do not accept the appellant's submissions on this issue. Although the appellant may have been at the scene of the accident, she has not provided any evidence to show that she was present when any of the witnesses, including the racetrack owner, were giving their statements to the Police. Consequently, the information in the witness statements is not within the appellant's knowledge and it would not, therefore, be absurd to withhold it.

Moreover, the notion that the racetrack owner's witness statement is or should be considered public knowledge, because the racetrack is open to the public, is not credible. During law enforcement investigations, the Police collect witness statements in a variety of locations, both public and private. The fact that a witness may have given his or her statement to the Police in a location that is open to the public does not transform the statement into a "public" statement or information that is "public knowledge." It is not, therefore, absurd to withhold this information.

CONCLUSION:

I have found that most of the undisclosed parts of the records at issue are exempt under section 14(1) and 38(b). The exceptions to this finding are the appellant's personal information and that of her son on pages 29 and 30.

The Police also claim that section 8(1)(i) of the *Act* applies to pages 38 to 40 and pages 44 to 46 of the records. However, given that I have already concluded that these records are exempt under section 14(1), it is not necessary for me to assess whether the section 8(1)(i) exemption also applies.

I have sympathy for the appellant's desire to obtain more information about the circumstances that led to her husband's death. However, where a mandatory exemption such as section 14(1) applies in the context of an access-to-information appeal under the *Act*, the IPC *must* uphold the application of the exemption, and the institution *must not* disclose the exempt records. I do not have the discretion to depart from the rules in the *Act*, even though the result may be unsatisfactory for the appellant.

ORDER:

1. I order the Police to disclose the portions of pages 29 and 30 of the records that contain the personal information of the appellant and her son, which I have highlighted in yellow on the copies that I have sent to the Police's Freedom and Privacy Co-ordinator, along with this order. This information must be disclosed to the appellant by **January 5, 2005**, but not before **December 30, 2005**. To be clear, the Police must *not* disclose the remaining information on these two pages.
2. I uphold the decision of the Police to deny access to the remaining records and parts of records at issue in this appeal.

Original Signed By: _____

Brian Beamish
Assistant Commissioner

November 30, 2005