



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1737

Appeal MA-030015-1

Ottawa Police Service



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NATURE OF THE APPEAL:

The Ottawa Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a law firm on behalf of an individual who was injured in a motor vehicle accident. The requester sought access to a copy of the entire police file regarding the accident, including:

...information concerning the police investigation of the accident, the names, addresses, phone numbers and copies of statements of any independent witnesses and that of the driver, all police notes, observations, statements and photographs, measurements and test results that have been made in assessing how the accident occurred.

The Police located the responsive records and notified a number of third parties under section 21 of the *Act*. After receiving responses from some of the third parties, the Police decided to grant access, in part, to the information requested. Access to the remaining records and parts of records was denied under the following exemptions in the *Act*:

- section 8(1)(l) – facilitate commission of an unlawful act;
- section 8(2)(a) – law enforcement report;
- sections 14(1) and 38(b) – invasion of privacy, taken in conjunction with the presumption in section 14(3)(b) – information compiled as part of an investigation into a possible violation of law;
- section 38(a), in conjunction with the section 8 exemptions claimed – discretion to refuse requester's own information/law enforcement

The appellant appealed the decision of the Police to deny access to the undisclosed information.

During the mediation stage of the appeal, the Police prepared an index of records and provided a copy to the appellant and this office. The index of records identified 78 pages of responsive records. Of the records identified as responsive in the index, 29 pages (pages 1-12, 22, 32, 37, 43-48, 52-54, 65-66, 74-75 and 77) were disclosed in their entirety, 30 pages (pages 15-17, 19, 24-27, 29-30, 33, 36, 38, 42, 55-64, 67-69, 73, 76 and 78) were partially disclosed, and 19 pages (pages 13-14, 18, 20-21, 23, 28, 31, 34-35, 39-41, 49-51 and 70-72) were withheld in their entirety. The index also set out the exemptions claimed for each record.

Also during mediation, the Police withdrew their reliance on the exemptions claimed for those records where the consent of an affected party had been obtained. As a result, the Police disclosed all of pages 21 and 49, and portions of pages 16, 27 and 69 to the appellant.

As further mediation was not possible, the appeal was moved into the adjudication stage of the process. I decided to seek the representations of the Police initially. The Police submitted representations, which were shared, in their entirety, with the appellant along with a copy of the Notice of Inquiry. I did not receive any submissions from the appellant.

RECORDS:

The records remaining at issue consist of:

- Safety Check List – Vehicle Inspection, and Notes (pages 13-14);
- A General Occurrence Report (pages 15-20, 23-31, 33-36 and 38-42)
- Statement of Witness (pages 50-51);
- Officer's Notes - Constable #1 (pages 55-60);
- Officer's Notes - Constable #2 (pages 61-64 and 67);
- Officer's Notes - Constable #3 (page 68);
- Officer's Notes - Constable #4 (pages 69-72);
- Officer's Notes - Constable #5 (page 73); and
- Officer's Notes – unidentified (pages 76 and 78).

DISCUSSION:

PERSONAL INFORMATION

The Police maintain that sections 14(1) and 38(b) apply to justify denying access to the remaining information in the records. In order to assess whether these provisions apply it is necessary to determine whether the records contain personal information and, if so, to whom does the personal information relate.

Under section 2(1) of the *Act*, "personal information" is defined as recorded information about an identifiable individual, including the individual's name if 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 have reviewed the contents of the undisclosed records and portions of records and find that the remaining information qualifies as the personal information of individuals other than the appellant. This information includes the dates of birth, addresses, home telephone numbers and other information about these individuals. Many of the records contain information provided by individuals other than the appellant about the accident, and I am satisfied, based on my review of their contents, that this information is also "about" those individuals within the meaning of section 2(1). Some of the records, or parts of records, also contain the personal information of the appellant as they describe the events surrounding the accident in which she was involved.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY/DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

Section 36(1) of the *Act* gives individuals a right of access to their own personal information. Section 38, however, provides certain exceptions to the section 36(1) right of access. Under section 38(b) of the *Act*, where a record contains the personal information of both the appellant

and of other individuals, the Police have the discretion to deny the appellant access to that information if they determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must determine whether disclosure would constitute an unjustified invasion of another individual's personal privacy (Orders M-1146 and MO-1727).

Sections 14(2) and (3) 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(3)(b) of the *Act* provides that the disclosure of personal information which was "compiled and is identifiable as part of an investigation into a possible violation of law" is *presumed* to 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].

The Police rely on the presumption in section 14(3)(b) as the basis for their contention that the disclosure of the remaining information would result in an unjustified invasion of the personal privacy of the individuals whose personal information is contained in the records. This section provides that:

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;

The Police submit that:

This information was collected for the sole purpose of interviewing all parties and ascertaining if charges are warranted.

Police investigation reports into the conduct of citizens are both confidential and privileged to the investigative body to maintain fairness and the presumption of innocence. The information was compiled and is identifiable as part of an investigation into a possible violation of law.

The personal information of other third parties was compiled by members of the Ottawa Police Service during an investigation into a motor vehicle collision and used to determine whether an offence under the *Criminal Code of Canada* or *Highway Traffic Act* may have been committed. The information contained in these records was used to investigate this accident and prosecute the offender(s) should charges be laid.

As noted above, I did not receive any representations from the appellant.

It should be noted that the appellant was granted access to those portions of the records containing only her personal information, as well as that of the individuals who consented to the disclosure of their own personal information. Based on my review of the records and the representations of the Police, I find that the section 14(3)(b) presumption applies to the undisclosed personal information contained in the records, since this information was compiled and is identifiable as part of a police investigation into whether criminal charges ought to be laid following the motor vehicle accident involving the appellant. Whether or not any criminal or quasi-criminal proceedings were commenced does not have a bearing on the issue, since section 14(3)(b) only requires that there be an investigation into a possible violation of law (Orders PO-1849 and MO-1727).

As a result, I find that the records containing only the personal information of individuals other than the appellant is exempt from disclosure under section 14(1). In addition, I conclude that those records containing the personal information of other identifiable individuals, along with that of the appellant, are exempt from disclosure under section 38(b).

The Police have provided submissions on the manner in which they exercised their discretion under section 38(b). After reviewing the representations from the Police in support of their decision under section 38(b), I am satisfied that the Police have exercised their discretion appropriately in deciding to withhold access to the undisclosed information.

Because of the manner in which I have addressed the application of sections 14(1) and 38(b) to the records, it is not necessary for me to consider whether they are also exempt under sections 8(1)(l), 8(2)(a) or 38(a).

ORDER:

I uphold the decision of the Police to deny access to the remaining information in the records.

Original Signed by: _____
Donald Hale
Adjudicator

January 9, 2004 _____