



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

ORDER M-95

Appeal M-9200304

Metropolitan Toronto Board of Commissioners of Police



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ORDER

BACKGROUND:

The Metropolitan Toronto Board of Commissioners of Police (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records held by the Police within a specified time period, which identify the requester and other named individuals. The Police identified a 28-page record which was responsive to the request.

Because the Police determined that release of the record might affect the interests of two other individuals (the affected persons), these affected persons were notified, pursuant to section 28(1)(b) of the Act, and provided with an opportunity to make representations concerning disclosure. The affected persons advised the Police that they would not consent to the release of any of their personal information, and recommended that the record not be disclosed to the requester. After considering the views of the affected persons, the Police decided to provide the requester with partial access to the record, subject to the severance of certain portions of the record under section 14(1) of the Act.

The requester appealed the Police's decision.

During the course of mediation, certain severed portions of the record were identified as not being responsive to the appellant's request. With the agreement of the appellant, these severances were removed from the scope of the appeal.

Further mediation was not successful, and notice that an inquiry was being conducted to review the Police's decision was sent to the appellant, the Police and the two affected persons. Written representations were received from the Police, the appellant and one affected person.

The portions of the record which have not been disclosed to the appellant, and which remain in issue in this appeal are described as follows: severed portions of pages 1-4, a General Occurrence Report; 1-page memorandum (page 5); severed portions of a one-page Supplementary Report (page 16); and portions of pages 23-26, a police officer's notebook entries.

ISSUES:

The issues arising in this appeal are:

- 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.

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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

...

(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;

Having reviewed the pages of the record which remain at issue in this appeal, I find that they contain information that satisfies the definition of personal information in section 2(1) of the Act. I also find that this information is the personal information of both the appellant and the affected persons.

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

I found under Issue A that the record contains the personal information of both the appellant and the affected persons. Section 36(1) of the Act gives individuals a general right of access to personal information that relates to them, which is in the custody or under the control of 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,

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 own personal information against the affected persons' right to the protection of their personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the affected persons' personal privacy, then section 38(b) gives the Police the discretion to deny the requester access to his own personal information [Orders M-22, M-28, M-88].

Sections 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 appellant. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

The Police claim that section 14(3)(b) applies to the record. This section reads as follows:

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;

It is evident from the portions of pages 1-4 and page 16 which have already been released to the appellant that these portions of the record contain information received by the Police as part of an investigation of alleged criminal conduct involving the appellant. Having reviewed pages 23-26, I am satisfied that these pages were also prepared in the course of the same investigation.

The Police submit that disclosure of the severed portions of these pages would disclose the identity or the personal information of the individual who registered the complaint against the appellant, as well as information which would identify other individuals who were involved in the matter. This information includes names, addresses, telephone numbers, and other personal information about the affected persons.

The appellant submits that release of the severed portions of the record is necessary because the statements made in the portions of the record which were released to him are false, and he wants to set the record straight.

In my view, the severed portions of pages 1-4, 16 and 23-26 contain personal information which was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the requirements for a presumed unjustified invasion of the personal privacy of the affected persons under section 14(3)(b) has been satisfied with respect to these portions of the record.

Page 5 of the record is a memorandum dated April 25, 1991, which is approximately one year before the incident which precipitated the complaint of the alleged criminal conduct. Although I am prepared to accept that this page has some relation to the investigation subsequently undertaken by the Police and, therefore, satisfies the requirements of a presumed unjustified invasion of personal privacy under section 14(3)(b), in my view, the privacy interests of the affected persons can be addressed through the severance of the signature of the author of the memorandum which appears on the bottom of page 5. I find that the remaining portions of page 5 do not qualify for exemption under section 38(b) of the Act and should be released to the appellant.

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(2) of the Act provides a list of factors, a combination of which, if present in the circumstances of an appeal, could operate to rebut a presumption [Order M-63]. Having carefully reviewed the record and considered all representations, in my view, there is no combination of factors under section 14(2) which rebut the presumption under section 14(3)(b) of the Act.

Therefore, I find that disclosure of the severed portions of pages 1-4, 16 and 23-26, as well as the signature of the author of page 5, would constitute an unjustified invasion of the personal privacy of the affected persons 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 in favour of refusing to disclose the remaining portions of the record, and I find nothing improper in the circumstances.

ORDER:

1. I order the Police to disclose page 5 of the record, with the signature of the author of the record severed, to the appellant within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. I uphold the decision of the Police not to disclose the severed portions of pages 1-4, 16 and 23-26 of the record.
3. In order to verify compliance with this order, I order the Police to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1 of this order, **only** upon my request.

Original signed by: _____ March 9, 1993
Tom Mitchinson
Assistant Commissioner