



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

ORDER MO-1253

Appeal MA-990151-1

Toronto 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:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Toronto Police Services Board (the Police). The request was for access to records that pertain to the appellant, “whether it being criminal, complaints and reports that were filed against [the appellant].”

The Police located 25 pages of responsive records consisting of “occurrence”, “arrest” and “Supplementary Reports”, computer generated documents and police officers’ notebooks. The Police granted access in full to one page and partial access to the remaining 24 pages. For those parts of the records to which access was denied, the Police claimed exemptions pursuant to sections 14(1) and 38(b) of the Act. In so deciding, the Police relied on the “presumed unjustified invasion of personal privacy” in section 14(3)(b) of the Act and the factor listed under section 14(2)(g) of the Act. The Police also claimed that information severed from 17 pages was not responsive to the request.

The appellant appealed this decision.

During mediation the appellant agreed not to pursue access to the information that the Police claimed was not responsive to the request, information relating to computer instructions and information relating to the notification of “spouse, guardian, parent or next of kin”. As the result of this narrowed scope, only the information severed from six pages remains at issue in this appeal.

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

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 pertain to investigations by the Police into the appellant’s conduct and his eventual apprehension under the Mental Health Act. As such, the records in their entirety contain the personal information of the appellant. The investigations involved contact with, and information provided by, other individuals (the affected persons) and I find that this information clearly qualifies as their personal information pursuant to section 2(1) of the Act. Therefore, I find that the records contain the personal information of the appellant and the affected persons.

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.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Police determine that the disclosure of the information would constitute an

unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Section 38(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the head the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, 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) Divisional Court determined in the case of John Doe 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.

If none of the presumptions in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

As stated above, in deciding that disclosure of the records would be an unjustified invasion of personal privacy, the Police relied on the presumption found in section 14(3)(b) of the Act and the factor listed under section 14(2)(g) of the Act.

Section 14(3)(b) of the Act states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

The Police submit:

These records were created and compiled by the police in the course of apprehending the appellant under the Mental Health Act. The information provided by the individuals
[IPC Order MO-1253/November 29, 1999]

identified within the documents was supplied by these persons for that purpose. These records were therefore compiled and identifiable as part of a law enforcement investigation and, in accordance with section 14(3)(b) of the Act, disclosure is presumed to constitute an unjustified invasion of personal privacy.

The appellant has made no submissions and none of the personal information contained in these records falls under section 14(4) of the Act. In addition, the appellant has not raised the possible application of section 16 of the Act.

I am satisfied that the information provided by the affected persons about the conduct of the appellant was compiled and is identifiable as part of an investigation by the police into a possible violation of law. Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information even though, in this case, the police investigation resulted in the apprehension of the appellant under the Mental Health Act, and not a charge under the Criminal Code. Consequently, in the circumstances, it is not necessary for me to consider the application of any of the factors weighing either for or against disclosure under section 14(2).

I understand the appellant's desire to obtain this information. The Police have granted the appellant access to well over three quarters of the information contained in the records. However, in the circumstances of this appeal, where a presumed unjustified invasion of personal privacy has been established under section 14(3), the Divisional Court's decision in John Doe indicates that the factors favouring disclosure under section 14(2) cannot overcome the presumption.

Accordingly, I find that the information contained in the records qualifies for exemption under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by _____
Holly Big Canoe
Adjudicator

November 29, 1999