



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

# **ORDER MO-1863**

**Appeal MA-040010-1**

**Toronto 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: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the notes of 3 named police officers with regard to “an unprovoked assault on [the requester] by an alleged assailant [the named individual] ... on August 21, 2003.” The request was submitted by the requester’s counsel, who represented him throughout these proceedings.

The Police identified a number of responsive records consisting of the relevant passages from police officers’ notebooks, the record of arrest and related supplementary records, and an occurrence report. The Police denied access to these records in their entirety pursuant to the exemption at section 49(a) (refuse to disclose requester’s own information) in conjunction with sections 8(1)(a) and (f) (law enforcement), as well as section 38(b) (personal privacy) with reference to the presumed unjustified invasion of privacy at section 14(3)(b).

The requester (now the appellant) appealed this decision. In the notice of appeal, the requester’s counsel stated:

“... I require the licence plate number of the vehicle driven by [the named individual] at the time of this alleged assault. ...”

During mediation, the appellant confirmed with the Mediator that the scope of the appeal was limited to the licence plate number of the vehicle of a named third party. Mediation could not resolve the outstanding issues and the matter moved on to the adjudication stage.

To begin the inquiry, this agency sent a Notice of Inquiry to the Police. The Police responded with representations. I then sent the Notice of Inquiry to the appellant with a complete copy of the Police’s representations. The appellant provided representations in the form of a brief letter.

As identified in the Notice of Inquiry, the information remaining at issue consists of the licence plate number of the vehicle driven by the named individual. This appears in the Record of Arrest, which comprises page 10 of the records originally identified as responsive.

In their representations, the Police advise that they no longer rely on the discretionary at sections 38(a), 8(1)(a) or 8(1)(f) of the *Act*. Accordingly, the only exemption remaining at issue is section 38(b), with reference to section 14(3)(b).

During the inquiry, I received a letter from the appellant stating:

We are requesting that the Toronto Police Services produce a statement from my client ...

If there are any witness statements that may be available to us, we would appreciate them since they are relevant to an upcoming ... hearing respecting [the appellant]’s entitlement to Statutory Accident Benefits.

As noted, the only information at issue in this inquiry is the named individual's licence plate number. The appellant would need to submit a new request to the Police for this other information, which I will not address further in this order.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine whether the exemption at section 38(b) of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1). The definition states, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (h) 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;

The Police submit that the information at issue comprises the personal information of the named individual since it is "about" the named individual, who was not acting in any professional capacity at the time of the events.

The appellant did not address this issue.

I have reviewed the Record of Arrest. It contains the names and addresses of both the appellant and the named individual, as well as the named individual's licence plate number, among other identifying numbers. It also identifies the appellant as the "victim or complainant". I find that this record contains the personal information of both the appellant and the named individual, pursuant to paragraphs (c), (d) and (h) of the definition.

I also find that the information at issue, the licence plate number of the car driven by the named individual, comprises the personal information of the named individual. This is *not* the personal information of the appellant.

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

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. I will consider the exercise of discretion later in this order, after I have determined whether the exemption applies.

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(3) lists the types of information the disclosure of which 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] though it 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. [See Order PO-1764]

The Police rely on the presumed unjustified invasion at section 14(3)(b) of the *Act* to justify their claim that disclosure of the information at issue would be an unjustified invasion of personal privacy. 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 submit that the records qualify under section 14(3)(b) "... as the personal information was compiled and is identifiable as part of an investigation which resulted in the criminal charge ..." referred to in the records.

The appellant does not address this issue directly. His representations simply state that:

Since the criminal charge against [the named individual] ... has been dealt with by the criminal courts, there is no reason for Toronto Police Services and/or the crown attorneys' office to withhold the requested information.

In Order MO-1386, Adjudicator Irena Pascoe stated:

The fact that the criminal charges have been disposed of does not negate the fact that the personal information relating to the affected persons was compiled for the purpose of an "investigation into a possible violation of law". Therefore, the section 14(3)(b) presumption of an unjustified invasion of personal privacy applies to the requested information.

In a similar vein, beginning with Order P-242, many previous decisions of this agency have indicated that even if no charges at all have been laid as the result of an investigation, the presumption in section 14(3)(b) will still apply if the information was compiled and is identifiable as part of an investigation into a possible violation of law.

Section 14(3)(b) appears in an exemption dedicated to the protection of personal privacy, which is one of the primary purposes of the *Act* as identified in section 1(b). In my view, the continued application of section 14(3)(b) to information that was compiled during an investigation, after the completion of a resulting prosecution, is consistent with both the statutory language and the important statutory purpose of privacy protection. I therefore agree with the analysis in Order MO-1386, and I find that disclosure of the information at issue would be a presumed unjustified invasion of personal privacy under section 14(3)(b).

As noted, factors under section 14(2) cannot rebut a presumption under section 14(3). Such a presumption can only be rebutted by the application of section 14(4) or the "public interest override" at section 16. The appellant does not rely on these sections, and I am satisfied that they do not apply in the circumstances of this appeal.

Accordingly, I find that disclosure of the information at issue would constitute an unjustified invasion of privacy, and it is exempt under section 38(b) of the *Act*.

### **EXERCISE OF DISCRETION**

The section 38(b) exemption is discretionary. Therefore, once it is determined that a record qualifies for exemption under this section, the Police must exercise discretion in deciding whether or not to disclose it. Under section 38(b), 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.

The Commissioner may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant (Orders P-344, MO-1573):

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person

- the age of the information
- the historic practice of the institution with respect to similar information.

The Police submit that, in balancing the appellant's right of access against the named individual's right of privacy, they considered the following factors:

- disclosure is a presumed unjustified invasion of personal privacy under section 14(3)(b);
- the factor favouring disclosure at section 14(2)(d) (fair determination of rights) may be applicable;
- the need for public trust in the confidential handling of law enforcement information is an important factor favouring privacy protection;
- privacy protection is a fundamental purpose of the *Act*;
- information about an individual's involvement in law enforcement activities may be sensitive;
- the personal information was not originally supplied by the appellant.

The Police also indicate that they reviewed their original decision to deny access once the charges against the named individual had been dealt with.

In my view, the Police considered the relevant factors in their exercise of discretion, and did not consider irrelevant ones. I find that their exercise of discretion was proper.

**ORDER:**

I uphold the decision of the Police to deny access to the information at issue.

Original Signed by: \_\_\_\_\_  
John Higgins  
Senior Adjudicator

\_\_\_\_\_ October 28, 2004