



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

# ORDER M-699

Appeal M\_9500676

Ottawa\_Carlton Regional Transit Commission



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## NATURE OF THE APPEAL:

The Ottawa-Carleton Regional Transit Commission (OC Transpo) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to an investigation and any subsequent discipline proceedings which followed an incident involving an OC Transpo operator and a member of the public (the complainant) on a specified date. The requester is a reporter for an Ottawa newspaper and specifically stated that he was not seeking the name of the operator.

OC Transpo located five records which are responsive to the request and denied access to them in their entirety, claiming the application of section 14(1) of the Act. The requester appealed the decision to deny access and indicated that there exists a public interest in the disclosure of the responsive records.

A Notice of Inquiry was provided by the Appeals Officer to the appellant, OC Transpo, the operator and the complainant who was involved in the incident which gave rise to the creation of the records. Representations were received from the appellant, OC Transpo and the operator.

The records at issue consist of the following documents:

Record 1 - Two General Occurrence Reports (pages 1-7)

Record 2 - Claims information (pages 8-11)

Record 3 - Customer Contact System Daily Contact Ledger Report (page 12)

Record 4 - Memorandum, Minutes and Correspondence (pages 13-18)

Record 5 - Note to File (page 19)

## PRELIMINARY ISSUE:

### JURISDICTION TO REVIEW HEAD'S DECISION

OC Transpo submits that Records 1, 3, 4 and 5 are outside the scope of the Act as they relate to the labour relations of an interprovincial undertaking. OC Transpo is a unique institution under the Act as it operates in the provinces of Ontario and Quebec. OC Transpo submits that records which relate to labour relations matters between an interprovincial undertaking and its union fall outside the jurisdiction of the Act.

In support of its position, OC Transpo relies on the decisions of Commissioner Tom Wright in Orders M-13 and M-160 and Assistant Commissioner Ann Cavoukian in Compliance Investigation Report I92-77M. It submits that, in Order M-13 Commissioner Wright expressly

recognized the principle of “inter-jurisdictional immunity” which limits the application of the Act in matters relating to interprovincial undertakings such as OC Transpo. In that order, Commissioner Wright found that:

It is possible that the disclosure of certain requested information might, in an unusual case, indirectly affect the management or labour relations of an institution. However, this concern is recognized in the Act, even for those institutions which are wholly within provincial jurisdiction, and exemptions from disclosure are available to that institution. In the very unusual case where it can be shown that disclosure of a record would clearly affect the working conditions, labour relations, or a vital part of the management and operation of an institution which is an interprovincial undertaking, then such a record would fall outside the jurisdiction of the Act.

It is clear that Commissioner Wright contemplated that the application of this principle would be limited only to those “very unusual cases” where evidence was adduced to demonstrate that the disclosure of the requested information would clearly affect the labour relations of an interprovincial undertaking.

In Order M-160, Commissioner Wright elaborated further on the principle of “inter-jurisdictional immunity” in relation to a request for records relating to the appellant’s grievance file. He held that:

As OC Transpo’s grievance procedures are governed by the Canada Labour Code, which is a federal statute, any decisions concerning the disclosure of records related to a grievance would generally be under that statute. Therefore, it follows that the application of the Act to records concerning grievances would impact on the way in which grievance procedures are carried out. Since I have found that grievances relate to labour relations, and are an important part of the relationship between employees and employers, if the disclosure of the records in issue would impact on grievance procedures, it would also clearly affect labour relations.

Commissioner Wright then went on to find that the records requested fell outside the jurisdiction of the Act.

OC Transpo also relies on the decision of Assistant Commissioner Cavoukian with respect to Compliance Investigation I92-77M in which concerns were raised by a complainant about the manner in which OC Transpo was disposing of “minor disciplinary entries from employee files”. Assistant Commissioner Cavoukian declined to undertake an investigation of the privacy complaint on the basis that the records, which related to entries in employee files concerning minor discipline matters, were outside the jurisdiction of the Act as they involved a provision of the collective agreement between OC Transpo and its union. She found that as the collective agreement, which contained provisions for the disposal of minor disciplinary entries in employee personnel files, related to OC Transpo, an interprovincial undertaking, and its union, the records were outside the jurisdiction of the Act.

I have reviewed the records at issue in this appeal and find that only Record 4 contains information which relates to the discipline of an OC Transpo employee. The actions taken by the employer against the employee were taken pursuant to the provisions of the collective agreement between OC Transpo and the union representing the employee.

Following the principles expressed in the orders and the findings in the compliance investigation described above, I find that Record 4 relates directly to actions taken by OC Transpo under the terms of its collective agreement with its union. I further find that the actions taken against its employee relating to the incident in question pertain directly to the labour relations of an interprovincial undertaking and are, accordingly, outside the jurisdiction of the Act.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have examined the information contained in Records 1, 2, 3 and 5 and find that they contain information about the operator and the complainant. Although the appellant is not seeking the operator’s name, his OC Transpo service number and a detailed description of his appearance and other personal characteristics would render this individual identifiable to those familiar with the OC Transpo operation.

### **INVASION OF PRIVACY**

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits the disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 14(2), (3) and (4) 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, OC Transpo must consider the application of the factors listed in section 14(2) of the Act, as well as any other circumstances which are relevant to the case.

OC Transpo submits that the information contained in Records 1 and 3 fall within the presumption in section 14(3)(b) as they are documents compiled, and identifiable with, an investigation into a possible violation of law. The two reports which comprise Record 1 are entitled “OC Transpo General Occurrence” and were completed by two Transit Law Enforcement Officers. OC Transpo argues that Record 3 was also prepared by a Transit Law Enforcement Officer. I have not been provided with any evidence that this is, however, the case.

Record 3 appears on its face to be a computer printout of information taken from the complainant some time after the incident by OC Transpo staff who address telephone complaints from the public. As such, I find that Record 3 was not compiled, nor is it identifiable with, an investigation into a possible violation of law.

OC Transpo submits that the two General Occurrence Reports which comprise Record 1 were prepared in response to a complaint involving a serious criminal offence. At the time the reports were prepared, the Ottawa-Carleton Regional Police were contacted and advised of the occurrence. The complainant was located and refused to discuss the matter with the Police. OC Transpo argues that Transit Law Enforcement Officers are responsible for a variety of law enforcement duties relating to the transit system and that their investigation of the occurrence, and the records created in the course of their investigation, fall within the ambit of the presumption in section 14(3)(b), regardless of the fact that criminal charges were not laid by the Police.

In my view, the investigation conducted by the Transit Law Enforcement Officers was a preliminary investigation into a possible violation of the Criminal Code, a law which is enforced by the local police force. Upon completion of the investigation, OC Transpo was not in a position to enforce or regulate compliance with the Code. Rather, if it determined that the allegations warranted further investigation, it would be required to forward the results of its investigation to the Police for further action. In my view, OC Transpo had responsibility for conducting the initial investigation of the complainant's allegations, but it was the Police which had regulatory responsibilities of law enforcement as envisioned by section 14(3)(b) of the Act. I find, therefore, that the personal information contained in the reports prepared by OC Transpo Transit Law Enforcement Officers was not compiled and is not identifiable as part of an investigation into a possible violation of law within the meaning of section 14(3)(b) of the Act.

Record 2 consists of a claim form and several invoices submitted by the complainant to OC Transpo for the reimbursement of certain damages which she suffered as a result of the incident involving the operator. OC Transpo submits that the information relates to the medical condition and treatment of the complainant and, as such, falls within the presumption in section 14(3)(a) of the Act.

I have reviewed the personal information contained in Record 2 and find that it qualifies as information relating to the medical condition and treatment of the complainant within the meaning of section 14(3)(a). As the presumption in section 14(3)(a) applies, I find that the disclosure of the personal information contained in Record 2 is presumed to constitute an unjustified invasion of the personal privacy of the complainant.

OC Transpo also claims the application of the presumptions in sections 14(3)(d) (employment history) and (g) (personnel evaluations) to Records 3 and 5. I find that none of the information contained in these records relates to the employment history of the operator. Rather, the records detail a single discreet incident which occurred while the operator was working. As such, it cannot be considered to qualify as information which relates to employment history and the presumption does not apply.

Similarly, Records 3 and 5 do not contain any information which might be characterized as an evaluation or reference within the meaning of section 14(3)(g). The presumption cannot, therefore, apply to either of these records.

I will now set out the factors listed in section 14(2) which were raised by OC Transpo and which weigh against the disclosure of the information contained in Records 1, 3 and 5. OC Transpo refers to the considerations listed in sections 14(2)(f) (highly sensitive), (h) (supplied in confidence) and (i) (unfairly damage the reputation of any person) as weighing against the disclosure of the personal information contained in Records 1, 3 and 5.

I find that the personal information is highly sensitive within the meaning of section 14(2)(f). I have been provided with no evidence to substantiate OC Transpo's contention that the information in these records was supplied in confidence. I further find that the disclosure of the personal information contained in Records 1, 3 and 5 would unfairly damage the reputation of the complainant, though not that of the operator.

The appellant raises the consideration listed at section 14(2)(a) (public scrutiny of an institution) as a factor weighing in favour of the disclosure of Records 1, 3 and 5. He submits that OC Transpo's hiring and discipline practices with regard to operators should come under public scrutiny as a result of the occurrence which is the subject of these records. I agree that this is a significant consideration when balancing the privacy interests of the complainant and the operator against the public's right to information about how OC Transpo deals with its staff in disciplinary matters.

The appellant has also raised the public health and safety consideration listed in section 14(2)(b) as a factor weighing in favour of disclosure. I find that, in the circumstances of the occurrence and in light of the other information made available to me in the course of this inquiry, this is not a consideration to which I can give much weight.

I have considered the representations of the parties and have carefully reviewed Records 1, 3 and 5 and find that, balancing the privacy interests of the complainant and the operator against the appellant's right to information, the disclosure of the personal information contained in Records 1, 3 and 5 would constitute an unjustified invasion of the personal privacy of the operator, and particularly, the complainant.

The appellant has not raised the application of any of the exceptions to the exemption which are contained in section 14(4) of the Act. I find, therefore, that as the disclosure of the personal information contained in Records 1, 2, 3 and 5 would constitute an unjustified invasion of personal privacy, these records are exempt from disclosure under section 14(1) of the Act.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant has raised the application of section 16, the public interest override, to the information contained in the records. As I have found that Record 4 is outside the jurisdiction of the Commissioner's office, I am prevented from rendering a decision as to whether it may be subject to the provisions of section 16. This section states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (my emphasis)

In Order P-984, Inquiry Officer Holly Big Canoe examined the component parts of section 23 of the provincial Act, which is the equivalent of section 16 of the Act. She held that:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant submits that if the complainant's allegations were substantiated, the public interest demands the disclosure of information relating to how the operator was dealt with by OC Transpo. I must, however, point out that the only reference to the steps taken by OC Transpo against the operator are contained in Record 4, a document over which I have no jurisdiction to order disclosure.

The appellant also submits that the public has a right to know whether OC Transpo is employing a man who is a danger to its passengers, particularly female passengers. I have not been provided with sufficient evidence to indicate that the operator has been involved in similar activity in the past or that he is liable to do so in the future. I find that the disclosure of the information contained in the records will not assist in informing the public that there exists an employee who may be a danger to them. In summary, I find that there does not exist a compelling public interest in the disclosure of Records 1, 2, 3 and 5. I will go on to evaluate the second requirement of section 16.

The second requirement to be met when determining if section 16 applies is whether this compelling public interest **clearly** outweighs the **purpose** of the exemption.

As stated above, I am limited to reviewing the decision made by OC Transpo to deny access to Records 1, 2, 3 and 5 only. These records do not contain any information regarding the disciplinary actions taken by OC Transpo against the operator, if any. The disclosure of the information in these records will not, in my view, assist the public in determining the appropriateness of OC Transpo's response to the complainant's allegations. Accordingly, I find there does not exist a sufficiently compelling public interest in the disclosure of Records 1, 2, 3 and 5 such as to clearly outweigh the purpose of the section 14(1) exemption.

#### ORDER:

I uphold the decision by OC Transpo to deny access to the requested records.

Original signed by: \_\_\_\_\_ February 6, 1996  
Donald Hale  
Inquiry Officer