



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-422

Appeal M-9400368

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 Metropolitan Toronto Police Services Board (the Police) received a request for a copy of a specific letter related to an internal disciplinary hearing of a named police officer. The one-page letter (the record) was entered as an exhibit at an internal disciplinary hearing held pursuant to the Police Services Act.

The Police rely on the following exemption to withhold the record in its entirety:

- invasion of privacy - section 14(1)

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

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 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.

I have reviewed the information in the record and I find that it satisfies the definition of "personal information". None of the personal information relates to the appellant. In my view, the personal information relates solely to identifiable individuals other than the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information to any person other than the individual to whom this information relates, 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 in a record, the only way such a presumption against disclosure can be overcome is if 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 (Order M-170).

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

In their representations, the Police submit that disclosure of the record would be an unjustified invasion of personal privacy under section 14(3)(b) because the record was compiled as part of an investigation under the Police Services Act into a possible violation of the law. As I have noted previously, the record was entered as an exhibit at an internal disciplinary hearing. The Police state that hearings conducted pursuant to the Police Services Act can be held in camera or be open to the public,

at the discretion of the presiding officer. In the present case, the hearing was not held in camera.

In his representations, the appellant has indirectly raised sections 14(1)(c) (personal information collected and maintained specifically for the purpose of creating a record available to the general public) and section 14(2)(a) (disclosure is desirable for subjecting the activities of the Police to public scrutiny). The appellant argues that the record was entered as an exhibit at a public forum, the disciplinary hearing under the Police Services Act and, therefore, should be disclosed. The appellant also claims that the information in the record goes directly to the issue of police accountability to the public and should be disclosed.

I have carefully reviewed the record and the representations and I make the following findings:

- (1) While the record was entered as an exhibit at a hearing open to the public and transcripts of oral evidence may be obtained, there is no provision for access to exhibits entered during the proceedings other than under the Act. Section 60(10) of the Police Services Act specifically provides that exhibits shall be returned, upon request, to the person who produced them, within a reasonable time after completion of the case. I find that section 14(1)(c) does not apply to the record.
- (2) I find that the record was compiled as part of an investigation under the Police Services Act into the conduct of a police officer (Orders M-348 and M-383). Therefore, the requirement for a presumed unjustified invasion of personal privacy under section 14(3)(b) has been established.
- (3) I find that section 14(4) does not apply to the information in the record. The appellant has not raised the application of section 16 of the Act.
- (4) The submissions provided by the appellant to support disclosure of the record under section 14(2)(a) are not sufficient to rebut the presumption in section 14(3)(b) (Order M-170).
- (5) Accordingly, I find that the exemption in section 14(1) applies to the record.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

November 18, 1994