



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-28

Appeal M-910116

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

The Metropolitan Toronto Police (the institution) received a request for the names and addresses of two witnesses (the affected persons) to an alleged mischief offence. The requester is the agent for the person accused of the offence.

The requester's client allegedly damaged the roof of a car belonging to a third person. The affected persons witnessed the incident and pursued the requester's client. They placed him in an automobile and brought him to the police station where the police charged him with mischief under the Criminal Code. According to the requester, his client complained to the police about the actions of the affected persons, but the police did not act on the client's allegations of violence and no charges were laid against the affected persons. On the date set for the trial of the mischief charge, neither the affected persons nor the investigating officer appeared at court, and the case was withdrawn by the Crown Attorney. The requester states that his client wants to have criminal charges laid against the affected persons and to pursue a civil court action.

The institution originally denied access to the records containing the requested information pursuant to sections 8, 9, 14 and 38 of the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester appealed the institution's decision.

The records were obtained and examined by the Appeals Officer. The records which contain the information at issue are: a subpoena request dated March 29, 1990, three pages of "will says" of the affected persons, and one page from the Crown Brief.

After the decision was appealed, the institution revised its claim for exemption and now relies solely on sections 12 and 14 of the Act. Mediation of the appeal was unsuccessful, and the matter proceeded to inquiry. Notice of the inquiry was sent to the institution, the appellant, and the affected persons, accompanied by an Appeals Officer's Report which is intended to assist the parties in making their representations. Representations were received from the institution and the affected persons. The appellant indicated that he wished the statements in his letter of appeal and accompanying documentation to constitute his representations.

The issues arising in this appeal are whether the requested information qualifies as "personal information", as defined in section 2(1) of the Act, and if so, whether its disclosure would constitute an unjustified invasion of the affected persons' personal privacy under section 14 of the Act. I must also consider whether the requested information qualifies for exemption under section 12 of the Act.

With respect to the first issue, the information requested clearly falls within subparagraph (d) of the definition of personal information found in section 2(1) of the Act and is properly characterized as the personal information of the affected persons.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. The institution has claimed the

application of section 14(3)(b), which raises the presumption that disclosure of the information at issue would constitute an unjustified invasion of personal privacy if the information is compiled and is identifiable as part of an investigation into a possible violation of law.

In this appeal, the personal information of the affected persons was compiled by members of a police force during their investigation into allegations that an offence under the Criminal Code had been committed. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies.

I will now consider whether any other provisions of the Act come into play to rebut this presumption. In my view, the records do not contain any information that pertains to section 14(4), and therefore that section does not operate to rebut the presumed unjustified invasion of privacy under section 14(3).

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 give 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".

Although the appellant does not specifically refer to section 14(2)(d), his representations indicate that it may have relevance in this appeal as his client wishes to have criminal charges laid or to pursue a civil action against the affected persons. Section 14(2)(d) states that a head, in determining whether disclosure of information contained in a record would constitute an unjustified invasion of an affected person's personal privacy, must consider whether the personal information is relevant to a fair determination of rights affecting the person who made the request.

In Order P-312, dated June 10, 1992, Assistant Commissioner Tom Mitchinson, in discussing the provincial equivalent of section 14(2)(d), stated the following:

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 feel that section 14(2)(d) is a relevant consideration in the determination of whether the presumption of an unjustified invasion of the affected persons' personal privacy could be rebutted. However, in my view, the application of section 14(2)(d) alone is not sufficient to rebut the presumption contained in section 14(3)(b). Accordingly, I find that the presumption in section 14(3)(b) applies and the disclosure of the information at issue would constitute an unjustified invasion of personal privacy.

As I have determined that section 14 applies to the information at issue in this appeal, it is not necessary to consider the application of section 12.

ORDER:

I uphold the decision of the head.

Original signed by: _____
Tom Wright
Commissioner

July 14, 1992