



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-1067**

**Appeal M-9700242**

**Halton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Halton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from an insurance company (the appellant) for all records relating to an accident in which a wheel detached from a truck and hit a pedestrian. The appellant represents the owner of the truck and is investigating the accident. The request includes officer's notes, narrative reports, any statements from parties involved in the accident, an accident reconstruction if completed, any report concerning the cause of the loss of the wheel assembly and any photographs of the scene of the accident.

The Police located responsive records and denied access to them pursuant to the following sections of the Act.

- law enforcement - sections 8(1)(a), (b), 8(2)(a) and (c);
- right to fair trial - section 8(1)(f);
- invasion of privacy - section 14(1).

In their decision letter, the Police indicated that the case is still under investigation with charges pending, and that there will be a court trial.

The appellant appealed the decision on the basis that there is no need for further investigation into the accident. This is because pursuant to section 84.1(1) of Bill 138, enacted on July 3, 1997, this is an absolute liability offence and conviction is automatic for a wheel detachment from a truck.

This office provided a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

## **RECORDS:**

The records at issue in this appeal consist of the following:

- Record 1 - Information dated July 17, 1997
- Record 2 - News Release dated August 29, 1997
- Record 3 - Memo from Police Constable (P.C.) to Senior Counsel AG dated August 13, 1997 re: a request for review
- Record 4 - Memo from Senior Counsel AG to P.C. dated August 19, 1997 re: response to Record 3
- Record 5 - Fax cover sheet from Senior Counsel AG to P.C. dated August 8, 1997
- Record 6 - Faxed memo from Senior Counsel AG to P.C. dated August 19, 1997 (same as Record 4)
- Record 7 - Faxed memo from Senior Counsel AG to P.C. dated August 6, 1997 re: wording of charges
- Record 8 - Major Incident Bulletin dated July 17, 1997
- Record 9 - Occurrence Report dated July 17, 1997

- Record 10 - Follow-up Report dated July 17, 1997
- Record 11 - Photographs of truck and wheel parts
- Record 12 - Descriptions of photographs

**Record 13 - Confidential Crown Counsel Brief (60 pages)**

- Index of Documents
- Copy of Information (copy of Record 1)
- Copy of Request for Summons (copy of Record 9)
- Copy of Summons
- Synopsis
- Two affidavits signed by the Registrar of Motor Vehicles
- Copy of Application for Vehicle Record Search
- Copy of Certified Copy of Vehicle Record
- Copy of CVOR Record
- Copy of Motor Vehicle Collision Report
- Witness Statements
- Copy of Vehicle Service & Inspection Report
- Copy of Wheel Separation Report
- Copy of Commercial Vehicle Inspection Report
- Copy of Safety Standards Certificate
- Copy of Vehicle Permit
- Copies of Original Statements
- Request for Witness
- Copy of Police Officer's Notes

For the institution's reference, I have number the pages in Record 13, beginning with the Index as page 1.

**DISCUSSION:**

**PERSONAL INFORMATION**

Section 2(1) of the Act defines personal information, in part, as "recorded information about an identifiable individual". I have reviewed the portions of the records to determine whether they contain personal information and, if so, to whom the personal information relates.

I find that Records 2, 8, 9, 10 and pages 5, 6, 14, 17, 36, 40, 41, 42, 43, 44, 45, 46, 52, 53, 58, 59 and 60 of Record 13 all contain the personal information of the pedestrian who was struck by the truck wheel.

I find that pages 5, 15 - 16, 39 - 40 and 52 of Record 13 contain the personal information of the driver of the truck. The appellant has not provided a consent from the driver for disclosure of his personal  
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information to the appellant. Accordingly, these pages will be analyzed pursuant to section 14(1)(f) of the Act.

I find that pages 12, 14, 17, 18, 41 - 42, 43, 52 and 60 of Record 13 contain the personal information of other identifiable individuals (witnesses and a relative of the pedestrian). In the circumstances of this appeal, however, when the names of the witnesses on pages 17, 18, 41 - 42, 43 and 52 (civilian witnesses only) are removed, much of the remaining information (except that pertaining to the pedestrian) no longer qualifies as personal information.

None of the records contain the personal information of the appellant.

## **LAW ENFORCEMENT**

### **Section 8(2)(a)**

In order for a record to qualify for exemption under section 8(2)(a) of the Act, the Police must satisfy each part of the following three-part test:

1. The record must be a report; **and**
2. The report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. The report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

All of the records were prepared by the Police during the course of their investigation into an accident in which a wheel detached from a truck and struck a pedestrian. I am satisfied that parts 2 and 3 of the above test have been met.

The word "report" is not defined in the Act. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I have reviewed the records and the representations. I find that the records contain recordings of fact only and therefore, do not qualify as "reports" for the purposes of section 8(2)(a) of the Act. Accordingly, the records do not qualify for exemption under section 8(2)(a).

### Section 8(2)(c)

Section 8(2)(c) states:

A head may refuse to disclose a record,

that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability.

I found above that the records are properly characterized as “law enforcement” records. With respect to the second part of this exemption, the Police submit that:

We have already been advised by the appellant that the reason he is requesting the information is in order to prepare for a civil law suit ... Disclosure of any of the records at this time could reasonably be expected to then place any individual documented in the records to civil liability as the appellant has himself stated.

In my view, the mere fact that a party is contemplating civil action does not automatically lead to the conclusion that the exemption in section 8(2)(c) will apply. The Police have not established that any person who has been **quoted** or **paraphrased** in the records could reasonably be expected to be exposed to civil liability. Accordingly, I find that this exemption does not apply.

### Sections 8(1)(a), (b) and (f)

These sections provide:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) deprive a person of the right to a fair trial or impartial adjudication.

The purpose of the exemptions contained in sections 8(1)(a) and (b) of the Act is to provide the Police with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter or investigation. The Police bear the onus of providing evidence to substantiate that, first, a law enforcement matter or  
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investigation is ongoing and second that disclosure of the records could reasonably be expected to interfere with the matter or investigation.

In their representations, the Police indicate that charges have been laid against the truck company and that dates for trial were set down in the fall of 1997. There is no indication from either party that the matter has reached a conclusion in the courts. However, in view of the fact that the matter has reached the prosecution stage, I am not persuaded that disclosure of the records could reasonably be expected to interfere with an **ongoing** investigation. Therefore, section 8(1)(b) does not apply.

With respect to section 8(1)(f), the Police state:

The company has a right to expect fairness throughout the judicial procedure and not be impeded by the premature disclosure of records. As previously stated, whether or not an individual or agency has access to records which are presently before the courts is up to the discretion of the Crown Attorney's office through the "disclosure" procedure.

The Police do not explain how disclosure of the information contained in the records could reasonably be expected to deprive the company of a fair trial or impartial adjudication. Moreover, in my view, the Act makes it clear (section 51(1)) that it operates independently of any disclosure mechanisms available during a criminal trial. In the circumstances of this case, I am not persuaded that disclosure of the records could reasonably be expected to deprive the company of a fair trial or impartial adjudication. Accordingly, I find that section 8(1)(f) has no application.

With respect to section 8(1)(a), however, the Police submit that as a result of the Police investigation, a charge under section 84.1 (1) of the Highway Traffic Act was laid against the owner of the truck. The Police indicate that this is the first occurrence of a flying truck wheel since the new law was enacted. It is also the first occurrence of a wheel actually hitting a pedestrian. Therefore, this case will receive a high degree of publicity once its disposition becomes known.

The appellant reiterates that:

[I]t is our understanding that under Bill 138 enacted on July 3, 1997, a conviction is automatic for a wheel detachment from a truck as per sec. 84.1(1).

As the government has decided that a conviction without trial is in order then his only recourse to see justice served is through the Civil Courts.

As I indicated above, this matter has been set down for trial. In my view, because of the novelty of the issues before the courts, disclosure of the evidence to be presented during the trial could reasonably be expected to interfere with this law enforcement matter. This is the case despite the fact that the charge is an absolute liability offence. In reviewing the records, however, I am not persuaded that this exemption applies to all of the information contained therein.

Accordingly, I find that the exemption in section 8(1)(a) applies only to the information contained in Records 9, 10 and pages 3, and 5 to 60 of Record 13. This information pertains to the details of the investigation into the accident and may have relevance at the trial. The remaining records contain information regarding the charges of which the appellant is clearly aware, administrative correspondence regarding the wording of the charges, and photographs. In my view, disclosure of these records could not reasonably be expected to interfere with a law enforcement matter as contemplated by section 8(1)(a).

### **INVASION OF PRIVACY**

I have found that the information in Records 9, 10 and pages 3, and 5 to 60 of Record 13 are exempt under section 8(1)(a). Therefore, I will not consider the application of the exemption in section 14(1) to the personal information contained in these records. Further, I note that, although Records 2 and 8 contain personal information, these records were created for public distribution. As such, I find that disclosure of these two records would not constitute an unjustified invasion of privacy. The remaining records at issue do not contain personal information. Accordingly, it is not necessary for me to further consider the application of this exemption.

### **SUMMARY:**

The information contained in Records 9, 10 and pages 3, and 5 to 60 of Record 13 is properly exempt under section 8(1)(a).

The exemptions in sections 8(1)(b), (f), 8(2)(a) and (c) do not apply to the records at issue.

The disclosure of the personal information in Records 2 and 8 would not constitute an unjustified invasion of personal privacy. As no other exemptions apply to Records 2 and 8, these records should be disclosed to the appellant.

Similarly, no other exemptions apply to the information in Records 1, 3, 4, 5, 6, 7, 11, 12 and pages 1, 2 and 4 of Record 13, and they should therefore be disclosed to the appellant.

### **ORDER:**

1. I order the Police to disclose Records 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and pages 1, 2 and 4 of Record 13 to the appellant by sending him a copy of these pages on or before **February 11, 1998**.
2. I uphold the decision of the Police to withhold the remaining records from disclosure.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_ January 22, 1998  
Laurel Cropley  
Inquiry Officer

**POSTSCRIPT:**

The appellant indicates in his correspondence with this office that the truck company may be involved in a civil action arising from this incident. The Police appear to acknowledge the possible need of the appellant for information contained in the records in order to defend or pursue civil action. In their representations, the Police state:

The appellant was advised time and again, that once the case has been before the courts and the appeal periods have all expired, he may reapply once again for access to the information. His request would then be considered and consent for disclosure would be sought.

Therefore, it is possible that, once the matter under the Highway Traffic Act has concluded, the appellant may be in a better position to pursue access under the Act to the above-noted records.