



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1758

Appeal MA-030332-1

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

The Niagara Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a representative of the insurer of two individuals involved in a motor vehicle accident. The request was for access to the following information regarding the accident:

It appears that an independent witness was at the scene and we are requesting information surrounding this witness, or ... a copy of any witness statement on file.

The Police responded to the request by identifying that the request affects the interests of a third party and that, pursuant to section 21 of the *Act*, the third party was being given an opportunity to make representations concerning the disclosure of the information.

Subsequently, the Police responded to the request by advising the requester that they were unable to secure the consent of the third party to the release of the information, and that access to the responsive records was therefore denied pursuant to section 14(1) of the *Act* (invasion of privacy), with reference to the presumption in section 14(3)(b) (information compiled as part of a law enforcement investigation).

The requester (now the appellant) appealed the decision of the Police.

Mediation did not resolve this matter, and the file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry setting out the facts and issues to the appellant, initially, and the appellant provided representations in response. I have decided that it is not necessary for me to seek representations from the Police in the circumstances of this appeal.

In the Notice of Inquiry, I identified for the appellant that the Police, by relying on section 14(1) and not section 38, were taking the position that the records do not contain the personal information of the appellant. I asked the appellant to identify whether he was representing an individual in this appeal, and to provide evidence in support of the position he was taking on this issue.

In response to the Notice of Inquiry, the appellant did not identify that he was representing any individuals whose information may be contained in the records for the purpose of this appeal; in fact, the appellant specifically indicates that section 38(b) has no application in these circumstances.

RECORDS:

The two records at issue in this appeal consist of a portion of a Supplementary Report and a witness statement, in its entirety.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual. The records in this appeal contain the names of certain identifiable individuals, along with their dates of birth (paragraph 2(a)) and other personal information relating to them (paragraph 2(h)). The records also contain the name, address, age, employment history, and other personal information of the witness. I find that the information in the records qualifies as the personal information of these individuals.

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

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 head 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.

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 application of the factors listed in section 14(2), as well as all other relevant considerations.

Section 14(3)(b)

Section 14(3)(b) states:

A disclosure of personal privacy 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 take the position that the information contained in the records was compiled as part of

a law enforcement investigation. Previous orders of this office have established that the presumption in section 14(3)(b) can be applied to personal information collected by the Police during the course of a motor vehicle accident investigation (see, for example, Order PO-1728). The records at issue in this appeal relate to a specific investigation undertaken by the Police into a possible offence.

The appellant submits the following with respect to the possible application of section 14(3)(b):

We submit ... that there are currently no charges laid and no investigation underway in relation to the motor vehicle accident. As such, the disclosure of [the records] does not in any way hinder any investigation into the motor vehicle accident, and does not fit into the exemption relied on by the Police. In any event, any investigation by the Police would not be related to the witness, and so should be disclosed.

I do not agree with the appellant that section 14(3)(b) does not apply. Previous orders have identified that, whether or not criminal proceedings are commenced against any individuals does not negate the applicability of subsection 14(3)(b). The presumption in subsection 14(3)(b) only requires that there be an investigation into a possible violation of law (See Order P-242). Furthermore, having found that the records contain the personal information of identified individuals, whether or not the individuals are the subject of the investigation has no bearing on the application of section 14(3)(b). It is sufficient that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

I am satisfied that the information responsive to the request contained in the records was originally obtained or “compiled” by the Police in the course of their investigation into the circumstances surrounding the motor vehicle accident. I am also satisfied that, as part of their policing function, the Police conducted this investigation with a view towards determining whether the actions of any party should result in criminal charges. Therefore, I find that disclosure of the personal information in the record would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b) of the *Act*.

The appellant argues that the factor under section 14(2)(b) (promote public health and safety) applies. However, as set out above, 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). (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The appellant has also taken the position that section 16 of the *Act*, the so-called “public interest override”, applies in the circumstances in this appeal. He states:

We submit that the just resolution of the civil rights of the individuals involved requires the disclosure of the witness statement and supplementary report. The information contained therein would go far in determining the facts associated with what happened. In addition, there would likely be a savings from less litigation pertaining to the events surrounding the accident. We submit, therefore,

that these benefits clearly outweigh the purpose for which the exemption was relied on by the Police.

Section 16 of the *Act* states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In order for section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the meaning of section 16, as follows:

In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

I find that there is nothing in the material before me demonstrating a compelling public interest in the information contained in the records which outweighs the protection of personal privacy. Although the appellant refers to general public interest considerations (a just resolution of civil rights, and less litigation), in the circumstances of this appeal, I am not satisfied that a "compelling public interest" as set out in Order P-984 exists in the disclosure of the records. The "civil rights" referred to by the appellant seem to reflect the factor in section 14(2)(d) of the *Act*, which, as set out above, cannot rebut a presumption in section 14(3). Furthermore, it is apparent from the records that this is essentially a private matter, as opposed to a matter which raises a "compelling public interest" (See, for example, PO-2215). Accordingly, I find that there does not exist a sufficient public interest in the subject matter of the records which would outweigh the purpose of the personal privacy exemption in section 14(1).

ORDER:

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

Original signed by: _____
Frank DeVries
Adjudicator

February 23, 2004
