



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

ORDER M-1041

Appeal M-9700236

Ottawa-Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The Ottawa-Carleton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the investigation of a motor vehicle accident which occurred on January 21, 1997.

The Police identified a 19-page responsive record and, pursuant to section 21 of the Act, notified an individual whose interest might be affected by disclosure (the affected person). After considering the affected person's submission the Police granted access in full to 11 pages, partial access to five pages, and denied access in full to three pages. The Police relied on the following exemptions under the Act:

- law enforcement - sections 8(2)(a) and (c)
- 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 this decision, but narrowed the scope of his request to include only statements provided to the Police by "the driver of vehicle #1". He also raised the possible application of section 16 of the Act, the so-called "public interest override".

The parts of the record which remain at issue in this appeal are information relating to the affected person which has been severed from the last paragraph on the Accident Supplementary Report (page 2) and the entire witness statement of the affected person (page 5).

A Notice of Inquiry was sent to the appellant, the Police and the affected person. Representations were received from the appellant and the Police.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

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 record and I find that it contains the personal information of the appellant, the affected person and other identifiable individuals.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from the record if they determine that disclosing it would constitute an unjustified invasion of another person's 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) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this

determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

The Police submit that the presumption in section 14(3)(b) applies in the circumstances of this appeal.

The appellant's submissions focus primarily on whether there is a compelling public interest in disclosure of the record. However, he does submit that disclosure of the record could shorten the litigation process involving his client. This raises the consideration contained in section 14(2)(d) of the Act (fair determination of rights) which favours disclosure.

Section 14(3)(b) states that:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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 find that the record satisfies the requirements of a presumed unjustified invasion of personal privacy under section 14(3)(b). The information contained in the record was "compiled" and is "identifiable" as part of an investigation into a possible violation of law, in this case the Criminal Code of Canada. Even if I were to accept the appellant's position with respect to section 14(2)(d), as I have previously indicated, a factor or combination of factors under section 14(2) cannot rebut a presumption under section 14(3).

I find that none of the provisions of section 14(4) are applicable.

Accordingly, the severed portions of pages 2 and 5 of the record are exempt from disclosure under section 38(b) of the Act.

COMPELLING PUBLIC INTEREST

Section 16 of the Act reads as follows:

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)

In order for section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the personal information exemption.

The appellant submits that disclosure of the information contained in the record could facilitate the settlement of an existing liability claim, thereby reducing legal expenses and court time. In the appellant's views, these costs of litigation are borne by the public in the form of higher insurance premiums and taxes, and there is a compelling public interest in disclosing records which would reduce these costs.

Having reviewed the appellant's submissions, in my view, the interests he advances are essentially private in nature. I find that the appellant has failed to establish the existence of a **compelling** public interest in disclosure of the information contained in the records. I also find that any public interest that does exist clearly does not outweigh the purpose of the personal information exemption. Accordingly, section 16 is not applicable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ November 24, 1997