



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

ORDER MO-1201

Appeal MA-980219-1

Hamilton-Wentworth Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

An insurance company made a request on behalf of an insured under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Hamilton-Wentworth Regional Police Services Board (the Police). The request was for access to the names, addresses and telephone numbers of any witnesses to a fatal automobile accident involving the insured. The insurance company also asked for any witness statements taken at the scene of the accident and a copy of the reconstruction of the accident scene. The insurance company provided the Police with a consent form signed by the insured for the disclosure of her personal information to it.

The Police located responsive records and denied access to them in full on the basis of sections 8(1)(a), (b), (f), 8(2)(a) and 14(3)(b) of the Act. The Police stated that the investigation was on-going and that the release of information may interfere with the completion of the investigation.

The insurance company appealed the denial of access.

During mediation, the insurance company narrowed the records at issue. Also, the Police subsequently advised that the accident investigation was no longer on-going and withdrew their reliance on sections 8(1)(a), (b) and (f) of the Act. These exemptions are no longer at issue in this appeal.

During the processing of this appeal, the Adjudication Review Officer contacted the insurance company to determine whether it was acting in its own interests in this matter or those of the insured. I am satisfied, as a result of these discussions, that the insurance company is acting as agent for the insured in this matter. Therefore, I will refer to the insured as the appellant.

I sent a Notice of Inquiry to the appellant and the Police. The following exemptions are at issue in this appeal:

- law enforcement report - section 8(2)(a) and
- invasion of privacy - section 14(1) with reference to section 14(3)(b).

Because the records appear to contain the personal information of the insured, the parties were also asked to address the possible application of sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) of the Act.

Representations were received from the Police.

RECORDS:

The records at issue consist of the following:

- four pages of occurrence reports;
- a two page vehicle mechanical report;
- nine pages of witness statements including a facsimile cover sheet and an acknowledgment letter;

- a two page collision statement;
- two pages with copies of six photographs; and
- one page of measurements.

PRELIMINARY MATTER:

RESPONSIVE RECORDS

The Police suggest in their representations that they provided more records to this office than were responsive to the request. It is not clear whether they take issue with the description of responsive records as identified in the Notice of Inquiry. They state:

It is felt by this institution that the mediator advised the appellant exactly what records were included in the Fatal Motor Accident Investigation and the appellant then added these to the request.

I should point out that when the Police provided these records to this office, they did not specify that particular records were considered not responsive by them. However, even if they did take this position, I do not agree with them. In reviewing the request and the records at issue, I am satisfied that the records which have been identified as at issue in this appeal are all “reasonably related” to the request (see: Order P-880). Therefore, I will consider all of the records in my discussion below.

DISCUSSION:

PERSONAL INFORMATION

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 pedestrian/motor vehicle accident in which the pedestrian was killed. The Police submit that the records contain the personal information of the deceased, several witnesses, other identifiable individuals and the appellant. The Police believe that the information relating to all of these identifiable individuals is so intertwined that it is not severable.

I do not agree with the Police in this regard. In reviewing the records, I agree that they all contain the personal information of the appellant as they describe her involvement and her actions throughout the stages of this accident. Portions of the records contain the personal identifiers of a number of witnesses, as well as their statements as to what transpired. Portions of the records describe the part of the accident involving the deceased.

However, it is clear from the records that the witnesses were not known to the appellant and that any identifying information pertaining to them is easily severable from their statements of what they observed.

Therefore, once the identifying information is removed, the witnesses can no longer be identified by the remaining information and it no longer qualifies as their personal information.

The records describe a chain of events which ultimately lead to the death of the deceased. However, for the most part, the events which transpired prior to the appellant's contact with the deceased are discrete in the record and easily severable from the portion which describes the portion of the accident in which the deceased was killed. In my view, these earlier events do not relate to the deceased in any way and are, therefore, not "about" her. Rather, they describe only the actions of the appellant and her operation of the vehicle or contain mechanical information about the vehicle. I find that these portions of the records contain only the appellant's personal information.

I have highlighted in yellow the portions of the records which contain the personal information of the appellant, the deceased, another identifiable individual and the witnesses. I will consider whether the discretionary exemption in section 38(b) applies to this information. As the remaining portions of the records contain only the appellant's personal information, section 38(b) cannot apply to them.

INVASION OF PRIVACY

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 it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's 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 [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

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;

The Police submit that the personal information in the records was compiled and is identifiable as part of an investigation into the fatal motor vehicle accident. In this regard, the Police indicate that the investigation was opened for the purpose of determining whether there was a violation of law, that being, in this case, an offence under the Criminal Code. The Police note that no charges were laid at the conclusion of their investigation.

I am satisfied that the records were created as part of a police investigation into the circumstances of a pedestrian/motor vehicle accident which was conducted with a view to determining whether criminal charges should be laid against the appellant. 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 and its disclosure would constitute a presumed unjustified invasion of personal privacy under section 14(3)(b). The presumption may still apply, even if, as in the present case, no charges were laid (Orders P-223, P-237 and P-1225). I find further that neither section 14(4) nor section 16 apply to the personal information in the records. Accordingly, I find that the portions of the records which I have highlighted in yellow are properly exempt under section 38(b).

LAW ENFORCEMENT REPORT/REFUSAL TO DISCLOSE REQUESTER'S OWN INFORMATION

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

The Police have relied on section 38(a) to deny access to the undisclosed portions of the records. Under section 38(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

The Police state that section 8(2)(a) applies to all of the records in the circumstances of this appeal. This section states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order to qualify for exemption under section 8(2)(a) of the Act, a record 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 M-84, M-1048 and P-324]

Only a report is eligible for exemption under this section. The word “report” is not defined in the Act. For a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information (Order P-200). Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

In Order M-1109, Assistant Commissioner Tom Mitchinson noted:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a “report”.

I have reviewed the different records at issue in this appeal. In my view, the first occurrence report (two pages) contains a description of the events surrounding the accident, information about the mechanical examination of the appellant’s vehicle and the police officer’s assessment of the matter based on the information as set out in the report. I am satisfied that this document contains a formal statement or account of the results of the collation and consideration of the information regarding the accident by the police officer. Therefore, I find that this record is a report and the first requirement has been met with respect to this record.

Consistent with my findings under section 38(b), I am satisfied that this record was prepared by the Police in the course of a law enforcement investigation by an agency that has the function of enforcing and regulating compliance with a law, thereby satisfying requirements 2 and 3.

As I have found that section 8(2)(a) applies to this record, it is properly exempt under section 38(a) of the Act. The Police have not numbered the records at issue in this appeal. Therefore, I will send a copy of the

two pages which comprise this record to the Police along with the highlighted copies of the remaining records.

I find that the remaining records consist primarily of descriptive information, including statements provided by several witnesses to a police officer, the observations of the police officers in attendance at the scene of the accident, photographs of the vehicle and area in which the accident occurred and a mechanical description of the condition of the vehicle. Accordingly, I find that they do not constitute a "report" within the meaning of section 8(2)(a). Therefore, I find that section 8(2)(a) does not apply, regardless of the fact that the records were prepared during the course of a criminal law enforcement investigation by an agency which, at the time, had the function of enforcing and regulating compliance with the law.

ORDER:

1. I uphold the decision of the Police to withhold from disclosure the two page occurrence report and the portions of the records which I have highlighted in yellow on the copy of these records which I have sent to the Freedom of Information and Privacy Co-ordinator for the Police.
2. I order the Police to disclose the remaining records and portions of the records to the appellant by providing her with a copy of them on or before **April 19, 1999**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records and portions of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ March 25, 1999