



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2152**

**Appeal MA06-238**

**Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

The Toronto Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the address and telephone number of a named individual (the affected person) who witnessed a motor vehicle accident that the requester was involved in. The request was submitted by the requester's legal representative.

The Police wrote to the affected person at the address contained in the record to notify her of the request, and to invite her to indicate whether or not she considered disclosure of the requested information to be an unjustified invasion of her privacy. This letter was returned to the Police by Canada Post, marked "moved/unknown". As the Police were not able to contact the affected person and obtain her consent to the disclosure of the information, they issued a decision letter denying access. In the decision letter, the Police indicated that they were relying on section 14(1) of the *Act* (personal privacy). They also cited the presumed unjustified invasion of personal privacy set out at section 14(3)(b), which applies to information that "was compiled and identifiable as part of an investigation into a possible violation of law...."

Following receipt of the decision letter, the legal representative for the requester (now the appellant) filed this appeal and the matter was moved to the mediation stage of the appeal process. Any reference made in this order to the appellant is intended to include a reference to the legal representative for the appellant, where appropriate.

During mediation, the mediator also made an effort to contact the affected person, without success. As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeal process.

I commenced this inquiry by issuing a Notice of Inquiry to the appellant, initially. I invited the appellant to provide this office with representations in response to the issues set out in the notice, and to explain why the presumed unjustified invasion of personal privacy in section 14(3)(b) does not apply. I received representations from the appellant and after reviewing them, I have determined that it is not necessary to seek representations from the Police in order to dispose of the issues in this appeal.

## **RECORD:**

The record at issue is a one page document that includes the name, date of birth, phone number and address of the affected person.

## **DISCUSSION:**

### **SCOPE OF THE REQUEST**

The original request filed by the appellant stated:

We are seeking to interview a witness to this incident, [the affected person]. Although the witness name surfaced, we have no contact information for her, but

we firmly believe that the investigating officer, [named individual], did interview her and should have an address, etc.

We would respectfully request that your office please contact the named witness [the affected person] in accordance with your policy, and provide her the opportunity to be of some assistance to the [appellant] and his family by making contact with our office.

As previously noted, the Police responded to that request by issuing a decision letter and denying access to the contact information for the affected person. In representations filed at the adjudication stage of the appeal process, the appellant attempted to broaden the scope of the request by referring to six additional individuals that he claimed were witnesses to the accident involving the appellant. The appellant stated:

We, the appellants are seeking disclosure of the contact information for the witnesses, identified below, which will include their addresses and telephone numbers, if they are contained in the police records.

The appellant then refers to the affected person in this appeal and six additional individuals for whom he is seeking addresses and other contact details. I note that there was no discussion at mediation about broadening the scope of the appellant's request.

As the original request related to the address and other contact details for one witness only, the appellant can not now broaden the scope of the appeal to include the contact details for six other individuals. There is no decision of the Police before me that relates to those additional individuals that could form the subject matter of an appeal. Should the appellant wish to pursue a claim for access to the addresses and other contact details for the other individuals mentioned in the representations, he should file another access request with the Police.

## **PERSONAL INFORMATION**

Before I can determine whether or not disclosure of a record would constitute an unjustified invasion of privacy, I must initially make a determination as to whether there is personal information in the record at issue and, if so, to whom that personal information belongs.

Section 2(1) of the *Act* defines personal information, 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, ...

- (c) any identifying number, symbol or other particular assigned to the individual,
- (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].

As previously noted, the record at issue is a one page handwritten note that contains the name, date of birth, address, and phone number of the affected person who is believed to be a witness to the accident that the appellant was involved in.

The appellant submits:

[T]hat the records do contain information about the [witnesses'] addresses and telephone numbers, and as such, fall under section 2(1)(a) and (d) of the Act.

I agree, and find that this qualifies as the affected person's personal information under paragraphs (a) and (d) of the definition of "personal information" found in section 2(1) of the *Act*. Paragraph (h) also applies. There is no other information in the record.

As the responsive record contains the personal information of an individual other than the appellant, I must turn to the provisions of section 14 of the *Act* to determine whether the personal information is exempt from disclosure under that provision.

### **INVASION OF PRIVACY**

The Police have relied upon sections 14(1) and 14(3)(b) to deny access to the record at issue. Where a requester seeks personal information of another individual, section 14(1) is a mandatory exemption that prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. Section 14(1)(f) is the only exception that could apply in this appeal. It states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). 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].

Section 14(3)(b) provides:

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;

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

The appellant concedes that:

The information that we are requesting constitutes personal information, which was compiled as part of an investigation into what we contend was a violation of law....

However, the appellant goes on to argue that the information should be disclosed under the public interest override” at section 16:

... [W]e submit that the exemption in section 16 should apply as the public interest in disclosure outweighs the purpose of the exemption (refusal to disclose). We submit that the disclosure will assist in the administration of justice, and in the fair determination of [the requester's] rights.

*We further submit that even though the information was collected as part of a Toronto Police Service investigation into a potential violation of law, no charges*

*were ever laid.* The information was collected many years ago, and, in the interests of justice and the public interest, this information should be disclosed to assist in the determination of civil liability and quantum of damages issues in the civil law suit that has been commenced. Section 16 permits the disclosure of information if a compelling public interest outweighs the purpose of exemption from disclosure. [emphasis added]

I have reviewed the record and, in my view, it was compiled and is identifiable as part of an investigation by the Police into a motor vehicle accident whose purpose was to determine whether or not a violation of law had taken place. I am satisfied that section 14(3)(b) applies. The fact that no charges were laid does not affect the application of the section [Orders P-223, P-237, MO-1443, MO-1817]. I am also not persuaded that the passage of time since the investigation was conducted affects the application of the section 14(3)(b) in any way.

Accordingly, I find that the presumption in section 14(3)(b) applies to the personal information of the affected person contained in the record at issue and that its disclosure is presumed to constitute an unjustified invasion of the personal privacy of that individual.

As noted above, a section 14(3) presumption can only be overcome if the personal information at issue is caught by section 14(4) or if a “compelling public interest”, as contemplated by section 16, is established. The circumstances of this appeal do not give rise to the application of section 14(4). Subject to my discussion of section 16, below, I find that disclosure of the affected person’s contact information is an unjustified invasion of personal privacy. The section 14(1)(f) exception to the mandatory personal privacy exemption at section 14(1) therefore does not apply, and the information is exempt under section 14(1). I now turn to consider the application of section 16 of the *Act* to the record at issue.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant raises the possible application of section 16 in this appeal.

Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that

in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. A compelling public interest has been found not to exist in circumstances where a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317].

The appellant submits:

We are entitled to the contact information [of] these witnesses, as they are material witnesses in the civil suit that has been commenced by the Office of the Children's Lawyer as Litigation Guardian, on behalf of [appellant] as a result of the ...pedestrian/motor vehicle collision.

The civil action has been commenced. The infant minor, [named individual] sustained catastrophic injuries and impairments as a result of the [accident].

...

It is submitted that the disclosure of the [witnesses'] name and contact details would assist in [the] administration and exercise of justice by providing necessary relevant evidence pertaining to the matters at issue in the civil action.

We submit that the principles enunciated in the decision of *R. v. Hanna* (1997), 25 C.E.L.R. (N.S.) 296 (Ont. Prov. Div.), also [apply] in this decision. We submit that the disclosure of this information will help to improve the quality of this infant plaintiff's life, as the disclosure of this information could assist in determining liability and quantum of damages in the civil lawsuit that has already been commenced.

*R. v. Hanna* dealt with arguments under section 8 of the *Canadian Charter of Rights and Freedoms* (the *Charter*), as well as abuse of process arguments, in relation to a seizure of records from a municipality by Ministry of the Environment investigators. The records related to bids for the demolition of a fire tower and an eventual contract awarded for that work. Charges were ultimately laid under the *Environmental Protection Act*. In applying section 8 of the *Charter*, it is necessary to determine whether there was a reasonable expectation of privacy in the records seized. In deciding that no such interest had been demonstrated, the Court referred to section 16 of the *Act*, finding a compelling public interest in the records based on the expenditure of public funds by the municipality, and finding further that this compelling public interest would override the privacy provisions of the *Act*.

In my view, *Hanna* is distinguishable and does not assist in deciding the case before me. The case before me does not relate to section 8 of the *Charter*, nor does the appellant argue a public interest based on the expenditure of public funds. Rather, the appellant's section 16 argument is based on the public interest in the "administration and exercise of justice."

In this regard, the appellant's arguments appear to assume that if a disclosure is desirable within the overall context of the administration of justice, the section 16 "public interest override" applies in the context of a request for that information under the *Act*. This argument completely ignores the fact that the courts have long-standing disclosure mechanisms to ensure fairness in proceedings before them. In this case, for example, the appellant does not mention the fact that he can bring a motion in the civil proceeding for production of the record from the Police under Rule 30.10 of the Rules of Civil Procedure. Where another avenue exists for obtaining information in a proceeding, this significantly undermines the argument that there is a "compelling public interest" in disclosure under the *Act*. In this case, in my view, it means that there is no compelling public interest in disclosure.

Equally important is the fact that I am not satisfied, in the circumstances, that the requested information relates to anything more than a dispute between two individuals that is in essence a private civil matter. For this reason as well, I find that there is therefore no public interest in disclosure of the record, let alone a compelling one.

Moreover, any public interest that exists must clearly outweigh the purpose of the exemption claim, which in this case is the protection of the privacy of the affected person. In my opinion, the interests of the appellant in this record do not outweigh the privacy interests of the affected person.

Accordingly, although I am sympathetic to the appellant's circumstances, I am not satisfied that section 16 applies to the record at issue. Accordingly, I uphold the decision of the Police to deny access to the affected person's contact information.

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
John Higgins  
Senior Adjudicator

January 31, 2007 \_\_\_\_\_