



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

ORDER MO-1827

Appeal MA-040029-1

Halton Regional Police Services Board



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the Halton Regional Police Services Board (the Police), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). As background, an individual involved in a motor vehicle accident submitted a request for access to the witness statements taken by police officers investigating the accident. The Police denied access to the statements in their entirety, relying on the exemptions under sections 8(1) (law enforcement) and 14(1) (invasion of privacy). The requester appealed the decision to withhold access to the statements.

During mediation of this appeal through this office, certain issues were clarified or narrowed. The Police indicated that they no longer rely on the application of section 8(1). Further, the mediator identified the possible application of section 38(b) (discretion to refuse requester's own information), together with section 14(1). As further resolution of the appeal was not possible, it was referred to me for adjudication.

I sent a Notice of Inquiry to the Police, initially, as well as to the four witnesses (the affected parties) whose statements are at issue. Two of the affected parties responded by indicating their objection to the release of their information. As well, the Police provided representations. I sent the representations of the Police along with the Notice of Inquiry to the appellant, who submitted a brief response.

The issue before me is whether section 38(b), in conjunction with section 14(1), applies to justify the denial of access.

RECORDS:

There are four witness statements at issue, including one from a driver involved in the accident. They contain the names, dates of birth and other identifying information of the four witnesses, and their accounts of the motor vehicle collision.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. Under section 2(1), personal information is defined, in part, to mean recorded information about an identifiable individual, including the address or telephone number of the individual [paragraph (d)], the personal opinions or views of that individual except where they relate to another individual [paragraph (e)] or 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 [paragraph (h)].

The Police submit that the records contain names, addresses, driver's license numbers, telephone numbers and dates of birth of the individuals providing the statements, along with their signed statements. Accordingly, they contain the personal information of witnesses to the motor vehicle accident.

Upon my review of the records, I am satisfied that they contain the personal information of the appellant, insofar as they describe the motor vehicle accident in which he was involved. Further, they contain the personal information of each of the witnesses providing the statements. The names, license numbers, dates of birth and telephone numbers of the witnesses are provided, as well as their accounts of the accident.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

General principles

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 this right.

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

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. Thus, I will first consider whether section 38(b) applies and then whether the Police properly exercised their discretion under this section.

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

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).

In this appeal, the Police submit that section 14(3)(b) applies. This section states:

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;

The Police state that they investigated the collision and interviewed a number of individuals. Subsequently, a charge was laid against one of the drivers. The Police submit that it is necessary in a law enforcement investigation to collect and maintain this type of personal information in order to conclude whether a violation of law has occurred under the *Criminal Code* or the *Highway Traffic Act*.

The Police have also referred to the fact that one of the drivers in the accident was charged. At the time of its decision, the matter was before the courts. The Police submitted that they balanced the right of the appellant to know against the right to privacy or non-disclosure during a court proceeding, and referred to the importance of protecting the rights of a charged person.

The appellant's brief submission stated simply that the driver in question has pleaded guilty to following too closely, and that he is therefore "entitled to full disclosure from Halton Regional Police Services of all documentation pertaining to the motor vehicle collision including witness statements."

Analysis

The fact that one of the drivers in the collision was charged and has apparently pleaded guilty does not determine whether release of the information would fall under the presumption in section 14(3)(b). In order for this section to apply, it is only necessary that the information was compiled and is identifiable as part of an investigation into a possible violation of law, which is not contested here.

I find, therefore, that disclosure of the personal information of the affected parties is presumed to constitute an unjustified invasion of their personal privacy. It is unnecessary to consider the factors listed in section 14(2). Further, I am satisfied that section 14(4) does not apply to the information at issue in this appeal. Section 16 has not been raised in this appeal and it does not apply in the circumstances.

As I have indicated above, as the record also contains the personal information of the appellant, section 38(b) provides a discretion to the Police to release the information despite the application of the section 14(3)(b) presumption.

The Police referred to a number of reasons to support their decision to deny access to the records, including the absence of consent from the affected parties, the court proceedings (which were pending when the Police submitted their representations), the apparent reason for the request, the sensitivity of the information, and the historical practice of this institution. I find that these were reasonable factors for the Police to take into consideration in exercising their discretion under section 38(b) and, on the whole, I am satisfied that they properly exercised their discretion.

It appears from the information provided by the appellant that one of the key reasons cited by the Police, the pending court proceedings, may no longer apply. This does not alter my finding as to the appropriateness of the decision at issue in this appeal. The appellant is free to submit a new request for the information, which will be subject to a new exercise of discretion by the Police having regard to the changed circumstances.

ORDER:

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

Original Signed by: _____
Sherry Liang
Adjudicator

September 1, 2004 _____