



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

ORDER M-623

Appeal M_9500321

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 appellant submitted a request under the Act to the Metropolitan Toronto Police Services Board (the Police). The appellant's request was for a copy of a police report which he identified by reference to the date of the report, and the name, division, and badge number of the police officer who submitted it.

The Police identified sixteen pages of responsive records. Full access was granted to some of these. Other pages were severed while still others were withheld in full. The Police denied access to the withheld information under the following exemptions in the Act:

- invasion of privacy - sections 14(1) and 38(b).

The records which were withheld, either in whole or in part, are as follows (page references refer to the page numbers assigned by the Police):

Record 1	General Occurrence Report dated April 24, 1995 (page FI0001)
Record 2	Supplementary Report dated May 25, 1995 (pages FI0002-FI0003)
Record 3	Supplementary Report dated April 25, 1995 (pages FI0004-FI0005)
Record 4	Extract from Officer's Notebook (pages FI0007-FI0016).

On the basis of the exemptions mentioned above, the Police denied access to portions of Records 1, 2 and 4, and to all of Record 3. The Police also concluded that the first and last sections of Record 4, which pertain to matters other than the subject of the request, are not responsive to the request. Those passages were not disclosed.

The appellant filed an appeal of the Police's decision to deny access to the undisclosed information under the exemptions claimed.

The appellant did not object to the non-disclosure of those parts of Record 4 which the Police found not to be responsive. On this basis, and because those parts of Record 4 clearly pertain to other matters and have no bearing on the investigation referred to in the request, I will not consider the non-responsive parts of Record 4 in this order.

The Commissioner's office sent a Notice of Inquiry to the Police and the appellant. This notice identified the issues in the appeal and invited the parties to make representations. The appellant submitted representations, while the Police indicated that they rely on their decision letter and have nothing to add to it.

The sole issue for me to decide is whether to uphold the Police's decision to deny access to the undisclosed information.

DISCUSSION:

PERSONAL INFORMATION

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.

The Police have claimed both sections 14(1) and 38(b). Both of these exemptions are intended to protect personal privacy. In Order M-352, I found that where a record contains the personal information of the requester, and access is being denied because disclosure would be an unjustified invasion of another individual’s personal privacy, the appropriate exemption is section 38(b), not section 14(1). Section 14(1) may only be applied to records which do **not** contain the requester’s personal information.

I have reviewed the records at issue to determine whether they contain personal information, and if so, to whom the personal information relates. The investigation pertained to an alleged assault on the appellant, and I find that all four records at issue contain his personal information. For this reason, the exemption to be considered in this discussion is section 38(b). I find that section 14(1) does not apply.

In order to find that the disclosure of information would be an unjustified invasion of personal privacy and apply the exemption in section 38(b), I must first make a finding that the information in dispute constitutes the personal information of an individual or individuals other than the appellant. I will now analyse the undisclosed parts of the records to make this determination.

The undisclosed part of Record 1 consists of the street address adjacent to the location of the alleged assault. In my view, this address is not linked to any identifiable individual other than the appellant. For this reason, it does not constitute the personal information of any individual other than the appellant, and accordingly, it cannot be exempt under section 38(b). As no other discretionary exemption has been claimed and no mandatory exemption applies, it should be disclosed.

Similarly, several of the undisclosed portions of Record 2 consist of this same street address and for the reasons just enumerated, these cannot be exempt under section 38(b). I find, however, that references in this record to a street address in connection with the actions of its “occupant” or “occupants” constitute the personal information of those individuals. This record also contains personal information pertaining to the appellant’s landlord.

I find that Record 3 contains the personal information of an individual who witnessed the incident. It also contains descriptions of the suspects, who are not identified by name. Based on the information provided to me, I am unable to conclude that the information about the suspects pertains to “identifiable individuals” and therefore it does not constitute personal information. For this reason, the information about the suspects cannot be exempt under section 38(b). As no other discretionary exemption has been claimed and no mandatory exemption applies, the information in Record 3 about the suspects should be disclosed.

I find that Record 4 contains personal information pertaining to an individual who witnessed the incident, and the appellant's landlord.

Record 4 also contains a street address which the perpetrators of the alleged assault ran past after the incident. Because it has no link to any identifiable individual, I find that this cannot be characterized as personal information. For this reason it cannot be exempt under section 38(b). As no other discretionary exemption has been claimed and no mandatory exemption applies, it should be disclosed.

To summarize, I have found that the undisclosed parts of Record 1, and some undisclosed passages in Records 2, 3 and 4 cannot be exempt under section 38(b) because they do not contain the personal information of any identifiable individual (except, in some cases, the appellant). I will order the disclosure of this information, which will not be included in the discussion which follows.

I have also found that parts of Records 2, 3 and 4 consist of the personal information of individuals other than the appellant. I will now consider whether the exemption in section 38(b) applies to this information.

INVASION OF PRIVACY

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 their decision letter, the Police refer to the presumptions in sections 14(3)(b) (investigation into a possible violation of law) and 14(3)(h) (personal characteristics, political beliefs and associations), as well as the factor weighing against disclosure mentioned in section 14(2)(i) (unfair damage to reputation).

Presumptions under section 14(3)

I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the street address of the house referred to in Record 2 in connection with its "occupants", because this information was clearly "compiled" and is "identifiable" as part of an investigation into a possible

violation of law. For the same reason, this presumption also applies to the information about the witness in Records 3 and 4.

However, the information about the appellant's landlord in Records 2 and 4 was clearly provided to the Police by the appellant. In Order M-444, I found that it would be an absurd result, and therefore an error in statutory interpretation, to apply section 14(3)(b) to information which had been supplied to the police by the requester. In my view, the circumstances here are essentially the same as those in Order M-444, and I find that the presumption in section 14(3)(b) does not apply to the information about the appellant's landlord in these two records.

The reference to section 14(3)(h) appears to relate to the information about the appellant's landlord given to the Police by the appellant. For the same reasons outlined in my discussion of the application of section 14(3)(b) to this information, I find that, in the circumstances of this appeal, section 14(3)(h) is also not applicable.

I find that sections 14(4) and 16 do not apply to the information which is subject to the presumption in section 14(3)(b), and accordingly, I find that the exemption in section 38(b) applies to all of this information. I have highlighted these passages, which appear in Records 2, 3 and 4, on the copies of these records which are being sent to the Police's Freedom of Information and Privacy Co_ordinator with a copy of this order.

Factors under section 14(2)

I will consider the application of this section to the remaining personal information in the records which I have **not** dealt with above. This consists of the information about the appellant's landlord in Records 2 and 4.

The only factor in section 14(2) which the Police have raised is section 14(2)(i) (unfair damage to reputation). No evidence of any kind has been provided to substantiate the application of this factor and I find that it does not apply.

In my view, no factors have been established to support the non-disclosure of the information in Records 2 and 4 about the appellant's landlord. Moreover, in my view, the fact that this information was (as noted above) supplied by the appellant to the Police is a relevant circumstance favouring disclosure. Having considered all the relevant circumstances, I find that disclosure of this information would not be an unjustified invasion of personal privacy, and the exemption in section 38(b) does not apply to it. As no mandatory exemption applies, and no other discretionary exemptions have been claimed, this information should be disclosed.

ORDER:

1. I uphold the decision of the Police to deny access to the parts of Records 2, 3 and 4 which are highlighted on the copies of these records which are being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Police to disclose all of Record 1, and the parts of Records 2, 3 and 4 which are **not** highlighted on the copies of these records which are being sent to the Police's Freedom

of Information and Privacy Co-ordinator with a copy of this order, to the appellant within twenty-one (21) days after the date of this order.

3. In order to verify compliance with 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 2.

Original signed by: _____
John Higgins
Inquiry Officer

_____ October 20, 1995