



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-48

Appeal M-910214

Metropolitan Toronto Police



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>

ORDER

BACKGROUND:

The Metropolitan Toronto Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information in its custody and control about the requester, his wife, and his two children both under 16 years of age. The request was co-signed by the requester's wife.

The Police initially identified 68 pages as containing information responsive to the request. A total of nine pages were released to the requester in their entirety, while the remaining 59 pages were released with severances. Access to the severed parts of the record was denied under sections 8, 14, 38(a) and 38(b) of the Act.

The requester appealed the decision to deny access, and also indicated that he believed additional responsive records existed.

During mediation, the appellant supplied the Police with detailed and specific information that he believed would help to identify more records. In response, the Police conducted a further search, and identified 22 additional pages that contained information responsive to the request. The Police released three of these pages to the appellant in their entirety, and denied access to the remaining 19 pages, either in whole or in part, claiming sections 8, 14, 38(a) and 38(b) of the Act.

The appellant indicated that he was still not satisfied that all responsive records had been located, and also stated that he continued to seek access to all exempt portions of the record.

The record consists of General Occurrence Reports, Summons Applications, Appearance Notices, Records of Arrest, and pages from police officers' notebooks.

Further mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Police's decision was sent to the Police and the appellant. Written representations were received from both parties.

PRELIMINARY MATTERS:

Having reviewed the record, I find that certain pages contain notes made by police officers with respect to matters that are not responsive to the appellant's request. The following pages of the record, therefore, fall outside the scope of this appeal and should not be released:

21-26, 30-38, 43, part of 44, 46-51, part of 52, 56, part of 58, part of 59, 61, 64, 66, part of 67, 68, 70, part of 71, 72-77, 79-81 and 84.

In addition, it should be noted that the appellant has been provided with access to the following 12 pages of the record:

14, 20, 29, 42, 45, 55, 57, 60, 65, 69, 78 and 89.

During the course of processing the appeal, the Police agreed to disclose the second severance from the top on page 82.

Therefore, the pages or parts of pages of the record which remain at issue in this appeal are:

1-13, 15-19, 27, 28, 39-41, remaining part of 44, remaining part of 52, 53, 54, remaining part of 58, remaining part of 59, 62, 63, remaining part of 67, remaining part of 71, remaining part of 82, 83, 85-88, and 90.

ISSUES:

The issues in this appeal are as follows:

- A. Whether the Police searches for records was reasonable in the circumstances.
- B. Whether the information contained in the record qualifies as "personal information" as defined in subsection 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to any parts of the record.
- D. Whether any parts of the record qualify for exemption under section 8(2)(a) of the Act.
- E. Whether any parts of the record qualify for exemption under section 8(2)(b) of the Act.
- F. If the answer to Issues, C and D is yes, whether the exemption provided by subsection 38(a) applies in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Police searches for records was reasonable in the circumstances.

The appellant claims that the Police have additional records in their custody which are responsive to his request. During mediation, the appellant provided the Appeals Officer with a letter describing 23 occurrences in which he or members of his family were involved, dating back as far as 1977. The Appeals Officer forwarded this letter to the Police, requesting that a further search be conducted to locate these records.

After conducting another search, the Police were able to locate additional records with respect to only one occurrence and one incident identified by the appellant. The Police provided the appellant with a detailed letter, describing the extent of the search and outlining the retention period for each type of record identified by the appellant.

In its representation, the Police state:

Hundreds, if not thousands, of person hours have been spent by various members of this office and indeed, this Force, searching for the records requested by the appellant, both for the first and clarifying requests. I feel most confident in saying that there are no additional records for the appellant or his family in the custody and control of this institution other than those which have been forwarded to the Office of the Information and Privacy Commission for purposes of resolving this appeal.

I have carefully considered the representations of both the appellant and the Police, and I am satisfied that the various searches for responsive records conducted by the Police were reasonable in the circumstances.

ISSUE B: Whether the information contained in the record qualifies as "personal information" as defined in subsection 2(1) of the Act.

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether the exemptions claims apply, to ensure that the information in question falls within the definition of "personal information" as set out in section 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both.

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual,
[IPC Order M-48/October 7,1992]

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;

In my view, all of the information contained in the remaining parts of the record falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act, and relates to both the appellant and other identifiable individuals.

ISSUE C: If the answer to Issue B is yes, whether the discretionary exemption provided by section 38(b) of the Act applies to any parts of the record.

I have found under Issue B that all remaining parts of the record contain the personal information of the appellant and other individuals. Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of municipal institutions covered by the Act. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access, including section 38(b), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his own personal information against other individuals right to the protection of their privacy. If the Police determines that release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then subsection 38(b) gives discretion to deny the requester access to his own personal information (M-22, M-28).

Subsections 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 an individual other than the requester. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The Police specifically claims that section 14(3)(b) applies.

Section 14(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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 remaining parts of the record contain personal information received by the Police during the course of investigating allegations of criminal conduct involving the appellant and members of his family. This information includes the names, addresses and statements of individuals other than the appellant or members of his family.

I am satisfied that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law, and I find that the requirements for a presumed unjustified invasion of the personal privacy of individuals other than the appellant under section 14(3)(b) has been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy has been established, I must then consider whether any other provisions of the Act come into play to rebut this presumption.

Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In my view, the record does not contain any information that pertains to section 14(4).

Section 14(2) of the Act also provides a list of factors, which, if present, would be relevant in the determination of whether disclosure would be an unjustified invasion of personal privacy. The appellant's representations do not specifically address any of the factors identified in section 14(2). Having carefully reviewed the record and considered all representations, in my view none of the factors under section 14(2) which favour disclosure of the records are present in the circumstances of this appeal.

Therefore, I find that disclosure of the personal information contained in the remaining portions of the record would constitute an unjustified invasion of personal privacy of the various individuals other than the appellant and members of his family identified in the record, and all remaining pages qualify for exemption under section 38(b) of the Act.

Section 38(b) is a discretionary exemption. The Police have provided representations regarding the exercise of discretion to refuse to disclose the exempt portions of the record, and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

Because of the manner in which I have disposed of Issues B and C, it is not necessary for me to consider Issues D, E and F.

ORDER:

1. I order the Police to disclose to the appellant the second severance from the top of page 82 of the record.
2. I uphold the Police's decision to deny access to the remaining parts of the record.
3. I order the Police to disclose the record outlined in Provision 1 above within fifteen (15) days of the date of this order and to advise me in writing, within five (5) days from the date on which disclosure was made. The notice covering disclosure should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5C 2V1.
4. In order to verify compliance with the provisions of this order, I order the Police to provide me with
[IPC Order M-48/October 7,1992]

a copy of the record which is disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ October 7, 1992