



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

ORDER MO-1739

Appeal MA-030191-1

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

NATURE OF THE APPEAL:

The requester made a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a specified occurrence report relating to her son.

The Police issued a decision letter to the requester, granting her partial access to the record. The Police denied access to the remaining information, relying on section 38(b) (invasion of privacy) in conjunction with sections 14(2)(f), 14(2)(g), 14(2)(i) and 14(3)(b) of the *Act*.

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

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the Police, initially, outlining the facts and issues and inviting the Police to make written representations. The Police submitted representations in response. I then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the Police's representations. The appellant, in turn, provided representations.

In this appeal I must decide whether the exemption claimed by the Police applies to the record.

RECORD:

The record is an occurrence report. It consists of one page entitled "General Occurrence" and three pages entitled "Supplementary Report." The undisclosed portions remain at issue.

BRIEF CONCLUSION:

Some of the information at issue is exempt from disclosure under section 38(b) of the *Act*, while the remaining information is not and must be disclosed.

DISCUSSION:

PERSONAL INFORMATION

The first issue I must decide is whether the record contains personal information, and if so, whose.

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 age (section 2(1)(a)) or address (section 2(1)(d)), or 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)).

The Police submit that the record contains the personal information of the appellant and her son.

The appellant does not make representations on this issue.

I have reviewed the record and I find that it contains the personal information of the appellant and her son.

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 exemptions from disclosure that limit this general right.

The Police rely on section 38(b) in conjunction with section 14 to support their denial of access to the information at issue. More specifically, the Police rely on the “presumed unjustified invasion of personal privacy” at sections 14(3)(a) and (b). The Police also make representations on sections 14(2)(a), (d), (e), (f), (g) and (i). These sections read:

38. A head may refuse to disclose to the individual to whom the information relates personal information,

(b) if the disclosure would constitute an unjustified invasion of another individual’s personal privacy;

14 (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (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;

Under section 38(b), where a record relates to the requester but disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution may refuse to disclose that information to the requester.

Section 38(b) is a discretionary exemption. Even if the requirements of section 38(b) are met, the institution must nevertheless consider whether to disclose the information to the requester. In this case, section 38(b) requires the Police to exercise their discretion in this regard by balancing the appellant's right of access to her own personal information against other individuals' right to the protection of their privacy.

Sections 14(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 38(b). Sections 14(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 38(b).

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

I have reviewed the record and I have concluded that none of the exceptions at sections 14(1)(a) through (e) applies in this case.

Among other things, the Police submit that some of the information at issue refers to an individual's medical condition (section 14(3)(a)) and that the record was created pursuant to an

investigation into a possible violation of law (section 14(3)(b)). The Police also submit that the record contains “highly sensitive” information (section 14(2)(f)).

The appellant takes issue with the record’s contents.

The purpose of section 38(b) is to protect the personal privacy of individuals other than the requester (here, the appellant). With the exception of one sentence on page 3, the appellant herself clearly provided all the information remaining at issue to the Police. In these circumstances, the appellant’s son has no privacy interest in this information vis-à-vis the appellant that warrants protection.

Barring exceptional circumstances, withholding information in the record that the appellant supplied or that she would already know would not serve the purpose of section 38(b). In the language of previous orders, doing so would produce an “absurd result” (for example, Orders M-444, MO-1561). This conclusion makes it unnecessary to undertake an invasion of privacy analysis under section 38(b) for this information (Order MO-1680).

I do, however, agree with the Police’s decision to withhold information in the record (one sentence on page 3) that the appellant clearly did not provide, or that she may not already know. The “absurd result” principle does not apply to this information. Rather, I find that this information was compiled and is identifiable as part of an investigation into a possible violation of law, thereby triggering the presumption of an unjustified invasion of privacy at section 14(3)(b). The presumption is not rebutted by section 14(4) or the “public interest override” at section 16, which was not raised in this case. This information therefore qualifies for exemption under section 38(b). In addition, I am satisfied that the Police did not err in exercising their discretion to withhold this information.

I am enclosing with the copy of this order being sent to the Police a copy of the record highlighting the portion that they must not disclose. I will order the Police to disclose the remaining information.

Finally, I would add that if the appellant wishes to request a correction to her own personal information in the record, she may do so under section 36 of the *Act*, but this issue is not before me in this appeal.

ORDER:

1. I order the Police to disclose the record to the appellant, except for the portion on page 3 that is exempt under section 38(b), by **February 3, 2004**. I am attaching a highlighted version of the record with the copy of this order being sent to the Police, identifying the portion that they must not disclose.

2. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Police to provide me with a copy of the record that is disclosed to the appellant, upon request.

Original signed by: _____
Shirley Senoff
Adjudicator

_____ January 13, 2004