



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

ORDER MO-1414

Appeal MA_000226_1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to a motor vehicle accident. More specifically, the requester (who is represented by counsel) sought access to the notebook entries of the police officer who attended at the scene of the accident.

The Police located one responsive record consisting of nine pages. Pursuant to section 21(1) of the *Act*, the Police notified three individuals (the affected persons) seeking their views on the disclosure of the requested information. None of the affected persons returned a response and the Police decided to deny access to the requested records claiming the application of the mandatory exemption in section 14(1) (personal privacy) in conjunction with the exemption in section 38(b), of the *Act*. The Police also relied on the exemption at section 8 (law enforcement) in conjunction with section 38(a).

The requester, now the appellant, appealed the Police's decision.

Mediation of the appeal was not successful and I sent a Notice of Inquiry to the Police, initially, summarizing the facts and issues in this appeal. In response, the Police submitted representations, which were provided to the appellant, in their entirety, along with a copy of the Notice of Inquiry. The appellant's legal counsel also submitted representations.

RECORDS:

The record at issue consists of nine pages of a police officer's notebook. It identifies the individuals who were present at the accident (the affected parties) and includes their addresses and telephone numbers.

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.

I find that the record contains the names, addresses and telephone numbers of the affected persons. I am satisfied that the information is "about" these individuals [paragraph (d)], and the requested information therefore falls within the definition of "personal information".

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED 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.

In this appeal, the Police have relied on 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 Police submit:

The records at issue include an officer's memorandum book notes which contain the personal information of parties involved in an accident which was investigated

by this Police Service. The information was collected as part of the investigation into a possible violation of law. When the officer attends the scene, he does so to investigate whether a violation of law has been committed, in this case either the *Criminal Code* or the *Highway Traffic Act*. Only after the investigation is completed can the officer determine whether a violation of law has taken place and proceed accordingly.

In her representations, the appellant indicates that she has commenced a civil action against the driver of the vehicle and that the “proper resolution of civil actions arising from motor vehicle accidents depends upon the orderly production of witness information from police records.” Her request is based on the following:

First, reference to how the accident occurred will help the requester reconstruct the events involved in the accident and will therefore assist in the proper trial of the civil action. Second, reference in the notebook to witnesses is especially important for the requester because their identities are needed so that they may be called as witnesses in the civil action, if required. I have reviewed the nine pages at issue and am satisfied that the personal information contained in them was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code* or the *Highway Traffic Act* (see for example Orders MO-1303, MO-1192, MO-1386). Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information. This presumption still applies, even if no charges are laid (Orders P-223, P_237 and P_1225).

The appellant’s counsel also states that the motor vehicle accident occurred almost two years ago and therefore there is no basis for the Police to withhold the names of witnesses. Under section 2(2) of the *Act*, however, personal information ceases to be information about an individual only after the individual has been dead for more than thirty years.

In the circumstances, I find that the Police have properly exercised this discretion under section 38(b) of the *Act* in deciding to withhold the information on the requested record.

LAW ENFORCEMENT

In addition to section 38(b) of the *Act*, another exemption to the general right of access is found in section 38(a) of the *Act*, under which the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

The portion of the record for which the Police have claimed the exemption provided in section 8(1)(l) consists of a message code (referred to as a “ten code”) used by police officers in their communications with one another.

The Police submit that “ten-codes” are used by police sources as a way of efficiently communicating with each other in a fashion which, if intercepted, would not permit non-police personnel to determine the content or importance of the communication. The representations of the Police point out that the meaning of the “ten-codes”, if disclosed, could facilitate the commission of unlawful acts.

The appellant responded by stating that, “in the event that this information (“ten codes”) does not relate to the identity of a witness, the requester will abandon this portion of its appeal.”

Previous orders of this office have dealt with the issue of requesting access to “ten-codes” (Orders M-393, M-757, PO-1777). I agree with the approach adopted in these orders that disclosure of “ten-codes” would leave police officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out by communicating with each other on publicly accessible radio transmission space.

Based on the foregoing, I find that the Police, in applying section 8(1)(l), have properly exercised this discretion under section 38(a) of the *Act*.

ORDER:

I uphold the decision of the Police to withhold the record.

Original signed by: _____
Dora Nipp
Adjudicator

_____ April 4, 2001