



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

ORDER M-933

Appeal M_9600383

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) for access to information relating to an incident in which the requester was assaulted by a named individual (the affected person). The Police granted partial access to the records. The requester appealed the decision to deny access to the remaining records.

The records which remain at issue in this appeal consist of a supplementary report, CPIC print-out, summons, supplementary record of summons and police officer's notes. The Police rely on the following exemptions under the Act to deny access, in whole or in part, to these records:

- facilitate commission of a crime - section 8(1)(l)
- invasion of privacy - section 14(1) and 38(b)

This office provided a Notice of Inquiry to the appellant and the Police. The parties were also asked to comment on the possible application of section 38(a) of the Act. The affected person was not able to be contacted as no address was available for her. 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 information contained in the records and find that they contain the personal information of the appellant and the affected person.

I find that the CPIC printout (page 2) also contains access codes which the Police have withheld under section 8(1)(l). I find that this portion of Record 2, withheld under section 8(1)(l), does not contain personal information.

INVASION OF PRIVACY

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 the appellant 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 appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellant 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 result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 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 circumstances that are relevant to the appeal.

The Ministry submits that the presumption in section 14(3)(b) applies to the information in the records as it was compiled and is identifiable as part of an investigation into a possible violation of the Criminal Code by the affected person and that the disclosure of this information would result in a presumed unjustified invasion of the personal privacy of that individual.

I find that the presumption in section 14(3)(b) applies to the personal information in the records, except for the access codes in the CPIC record (Record 2). I find that section 14(4) does not apply in the circumstances of this appeal and the appellant has not raised section 16.

Accordingly, the personal information to which I have found the presumption applies, is exempt from disclosure under section 38(b).

FACILITATE COMMISSION OF AN UNLAWFUL ACT

The Police claim the application of section 8(1)(l) of the Act to the undisclosed codes contained in the CPIC printout (Record 2). These codes consist of transmission access codes for the CPIC system which allow the Police to gain access to certain criminal records information. Section 8(1)(l) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

The Police submit that the disclosure of this type of information could compromise the security of the CPIC security system and would make unauthorized and illegal access to the CPIC system easier, contrary to various provisions of the Criminal Code relating to the unauthorized use of data contained in computer records. I accept the submissions of the Police. I find that disclosure of the access codes for the CPIC system could reasonably be expected to facilitate the commission of an unlawful act, the unauthorized use of the information contained in the CPIC

system. Accordingly, I find that the codes qualify for exemption from disclosure under section 8(1)(l) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 30, 1997