



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

# **ORDER M-874**

**Appeal M\_9600312**

**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). The requester sought access to the name of an individual who made a statement to the Police, along with the statement itself. The Police located the responsive records, which consist of the statement by the individual and several supplemental police reports. The Police denied access to the requested records, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(d) and 8(2)(a)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)

The requester, now the appellant, appealed the Police's decision to deny access. A Notice of Inquiry was provided to the appellant and the Police by this office. Representations were received from both parties.

## **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 reviewed the records at issue and find that they contain the personal information of the appellant and several other identifiable individuals.

### **INVASION OF PRIVACY**

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 general right of access.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the Police 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 Police can disclose the personal information only if it also 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 records at issue were compiled and are identifiable as part of a murder investigation. They state that the witness statement and the follow-up information contained in the supplementary reports was gathered during the investigation of the appellant as a possible suspect in the murder investigation. The appellant has since been exonerated of any involvement whatsoever in the crime. Because the records were compiled during the course of a police investigation into a possible violation of law, the Police submit that the 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.

The fact that the appellant was not the subject of any criminal proceedings in relation to the crime being investigated does not negate the application of section 14(3)(b). Section 14(3)(b) only requires that there be an investigation into a possible violation of law and I am satisfied that the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established. 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 disclosure of the records is relevant to a fair determination of his rights and that he requires the information to assist him in clearing his name. In this context, 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(1)(d), 8(2)(a) and 38(a).

## **ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_

December 9, 1996

Donald Hale  
Inquiry Officer