



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

# **ORDER MO-1173**

**Appeal MA-980207-1**

**Halton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant represents the Motor Vehicle Accident Claim Fund (the Fund). He submitted a request to the Halton Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for information regarding a pickup truck which was operated by a named individual on June 8, 1996. Specifically, the appellant wants to receive information which would identify the truck, its owner and its insurer. The appellant believes that the truck was used to transport two all-terrain vehicles which were involved in a collision in which two people were killed.

The Police notified a third party (the affected person) who refused to consent to disclosure of his or her identity. The Police subsequently denied access to the information on the basis of section 14(1)(f) (invasion of privacy). The appellant appealed this decision and raised the application of section 16 of the Act, the so-called "public interest override".

Within 35 days from the confirmation of the appeal, the Police issued a second decision in which they claimed the application of section 8(2)(a) (law enforcement report) in addition to section 14(1).

This office provided a Notice of Inquiry to the Police, the appellant and the affected person. Representations were received from the Police and the affected person. The affected person indicates that the truck was sold to the named individual the day before the accident but that the named individual had not transferred the ownership over into his own name. The affected person does not believe that he/she is responsible in any way to any party as a result of this accident and does not wish to be identified.

## **RECORDS:**

The information which responds to the appellant's request is found on a one-page record entitled "Follow-up Report".

## **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. The record contains the name of the owner of the vehicle, the vehicle make and licence plate, information about the owner's insurance and information regarding the relationship between the vehicle owner and the named individual who was driving it. I find that this qualifies as the personal information, primarily, of the vehicle owner, as well as the named individual. The record also contains the name of a witness and this qualifies as this person's personal information.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the 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) 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.

Section 14(3)(b) states that:

A disclosure of personal privacy 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 submit that the information contained in the record was compiled as part of a law enforcement investigation into the fatal accident involving two all-terrain vehicles. In this regard, the Police indicate that the accident was being investigated to determine whether charges should be laid under the Criminal Code.

I note that the record at issue was prepared by the Police in response to the appellant's access request. Therefore, this document does not, in and of itself, pertain to the investigation of the accident. However, I am satisfied that the **information** regarding the truck owner which is contained in this record was originally obtained or "compiled" by the police in the course of their investigation into the circumstances surrounding the accident. I am also satisfied that, as part of their policing function, the police conducted this investigation with a view towards determining whether the actions of any party should result in criminal charges. Therefore, I find that disclosure of the personal information in the record would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b) of the Act.

I am satisfied that section 14(4) has no application in this appeal. As I indicated above, the appellant has raised the possible application of section 16 of the Act, the so-called "public interest override".

## **PUBLIC INTEREST IN DISCLOSURE**

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 there is a compelling public interest in disclosure of the identity of the affected person and his or her insurer as the taxpayers will have to bear the cost of paying for any damages caused by this fatal accident from the accident fund if the insurer is not held accountable. He argues that the insurer cannot be held accountable if he is not able to find out who the insurer is.

The Police argue that there is no compelling public interest in disclosure of the information. In this regard, the Police are of the view that should any litigation arise as a result of this accident, the information would likely become available to the appellant through due process of the civil courts. The Police submit that the alternative access vehicle available through the courts renders the matter less compelling in the access scheme.

The Police point out further that disclosure under the Act is, effectively, disclosure to the world and that there is no control over how the appellant may use the information in the record (see: Order M-96).

Additionally, the Police submit that there is a significant public interest in protecting this information from disclosure under the Act. In particular, the Police believe that disclosure under the Act would have the effect of decreasing public confidence in the police, generally, if members of the public were to believe that information pertaining to them which is compiled as part of police investigations was not protected.

In discussions with this office, the appellant acknowledges that he could contact witnesses to the accident as their identities are known to him, however, he chose not to do so because they have already been traumatized by the event and he does not wish to subject them to further anguish.

I agree with the appellant that there is a public interest in protecting the government's liability for payments which should be covered by appropriate private insurers, thereby reducing the burden on the taxpayer. However, I am not satisfied that this interest is either compelling, or that it outweighs the purpose of the section 14(1) exemption. In my view, the intention of the Legislature in providing information compiled as part of a law enforcement investigation with a heightened level of protection (as envisioned by the

presumptions in section 14(3)) is indicative of the importance which is placed on personal privacy in this context. Further, as the Police indicate, once access is provided to personal information under the Act, it, thereafter, can be made available to anyone and/or used in any way. Therefore, the appellant has a very difficult hurdle to cross in establishing that the public interest in disclosure outweighs the public interest in protecting this type of information.

In my view, the appellant has not provided sufficient information to demonstrate that the public interest in disclosure of the personal information under the Act is compelling. In coming to this conclusion I have noted that the appellant has the means of obtaining information about the circumstances of the accident from witnesses who are known to him, even though I appreciate his reluctance to approach these individuals.

Moreover, I refer the appellant to section 51 of the Act, which provides:

- (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.
- (2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Previous orders of this office have reviewed the role and operation of the Fund. In Order P-538, Inquiry Officer Holly Big Canoe described its function:

The Fund was created in the 1960s to provide relief for persons injured by uninsured motorists. Where an accident occurs in which a person is injured by an uninsured driver, the injured party has the option of making an application for payment from the Fund or of commencing an action against the uninsured driver.

In cases where the injured party chooses to commence a legal action against the uninsured driver, the uninsured driver often does not file a defence. The injured party (the plaintiff) notifies the Fund that the defendant is in default in defending the claim and the Fund responds to the claim and defends or settles the action. All acts done by the Fund in accordance with the lawsuit are deemed to be the acts of the defendant.

Where the Fund cannot settle the action directly, it often retains counsel to conduct the defence of the action. After settlement or trial, the Fund pays the claim to the plaintiff after a judgment is taken out and assigned to the Minister, to whom the Fund is responsible. The Fund then attempts to recover the money from the defendant.

In my view, since the Fund may seek to recover any money paid by it through the courts, it has available to it all of the discovery and court processes which, in my view, render the need for obtaining the requested information less compelling in the access context.

In the end, I find that there is no compelling public interest in disclosure of the personal information in the record which outweighs the purpose of the exemption. Therefore, I find that the information is properly exempt under section 14(1) of the Act.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ December 9, 1998