



Information and Privacy
Commissioner/Ontario

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

ORDER M-579

Appeal M_9500189

Peel Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Peel Regional Police Services Board (the Police) received a request for information about a van and the identity of its owner who may have been involved in a fatal car accident. The requester represents the family members of the individual killed in that car accident (the deceased).

The Police identified the name, address, telephone number and date of birth of the driver of the van, recorded by a police officer in his notebook, as the record responsive to the request. The Police denied access to the record on the basis of the following exemptions:

- law enforcement - section 8(2)(a)
- invasion of privacy - sections 14 and 38(b)

The requester appealed the decision to deny access. A Notice of Inquiry was provided to the appellant, the Police and the driver of the van (affected person). Representations were received from all parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act "personal information" is defined to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual. The record at issue relates to an accident involving the deceased and other individuals. The information in the record includes the name, address and telephone numbers of the affected person and constitutes that individual's personal information. The information in the record is not the appellant's personal information.

Possible application of sections 38(a) and (b) were raised by the Police and in the Notice of Inquiry. Under section 38(a) of the Act, the Police have the discretion to deny access to records which contain the requester's own personal information in instances where certain exemptions would otherwise apply to that information. Under section 38(b), where a record contains the personal information of both the requester and other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

In the present case, I have determined that the information in the record is not the personal information of the appellant. Therefore, sections 38(a) and (b) are not applicable to the record.

Once it has been determined that a record contains personal information of an individual other than the requester, 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 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 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.

If none of the presumptions 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 circumstances that are relevant in the circumstances of the case.

The Police submit that the record was compiled during an investigation into a fatal motor vehicle accident and a possible violation of law. They therefore claim that the presumption contained in section 14(3)(b) of the Act applies. Section 14(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Police also submit that section 14(2)(e) (disclosure of the record could unfairly expose the affected person to harm) is a factor favouring the non-disclosure of the record. The Police state that the accident was thoroughly investigated and their findings did not indicate any fault on the part of the affected person.

The affected person states that the police investigation has confirmed that he did not contribute to the accident. He also submits that his interests could be adversely affected by disclosure of the information (section 14(2)(e)).

The appellant submits that disclosure of the personal information would not constitute an unjustified invasion of personal privacy as the information is sought for the purposes of a civil suit against the affected person's insurance company and not against the affected person personally. He explains that although the statement of claim would name the owner and operator of the van, the claim would be made against an insurance company and therefore, he would not be dealing personally with the affected person, but rather only with the insurance company.

The appellant has also raised sections 14(2)(b) (access is necessary to promote public safety) and 14(2)(d) (fair determination of the rights affecting the family of the deceased) as relevant factors favouring disclosure of the record. He advises that his clients wish to initiate an action pursuant to the Insurance Act against the affected person to recover damages under the Family Law Act. In order to do so, he must be able to name the owner of the vehicle. He states that he has received information from witnesses that the accident was caused by the affected person and that the initial Police investigation was not carried out in an appropriate manner in that the Police failed to take statements from these witnesses.

I have carefully reviewed the information in the record together with the representations of the parties. The record at issue was compiled as part of an investigation into a possible violation of law (the Criminal Code), and I must find, therefore, that the presumed unjustified invasion of personal privacy found in section 14(3)(b) applies. As I have indicated previously, factors favouring disclosure of the records under section 14(2) cannot be used to rebut the presumption. None of the information in the record falls within section 14(4) of the Act and the appellant has not raised section 16. Therefore, I find that disclosure of the information in the record would constitute an unjustified invasion of personal privacy pursuant to section 14 of the Act.

As I have found that section 14 of the Act applies to the record at issue, I need not consider the application of section 8(2)(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ August 3, 1995