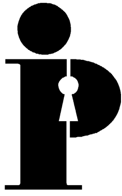

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-671

Appeal M_9500429

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 the names, addresses and statements of two suspects who were arrested and then released in connection with a break and enter incident at the requester's garage. The Police denied access to the records on the basis that disclosure of the records would interfere with an ongoing law enforcement investigation (section 8(1)(b)). The requester appealed the decision to deny access.

The Police then issued a revised decision letter indicating that section 8(1)(b) was no longer applicable and partial access was granted to the record of arrest, the supplementary record and police officers' notes.

The records that remain at issue consist of the remaining portions of the police officers' notes to which access was denied under sections 14(3)(a), (b), (d), (f) and (h) and section 38(b) of the Act. Section 38(b) gives the Police the discretion to deny access to the personal information of the requester if the Police determine that disclosure of the information would constitute an unjustified invasion of another individual's privacy.

The appellant confirmed that he is only seeking access to the statements given by the two suspects and recorded in the police officers' notebooks. The appellant is not interested in their names or other personal identifiers.

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

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 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 the disclosure of the name would reveal other personal information about the individual.

I note that the appellant has indicated that he no longer wants access to the names or addresses of the suspects. On this basis, the appellant contends that the information in the records does not qualify as "personal information".

In Order P-230, Commissioner Tom Wright considered a similar situation and stated as follows:

> If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under section 2(1) as personal information.

I agree with Commissioner Wright's approach and adopt it for the purposes of this appeal.

In the circumstances of this appeal, the appellant has indicated that he has knowledge of the names of the affected parties. In my view, even with the names and addresses of the affected parties removed, there is a reasonable expectation that the release of the records would disclose information about identifiable individuals.

I find that the information is recorded information **about** an identifiable individual and therefore, falls within the definition set out in section 2(1) of the Act. I find that this personal information relates to both the appellant and 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 the other individuals' 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 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 their representations, the Police submit that the presumption contained in section 14(3)(b) of the Act applies to the personal information in the records. I have reviewed the records and I am satisfied that the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). Therefore, the presumed unjustified invasion of personal privacy under section 14(3)(b) applies. I find that section 14(4) does not apply to the personal information and the appellant has not raised the possible application of section 16 of the Act. Accordingly, disclosure of the personal information which has been withheld would constitute an unjustified invasion of personal privacy of individuals other than the appellant and is properly exempt under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: December 19, 1995
Mumtaz Jiwan
Inquiry Officer