



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-379

Appeal M-9400227

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant, who is represented by his father in this appeal, has requested a copy of records from the Metropolitan Toronto Police Services Board (the Police) relating to his arrest. He specifically requested the details of the information which was supplied to the justice of the peace by a named police officer to support the issuance of a warrant for his arrest.

The records consist of two supplementary reports which form the synopsis of events leading to the arrest of the appellant.

The Police rely on the following exemption to withhold portions of the two reports:

- invasion of privacy - section 14(1)

In appealing the decision of the Police, the appellant indicates that he believes that more records should exist.

A Notice of Inquiry was provided to the appellant and the Police. As the records related to the arrest of the appellant, the Notice of Inquiry raised the possible application of section 38(b). Representations were received from the Police only. In their representations, the Police addressed section 38(b).

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

I have reviewed the information at issue and I find that it satisfies the definition of "personal information". In my view, the personal information is about the appellant and another individual.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a

presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

In their representations, the Police state that all of the information contained in the records pertains to the investigation into the charges for which the appellant was arrested. The Police submit, therefore, that the information was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). The Police further submit that the release of personal information would represent a presumed unjustified invasion of the personal privacy of another individual referred to in the records.

The Police also state that disclosure of the record could unfairly expose the other individual to harm (section 14(2)(e)), and that this factor favours non-disclosure of the information.

Having reviewed the evidence before me, I have made the following findings:

- (1) All of the information at issue in the records was compiled and is identifiable as part of an investigation into a possible violation or violations of law, and accordingly, the presumed unjustified invasion of personal privacy in section 14(3)(b) applies.
- (2) I find that section 14(4) does not apply to the information, and the appellant has not claimed that section 16 of the Act applies in this appeal.
- (3) I find that disclosure of the personal information which has not been disclosed would constitute an unjustified invasion of personal privacy and is properly exempt from disclosure under section 38(b) of the Act.

Because of the manner in which I have disposed of this issue it is not necessary for me to consider the possible application of section 14(2)(e).

REASONABLENESS OF SEARCH

In discussions with the Appeals Officer, the appellant's father indicated that it is not possible that a warrant could be issued on the basis of the two supplementary reports alone. He believes that the Police must have more records relating to their investigation which led to securing a warrant for his son's arrest.

Where the requester provides sufficient details about the records which he is seeking and the Police indicate that additional records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records which are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested records do not exist. However, in my view, in order to

properly discharge their obligations under the Act, the Police must provide me with sufficient evidence which shows that they have made a **reasonable** effort to identify and locate records responsive to the request.

In their representations the Police submit that the wording of the appellant's request was very clear, and that he specifically sought the information which was provided to the justice of the peace by the police officer.

The Police outline the procedures which are followed in obtaining arrest warrants. In this case, as is the usual practice, the named police officer took the two supplementary reports which were prepared by the investigating officer to the court and informed the justice of the peace of their contents under oath.

The Police submit that no clarification was necessary as the request was clear, nor were other searches conducted for any other records relating to the appellant.

The search for responsive records is determined by the parameters set out in the wording of the request. In my view, the request is clear and provides sufficient description of the records sought to enable an experienced employee of the Police to correctly identify the responsive records. In the circumstances of this appeal, the records which the Police have identified contain information that is, in my view, fully responsive to the request.

I am, therefore, satisfied that the search for records was reasonable.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 25, 1994