



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

ORDER M-900

Appeal M_9600344

Metropolitan Toronto Police Services Board



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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, represented by counsel, sought access to a police report relating to a specific incident in which the requester was injured. The Police denied access to the responsive records. The requester (now the appellant) appealed the decision to deny access. In this order, references to the appellant will mean references to the requester as represented by his counsel.

The records at issue consist of a total of 74 pages which include a record of arrest, a supplementary record, a property record and handwritten notes of police officers. The Police denied access to the records on the basis of exemptions under the following sections of the Act:

- law enforcement - section 8(1)(a)
- right to a fair trial - section 8(1)(f)
- discretion to refuse requester's own information - section 38(a)

This office provided a Notice of Inquiry to the appellant and the Police. Because the records appeared to contain the personal information of the appellant and other individuals, the Notice of Inquiry also invited the parties to make representations on the possible application of sections 14(1) and 38(b) of the Act (invasion of privacy). Representations were received from the Police only.

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 and find that they contain the personal information of the appellant and 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 they determine that disclosing that information would constitute an unjustified invasion of 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 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 other relevant circumstances.

The Police submit that the records were generated as part of the investigation into the incident. As a result, criminal charges were laid and the records form part of the confidential Crown Brief and will be used in the upcoming trial. On this basis, I accept that the information in the records was compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code), and that disclosure of the personal information in these records would constitute an unjustified invasion of personal privacy. I find, therefore, 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. Accordingly, the personal information in the records is properly exempt under section 38(b) of the Act.

Because of the findings I have made above, it is not necessary for me to consider the application of sections 8(1)(a), 8(1)(f) and 38(a).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

February 18, 1997