



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

ORDER MO-1363

Appeal MA-000145-1

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) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to a specified occurrence report prepared by the Police in the course of their investigation of an alleged sexual assault which took place on a school bus. The requester's young son was the alleged victim. The Police located the requested three-page occurrence report and denied access to portions of it under the mandatory exemption in section 14(1) of the *Act* (invasion of privacy), with reference to the presumption in section 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law).

The appellant appealed the Police decision not to grant access to all of the information contained in the record.

During the mediation of the appeal, the appellant agreed that she was no longer pursuing access to a Police "10-code" located at the bottom of page one of the record. In addition, the Police provided the appellant with an amended decision letter in which it applied the invasion of privacy exemption in section 38(b) of the *Act*, as it appeared that the record contained the personal information of the appellant and her son, as well as other identifiable individuals.

I decided to seek the representations of the Police and another individual whose rights may be affected by the disclosure of the information contained in the records (the affected person) initially.

Both the Police and the affected person provided me with representations. The affected person consented to the disclosure of the statement which she provided to the Police but declined to agree to the release of her address and telephone number to the appellant.

The non-confidential portions of the representations of the Police were shared with the appellant to assist her in making her submissions. The appellant provided me with representations responding to the issues raised in the Notice of Inquiry and also raised the possible application of section 16 of the *Act*, the "public interest override". Similarly, the non-confidential portions of the appellant's representations were shared with the Police in order to assist them in preparing their reply submissions on the possible application of section 16 to the undisclosed information. The Police addressed this issue in their reply representations.

The record at issue in this appeal consist of the undisclosed portions of pages one and two of the occurrence report requested by the appellant.

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.

The undisclosed portions of the occurrence report relate to a police investigation into a matter involving the appellant's young son. I find that they contain information about the appellant and her son as they describe their involvement in the incident giving rise to the investigation as well as the investigation itself. The undisclosed portions of the record also contain the personal information of other identifiable individuals who were involved in the incident and the police investigation. This information consists of their addresses and telephone numbers (section 2(1)(d)), their age, race and date of birth (section 2(1)(a)) and their name and occupation, as well as their observations and their actions and involvement in the matter (section 2(1)(h)).

By way of summary, I find that the responsive record contains the personal information of the appellant, her son and other identifiable individuals.

INVASION OF PRIVACY

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 institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which 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 14(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Divisional Court has stated 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 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.

Section 14(1)(a)

As noted above, the affected person has consented to the disclosure of the statement which she provided to the Police though not her address and telephone number. I find that the statement falls within the exception

in section 14(1)(a) to the general proscription against the disclosure of personal information. This section states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

As the affected person has given her written consent to the disclosure of her statement to the appellant, I find that the exception in section 14(1)(a) applies to that information. I have provided the Police with a highlighted copy of page 1 of the occurrence report in which I have indicated in yellow those portions of this page which contain the affected person's statement. I will order that the highlighted portion of page 1 be disclosed to the appellant.

I will now consider the application of section 38(b) to the remaining undisclosed portions of the occurrence report.

Sections 38(b) and 14(3)(b)

In this case, the Police have cited the presumption in section 14(3)(b) in conjunction with section 38(b). These sections read:

- 38. A head may refuse to disclose to the individual to whom the information relates personal information,
 - (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- 14.(3) A disclosure of personal information 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.

The occurrence report which forms the record in this appeal relates to the investigation commenced by the Police in response to the appellant's complaint to them. I am satisfied that the investigation originated as an investigation into a possible violation of law (the *Criminal Code*) and that, because of the age of the alleged

offender, it was determined that no charges could or would be laid. Accordingly, I find that the personal information contained in the undisclosed portions of the occurrence report was compiled and is identifiable as part of an investigation into a possible violation of law within the meaning of section 14(3)(b).

The Police have described in detail the reasons behind their decision not to disclose the remaining portions of the records to the appellant. In their view, this information is extremely sensitive and the disclosure which was made would enable the appellant to understand what had transpired. In the circumstances of this appeal, I find that the Police properly exercised their discretion under section 38(b) in balancing the privacy interests of the individuals involved against the access rights of the appellant.

Compelling Public Interest

The appellant raises several arguments in support of her contention that there exists a public interest in the disclosure of the remaining personal information in the records which is sufficient to outweigh the purpose of the invasion of privacy exemption in section 38(b). She submits that:

The appellant seeks the information for two purposes: first, to assist and facilitate the therapy and treatment which her child is receiving from his mental health professionals, and to assist the appellant in understanding and responding to her child's trauma; second, to assist in assessing the child's options for legal redress, including litigation.

The appellant also relies upon Article 3 of the *Convention on the Rights of the Child*, Can. T. S. 1992, No. 3, to which Canada is a signatory, which states that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The appellant argues that the disclosure of the information sought in this appeal is in the best interests of the appellant's child and that it satisfies a compelling public interest that has been recognized by Canada and the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R.(4th) 193 at 231.

The Police submit that there is no compelling public interest in the disclosure of the information contained in the occurrence report which clearly outweighs the purpose of the personal information exemption. They argue that the thresholds set in place by the Commissioner's office regarding the definition of "compelling" and "public interest" have not been met.

Section 16 of the *Act* states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In Order P-984, Adjudicator Holly Big Canoe discussed the meaning of section 16, as follows:

In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act*'s central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

There is nothing in the material before me demonstrating a compelling **public** interest which outweighs the protection of personal privacy. Rather, it is apparent from the records that this is essentially a private matter. I find that there does not exist a sufficient public interest in the subject matter of the records which would outweigh the purpose of the personal privacy exemption in section 38(b).

ORDER:

1. I order the Police to provide the appellant with access to that portion of page 1 of the record which I have highlighted in yellow on the copy provided to the Police Freedom of Information and Protection of Privacy Co-ordinator by December 19, 2000 but not before December 14, 2000.
2. I uphold the decision of the Police to deny access to the remainder of the record.
3. In order to verify compliance with Provision 1, I reserve the right to require the Police to provide me with a copy of the severed version of page 1 of the record which is disclosed to the appellant.

Original Signed By: _____ November 14, 2000
Donald Hale
Adjudicator