



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-389**

**Appeal M-9400099**

**Sudbury Regional 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 requester asked the Sudbury Regional Police Services Board (the Police) for access to a specific statement provided to the Police by an individual who was accused of setting fire to a church. This individual was subsequently convicted of arson. The requester is an individual employed by a firm of insurance adjusters.

The Police identified an eight page statement as the record that was responsive to the request but denied access to this document in its entirety based on the invasion of privacy exemption found in section 14(1) of the Act.

A Notice of Inquiry was provided to the parties to the appeal. Representations were received from everyone except the individual who provided the statement.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Section 2(1) of the Act defines "personal information" to include an 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.

In his representations, counsel for the appellant contends that once personal identifiers, such as the name, address or telephone number of the individual are removed from the statement, the remainder of the document would not constitute personal information.

I do not accept this submission. Based on the contents of the record and the circumstances of this case, I believe that the disclosure of the statement, even in a severed form, would still reveal personal information about an individual whose identity could be readily ascertained.

My conclusion, therefore, is that the statement in its entirety constitutes the personal information of the individual who provided it.

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.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way that such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) (which is not the case in the present appeal) or where a finding is made that the public interest override in section 16 of the Act applies to the personal information.

Finally, once it has been shown that a section 14(3) presumption applies to the personal information at issue,

that presumption cannot be overcome by a combination of the factors set out in section 14(2) of the Act.

In their representations, the Police submit that the presumption against disclosure contained in section 14(3)(b) of the Act (information compiled and identifiable as part of an investigation into a possible violation of law) applies to the contents of the statement.

Counsel for the appellant, on the other hand, points out that the individual accused of committing the crime has been convicted in a court of law. On this basis, he states that there exists an actual - as opposed to a possible - violation of the law which in his view nullifies the application of the section 14(3) presumption. Putting the matter somewhat differently, it is his position that the presumption is only intended to apply where a law enforcement investigation is ongoing.

Counsel also submits that the members of the Diocese have a right to know the events surrounding the destruction of their church. He views this right as a compelling public interest for the purposes of section 16 of the Act.

Having reviewed the representations of both parties and the statement in question, I have made the following findings with respect to the information at issue:

1. For the section 14(3)(b) presumption to apply, the Police need only prove that the contents of the statement were compiled as part of an **investigation** into the possible violation of a law. There is nothing in this section to suggest that the benefit of this presumption will be lost if the individual is subsequently convicted of this offence.
2. On this basis, I conclude that the personal information contained in the statement was compiled and is identifiable as part of an investigation into a possible violation of the law (namely the arson provisions found in the Criminal Code) for the purposes of section 14(3)(b) of the Act.
3. Although I agree that members of the church and their insurer have a legitimate collective interest in obtaining information about the circumstances of the fire, I cannot characterize this concern as a compelling public interest for the purposes of section 16 of the Act nor would I be prepared to say that this type of interest clearly outweighs the purpose of the invasion of privacy exemption.

In arriving at this conclusion, I have also taken into account that the individual whose statement is at issue was tried in open court where the details of his crime were made public. For these reasons, I find that the public interest override does not apply to the contents of the statement in the circumstances of this case.

4. The result is that the statement in question is exempt from disclosure under section 14(1) of the Act and must not be disclosed to the appellant.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ September 16, 1994