



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

ORDER MO-1220

Appeal MA-980339-1

South Simcoe Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the South Simcoe Police Services Board (the Police). The request was for access to the Crown brief and pre-sentence report related to a fatal motor vehicle accident. The appellant is an insurance company representing an establishment named as a defendant in a civil action filed by the family of the individual who was killed in the accident.

The Police notified the witnesses pursuant to section 21(1) of the Act, but did not receive a response from any of these individuals. The Police provided partial access to the responsive records. The Police denied access to the witness statements, claiming that disclosure of the records would constitute an unjustified invasion of privacy pursuant to section 14 of the Act, with specific reference to section 14(3)(b).

The appellant appealed the decision of the Police.

I sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

RECORDS:

The records identified as responsive by the Police consist of 14 pages of statements and eight pages of information about the individuals who gave statements.

DISCUSSION:

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 records were created during a police investigation into a motor vehicle accident in which one person was killed. The records contain the name, address and telephone number of witnesses who provided information to the Police. I find that the records contain recorded information about the deceased individual, the individual who was criminally charged, and the witnesses, and, therefore, qualifies as the personal information of all of these individuals.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Ontario Court of Justice (General Division) determined in the case of John Doe et al. v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 that 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) 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 section 14(3)(b) applies. This section states:

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 state that the statements were taken by the Police as part of an investigation that led to proceedings in a criminal court. The Police submit, therefore, that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, and its disclosure would constitute a presumed unjustified invasion of personal privacy. Additionally, the Police note that the witnesses were notified and did not consent to disclosure of their personal information.

I have reviewed the records and considered the representations of the Police. I find that the records were created as part of a police investigation into the circumstances of a fatal motor vehicle accident which was conducted with a view to determining whether criminal charges should be laid. Therefore, I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. I find further that neither section 14(4) nor section 16 apply to the personal information in the records. Accordingly, I find that the records at issue in this appeal are properly exempt under section 14(1)(f).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ June 28, 1999