



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1565

Appeal MA-010279-1

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 records relating to the Police investigation into two specified domestic dispute incidents. The Police located the records responsive to the request and granted access to them, in part. Portions of the investigating officer's notes were described by the Police as being not responsive to the request as they related to other incidents involving the investigating officers which took place on the dates in question. Access to the remaining portions of the records was denied on the basis that the information was exempt from disclosure under the following exemptions contained in the *Act*:

- Facilitate commission of an unlawful act – section 8(1)(l);
- Invasion of privacy – sections 14(1) and 38(b), relying on the presumption in section 14(3)(b);
- Discretion to refuse requester's own information – section 38(a).

The requester, now the appellant, appealed the decision of the Police to deny him access to the undisclosed portions of the records. Mediation of the appeal was not successful and the matter was moved to the inquiry stage of the appeal process.

I decided to seek the representations of the Police, initially, as they bear the onus of demonstrating that the exemptions claimed to apply to the records are, in fact, applicable. The Police made submissions, portions of which were shared with the appellant. The undisclosed parts of the representations of the Police were withheld from the appellant as they contained specific information included in the records at issue, consisting of the undisclosed portions of certain occurrence reports and police officer notebooks, itemized as Records 1, 2 and 4-30. The appellant did not provide me with representations in response to the Notice of Inquiry.

DISCUSSION:

PERSONAL INFORMATION

The personal privacy exemptions in sections 14(1) and 38(b) apply only to information which qualifies as "personal information", as defined in 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 [paragraph (c)] 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 [paragraph (h)].

The Police submit that the undisclosed portions of the records contain the personal information of individuals other than the appellant, including their names, addresses, dates of birth and other personal information. Based on my review of the contents of the records, I find that they contain the personal information of the appellant and other identifiable individuals within the meaning of section 2(1).

INVASION OF PRIVACY

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 requester 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.

Section 38(b) of the *Act* introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the Police determine that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the Police the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, 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 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 whose disclosure is presumed to constitute an unjustified invasion of personal privacy. 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 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 Police 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 rely on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*, stating that the records were created following "complaints of domestic incidents which involved the requester. Investigations were undertaken to determine if an offence under the *Criminal Code of Canada* was committed; i.e. assault, threatening or other possible charges." The Police rely on Order M-508 in support of its position that, despite the fact that charges were

not laid, the presumption in section 14(3)(b) still applies to records created as part of a criminal investigation. Section 14(3)(b) 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, the presumption in section 14(3)(b) applies to the undisclosed information remaining at issue in the records. The records were clearly compiled by the Police and are identifiable as part of an investigation into a possible violation of law, the *Criminal Code*. I find that the exceptions described in section 14(4) do not apply to the records and the appellant has not raised the possible application of the “public interest override” provisions in section 16.

As a result, I find that the undisclosed portions of the records are exempt from disclosure under the discretionary exemption in section 38(b). The Police have provided me with submissions regarding the manner in which they exercised discretion not to disclose the records. I find nothing improper in the manner in which that discretion was exercised.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

_____ August 30, 2002