



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

# ORDER M-692

Appeal M\_9500490

Metropolitan Toronto Police Services Board



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## NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Metropolitan Toronto Police Services Board (the Police). The request was for information about another named individual's criminal history, including the "... charge sheet, information sheet, contacting officer, name, address, court, remand dates, judge and sentence received."

The Police refused to confirm or deny whether any responsive records exist, under the provisions of section 14(5) of the Act.

The appellant filed an appeal of this decision. A Notice of Inquiry was sent to the Police and the appellant. Representations were received from the Police only.

## DISCUSSION:

### REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

As noted above, the Police rely on section 14(5) as their basis for refusing to confirm or deny whether any responsive records exist. This section states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Police are denying the requester the right to know whether a record exists, even if one does not.

For this reason, an institution relying on section 14(5) of the Act must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. An institution must establish that disclosure of the mere existence or non-existence of the requested records would convey information to the requester, and that the disclosure of this information would constitute an unjustified invasion of personal privacy (Order M-328).

Accordingly, I will begin by considering whether disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy. If the answer to this question is yes, I will then consider whether disclosure of the existence or non-existence of records of the type requested would constitute an unjustified invasion of personal privacy.

An unjustified invasion of personal privacy can only result from disclosure of 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.

Records of the nature requested, if they exist, would reveal parts of the criminal history of an identifiable individual. I find that such information, if it exists, would qualify as the personal information of an individual other than the appellant.

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.

Section 14(2)(f) sets out a factor which applies where "... the personal information is highly sensitive". In my view, information pertaining to an individual's criminal history is highly sensitive, and I find that section 14(2)(f) would apply to such information if it exists. I therefore find that section 14(2)(f) is a relevant factor in the circumstances of this appeal.

The appellant has not made representations, and I find that no factors favouring disclosure have been established. Section 14(2)(f) weighs in favour of privacy protection and, in my view, disclosure of responsive records, if they exist, would constitute an unjustified invasion of personal privacy.

I will now turn to the question of whether disclosure of the mere existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy. The Police argue that it would.

I find that such disclosure would reveal personal information about an identifiable individual, namely, whether or not that person has a criminal record, or has been charged with an offence or offences.

I also find that information of this nature is highly sensitive. In my view, the analysis above relating to disclosure of responsive records, if they exist, is equally applicable here. I find that section 14(2)(f) is a relevant factor which weighs in favour of privacy protection, and disclosing the existence or non-existence of responsive records would constitute an unjustified invasion of personal privacy.

Accordingly, the Police have met the requirements for the application of section 14(5) in this appeal.

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ January 18, 1996