



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-38

Appeal M-920066

Kirkland Lake 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>

ORDER

The Kirkland Lake Police Service (the police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the names and addresses of two children allegedly involved in a fire which occurred in Kirkland Lake in September 1990. The police denied access to the names and addresses of the children pursuant to section 14 of the Act. The requester appealed this decision.

As settlement of the appeal was not effected, the appeal proceeded to inquiry. Notice that an inquiry was being conducted to review the decision was sent to the police and the appellant. Enclosed with each notice was an Appeals Officer's Report, intended to assist the parties in making representations about the subject matter of the appeal. Representations were received from both parties.

It is agreed that the information requested, the names and addresses of two children, qualifies as "personal information" as defined in section 2(1) of the Act. The sole issue in this appeal is whether the mandatory exemption provided by section 14 of the Act applies.

Section 14(1) of the Act prohibits the disclosure of personal information except in certain circumstances. One such circumstance is described in section 14(1)(f) of the Act, which states:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of another individual's personal privacy. Section 14(3) lists the types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The police rely on the application of section 14(3)(b) to raise the presumption that disclosure of the personal information at issue would constitute an unjustified invasion of privacy. 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 appellant contends that the requirements for a presumed unjustified invasion of privacy under section 14(3)(b) have not been met. He states:

... it is submitted that there is criteria required to be met under s. 21(3)(b) of the Provincial Act, and s. 14(3)(b) of the Municipal Act, before these sections are satisfied. One of the criteria is that there exist legislative sanctions which could be levied against the wrongdoer. It is submitted that there were no such legislative sanctions applicable in this case as the youths in question were nine years of age at the time of the investigation. Section 2(1) of the Young Offenders Act (the Y.O.A.) states that: a young person means a person who is or appears to be twelve years of age or more but under eighteen years of age. It is submitted that the Y.O.A. does not apply and there could be no "possible violation of the law", pursuant to s. 14(3)(b) of the Act, in this case.

In my view, the appellant's position represents an overly narrow interpretation of this section. It was only after conducting an investigation that the police decided not to lay charges. This decision was based on information collected during the course of the investigation. The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law. The fact that the police did not, and probably could not, initiate charges against the children does not negate the application of section 14(3)(b).

I am satisfied that the information at issue (the names and addresses of the two children), "was compiled and is identifiable as part of an investigation into a possible violation of law" and the release of this information would, therefore, constitute a presumed unjustified invasion of personal privacy.

Section 14(4) of the Act outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). I have reviewed this section and find that none of its provisions are relevant in the circumstances of this appeal.

As section 14 is similar in wording to section 21 of the provincial Freedom of Information and Protection of Privacy Act (the provincial Act), orders issued under section 21 of the provincial Act provide guidance in the interpretation and application of section 14 of the municipal Act. In Order 20, dated October 7, 1988, former Commissioner Sidney B. Linden considered the rebuttal of a presumed unjustified invasion of personal privacy under section 21 of the provincial Act. He stated that, "... a combination of the circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view, such a case would be extremely unusual".

Section 14(2)(d) of the municipal Act (similar to section 21(2)(d) of the provincial Act) states, in part, as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant relies specifically on section 14(2)(d) to support his claim that the disclosure of the names and addresses of the two children would not result in an unjustified invasion of privacy. He states that he has been retained by an insurance company with respect to a subrogated insurance claim and that his client "... will be subject to unfairness if they are unable to pursue their claim and recover the losses that have been suffered".

In Order P-312, Assistant Commissioner Tom Mitchinson, in discussing the provincial equivalent of section 14(2)(d), stated:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In the circumstances of this appeal, I accept that section 14(2)(d) is a relevant consideration in the determination of whether the presumption of an unjustified invasion of the personal privacy of the children is rebutted.

The appellant does not raise any of the other factors set out in section 14(2) which favour disclosure, although he does address the application of sections 14(2)(e), (h) and (i) claimed by the police and all of which do not favour disclosure.

I have carefully considered the representations of the parties and reviewed the circumstances of this appeal. In my view, section 14(2)(d) alone is not sufficient to rebut the presumption contained in section 14(3)(b). Accordingly, disclosure of the names and addresses of the two children would constitute an unjustified invasion of personal privacy.

ORDER:

I uphold the decision.

Original signed by: _____

Tom Wright
Commissioner

September 16, 1992