



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1727

Appeal MA-030177-2

Peel 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/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the Peel Regional Police Services Board (the Police), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to copies of all records including the incident report, statements/names/addresses of any witnesses and any investigative notes or copies of the notebooks, in relation to an incident involving the appellant at Pearson International Airport in Terminal 3 on a specified date.

The Police located a number of responsive records. In its decision, the Police granted partial access to them, denying access to some portions in reliance on the discretionary exemption in section 38(b) of the *Act*, in conjunction with sections 14(1) (unjustified invasion of personal privacy) and 14(3)(b) (law enforcement investigation).

The appellant appealed the decision of the Police denying access to portions of the records. During mediation of the substantive issues in the appeal, some matters were clarified or narrowed. The Police issued a supplementary decision letter outlining their exercise of discretion. The appellant accepted that portions of the officers' notes are not responsive to the request. The information at issue was narrowed to certain portions identified by the appellant.

I decided to seek representations from the appellant, initially. Having received and reviewed those representations, I find it unnecessary to invite representations from the Police.

RECORDS:

The information remaining at issue consists of portions of handwritten notes from police officers' notebooks. Using the numbering of the records assigned by the Police, the information is found on pages 2, 3, 5, 6 and 7 of these notebooks.

DISCUSSION:

PERSONAL INFORMATION

As I have indicated, 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 to whom that personal information relates.

Under section 2(1) of the *Act*, "personal information" is defined as recorded information about an identifiable individual, including 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.

The appellant accepts that some of the information qualifies as the "personal information" of other individuals. However, he submits that to the extent that some of the information involves statements by a person involved in the incident and from a potential witness to the incident, this does not qualify as personal information.

On my review of the records, I find that all of the severed portions contain the personal information of individuals other than the appellant. They contain dates of birth, addresses, home telephone numbers and other information about these individuals. One portion (two lines on page 2) contains information provided by an individual about the incident, and I am satisfied from a review of its content that this information is also “about” that individual within the meaning of section 2(1).

The records also contain the personal information of the appellant.

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 be satisfied that disclosure would constitute an unjustified invasion of another individual’s personal privacy (see Order M-1146).

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].

In this case, the appellant relies on the latter part of section 14(3)(b), which he submits contains an exception to the presumption, as follows:

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*; [emphasis added]

The appellant does not dispute that the information in the notes of the police officers was compiled and is identifiable as part of an investigation into a possible violation of law. He submits, however, that he requires the information in order “to continue an investigation into the incident to determine what, if any, further steps should be taken to pursue his legal rights.” He

states that this information falls, therefore, within the exception contained in section 14(3)(b), and its disclosure is not presumed to constitute an unjustified invasion of personal privacy.

I do not accept the submission of the appellant. Prior orders have clearly established that an appellant's own "investigation" does not constitute the continuation of the "investigation into a possible violation of law" referred to in section 14(3)(b). In Order PO-2167, for instance, dealing with the provincial equivalent to section 14(3)(b), the requester was a private investigator representing the surviving spouse of an individual killed in a motor vehicle accident. Access to police records surrounding the accident was sought in order for the spouse to determine independently whether the police investigation was adequate, and whether any violations of law arose from the accident. Adjudicator Bernard Morrow did not accept the submission that these circumstances fell within the exception to this presumption, stating:

I acknowledge the appellant's concerns that he requires this information in order to complete his own investigation. However, in my view, the drafters of the *Act* did not intend to justify the rebutting of the presumption against disclosure under section [14(3)(b)] in circumstances where a private individual or organization wished to pursue their own investigation. The phrase "continue the investigation" refers to the investigation in which the information at issue was compiled. This view has been followed in previous orders of this office (Orders MO-1356, M-718 and M-249).

I agree with the above analysis, and find that the section 14(3)(b) presumption applies to the personal information of individuals other than the appellant, since this information was gathered during the course of a police investigation into an incident at Pearson International Airport. 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 (Order PO-1849).

The appellant has provided submissions on the exercise of discretion by the Police under section 38(b). After reviewing these submissions, and the reasons offered by 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 this information.

ORDER:

I uphold the decision by the Police to deny access to the remaining information.

Original Signed By: _____

Sherry Liang
Adjudicator

December 15, 2003 _____