



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-453**

**Appeal M-9400504**

**Metropolitan Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

The Metropolitan Toronto Police Services Board (the Police) received a request for access to all information pertaining to any investigation conducted by the Police into the operations or actions of a named bookstore and its owners, operators or staff.

The Police granted partial access to three records, and advised the requester that the existence of other records could neither be confirmed nor denied. The Police claimed the application of the following exemptions contained in the Act:

- invasion of privacy - section 14(1)
- refusal to confirm or deny the existence of a record - section 14(5)

The requester appealed this decision. A Notice of Inquiry was sent to the Police and the appellant. Representations were received from the Police only.

## **DISCUSSION:**

### **REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD**

Section 14(5) of the Act provides the Police with the discretion to refuse to confirm or deny the existence of records responsive to the appellant's request. This section provides:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the requester the right to know whether a record exists, even if one does not. This section provides institutions with a significant discretionary power which, in my view, should be exercised only in rare cases.

In my view, an institution relying on this section must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. An institution must provide detailed and convincing evidence that disclosure of the mere existence of the requested records would convey information to the requester, and that the disclosure of this information would constitute an unjustified invasion of personal privacy (Order P-339).

In its representations, the Police submit that records of the nature requested, if they exist, could disclose that the Police arrested certain individuals and detail the actions of the Police in proceedings. The Police state that simply confirming whether such records exist would constitute, in itself, an unjustified invasion of another individual's personal privacy.

In my view, the Police have confused the exercise of discretion under 14(5) with the analysis of the exemption claim under section 14. By simply confirming that records associated with an investigation exist, the Police are not confirming that any identifiable individual was investigated. Rather, the Police are merely

confirming that records associated with such a process exist, without indicating the parties involved. In my view, there is no unjustified invasion of personal privacy in these circumstances.

I find that the Police have not provided sufficient evidence to establish that disclosure of the existence of records relating to an investigation would convey information to the appellant which would constitute an unjustified invasion of personal privacy and therefore, section 14(5) does not apply.

As responsive records do exist, I will proceed to consider whether these records qualify for exemption under the Act.

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and, in my view, they contain the personal information of individuals other than the appellant.

Section 14(1)(f) of the Act reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 14(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of this appeal, the only representations I have been provided with weigh in favour of finding that section 14(1)(f) does not apply. Having found that the records contain information which qualifies as personal information, and in the absence of any evidence or argument weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply.

### **ORDER:**

1. I do not uphold the decision of the Police to refuse to confirm or deny the existence of the records.
2. I uphold the decision of the Police not to disclose the records and parts of records to the appellant.
3. In this order, I have disclosed the fact that responsive investigation records exist. I have released this order to the Police in advance of the appellant in order to provide the Police with an  
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opportunity to review this order and determine whether to apply for judicial review. If I have not been served with a Notice of Application for Judicial Review within fifteen (15) days of the date of this order, I will release this order to the appellant within five (5) days of the expiration of the 15-day period.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
January 30, 1995