



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

# ORDER M-713

Appeal M\_9500416

Metropolitan Toronto Police Services Board



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## **NATURE OF THE APPEAL:**

The Metropolitan Toronto Police Services Board (the Police) received a request for information under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought information related to two specific incidents.

The first incident occurred on September 30, 1994. The requester sought access to a 911 tape of two calls she made to the Police, the notes of two named Police officers and a Police report filed with 33 Division. The Police provided the requester with severed versions of all of these records.

The second incident occurred on March 23, 1995. The requester sought access to the notes of five named Police officers and the Police report of the incident. The Police provided the requester with severed copies of the Police report and the notes of two of the named officers. The Police advised the requester that two of the officers do not keep memorandum books and thus had no notes of the incident. The Police did not issue a decision on access to the notes of the fifth officer.

The Police claimed that to provide access to the portions of the records they had withheld would be an unjustified invasion of the personal privacy of other individuals (sections 14(1) and 38(b) of the Act).

The requester (now the appellant) appealed the decision of the Police to deny access to some of the information. She also claimed that more responsive records exist.

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

The records at issue consist of 17 pages of reports, statements and extracts from Police notebooks and the tape recording of two calls to 911. The tape recording is labelled "page 11".

## **DISCUSSION:**

### **PRELIMINARY ISSUES**

#### **SCOPE OF THE REQUEST AND THE APPEAL**

In her submissions, the appellant refers to documentation relating to five incidents. Two are the incidents described above. One relates to a matter referred to in the letter of appeal and the other two are being raised for the first time in these representations. The documentation before me does not indicate that the appellant has ever submitted a request to the Police for access to the information related to the incidents on May 27, 1995, June 16, 1995 or June 27, 1995.

Accordingly, in this appeal, I have no jurisdiction to deal with the issues raised by the appellant with respect to these matters.

Should the appellant wish to access this information, she should submit another request to the Police. The appellant should provide the Police with as much information as possible about the records she is seeking.

### **RESPONSIVENESS OF RECORDS**

The Police have marked portions of the officers' notebooks as not being responsive to the appellant's request. In the Notice of Inquiry, provided to the parties, they were asked to comment on this issue. The Police submit that these portions "have no bearing whatsoever ..." on the matters requested by the appellant. The appellant states that she is seeking access to "all the information pertaining to [this] case ...".

I agree with the position of the Police. The parts the Police have characterized as "N/R" or non-responsive describe other duties undertaken by the officers that are entirely unrelated to the appellant's request. Accordingly, I will not consider these portions of the notebooks in my order.

The appellant also claims that the 911 tape "is not [her] correct voice ...". She states "Even the information on sections do not correspond to my date and case".

I have listened to the tape. It contains recordings of two telephone calls made to the Police on September 30, 1994. A female voice on the tape identifies herself as the individual with the appellant's name who lives at the appellant's address. The information on the tape is consistent with that provided by the appellant herself in her letter of appeal and submissions. It is also consistent with the information contained in the notebooks of the Police officers and other records. Considering these circumstances, and in the absence of any evidence from the appellant to substantiate her claim that the voice on the tape is not her voice, I will consider the tape recording as a responsive record in this order.

### **REASONABLENESS OF SEARCH**

Where the appellant provides sufficient detail about a record which she is seeking and the Police indicate that such a record does not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any records that are responsive to the request. The Act does not require the Police to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Police must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The appellant sought access to the notebooks of five officers who were allegedly involved in the incident of March 23, 1995. As I have previously indicated, the Police made a decision on access to the notebooks of two of the officers.

The Police have explained that two of the officers do not keep notebooks because senior officers are not required to keep them. Nonetheless, the Police verified that neither of these particular officers kept a memorandum book or had notes of the incident. I am satisfied that the Police conducted a reasonable search to locate these memorandum books.

The fifth officer, identified by surname only, has a very common name. The Police did not make a decision on access to this notebook. The Police indicate that, in the absence of a computerized memorandum book system, the officer's badge number or even a definite date, it would require an inordinate amount of time to manually search for this information, if it existed. The Police indicate that at least 34 memorandum books will have to be examined.

Although the appellant's request refers to the incident which occurred on March 23, 1995, it appears from correspondence she provided to this office that she had contact with a constable with this name on April 7, 9, 10 and 29 and May 1, 1995. This information has never been given to the Police. Should the appellant wish to pursue access to information contained in the notebooks of this officer she should provide these dates to the Police to enable them to undertake a reasonable search for such records.

With respect to the incident of September 30, 1994, the appellant states that her son also gave a statement to the Police. She indicates that he spoke to the female officer in attendance and signed his name "... a few times to the reports".

The Police correctly state that, in her request, the appellant did not refer to the existence of a statement made by her son. The Police also state that when the appellant was contacted by the Police with regard to third party notification, she did not mention this statement. Furthermore, there is no reference to such a statement in any of the records forwarded to this office.

The position of the Police is stated as follows:

In our view, the onus is on the requester to provide some evidence or information to substantiate his position or, if it is believed we should search elsewhere, for example in a completely unrelated file, to advise and an appropriate search of the indicated file will be conducted.

In general, I would agree with this statement. However, in this case, I do not think that the fact that this statement was never specifically referred to by the appellant is determinative of the issue. The appellant obviously thought that the statement would be contained in the officer's notebook or the Police report of the September 30, 1994 incident, two of the records she requested. In these circumstances, I cannot conceive of what information the appellant could have provided to the Police to substantiate her position that the statement exists.

Because the Police have provided no information about the search they conducted to locate the statement, I cannot conclude that it was reasonable. Accordingly, I will require the Police to undertake another search for the statement given to the Police by the appellant's son on September 30, 1994.

## **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 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 have reviewed the records at issue. In my view, they all relate to incidents involving the appellant, other identifiable individuals and the Police. I find that they all contain the personal information of the appellant as well as of these 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 a requester 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. In this situation, the requester is not required to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his or her own personal information, the only situation under section 38(b) in which he or she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy.

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 Police 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 the circumstances of this appeal, the Police did raise section 38(b) in their decision letter. In their response to the Notice of Inquiry, the Police acknowledge that the records contain the personal information of the appellant and others and suggest that to disclose such information would violate the privacy of the other individuals involved.

The Police state that the information collected from third parties (not the appellant) was supplied to the investigating officers as a result of a law enforcement activity. This raises the application of the presumption in section 14(3)(b) which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The personal information which has been withheld from pages 1-4 and 18-19 was provided to the Police by individuals other than the appellant. I find that this information satisfies the presumption in section 14(3)(b) of the Act. This information does not fall within section 14(4) of the Act. Nor has the appellant claimed that there is a public interest in disclosure of this information under section 16.

The appellant does submit that she requires the information for a civil suit, thus raising the issue of the application of section 14(2)(d) of the Act (the personal information is relevant to a fair determination of rights affecting the person who made the request). However, as I have previously noted, a presumption under section 14(3) cannot be rebutted by a combination of factors under section 14(2) (Order M-170). Accordingly, I find that disclosure of the withheld information on pages 1-4 and 18-19 would result in an unjustified invasion of the personal privacy of the other individuals named on these pages. Section 38(b) thus applies to this information.

However, the personal information withheld from pages 6-10, 12-17 and the tape of the appellant's 911 calls to the Police (page 11), was provided to the Police by the appellant herself.

Past orders of the Commissioner's office have found that non-disclosure of information which was originally provided to the Police by the requester would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (Orders M-384, M\_444, M-613 and M-646). In this case, as in those previous orders, applying the presumption to deny access to the information which the appellant herself provided to the Police would, according to the rules of statutory interpretation, lead to an "absurd" result.

On this basis, I find that the presumption in section 14(3)(b) does not apply to the information provided to the Police by the appellant. Having considered the factors listed in section 14(2) and all of the circumstances of this appeal, I also find that disclosure of this information would not constitute an unjustified invasion of personal privacy, and section 38(b) does not apply. Pages 6-10, 12-17 and the tape of the 911 calls (page 11) should therefore be disclosed to the appellant in their entirety.

## **ORDER:**

1. I uphold the decision of the Police to deny access to pages 1-4 and 18-19 in their entirety.
2. I order the Police to disclose pages 6-10, 12-17 and the tape of the 911 calls (page 11) in their entirety by sending this information to the appellant no later than **March 4, 1996**.

3. I order the Police to conduct a further search to locate the statement of the appellant's son allegedly provided to the Police on September 30, 1994, and to advise the appellant of the results of the search no later than **March 7, 1996**.
4. If, as a result of this further search, the Police locate the statement, I order the Police to provide a decision letter regarding access to the statement to the appellant in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
5. In order to verify compliance with this order, I order the Police to provide me with a copy of the letter referred to in Provision 3 and a copy of the decision referred to in Provision 4 (if applicable) no later than **March 22, 1996**. These copies should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1. I also reserve the right to require that the Police provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.
6. Should the appellant wish to seek access to the information contained in the notebook of the fifth officer who allegedly had contact with her concerning the March 23, 1995 incident, I order her to so advise the Police no later than **February 26, 1996** and identify the dates on which she had contact with this officer.
7. In the event that the appellant contacts the Police pursuant to Provision 6, I order the Police to search for these records, to advise the appellant of the results of the search and, if they locate additional records, to follow the procedures set out in Provisions 4 and 5 of this order.
8. In the event that the appellant does not contact the Police pursuant to Provision 6, this matter will be deemed to have been abandoned by the appellant. This does not, however, preclude her from submitting another access request to the Police with respect to these notebooks.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

February 16, 1996