



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

ORDER M-852

Appeal M_9600201

Ottawa_Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Ottawa-Carleton Regional Police Services Board (the Police) for a copy of the police file relating to a hit-and-run accident which occurred in 1991. The appellant is the province's Superintendent of Insurance, who administers the Motor Vehicle Accident Claim Fund. The appellant is currently a party defendant in an action initiated by an individual who was seriously injured in the accident in question. The appellant explains that, pursuant to section 268(2) of the Insurance Act, the Fund is the final recourse for the payment of standard insurance benefits to pedestrians injured by an automobile, if there are no other existing sources of accident insurance benefits.

In accordance with section 21 of the Act, the Police notified a number of individuals whose information is contained in the record. After receiving responses from some of those notified objecting to the disclosure of all or part of their information, the Police granted the requester partial access to the records. The Police have claimed the following exemptions to deny access to the remaining portions of the record:

- law enforcement - section 8(2)(a)
- invasion of privacy - section 14

The appellant appealed the decision of the Police.

In their access decision, the Police advised the appellant that some information is not responsive to the request. The Police subsequently identified page 18 of the record (an occurrence report relating to a missing person) as the portion of the record which is not responsive. The appellant accepts that page 18 of the record is not responsive to the request and this page is not at issue in this appeal.

The record remaining at issue, totalling 44 pages, includes Motor Vehicle Accident Reports, an Accident Supplementary Report, an Investigation Report, Follow-Up Investigation Reports, a Towed Vehicle Report and Form, Vehicle Query printouts, an Alcohol Influence-Interview Report, a Certificate of a Qualified Technician (Breath Samples), a Notice for Persons Charged under certain sections of the Criminal Code, a Forensic Laboratory Report and a police officer's notes.

A Notice of Inquiry was provided to the appellant, the Police and six individuals whose information is found in the record (the affected persons). Representations were received from the appellant, the Police and one affected person. The affected person objected to disclosure of his personal information.

PRELIMINARY MATTERS:

The appellant argues that section 51(1) authorizes the disclosure of the portions of the record at issue to the appellant in that the Act cannot impose any limitation on the information otherwise available by law to a party to litigation.

Section 51(1) does not create a substantive right of access. The right of access created under the Act is found in sections 4 and 36, and is subject to the exemptions found in the Act. Section 51 ensures that the Act and its exemptions do not operate in a way which would deny access to information through other legal rules or principles, including the rules of natural justice and the requirements of the Statutory Powers Procedure Act. The Act can and should operate as an independent piece of legislation.

The appellant also argues that it should receive access to the undisclosed portions of the record under sections 32(e) and 32(f)(ii) of the Act. Section 32 is contained in Part II of the Act. This Part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The appellant's request was made under Part I of the Act, and this appeal concerns the decision of the Police to deny access. In my view, the considerations contained in Part II of the Act, and specifically the factors listed in section 32, are not relevant to an access request made under Part I (Order M-96).

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. Having reviewed the record, I find that it contains the personal information of individuals other than the appellant.

Section 14(1) of the Act prohibits the Police from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it.

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

The Police submit that the presumptions in sections 14(3)(a) and (b) apply. These sections state:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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.

With regard to section 14(3)(b), the Police state that the personal information in the record was compiled and is identifiable as part of their investigation into a possible violation of law, specifically the Criminal Code.

Having reviewed the record and the representations of the Police, I am of the view that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established. I find that section 14(4) has no application in the circumstances of this appeal, and the information is exempt under section 14 of the Act.

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there is a public interest in the disclosure of the record at issue in accordance with section 16 of the Act. This section provides:

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. [emphasis added]

There are two requirements contained in section 16 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.

In support of the application of section 16, the appellant states that the other insurers approached by the injured party have refused to provide insurance benefits. The appellant has paid, on a without prejudice basis, all sums which the injured party may be entitled to recover as general insurance benefits. The issue of responsibility for payment of insurance benefits is yet to be resolved. The appellant submits that the information at issue may confirm the identity of the driver of the vehicle. Lack of disclosure of the information would prejudice the public’s right to have the driver, or ultimately the driver’s insurer, rather than the public purse, assume the cost of paying accident payments to the injured party.

The appellant further submits that, should access to the information be denied, it could open the door in the future to insurers avoiding their responsibilities in similar circumstances by resisting such disclosure. This would increase the burden on an ever-shrinking public purse. It could also potentially allow an individual to escape liability for damages in similar cases.

The appellant submits that for the reasons mentioned above, a compelling public interest exists in the disclosure of the information at issue which clearly outweighs the purpose of the section 14 exemption.

In the circumstances of this appeal, the appellant has been provided with the name of the individual whose actions were investigated by the police, and possesses a statement of claim naming a probable driver. The appellant has also been provided with parts of one witness statement, and parts of the police report of the accident. As well, additional information will likely be available to the appellant during the litigation arising from this accident. Accordingly, I find that there is no compelling public interest in the disclosure of the information remaining at issue which clearly outweighs the purpose of the mandatory personal privacy exemption, and section 16 does not apply.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 29, 1996