



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

# **ORDER M-1118**

**Appeal M-9800079**

**Peel Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Peel Regional Police Services Board (the Police) received a request from the Toronto Licencing Commission (the Commission) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records relating to an investigation by the Police into an incident involving a taxi driver licenced by the Commission. The Police located records responsive to the request and denied access to them, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a) and 8(2)(a)
- invasion of privacy - section 14(1)

The Commission appealed the decision to deny access.

A Notice of Inquiry was provided to the Police, the Commission and the taxi driver who was the subject of the investigation (the affected person). Representations were received from all three parties.

The records at issue consist of several occurrence reports, a police officer's notes and a videotape of an interview with the affected person conducted by 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 records and find that they contain information about the affected person and a number of other identifiable individuals. The records do not contain the personal information of the individual who made the request on behalf of the Commission.

Where a record contains the personal information of individuals other than the requester, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in this section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found 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 where 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 contained 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 considerations that are relevant in the circumstances of the case.

In their decision letter of March 25, 1998, the Police state that the disclosure of the personal information would constitute a presumed unjustified invasion of the personal privacy of the affected person under section 14(3)(b). The Police indicate that because the presumption applies to the records they are, accordingly, exempt under section 14(1). I will first address the application of the presumption in section 14(3)(b), which provides 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;

The Police indicate that the records were compiled as part of an investigation into a possible violation of law. The affected person was charged with several offences under the Criminal Code as a result of the investigation and these charges are still before the courts.

I find that the presumption in section 14(3)(b) applies to the personal information in the records. I further find that section 14(4) does not apply in the present circumstances. The appellant has raised the possible application of section 16. It submits that there is a compelling public interest in the disclosure of the records as it is entrusted with ensuring that the persons which it licences are not a danger to the public. In my view, the Commission has not demonstrated that any public interest which may exist in the disclosure of the records clearly outweighs the purpose of the invasion of privacy exemption in section 14(1). I find, therefore, that the records are properly exempt under section 14(1).

### **DISCLOSURE PURSUANT TO SECTION 32(f)**

The Commission submits that because it is an agency which has a law enforcement mandate and is charged with protecting the public, it should be entitled to access the requested information under section 32(f)(ii) of the Act. This section states that:

An institution shall not disclose personal information in its custody or under its control except,

- (f) if disclosure is by a law enforcement institution,
  - (ii) to another law enforcement agency in Canada;

In Order M-96, Assistant Commissioner Tom Mitchinson addressed the application of section 32 to a request made under Part 1 of the Act, as is the case in the present appeal, as follows:

Section 32 is contained in Part II of the Act. This Part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the  
**[IPC Order M-1118/June 10,1998]**

course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The Federation's request to the Board was made under Part I of the Act, and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the Act, and specifically the factors listed in section 32, are not relevant to an access request made under Part I.

I adopt the position taken by Assistant Commissioner Mitchinson in Order M-96 and find that the factor described in section 32(f) is not relevant in the context of an access request made under Part I of the Act.

Because of the manner in which I have addressed the application of section 14(1) to the records, it is not necessary for me to address the possible application of sections 8(1)(a) and (b).

**ORDER:**

I uphold the decision of the Police.

Original signed by \_\_\_\_\_  
Donald Hale  
Adjudicator  
(formerly Inquiry Officer)

\_\_\_\_\_ June 10, 1998