



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

ORDER M-527

Appeal M-9500010

Regional Municipality of York 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 Regional Municipality of York Police Services Board (the Police) received a request for access to the entire investigation report regarding a single motor vehicle accident with injuries which occurred on the property of Canada's Wonderland. The requester was the insurance carrier for Canada's Wonderland and indicated that it required the information contained in the Police records to conduct an investigation on behalf of the insured. The Police denied access to the requested records based on the following exemption:

- law enforcement - section 8(1)(a)

The requester appealed the denial of access. Within 35 days of receipt of the appeal, the Police indicated that they were also relying on the law enforcement exemption found in section 8(1)(f) of the Act. A Notice of Inquiry was sent to the Police and the appellant, in which the Appeals Officer identified that the personal privacy exemption, section 14, was also relevant in the circumstances of the appeal. Representations were received from the Police and the appellant.

With its representations, the Police included a highlighted copy of the records. The Police indicate that the highlighted portions of the records are those to which the Police feel access should be denied. Although the Police have not provided the appellant with access to the portions of the records which are **not** highlighted, their representations indicate that they are prepared to disclose this information to the appellant.

PRELIMINARY MATTER:

In an index provided with the records, the Police have indicated that parts of certain records will not be disclosed as they contain information which is unrelated or not responsive to the request. During the inquiry, the appellant was informed of this aspect of the decision and was invited to submit representations regarding the responsiveness of parts of the records. The appellant's representations did not address this aspect of the decision.

I have reviewed the parts of the records which the Police indicate are not responsive to the request. These parts of the records do not relate to the investigation which is the subject of the request, and should not be disclosed to the appellant.

DISCUSSION:

LAW ENFORCEMENT

The Police submit that sections 8(1)(a) and (f) of the Act apply to parts of the records. These sections provide:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;

[IPC Order M-527/May 17,1995]

- (f) deprive a person of the right to a fair trial or impartial adjudication.

The purpose of the exemptions contained in section 8(1) is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to result in one of the harms set out in this section. The Police bear the onus of providing sufficient evidence to establish the reasonableness of the expected harm.

As a result of the Police investigation, charges were laid against the driver of the vehicle. The trial date to commence the hearing of the charges is June 16, 1995. The Police submit that the information to which section 8(1)(a) of the Act has been applied will be used at the trial of the accused.

Having reviewed the records and representations of the Police, I am satisfied that the Police have provided sufficient evidence to establish that disclosure of parts of the records could reasonably be expected to interfere with a law enforcement matter as the case is still before the courts. Premature disclosure of the records could reasonably be expected to interfere with the preparation of this matter for trial. Therefore, I find that section 8(1)(a) of the Act applies. Accordingly, I need not consider the application of section 8(1)(f).

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 my view, all of the parts of the records to which section 14 has been applied contain personal information of individuals other than the appellant.

The Police indicate that parts of the records may be disclosed to the appellant. However, it is apparent from a review of the records that certain parts of the records which the Police propose to disclose contain personal information of the accused, the witnesses and victims (e.g. name, address, date of birth, age and drivers license number). On reviewing the representations of the Police, it appears that this aspect of their decision is based on the fact that this information may have been made public through the motor vehicle accident report prepared by the investigating officer.

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. One such circumstance is found in section 14(1)(c), which states:

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

personal information collected and maintained specifically for the purpose of creating a record available to the general public;

In my view, while some of the same personal information may be available elsewhere, the specific purpose for collecting and maintaining this personal information was to investigate the accident, not to create a record available to the general public, and section 14(1)(c) does not apply.

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.

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. In my view, section 14(3)(a) (medical, psychiatric or psychological information) is also applicable.

Having reviewed the representations and the records in question, I have made the following findings:

- (1) The personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law for the purposes of section 14(3)(b) of the Act, and parts of it relate to a medical, psychiatric or psychological diagnosis, condition, treatment or evaluation for the purposes of section 14(3)(a).
- (2) I find that section 14(4) and section 16 (the public interest override) do not apply in the circumstances of this appeal.

The result is that the records are exempt from disclosure under section 14 of the Act and must not be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Police to apply sections 8(1)(a) and 14 of the Act to withhold the information which is highlighted in the copy of the records which the Police forwarded to this office with its representations, and I uphold the finding of the Police that the remaining information which was highlighted is not responsive to the request.
2. I order the Police not to disclose personal information of the accused, victims and witnesses (e.g. name, address, date of birth, age and drivers license number) which was not highlighted in the copy of the records which the Police forwarded to this office with its representations.

3. I order the Police to disclose the records, with the exception of the information described in Provisions 1 and 2 of this order, within 20 days of the date of this order.
4. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ May 17, 1995