



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

# **ORDER MO-1687**

**Appeal MA-020388-1**

**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 information relating to an incident involving the requester.

The Police issued a decision letter in which they identified that access to the records was denied, and indicated that the following exemptions applied to the records in their entirety: section 8(2)(a) (law enforcement), sections 14(1) and 38(b) (invasion of privacy) (with reference to the presumption in 14(3)(b)), and section 38(a) (discretion to refuse requester's own information). The Police also informed the requester that portions of the records were not responsive to the request.

The requester (now the appellant) appealed the Police's decision to deny access to the records.

In the course of processing the appeal, the Police issued a supplementary decision letter to the appellant. In this letter, they identified that an additional exemption, section 8(1)(l) (facilitate commission of an unlawful act), applied to the records in their entirety.

No issues were resolved during mediation and the appeal proceeded to the inquiry stage of the process. I decided to send a Notice of Inquiry to the Police, initially, and received representations in response. I then sent the Notice of Inquiry, together with the non-confidential portions of the Police's representations, to the appellant. The appellant did not provide me with any representations.

## **RECORDS:**

The records remaining at issue in this appeal are a three-page General Occurrence Report, the responsive portions of two pages of an officer's notebook, and three pages of an I/CAD Event Details Report.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 38(b) applies only to information that qualifies as personal information. Under section 2(1) of the *Act*, personal information is defined, in part, to mean 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 (section 2(1)(h)).

I have reviewed the contents of the records and have determined that each of them contains the personal information of both the appellant and other identifiable individuals within the meaning of section 2(1). The personal information includes the names, addresses, telephone numbers and age, as well as other personal information relating to these individuals.

## 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 institution 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 institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution 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 deciding 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. [Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution 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.

In this appeal the Police rely on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*, which states:

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;

### **Operation of the presumption in section 14(3)(b)**

The Police submit that:

Section 14(3)(b) relates to personal information compiled and identified as part of an investigation into a possible violation of law. With respect to this case, the police responded to a complaint of Harassment, an offence contrary to the Criminal Code of Canada. The personal information gathered is contained within an ICAD Events Details Report, investigating police officer's notes, as well as in a General Occurrence Report with supplementary text. As such, despite the fact that no criminal charges were laid against the appellant at the end of the investigation, these records were compiled during the course of an investigation into a possible violation of law, and therefore, the presumed unjustified invasion of personal privacy afforded by section 14(1)(f) prevails.

I have reviewed the contents of each of the records remaining at issue. In my view, the information in the records was compiled and is identifiable as part of a law enforcement investigation undertaken by the Police into a possible violation of the *Criminal Code*. As such, I find that the presumption in section 14(3)(b) applies to all of the undisclosed information contained in the records.

As noted above, as a result of the decision in *John Doe*, it has been well-established that a presumption under section 14(3) cannot be rebutted by any of the factors under section 14(2), either alone or taken together. Accordingly, I find that the disclosure of the personal information contained in the records would constitute a presumed unjustified invasion of the personal privacy of the individuals referred to in these documents. The records are, therefore, exempt from disclosure under section 38(b).

### **SEVERANCE**

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt from disclosure.

The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld

information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

The Police have provided representations, including confidential representations, on the reasons why they have not provided the appellant with severed portions of the records. The appellant has not made representations.

In light of the principles set out above and on my review of the records, I find that the Police have acted reasonably in deciding not to sever portions of the records in the circumstances of this appeal. I make this decision based on the following factors:

- The nature of the information contained in the records relating to the individuals other than the appellant, and the fact that most of this information is “inextricably intertwined” with the personal information of the appellant;
- The fact that severing some of the information would result in the disclosure of “disconnected snippets” of information;
- The fact that severing some of the information may simply result in the disclosure of small portions of information relating to the appellant of which she is clearly already aware;
- The particular circumstances of this appeal, as identified in the confidential portions of the Police’s representations.

#### **EXERCISE OF DISCRETION**

As noted, section 38(b) is a discretionary exemption. Once it is found that records qualify for exemption under this section, the Police must exercise their discretion in deciding whether or not to disclose it.

I have reviewed the representations of the Police with respect to the considerations they took into account when determining not to disclose the information in the records to the appellant. Based on the representations of the Police, I am satisfied that the Police properly exercised their discretion in responding to this request.

Because of the manner in which I have addressed the application of section 38(b) to the records, it is unnecessary for me to determine whether they are also exempt from disclosure under sections 8(1)(l), 8(2)(a) or 38(a).

**ORDER:**

I uphold the decision of the Police to deny access to the records.

Original signed by \_\_\_\_\_  
Frank DeVries  
Adjudicator

September 12, 2003 \_\_\_\_\_