



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

ORDER MO-1224

Appeal MA-980231-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Toronto Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the following information: all black book incident reports, tapes that were presented as evidence, any tapes of the appellant's conversation with detectives and anything after a specific date including reports of two named detectives and the final incident report. All of the requested information relates to the appellant's complaint of a sexual assault.

The Police located responsive records and denied access to them on the basis of the following sections of the Act: 8(1)(a) and (f), 14(1)(f), with reference to 14(3)(b) and (h), 38(a) and (b). In addition, the Police indicated that some information was removed as it was not responsive to the request.

The appellant appealed the decision of the Police to deny access to the responsive records. The appellant indicated that she was also seeking access to certain photographs taken of her by the Police. These records were not originally included as being responsive to the request.

Within the time period permitted by the IPC policy as set out in the Confirmation of Appeal, the Police issued a second decision letter claiming the following additional discretionary exemptions: sections 8(1)(e) and 13.

During mediation, the appellant indicated that she was not pursuing any information which the Police had identified as being not responsive to the request. Therefore, this part of the decision is not at issue.

Subsequent to the issuance of the Mediator's Report, the appellant and the Police both advised the Mediator that the appellant had now received copies of the photographs and any issues regarding them had been resolved. Also, the Police indicated that they were withdrawing their reliance on sections 8(1)(a) and (f) of the Act. These sections are, therefore, no longer at issue.

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

RECORDS:

The responsive records consist of 47 pages of information and four audiotape recordings.

The paper records consist of Record of Arrest, Authorization for Release of Medical Information, Internal Correspondence, Memos, Officer's notebooks, Information, Exhibit List, Property Receipt, Business Card, Receipts and computer print-outs.

The audiotapes contain recordings of statements given by the appellant (Records 49 and 51), the accused (Record 50) and a witness (Record 48).

PRELIMINARY MATTER:

During the processing of this appeal, the Police became concerned about additional victimization of

the appellant should information about this matter become available or revealed to certain members of the appellant's family. To address these concerns, the appellant was requested to obtain assistance from an independent third party. She did so, and all correspondence from this office was sent to the appellant's representative.

In their representations, the Police indicate that they are not abandoning the application of sections 8(1)(e) and 13. However, they also state that "recent changes have addressed our concerns in this regard". In particular, the Police refer to a note in the Mediator's Report which was sent to the parties prior to the issuance of the Notice of Inquiry. In this note, the Mediator briefly outlined the concerns of the Police regarding the appellant's safety and indicated that the appellant had provided "written authority" for all correspondence to be addressed to her in care of her representative. The Police point out, however, that they are not in possession of any written authority which directs them to forward records to an address other than the appellant's home address.

I have reviewed the appellant's authorization for the use of her representative's address which the appellant sent to this office. In my view, as worded, it only authorizes this office to communicate with the appellant's representative. Consequently, the Adjudication Review Officer contacted the appellant's representative and authorization was given for this office to provide the Police with the representative's name and address for the purposes of communications regarding this appeal only.

In my view, the concerns of the Police have been adequately addressed. Further, I am satisfied that all issues with respect to the application of sections 8(1)(e) and 13 have been addressed, and they are no longer applicable. I have made this decision, in part, because the Police did not provide any representations on their application, and in part, after considering the appellant's representations on this issue generally.

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 records were created in connection with an investigation into the appellant's complaint that she had been sexually assaulted. They comprise information which was collected or created during the investigation, as well as information created subsequent to charges being laid against the accused. The records contain the names, addresses, telephone numbers, dates of birth and other identifying information about a number of identifiable individuals, including the appellant, as well as their statements. I find that the records contain recorded information about the appellant as well as the accused as they pertain to the investigation into the matter involving these two individuals. Some of the records also contain the personal information of the other individuals who were contacted by the Police in connection with this matter. It is apparent that the appellant and the other individuals identified in the records are all

known to one another. Therefore, even if names were removed from the records, the appellant would be able to identify the other individuals by the other information contained in the records.

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 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) 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.

Sections 14(3)(b) and (h) state that:

A disclosure of personal privacy is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) 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;
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The Police state that, as a result of complaints made by the appellant to the police, the accused was charged with several Criminal Code offences, although the Police note that the charges against the accused were subsequently withdrawn. The Police submit that the personal information contained in the records was compiled and is identifiable as part of the investigation into these alleged violations of law.

Further, the Police indicate that portions of the records make reference to an individual's country of birth and other information which would reveal personal information about that individual's racial or ethnic origin.

I agree with the Police that certain portions of the records would reveal an individual's ethnic or racial origin, and section 14(3)(h) is applicable to this information. I am also satisfied that much of the information in the records was compiled and is identifiable as part of an investigation into violations of the Criminal Code and section 14(3)(b) applies to this information. This includes the information contained in the police officers' notebooks, occurrence reports, all witness statements, including those given by the appellant, the audiotapes and all property taken by the police during the investigation. Previous orders of this office have held that the presumption may still apply, even if no charges were laid (Orders P-223, P-237 and P-1225). In my view, this reasoning is equally applicable where, as in this case, the charges were subsequently withdrawn.

I note, however, that some of the records, although compiled by the Police, were not compiled **as part of an investigation**. Rather, these portions of the records, such as the information, appearances documents, exhibits and witness lists, pertain to the subsequent charges which were laid against the accused and relate to his anticipated trial. I find that section 14(3)(b) does not apply to this information.

The Police also claim that the personal information in the records pertaining to this matter is highly sensitive (section 14(2)(f)) and that it was provided in confidence (section 14(2)(h)). In this regard, the Police state generally, that:

[t]here are few things more sensitive than criminal history information. A social stigma is attached by most people of our society to those individuals against whom allegations of misconduct are directed, in particular if the misconduct relates to criminal activity.

The Police state further that the information collected from and relating to the other individuals in the records was supplied to the investigating officers as a result of a law enforcement activity. The Police assert that these types of investigations imply an element of trust on the part of citizens to provide personal information to the police knowing that it will be protected. The Police acknowledge that the personal information in the records relates to the appellant, but take the position that it also serves to identify the other parties involved.

Finally, the Police point out that the appellant herself agrees that the information is "sensitive" and has taken steps to restrict access to it.

I agree that the disclosure of personal information obtained in the course of a police investigation into an alleged sexual assault or related to the prosecution of such a charge could reasonably be expected to cause extreme distress to, not only the accused, but anyone involved in the investigation. Therefore, I find that the personal information in the records is highly sensitive and the factor weighing in favour of non-disclosure in section 14(2)(f) is relevant. I am also convinced that individuals who provide information or statements to the police in such a matter do so with a reasonably held expectation of confidentiality, and I find the factor in section 14(2)(h) is also relevant to this information. In making this finding, I note that not all of the information was provided by the other individuals referred to in the records. In fact, portions of the

information were provided by the appellant and portions reflect the independent recordings made by the police officers investigating this matter. Section 14(2)(h) is not relevant with respect to this information.

The appellant points to the apparent unfairness in the investigation and prosecution of a sexual assault where the accused is provided with access to statements she made to the police, while she is denied complete access to any information. The appellant also outlines her concerns regarding the manner in which the Police investigated her complaint.

In my view, the appellant is confusing access under the Act to disclosure in the criminal context. I find that the rights the accused is entitled to under due process of law are not relevant to an access request for personal information under the Act. However, I find that disclosure of the personal information in the records is relevant to the appellant's ability to understand and monitor the manner in which the Police investigated her complaint.

With one exception, which I will discuss below, in weighing the appellant's rights to disclosure of the information and the factors weighing in favour of non-disclosure, I find that, in the circumstances of this appeal, the sensitivity and confidentiality of the law enforcement investigation outweigh the appellant's desire to know what the police did and how they did it.

As I indicated above, some of the personal information contained in the records was provided to the police by the appellant initially, as part of her complaint, and as a result of the subsequent investigation. All of this information qualifies for exemption under section 14(3)(b) of the Act. However, the appellant is clearly aware of the information she provided to the police.

A number of previous orders have found that non-disclosure of personal information which was originally provided to an institution by an appellant would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (see Orders M-444, M-613, M-847, M-1977 and P-1263, for example). These orders all determined that applying the presumption to deny access to information which the appellants provided to the institutions would, according to the rules of statutory interpretation, lead to an "absurd result". I find that the same reasoning applies to the personal information which was provided by the appellant in this case.

In my view, to apply the presumption in section 14(3)(b) to those portions of the records which contain information which was provided by or is about the appellant would lead to an absurd result. Accordingly, I find that this presumption does not apply to the personal information of the appellant which I have highlighted on pages 1, 2, 7, 8, 10, 14, 26, 27, 28, 41, 42, 43, 45 and 46 and the two audio taped interviews with the appellant (Records 49 and 51). I have also considered the factor in section 14(2)(f), and find that disclosure of the personal information which was provided by the appellant would not

constitute an unjustified invasion of personal privacy of another individual in the circumstances of this appeal. Accordingly, I find that section 38(b) does not apply to this information.

In conclusion, I find that the factor in section 14(2)(f) applies to all of the remaining personal information in the records, and that the presumptions in sections 14(3)(b) and (h) and the factor in section 14(2)(h) apply to some of this information.

None of the personal information contained in the records fall under section 14(4), and I find that section 16 of the Act does not apply in the circumstances of this appeal. Therefore, the remaining personal information is exempt under section 38(b) of the Act.

ORDER:

1. I order the Police to disclose Records 49 and 51 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 by sending the appellant's representative a copy of these records and portions of the records on or before **July 29, 1999**.
2. I uphold the decision of the Police to withhold the remaining records and portions of records from disclosure.
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 1.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ July 9, 1999