



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-41

Appeal M-910391

Metropolitan Toronto Police



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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 information pertaining to an investigation of threats alleged to have been made by the appellant at a meeting which took place at a community centre.

The police granted partial access to four pages of the record, and denied access to the fifth page, pursuant to sections 8(1)(e), 8(2)(a), 14 and 38(b) of the Act. The requester appealed the decision.

The record consists of a single-page "General Occurrence Report", a three-page "Supplementary Report" and a single-page memo to the City of Scarborough, Planning and Buildings Department.

During the course of mediation, the police agreed to release additional information contained on page two of the record to the appellant. In addition, the Appeals Officer, with the consent of the police, provided the appellant with a generic description of the information severed from pages one to four of the record. This further disclosure did not satisfy the appellant and it became apparent that further mediation was not possible. As a result, the matter proceeded to inquiry.

Notice that an inquiry was being conducted to review the decision was sent to the police, the appellant and a person contacted by the police during the investigation (the affected person). An Appeals Officer's Report, which is intended to assist the parties in making their representations to the Commissioner, accompanied the Notice of Inquiry. Representations were received from the police and the affected person.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.
- C. Whether the requested record qualifies for exemption under section 8(1)(e) or 8(2)(a) of the Act.

- D. If the answer to Issues A and C is yes, whether the discretionary exemption provided by section 38(a) applies.

SUBMISSIONS/CONCLUSIONS:

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

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

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

...

- (h) the individual's name if 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 record contains information concerning an investigation related to the appellant. The information includes the occupation, employment location, telephone number and name and statements and/or allegations of the affected person. In my view, the information contained in the record qualifies as the personal information of both the appellant and the affected person. The occurrence number has also been severed from the record but does not qualify as personal information.

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

The institution submits that section 38(b) applies to page five of the record. Under Issue A, I found that the information contained on page five as well as the information severed from pages one to four of the record (with the exception of the occurrence number) consists of the personal information of the appellant and the affected person.

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 an institution. However, this right of access is not absolute;

section 38 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, section 38(b) of the Act states:

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

if 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/her own personal information against another individual's right to the protection of their privacy. If the police determine that release of the information would constitute an unjustified invasion of the other individual's personal privacy, section 38(b) gives the police the discretion to deny access to the personal information of the requester.

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

In this appeal, the police specifically rely on the application of sections 14(3)(b) and (d) to raise the presumption that disclosure of the information would constitute an unjustified invasion of personal privacy. Sections 14(3)(b) and (d) of the Act state:

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;

(d) relates to employment or educational history;

I have reviewed the circumstances under which the record was created by or supplied to the institution. I am satisfied that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy have 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 at issue in this appeal does not contain information relevant to section 14(4).

The appellant has not made representations in support of any factors contained in section 14(2) which might weigh in favour of disclosure of the information. Having carefully considered the information at issue, the representations which have been provided, and the provisions of the Act which may operate to rebut the presumption of an unjustified invasion of personal privacy, I find that the presumption raised by section 14(3)(b) of the Act has not been rebutted. Therefore, it is not necessary for me to consider the application of section 14(3)(d).

In the circumstances of this particular case, I am of the opinion that disclosure of the information would constitute an unjustified invasion of the personal privacy of the affected person and, therefore, qualifies 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 information at issue and I find nothing to indicate that the exercise of discretion was improper.

ISSUE C: Whether the requested record qualifies for exemption under section 8(1)(e) or 8(2)(a) of the Act.

Under Issue B, I found that all of the information severed from the record, with the exception of the occurrence number, is properly exempt under section 38(b) of the Act. Accordingly, I will restrict my consideration of sections 8(1)(e) and 8(2)(a) to the occurrence number only. Sections 8(1)(e) and 8(2)(a) read:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
 - (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In my view, it is not reasonable to expect that disclosure of an occurrence number alone would endanger the life or physical safety of a law enforcement officer or any other person, and section 8(1)(e) does not apply. Further, an occurrence number alone is not a "report" for the purposes of section 8(2)(a).

Since I have found that the occurrence number does not qualify for exemption under sections 8(1)(e) or 8(2)(a), it is not necessary for me to consider Issue D.

ORDER:

1. I order the police to disclose the occurrence number as it appears in the record to the appellant within 35 days following the date of this order, and **not** before the thirtieth (30th) day following the date of this order.
2. The police are further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with this order, I order the police to provide me with a copy of the information which is disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Tom Wright
Commissioner

September 29, 1992
Date