



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

# **ORDER M-84**

**Appeal M-9200094**

**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 the record of an investigation of assault upon the requester at her place of employment. The Police granted partial access to the records. Access was denied to certain information pursuant to sections 8(1)(c), 8(1)(g), 8(2)(a), 14 and 38(b) of the Act. The requester appealed the decision of the Police.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the decision was sent to the Police, the appellant and the person accused of assault (the affected person). Written representations were received from the Police, the appellant and the affected person.

In its representations, the Police indicated that it granted access to additional information. The Police withdrew its application of sections 8(1)(c) and (g), and added section 8(1)(l) as a new exemption claim.

The information severed from the record consists of the name, occupation, business telephone number, gender, race, height, weight, hair colour, eye colour and condition of the affected person and information provided to the Police by the affected person; names of witnesses and information provided by one witness; an internal Police report classification code and an "in-house" police 'FAX' number"; two pages of a police officer's notebook; and one page of notes.

The information severed from the pages of the police officer's notebook does not relate to the investigation of assault at the appellant's workplace. In my view, this information is not responsive to the request, and should not be disclosed to the appellant. Additionally, I find that the police FAX number is not responsive to the request, and should not be disclosed to the appellant.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. Whether the mandatory exemption provided by section 14 of the Act applies.
- C. Whether the discretionary exemption provided by section 38(b) of the Act applies.
- D. Whether the discretionary exemptions provided by sections 8(2)(a) and/or 8(1)(l) of the Act apply.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the records contain "personal information" as defined in section 2(1) of the Act.**

In section 2(1) of the Act, "personal information" is defined, in part, as:

"personal information" means recorded information about an identifiable individual, 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,
- ...
- (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;

In my view, the name, occupation, business telephone number, gender, race, height, weight, hair colour, eye colour and condition of the affected person and the information provided to the Police by the affected person are recorded information about the affected person and qualify as the personal information of the affected person.

In the circumstances of this appeal, I find that the name and occupation of each witness qualify as the personal information of each witness, and the information provided by the witness qualifies as the personal information of the witness, the affected person, and the appellant.

**ISSUE B: Whether the mandatory exemption provided by section 14 of the Act applies.**

The Police submit that section 14 applies to the personal information of the affected persons and witnesses severed from pages 1, 2, 4-8, 11-15, 17 and 19 of the record. In Issue A, I found that the information provided by the witness qualifies as the personal information of the witness, the affected person, and the appellant, and this information will be considered under Issue C.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, sections 14(1)(a) and (f) of the Act read as follows:

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

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

In her representations, the affected person consented to the release of some of her personal information to the appellant. Accordingly, I find that section 14(1)(a) applies, and the mandatory exemption from disclosure does not apply to the name, occupation, business telephone number, gender, race, hair colour and eye colour of the affected person, and the information provided to the Police by the affected person which appears on pages 2 and 13.

The only parts of the record remaining at issue under section 14 are the name and occupation of each of the two witnesses (found on pages 2, 5, 11, 13 and 15); the height, weight and condition of the affected person (found on pages 1, 4, 8, 12 and 14); and the information provided by the affected person on page 19.

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 the individual to whom the information relates. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Police submit that section 14(3)(b) applies to this part of the record. This section reads:

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;

I have reviewed the circumstances under which the information was supplied to the institution. I am satisfied that the personal information of the affected person and the witnesses 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 is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must 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, section 14(4) is not relevant in the circumstances of this appeal.

Section 14(2) of the Act provides some criteria to be considered in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. A combination of listed and/or unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 14(3); however, such a case would be extremely unusual.

The appellant submits that sections 14(2)(a), (c), (d) and (g) are relevant in the circumstances of this appeal, and weigh in favour of disclosure of the record. These sections read:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (g) the personal information is unlikely to be accurate or reliable;

By definition, section 14(2)(g) weighs in favour of protection of personal privacy and, in my view, this section is not relevant to the determination of whether the presumption provided by section 14(3)(b) has been rebutted.

The appellant submits that she believes the investigating police officer failed to conduct a competent and objective investigation in his capacity as a publicly employed officer. She submits that it is in the public interest to scrutinize his performance against the standard of his profession.

In order to establish the relevance of section 14(2)(a), the appellant must provide evidence demonstrating that the activities of the Police have been publicly called into question, necessitating disclosure of the personal information of the affected person and the witnesses in order to subject the activities of the Police to public scrutiny (Order P-273). In my view, the appellant's personal concerns about the actions of one police officer are not sufficient to establish the relevance of section 14(2)(a), and I find that this section is not relevant in the circumstances of this appeal.

The appellant submits that section 14(2)(c) is a relevant consideration in the circumstances of this appeal. She submits that she is involved in a number of legal proceedings related to the investigation of assault, and she is faced with complex and diverse case preparation and presentation. She submits that she will be purchasing the services of a legal counsel, and access to the personal information contained in the record will assist her and her legal counsel in selecting the type and degree of service required to best defend her interests. In my view, section 14(2)(c) is not intended to weigh in favour of disclosure of personal information of another individual for the purpose of enabling someone to determine the specialization and extent of legal representation he or she requires.

In order for section 14(2)(d) 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.

[Orders M-28, P-312]

The appellant is of the opinion that the investigation of the incident was relevant to her employer's decision to suspend her wages and benefits, and ultimately to end her employment. As a result, she submits that she has suffered financial and job loss, and is facing civil litigation and labour arbitration. She also submits that she requires the information to prepare the remainder of a submission to the Office of the Police Complaints Commissioner.

For the purposes of this appeal, I acknowledge that the appellant is contemplating or involved in a legal proceeding. However, no information which indicates that the personal information she is seeking access to may have some bearing on the determination of the rights in question or is required in order to prepare for the proceeding or to ensure an impartial hearing has been provided. In my view, the requirements for parts 3 and 4 of the above test have not been satisfied and, therefore, section 14(2)(d) is not a relevant consideration.

Having considered the records and the representations of the appellant, I find that the presumption of an unjustified invasion of personal privacy has not been rebutted. Accordingly, I find that the disclosure of the name and occupation of each of the two witnesses (found on pages

2, 5, 11, 13 and 15); the height, weight and condition of the affected person (found on pages 1, 4, 8, 12 and 14); and the information provided by the affected person (found on page 19) would constitute an unjustified invasion of the personal privacy of the affected person and/or the witnesses, and section 14 applies.

**ISSUE C: Whether the discretionary exemption provided by section 38(b) of the Act applies.**

In Issue A, I found that the information provided by the witness on pages 2 and 13 of the record qualifies as the personal information of the witness, the affected person and the appellant.

As in Issue B, 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.

For the same reasons as in Issue B, I find that the presumption of an unjustified invasion of personal privacy has not been rebutted. Accordingly, I find that the disclosure of the information provided by the witness on pages 2 and 13 would constitute an unjustified invasion of the personal privacy of another individual and, therefore, section 38(b) applies.

In reviewing the Police's exercise of discretion in favour of refusing to disclose the records and parts of records for which I have found section 38(b) to apply, I have found nothing to indicate that the exercise of discretion was improper, and will not alter it on appeal.

**ISSUE D: Whether the discretionary exemptions provided by sections 8(2)(a) and/or 8(1)(l) of the Act apply.**

The Police submit that, with the exception of the information the affected person has consented to disclose, section 8(2)(a) applies to the information severed from pages 2, 8, 13 and 19, and section 8(1)(l) applies to the information severed from pages 2, 8 and 13. In Issue B, I found that the information severed from page 19 is exempt under section 14 and, therefore, it is not necessary for me to consider whether section 8(2)(a) applies to this part of the record. Section 8(2)(a) reads:

A head may refuse to disclose a record,

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 order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders M-12, 200]

Pages 2, 8 and 13 were prepared by a police officer in the course of his investigation of the appellant's allegation of an alleged criminal offence, and I am satisfied that the requirements of parts 2 and 3 of the above test have been met.

In order to satisfy the first part of the test, a record must consist of a formal statement or account of the results of the collation and consideration of information (Order 200). In the circumstances of this appeal, I am satisfied that the requirements of the first part of the test have also been met.

Section 8(2)(a) enables the head of the agency to refuse to disclose the entire "**report**". Thus, unlike other exempting provisions in the statute, there is no obligation to sever portions of the documents which do not contain sensitive material and disclose them to the requester. I have reviewed the information severed from these pages of the record, and I am satisfied that they qualify for exemption pursuant to section 8(2)(a) of the Act.

In this particular appeal, the Police have exercised their discretion under section 8(2)(a) in favour of releasing certain information contained on the pages. I have reviewed the representations provided by the Police in favour of severing information from these pages, and I find nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

Because I have found that the severed information qualifies for exemption pursuant to section 8(2)(a) of the Act, it is not necessary for me to consider the application of section 8(1)(l).

## **ORDER:**

1. I order the Police to disclose the name, occupation, business telephone number, gender, race, hair colour and eye colour of the affected person which appear on pages 1, 2, 4, 5, 8, 11-15 and 17, and the information provided to the Police by the affected person which appears on pages 2 and 13 to the appellant within 15 days of the date of this order.
2. I uphold the decision of the Police not to disclose the remainder of the information severed from 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: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ February 10, 1993