



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1852

Appeal MA-040025-1

Toronto Police Services Board



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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 access to “any occurrence reports having to do with (a specified individual) which involve the use of force.”

The Police responded that they could not confirm or deny the existence of the requested record(s) pursuant to section 14(5) of the *Act*.

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

During the mediation stage of the appeal, the appellant took the position that, in his view, there exists a compelling public interest in the disclosure of any requested record(s), if they exist, as contemplated by section 16 of the *Act*. As further mediation was not possible, the matter was moved to the adjudication stage of the process.

I provided the Police with a Notice of Inquiry soliciting their representations on the issues identified in this appeal. The Police provided their submissions, which were shared in their entirety, along with a Notice of Inquiry with the appellant. I did not receive any response from the appellant.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD - INVASION OF PRIVACY

Introduction

Section 14(5) reads as follows:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the *Act*. By invoking section 14(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power that should be exercised only in rare cases (Order P-339).

Definition of Personal Information

An unjustified invasion of privacy can only result from the disclosure of personal information. Under section 2(1), “personal information” is defined, in part, to mean recorded information about an identifiable individual, including 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)].

Any record responsive to the appellant's request would, by definition, contain information about the individual named by the appellant involving the "use of force" by this individual. Therefore, I find that any such record, if it exists, would be "about" the named individual in a personal sense, and would fall within the scope of the definition of "personal information".

Unjustified invasion of personal privacy and Section 14(5)

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) lists some criteria for the Ministry to consider in making this determination; and section 21(3) identifies certain 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). 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).

The Police submit that disclosing any responsive information, if it exists, would constitute a presumed unjustified invasion of privacy under section 14(3)(b), which reads:

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 indicate that responsive records such as occurrence reports containing information relating to the named individual's "use of force", if they exist, would contain information that is compiled and is identifiable as part of an investigation into a possible violation of law. This information would fall within the ambit of the presumption in section 14(3)(b), according to the Police.

I note that the appellant has not made any submissions in response to the Notice of Inquiry provided to him.

Based on the representations of the Police, I find that disclosure of responsive records, if they exist, would be a presumed unjustified invasion of privacy pursuant to section 14(3)(b). Sections 14(4) and 16 have no application in the circumstances of this appeal, and disclosure of the record, if it exists, would therefore be an unjustified invasion of personal privacy.

In the circumstances of this appeal, particularly in light of the nature and wording of the request, I have concluded that section 14(5) applies. In my view, this is a situation in which the very

nature of the request permits the Police to rely on the “refuse to confirm or deny” exemption. Disclosing the existence or non-existence of records responsive to this request would itself reveal personal information about a named individual, specifically whether or not the named individual’s name appears in a Police occurrence report relating to “the use of force”. In the absence of any factors favouring the disclosure of the existence or non-existence of records, I find that disclosing the existence or non-existence of responsive records would constitute an unjustified invasion of the individual’s personal privacy. In my view, this justifies the discretionary decision by the Police to apply section 14(5).

Accordingly, I find that the Police properly exercised their discretion to refuse to confirm or deny the existence of responsive records, and that section 14(5) applies in this appeal.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

_____ October 13, 2004