



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

ORDER M-856

Appeal M_9600235

Ottawa_Carleton Regional Police Services Board



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BACKGROUND:

The appellant was injured in an industrial accident in July 1995. The Ottawa-Carleton Regional Police were called in to investigate, and a report was prepared by the investigating officer. At the appellant's request, the Police provided him with a copy of the police report regarding the accident. However, the Police had blanked out the names of witnesses on this copy.

NATURE OF THE APPEAL:

The appellant submitted a request to the Ottawa-Carleton Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the names of the witnesses to this accident.

The Police notified the witnesses pursuant to section 21 of the Act, and requested their comments on disclosure of this information. One witness consented to disclosure of his identity and the Police provided the appellant with this information.

The second witness (the witness) objected to disclosure of his identity. The Police subsequently denied access to this information on the basis of the following sections of the Act:

- law enforcement report - section 8(2)(a)
- invasion of privacy - section 14(1).

The appellant appealed this decision.

This office provided a Notice of Inquiry to the Police, the appellant and the witness. Because the record appeared to contain the appellant's personal information, the Appeals Officer raised the application of sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) to the information at issue. Representations were received from the Police and the witness.

The information at issue is the name of the witness. This information is found on page 2 of a document entitled "Ottawa-Carleton Regional Police Service Follow-Up Investigation" (the record). In order to determine the issues in this appeal, it is necessary to examine the information at issue in the context of the entire record.

DISCUSSION:

INVASION OF PRIVACY

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual." Having reviewed the record, I find that it contains the personal information of the appellant, the witness, and other identifiable individuals.

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this right.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the institution to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would 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 institution 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 Ministry must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The Police submit that the names and addresses of witnesses were collected by the investigating officer for the sole purpose of interviewing all parties at the scene of the accident to ascertain whether criminal charges were warranted. The Police indicate that disclosure of this information is presumed to be an unjustified invasion of personal privacy under section 14(3)(b) of the Act, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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.

I am satisfied that this part of the record was compiled during the course of a law enforcement investigation conducted by the Police, an agency which has the function of enforcing and regulating compliance with a law, and I find that section 14(3)(b) applies. Section 14(4) does not apply in the circumstances of this appeal, and the appellant has not raised the application of section 16.

The appellant submits that the information is required in order to assist in the preparation of a Statement of Claim in a civil action against the parties responsible at law for his damages. The appellant asserts that the intent of the Act cannot be to thwart the ability of civil litigants to recover damages in an action properly constituted before the courts. In this regard, I draw the appellant's attention to the provisions of section 51 of the Act, which states:

- (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

- (2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

This provision indicates that, for the purposes of his lawsuit, the appellant's rights to information necessary to pursue his action are preserved, whether or not he is entitled to access under the Act.

In this context, however, the appellant's submissions raise the application of section 14(2)(d) (fair determination of rights). As I have previously indicated, once a presumption in section 14(3) is found to apply, the only way in which it can be rebutted is if it falls under section 14(4) or where section 16 is found to apply. This result is dictated by the findings of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767. Consequently, the application of section 14(2)(d) could not override or rebut the presumption I have found to apply, and the information is properly exempt under section 38(b) of the Act.

Because of the findings I have made, it is not necessary for me to consider the application of sections 8(2)(a) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Inquiry Officer

November 4, 1996