



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

ORDER M-676

Appeal M_9500585

Metropolitan Toronto 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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 a copy of an incident report dated July 1, 1995 involving the requester. The Police granted partial access to the responsive record, a two page occurrence report, and relied upon the following exemptions contained in the Act to deny access to the undisclosed portions:

- law enforcement - section 8(1)(c)
- invasion of privacy - section 14

The requester appealed the decision of the Police to deny him access to the name and address of the individual identified as the victim on the first page of the record. As a result, the application of section 8(1)(c) and the information on page 2 of the record are no longer at issue in this appeal.

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

Because the record appeared to contain the personal information of the requester and another identifiable individual, the Appeals Officer raised the possible application of section 38(b) of the Act (invasion of privacy) in the Notice of Inquiry.

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. I have reviewed the information contained in the record, and I find that it satisfies the definition of personal information. In my view, the personal information is that of the appellant and the victim.

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 another individual 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.

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 can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The Police submit that the personal information of the victim contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law, the Criminal Code. Accordingly, the Police submit that the disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the Act.

The appellant submits that he intends to commence a civil action against the victim for injuries which he sustained as a result of the negligent operation of a motor vehicle by the victim. The appellant states that the name and address of the victim are required in order that the victim can be named as a defendant in the civil action for damages. The appellant's submissions raise the consideration of section 14(2)(d) of the Act (fair determination of rights).

Having carefully reviewed the representations and the record, I have made the following findings:

- (1) The record was compiled as part of an investigation into a possible violation of law. Accordingly, the disclosure of the personal information of the victim which is contained in the record would constitute a presumed unjustified invasion of his or her personal privacy under section 14(3)(b).
- (2) Factors favouring disclosure of the record under section 14(2) (such as section 14(2)(d)) cannot be used to rebut the presumption. None of the personal information contained in the record falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
- (3) I find that the disclosure of the personal information in the record at issue would constitute an unjustified invasion of the personal privacy of the victim and that the record is exempt from disclosure under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ December 20, 1995
Donald Hale
Inquiry Officer