



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

# **FINAL ORDER MO-1328-F**

**Appeal MA-990163-1**

**Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

This order represents my final order in respect of the outstanding issues from Interim Order MO-1318-I.

## **BACKGROUND:**

The appellant, by his counsel, 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 all records relating to his arrest and subsequent detention by the Police. Specifically, the appellant sought access to records which would document his treatment by Police and any injuries which he received while in custody. The appellant alleges that he was physically and sexually attacked and tortured in the course of his arrest and interrogation by members of the Police.

The Police denied access to the requested records, claiming application of the exemptions provided by sections 8(1)(a), (b), (c), (d) and (l) (law enforcement), 8(1)(f) (right to a fair trial), 9(1)(d) (intergovernmental relations) and 14(1) (invasion of privacy) of the Act to some or all of the records. The Police also denied access to some of the information found in the records, on the basis that it was not responsive to the request.

The appellant appealed the decision of the Police, stating that the exemptions should not apply and requesting a review of the non-responsive records.

After sending a Notice of Inquiry, receiving representations from both parties, and reviewing the records, I issued Interim Order MO-1318-I. In that order, I found that the records satisfied the requirements of section 14(3)(b) of the Act, but that the Police had improperly processed the request under Part I rather than Part II of the Act. As a consequence, the Police had failed to exercise discretion under section 38(b) of the Act, which provides the Police with discretion to balance two competing interests - the appellant's clients' right of access to their personal information and other identifiable individuals' right to privacy. If the Police were to conclude that the balance weighs in favour of disclosure, the records could be released to the appellant, even if the Police have determined that this disclosure would represent an unjustified invasion of the other individuals' privacy.

I included a provision in Interim Order MO-1318-I requiring the Police to exercise discretion under section 38(b) with respect to the records and to provide me with representations as to the factors considered in doing so. I received representations from the Police in compliance with this provision.

## **DISCUSSION:**

### **Exercise of Discretion**

The Police have provided me with their representations on the exercise of discretion with respect to those records which contain the appellant's personal information. Essentially, they argue that a number of considerations were weighed in determining whether the appellant ought to be granted access to these records against the privacy interests of the other identifiable individuals whose personal information is also included therein. Specifically, the Police point out that in circumstances involving the commission of a crime,

the personal information of other individuals is to be considered “highly sensitive” within the meaning of section 14(2)(f). The Police indicate that section 14(2)(d) has no application to the records at issue as the appellant did not provide sufficient evidence to demonstrate its relevance.

Finally, the Police state that there exists no compelling public interest in the disclosure of the records, within the meaning of section 16 of the Act. The appellant has only raised his own private interests regarding the disclosure of the records. The Police are of the view that the appellant did not provide any information which would demonstrate that the disclosure of the records would satisfy a public, rather than his own private interest. They conclude by adding that “Any public interest that may be present is insufficient to outweigh the privacy rights of the other individuals identified in the records.”

An institution’s exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility to ensure that this exercise of discretion is in accordance with the Act. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion [Order 58].

Having reviewed the reasons and rationale provide by the Police for exercising discretion under 38(b) of the Act, I find nothing improper. The Police have taken into account the competing interests of access and privacy protection, and have balanced these interests in favour of protecting the privacy of the various individuals placing calls to the appellant’s clients. It is also clear that the Police have taken the particular circumstances of this case into account in exercising discretion in this manner.

**FINAL ORDER:**

I uphold the decision of the Police and find that the records qualify for exemption under section 38(b) of the Act.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ August 1, 2000