



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1552

Appeal MA-020044-1

Waterloo Regional 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Waterloo Regional 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 the police investigation of a motor vehicle accident involving an identified individual, including “the charges laid, breathalyzer results, witness statements – all information concerning this accident and the disposition in the Kitchener courts on [a specified date]”. The Police responded by advising the appellant that it could neither confirm nor deny the existence of responsive records, pursuant to sections 8(3) and 14(5) of the *Act*.

The requester, now the appellant, appealed the decision of the Police.

Mediation was not successful and the appeal is now being moved to the adjudication stage of the process. In response to a Notice of Inquiry, the Police provided me with representations which were then shared, in part, with the appellant. Portions of the submissions of the Police were withheld due to confidentiality concerns. The appellant also made representations in response to the Notice of Inquiry.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD – INVASION OF PRIVACY

The Police rely on section 14(5) to refuse to confirm or deny whether any record responsive to the appellant’s request exists. This section states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the *Act*. By invoking section 14(5), the Police are denying the appellant the right to know whether a record exists, even if one does not.

For this reason, in relying on section 14(5), the Police must do more than merely indicate that the disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. The Police must establish that the disclosure of the mere existence or non-existence of the requested record would convey information to the requester, the disclosure of which would constitute an unjustified invasion of personal privacy (Order M-328, M-1096, MO-1179 and MO-1395).

An unjustified invasion of personal privacy can only result from the disclosure of personal information. Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

Records of the nature requested, if they exist, would contain information about whether the identified individual had been involved in a motor vehicle accident and had been charged with a criminal offence as a result. I find that such information, if it exists, would qualify as the personal information of the identified individual.

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 personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the *Act* applies to the personal information.

The Police submit that, in the present circumstances, the disclosure of personal information of the type requested is presumed to constitute an unjustified invasion of personal privacy as the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, as provided for in section 14(3)(b). This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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 my view, if records responsive to the request exist, they would fall within the ambit of the presumption as they would have been compiled by the Police as part of an investigation into a possible violation of law, in this case, the *Criminal Code*. I further note that records of the type requested are not among those listed in section 14(4) and the appellant has not raised the possible application of section 16. Therefore, I find that disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy under section 14(1).

Having determined that the disclosure of records of the type requested, if they exist, would constitute an unjustified invasion of personal privacy, it is now necessary to determine whether disclosure of the mere existence or non-existence of responsive records would also constitute an unjustified invasion of personal privacy.

By informing the appellant of the existence or non-existence of records responsive to the request, the Police would disclose personal information about this individual, specifically, whether or not that individual had been the subject of a law enforcement investigation into a possible violation of law.

In my view, information of this sort is “highly sensitive” as contemplated by section 14(2)(f) of the *Act* and its disclosure could reasonably be expected to result in unfair pecuniary or other harm to the individual to whom it relates under section 14(2)(e) of the *Act*. The appellant has not made reference to any of the listed factors in section 14(2) or to any unlisted considerations favouring the disclosure of the fact that the records requested exist or do not exist. Accordingly,

as only factors favouring the non-disclosure of this information are present in this appeal, I find that the disclosure of the existence or non-existence of responsive records would constitute an unjustified invasion of the personal privacy of the identified individual under section 14(1).

Accordingly, I am satisfied that the Police have established the requirements of section 14(5) of the *Act*. Because of the manner in which I have addressed the application of section 14(5), it is not necessary for me to determine whether section 8(3) is also applicable to the present appeal.

ORDER:

I uphold the decision of the Police to refuse to confirm or deny the existence of responsive records.

Original signed by: _____
Donald Hale
Adjudicator

_____ June 19, 2002