



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

ORDER MO-1751

Appeal MA-030297-1

Ottawa Police Service



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NATURE OF THE APPEAL:

The Ottawa Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “all records” in the control of the Police “about” a named individual (the affected person). Initially, the Police located 33 pages of responsive records and denied access to them, claiming the application of the invasion of privacy exemption in section 14(1) of the *Act*.

The requester, now the appellant, appealed the decision. During the mediation stage of the appeal, the Police located an additional 296 pages of records and also denied access to them under section 14(1).

Also during mediation, the Police provided some background information concerning the request. On January 28, 2002, the appellant filed a request seeking access to “all Ottawa Police Service enforcement records pertain [sic] to [himself] and [his wife] created as results [sic] of law enforcement endeavour which targeted [the affected person] between 1990 to 2000.” The appellant enclosed an authorization dated August 19, 2001 from the affected person granting the appellant the right to access all of the affected person’s personal information in the record-holdings of the Police.

The Police identified this request as file number 02-039 and contacted the affected person under section 21(1), seeking his views on the disclosure of his personal information to the appellant. The affected person responded by providing the Police with a document dated February 11, 2002 indicating that he no longer consented to the disclosure of his personal information. The affected person also indicated that if he decided to seek access to his own personal information in the future, he would do so personally. The Police issued a decision letter to the appellant denying him access to the responsive records under section 14(1). The appellant did not appeal this decision to the Commissioner’s office.

The request that gave rise to the present appeal was made on July 16, 2003 and was identified by the Police as file number 03-363. Attached to the request was the August 19, 2001 “authorization” from the affected person. As noted above, the Police again denied access to the requested information on the basis that it is exempt from disclosure under the mandatory exemption in section 14(1).

Also during the mediation stage of the appeal, the Police issued a further decision letter in which they indicated that some of the identified records were not, in fact, responsive to the request. The appellant advised that he wishes to have the issue of whether the records are responsive adjudicated, in addition to the application of the section 14(1) exemption.

I decided to seek the representations of the Police, initially, and provided them with a Notice of Inquiry setting out the facts and issues in the appeal. I received submissions from the Police that were then shared in their entirety with the appellant, along with a Notice of Inquiry. The appellant provided me with a copy of the authorization dated August 19, 2001 and argued that this authorization was still valid. I provided the Police with the appellant’s representations, as well as the authorization from the affected person. By way of reply, the Police provided me with

the February 11, 2002 response from the affected person indicating that he no longer consented to the disclosure of his personal information. The Police take the position that the "authorization" executed by the affected person on August 19, 2001 has been superseded by the later February 11, 2002 response that it received from him following its notification respecting request 02-039.

RECORDS:

The records at issue consist of some 329 pages of records including police occurrence reports, witness statements and various computer printouts.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

The personal privacy exemption in section 14(1) applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. 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)). [Order PO-1706]

I have reviewed the contents of the records originally identified as responsive to the request and find that they contain the personal information of the affected person and a number of other identifiable individuals. This information includes the race, colour, age, sex and marital or family status of these individuals (section 2(1)(a)), information relating to their criminal history (section 2(1)(b)), their addresses and telephone numbers (section 2(1)(d)) as well as their names along with other personal information relating to them (section 2(1)(h)).

I note that the records do not contain any personal information relating to the appellant or his wife.

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only sections which may apply in the circumstances of this appeal are sections 14(1)(a) and (f), which read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(a)

General principles

In order for consent to operate as an exception to the mandatory section 21(1) [the equivalent provision in the provincial *Act* to section 14(1)] exemption, it must be in writing, and provided to the institution that has custody and control of the records containing the individual's personal information. The individual can provide this consent either directly to the institution or indirectly through this office on appeal. [Order PO-2033]

... Where consent is given by an individual to disclose his/her personal information to which he/she is entitled to have access, and in the absence of any other exemption applying to the information, in my opinion, there is no residual discretion that can be exercised by the head to refuse disclosure of the personal information of this person. Simply stated, if the exception contained in section 14(1)(a) applies, the mandatory exemption from disclosure does not. [Order M-8]

Representations of the parties on section 14(1)(a)

The Police take the position that the "authorization" dated August 19, 2001 that was provided by the appellant with the current request was nearly two years old at the time it was submitted. They further argue that the affected person made his views respecting disclosure known more recently when he declined to consent to the disclosure of his personal information to the appellant in February 2002.

The appellant submits that the August 19, 2001 authorization remains valid. During the mediation stage, the appellant adamantly opposed any efforts by this office to contact the affected person in order to solicit his views on the disclosure of his personal information to the appellant.

Findings with respect to section 14(1)(a)

Two diametrically opposed statements have been submitted as evidence by the Police and the appellant from the affected person respecting his position on the disclosure of his own personal information to the appellant. The appellant argues that the August 19, 2001 authorization from the affected person remains valid and ought to be treated as this individual's consent to the disclosure of his personal information to the appellant. The Police submit that the response which they obtained following a notification to the affected person under section 21(1) upon receipt of request 02-039 ought to be considered to represent the affected person's position on the disclosure of his own personal information to the appellant.

In light of the contradictory evidence provided by the parties respecting the affected person's views on disclosure and the very sensitive nature of much of the information contained in the records, I cannot accept the August 19, 2001 "authorization" as representative of the affected person's present position on disclosure of his personal information to the appellant. The affected person has more recently (February 11, 2002) declined to allow the release of his personal information to the appellant. I also have some concerns with the fact that the appellant was reluctant to allow this office to contact the affected person and seek his current opinion respecting the disclosure of his personal information to the appellant.

As a result, I find that the exception in section 14(1)(a) has no application in the circumstances of this appeal. I will now consider whether the exception in section 14(1)(f) applies.

Section 14(1)(f)

Sections 14(2) and (3) 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 the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which 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. [Orders PO-2017, 2033-I and PO-2056-I]

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 have not referred to any of the listed presumptions of an "unjustified invasion of personal privacy" in section 14(3)(b) of the *Act* or to any of the factors listed or otherwise under section 14(2) of the *Act*. The appellant did not address this issue in his representations either.

Based on my review of the contents of the 329 pages of records, I find that all of them were compiled and are identifiable as part of various investigations into a possible violation of law in which the affected person was involved in some way. As such, the presumption in section 14(3)(b) applies to the personal information in the responsive records. As the appellant has not raised the possible application of section 16 to the records and the exceptions in section 14(4) do not apply, I find that the records are exempt from disclosure under section 14(1).

In a letter to the appellant dated October 18, 2003 during the mediation stage of the appeal, the Police indicated their belief that some of the identified records may be “non-responsive” as they do not contain information relating to the affected person. Because I have found that all of the records originally identified as responsive to the request by the Police contain personal information of individuals other than the appellant and his wife and that they are exempt from disclosure under section 14(1), it is not necessary for me to consider whether some of them may be “non-responsive”.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

February 9, 2004 _____