



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

# **ORDER MO-1386**

**Appeal MA-000190-1**

**South Simcoe Police Services**



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## **NATURE OF THE APPEAL:**

The South Simcoe Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a particular incident which occurred outside a named establishment. The requester is a solicitor representing the establishment, which has been named as a defendant in a civil action filed by an individual who was injured in the incident.

The Police located a number of responsive records and, pursuant to section 21(1) of the *Act*, gave notice to 12 individuals (the affected persons) seeking their views on the disclosure of the requested information. None of the affected persons consented to the disclosure of their information. Subsequently, the Police denied access to the majority of the records, claiming the application of the following exemptions contained in the *Act*:

- section 8(2)(a) - law enforcement; and
- section 14(1) - invasion of privacy.

The Police referred to the presumptions in sections 14(3)(a) (medical condition or treatment), 14(3)(b) (investigation into possible violation of law) and 14(3)(d) (relates to employment or educational history) and the factor against disclosure in section 14(2)(i) (the disclosure of the information may unfairly damage the reputation of any person referred to in the record) in support of the section 14(1) exemption claim. The Police also withheld certain portions of the records on the basis that they are not responsive to the request.

The requester (now the appellant) appealed the decision of the Police to deny access to the records.

During the mediation of the appeal, the Police indicated that they were no longer relying on the exemption contained in section 8(2)(a) or the presumptions in sections 14(3)(a) and (d). In addition, the appellant advised that he was not pursuing access to Records 144, 150, 152, 153, 165 and 166, as they contained only information which was not responsive to the request. The Police also disclosed to the appellant Records 7, 35, 36, 41 and 42 in full, and additional portions of Record 40.

A Notice of Inquiry, summarizing the facts and issues in the appeal, was sent to the Police, initially. In response, the Police submitted representations, which were provided to the appellant along with a copy of the Notice of Inquiry. The appellant provided representations, which were forwarded to the Police for reply. Reply submissions were made by the Police.

## **RECORDS:**

The records remaining at issue in this appeal consist of witness statements, police occurrence reports, court synopses and police officers' notes which comprised the investigation records maintained by the Police.

## **DISCUSSION:**

## **PERSONAL INFORMATION**

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

As indicated above, the records at issue in this appeal consist of witness statements, police occurrence reports, court synopses and police officer's notes. In my view, the records contain the personal information of a number of identifiable individuals, including the names of individual witnesses and subjects of the investigation. The records also contain other information about these individuals, including addresses, telephone numbers, dates of birth and their involvement in the events under investigation. None of the records contain the personal information of the appellant.

## **INVASION OF PRIVACY**

Where a requester seeks the personal information of other individuals, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only exception with potential relevance in this appeal is section 14(1)(f) which reads:

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) and (3) provide guidance in determining whether disclosure would result in an unjustified invasion of privacy. Section 14(2) provides some criteria for an institution 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, and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) (*John Doe v. Ontario Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767).

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption (see Order PO-1764).

If none of the presumptions in section 14(3) applies, the institution 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.

The Police have relied on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*. This section states:

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

In his submissions, the appellant accepts that certain personal information, such as age, marital status, address and employment of specific witnesses may be severed from the records. The appellant goes on, however, to state the following:

... The individual names and their relevant observations; however, should not be subject to censor. This is particularly so when the criminal charges have been disposed of and the individuals have not responded to the inquires from the Police Service regarding disclosure of information.

The appellant also feels that disclosure of the records at issue in this appeal is comparable to disclosure of records relating to motor vehicle accidents. The appellant submits that in the normal course, after an accident, an interested party can obtain a copy of the motor vehicle accident report as well as copies of the witness statements obtained by the police. The appellant argues that the records in the present appeal should be treated on the same basis. The appellant also feels that the information which was withheld from the records by the Police "is well beyond the protection of personal information that the provisions of the *Act* cited by the Police Service contemplated".

The Police submit that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, in this case, aggravated assault. The Police submit, therefore, that the presumption in section 14(3)(b) applies to the records.

Based on my review of the records, I find that the information contained in the records was clearly compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code*. The fact that the criminal charges have been disposed of does not negate the fact that the personal information relating to the affected persons was compiled for the purpose of an "investigation 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.

The appellant appears to argue that the fact that certain affected parties did not respond to the inquires from the Police regarding disclosure of their information should be a factor considered by the Police which favours disclosure. As I indicated above, once a determination has been made that the presumption in section 14(3)(b) applies, it cannot be rebutted by any listed or unlisted factors in section 14(2).

With respect to the appellant’s submissions concerning disclosure of records relating to motor vehicle accidents, I note that a number of previous orders of this office have involved requests for such records. Where these records have contained the personal information of individuals other than the requester, as is the case in the present appeal, they have not been ordered disclosed [see for example Orders M-932, P-1470, MO-1220, MO-1260].

Also, I do not agree with the appellant’s submission that the information which was severed from the records by the Police “is well beyond the protection of personal information that the provisions of the Act cited by the Police Service contemplated”.

In Order PO-1762-R, Adjudicator Laurel Cropley made the following comments with respect to records compiled and identifiable as part of the “law enforcement” process, as well as the presumption against disclosure described in subsection 21(3)(b) of the provincial *Act* (which is the equivalent of section 14(3)(b) of the *Act*):

One of the fundamental purposes of this *Act* as set out in section 1(b) is:

- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The extent to which “law enforcement” information should be protected under the *Act* was discussed in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen’s Printer, 1980) (the Williams Commission Report):

In addition to investigative records relating to individuals who have engaged in criminal activity, or are suspected of having done so, information concerning witnesses, informants, relatives or associates of suspected parties or victims will also be recorded ... The interest of such individuals in obtaining access to law enforcement files is an aspect of the informational privacy problem which will be the subject of discussion in

subsequent sections of this report ... As will be seen, however, we feel that the law enforcement exemption to the freedom of information scheme should be paralleled by a similar exemption from the general rule that persons about whom personal information is recorded by government should be afforded an opportunity to see their files.

In commenting on whether personal privacy interests in law enforcement matters should be protected under the law enforcement exemption or a more general personal privacy exemption, the Williams Commission Report concluded:

... the exemption of sensitive personal information [in the law enforcement context] is a more general problem and, for this reason, a general exempting provision relating to privacy invasion is included ... in our proposals. It is our view, therefore, that it would be redundant to make reference to the privacy protection issue in the context of the law enforcement exemption.

In discussing how best to balance the interests in disclosure against the privacy interests of individuals about whom the information relates, the Williams Commission Report recognized that a general balancing test should be established and applied in making this determination. However, it also noted that:

personal information which is generally regarded as particularly sensitive should be identified in the statute and made the subject of a presumption of confidentiality.

By including the category of information referred to in section 21(3)(b), the legislature has clearly identified records compiled and identifiable as part of the "law enforcement" process as particularly sensitive.

I agree with Adjudicator Copley's comments. As indicated above, I find that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, the section 14(3)(b) presumption applies to the information which was withheld by the Police.

In the circumstances, none of the considerations in section 14(4) apply, and the appellant has not raised the possible application of section 16. Accordingly, I find that disclosure of the information in the records would constitute an unjustified invasion of personal privacy under section 14(1) of the *Act*.

**ORDER:**

1. I uphold the decision of the Police.

Original signed by: \_\_\_\_\_

Irena Pascoe  
Adjudicator

\_\_\_\_\_ January 9, 2001