



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

ORDER M-613

Appeal M_9500313

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to incidents between a family, represented by the requester, and an identified neighbouring family, which required the intervention of members of the Police's 41 Division.

The Police granted partial access to records identified as responsive to the request and claimed the following exemptions in denying access to the remaining parts of the records:

- invasion of privacy - sections 38(b) and 14

The requester appealed the decision to deny access. Included in the request was a reference to an incident which occurred in April, 1986. The appellant accepts that records relating to the April, 1986 incident no longer exist.

The Police identified portions of the records as not responsive to the request. The portions of the records described as not responsive are found primarily in copies of officers' notebooks. The appellant accepts that the portions so identified are not responsive to the request.

During the course of mediation, the appellant further narrowed the scope of the request. The records remaining at issue consist of portions of general occurrence and supplementary reports as well as parts of officers' notebooks which have been identified as responsive to the request and to which the appellant continues to seek access.

The following pages of the records contain information which remains at issue:

Pages 2, 3, 5, 6, 7, 10, 11, 12, 15, 16, 17, 19, 21, 23, 26, 27, 33 and 38.
[Pages 5, 6 and 7 are duplicates of pages 15, 16 and 17.]

A Notice of Inquiry was provided to the appellant, the Police and the neighbouring family. None of the parties submitted representations. The appellant relies on material he has already provided, the Police rely on their decision letter and indicate that there is nothing further they wish to add, and the neighbouring family confirmed that they will not be submitting representations.

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 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 in the records and I find that it satisfies the definition of "personal information" in section 2(1) of the Act and that this information relates to the appellant and to other individuals.

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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has 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 institution 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 Order M-444, Inquiry Officer John Higgins found that non-disclosure of the information which the appellant in that case provided to the Police in the first place would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. In this case, as in the one considered by Inquiry Officer Higgins, applying the presumption to deny access to the information which the appellant himself provided to the Police would, according to the rules of statutory interpretation, lead to an "absurd" result. On this basis, I find that the presumption in section 14(3)(b) does not apply to the information provided to the Police by the appellants. Having considered the factors listed in section 14(2) and all of the circumstances of this appeal, I also find that disclosure of this information would not constitute an unjustified invasion of personal privacy, and section 38(b) does not apply. The information supplied by the appellant is found in the portions of pages 2, 5 and 15 of the records which I have highlighted and will forward to the Police's Freedom of Information and Privacy Coordinator.

I have reviewed the remaining personal information in the records and I make the following findings:

- (1) This personal information was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). Accordingly, the presumed unjustified invasion of personal privacy under section 14(3)(b) applies.
- (2) Section 14(4) does not apply to the information and the appellant has not raised the possible application of section 16 of the Act.
- (3) Accordingly, disclosure of the personal information which has been withheld (and not highlighted as per Provision 1 below) would constitute an unjustified invasion of personal privacy of individuals other than the appellant and qualifies for exemption under section 38(b) of the Act.

I am satisfied that there is sufficient evidence on the face of the records to show that the personal information described above qualifies for exemption under section 38(b).

As I have found that certain records fall within the scope of this exemption, the Police are obliged to consider whether it would be appropriate to release the records, regardless of the fact that they qualify for exemption. During the course of this appeal I have received no indication as to whether the head considered the option of release prior to deciding to deny the appellant access to the records.

Along with the purpose of the protection of personal privacy, another equally important purpose of the Act is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. Accordingly, a person seeking access to his own personal information, like the appellant in this case, enjoys a higher right to that information than does someone whose personal information is not contained in a record.

In my view, it is particularly important in law enforcement matters, given the broad application of the section 14(3)(b) presumption to personal information contained in these types of records, for the person analyzing the request to turn his or her mind to the principles enunciated in the Act regarding the rights of individuals to access information in such records which contain their own personal information. In the absence of representations from the Police, which would have been of great assistance to me, I have no choice but to undertake an independent review of the circumstances in this appeal.

I have carefully considered everything in the records. From what the records tell me about the circumstances of this appeal, I am satisfied that it is reasonable to apply the section 38(b) exemption of the Act to the personal information which has been withheld (and not highlighted on the copy of the records I have provided to the Police). Accordingly, I find that this information is properly exempt from disclosure.

ORDER:

1. I order the Police to disclose to the appellant those portions of the records which **are** highlighted on the copy of the records which have been provided to the Freedom of Information and Privacy Co_ordinator of the Police with a copy of this order within

thirty_five (35) days of the date of this order but not earlier than the thirtieth (30th) day after the date of this order.

2. I uphold the decision of the Police not to disclose the remaining severed portions of the records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 16, 1995