



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1986**

**Appeal MA-040311-1**

**Ottawa Police Services Board**



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## **NATURE OF THE APPEAL:**

The Ottawa Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the Police file relating to its investigation into a specified motor vehicle accident (MVA) (including the police accident report, officer's notes, any accident investigation reports and witness statements). By way of background, the appellant is the mother of an individual who was killed in the MVA (the deceased). The MVA involved a single vehicle, driven by the deceased, and a VIA passenger train.

In their decision, the Police granted partial access to the responsive records. Access to some of the information was denied pursuant to section 38(a), read in conjunction with section 8(2)(a) (right of access to one's own personal information/law enforcement report) and section 38(b), read in conjunction with section 14(1) (right of access to one's own personal information/invasion of privacy) of the *Act*. The Police cited the application of section 14(3)(b) (investigation into violation of law) in support of its position on the section 38(b)/14 exemption.

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

During the course of the mediation stage the Police advised that they had previously contacted six affected parties regarding disclosure of their witness statements. The Police indicated that two of the affected parties did not consent to the release of their information while the remaining four did not respond. The affected parties were not contacted again during the mediation process.

The Police also stated that at the request stage they had raised the possible application of section 54(a) (administration of the estate) of the *Act*. In response, the appellant provided a copy of the will appointing her the executor of the deceased's estate. However, during the course of mediation, the appellant confirmed that her request for the records was not related to the administration of the deceased's estate. Therefore, section 54(a) is not applicable in this appeal.

The Police advised the mediator that if the appellant was seeking access to photographs of the MVA, they could be obtained at the Identifications Section of the Police. I understand that the mediator conveyed this information to the appellant.

Prior to the close of mediation, the Police issued a revised decision letter advising the appellant that they were no longer relying on sections 38(a) and/or (b) of the *Act* to deny access to any of the information at issue. Having reviewed the records at issue, I agree that sections 38(a) and/or (b) are not applicable in the circumstances of this appeal.

Further mediation was not possible and the file was transferred to me for inquiry. The issues to be determined are whether the information at issue in the records is exempt under the section 14(1) mandatory exemption and/or whether the information at issue in records 5, 6, 7, 8, 9 and 10 is exempt under section 8(2)(a).

I commenced my inquiry by sending a Notice of Inquiry to the Police, seeking their representations on the issues. The Police submitted representations and agreed to share them in their entirety with the appellant.

I then sought and received representations from the appellant, who was provided with a complete copy of the Police's representations. In her representations the appellant raised for the first time the possible application of section 16 (public interest override) as a basis for allowing access to the information at issue. Since the appellant has now raised public interest as an issue, I will address its application in this order.

During the course of my inquiry I determined that some of the records may contain the personal information of five additional affected persons. As a result, I notified them of this appeal and sought their representations on the application of the section 14(1) exemption to the information that pertains to them. Four of five of the affected persons did not respond. One affected party did respond but chose not to submit representations.

### **RECORDS:**

The following ten records remain at issue:

<b>Record #</b>	<b>Description</b>	<b>Withheld or Severed</b>	<b>Sections of the Act</b>
1	Motor vehicle accident report (1 page)	Severed	14(1)
2	Witness statement (1 page)	Withheld	14(1)
3	Witness statement (1 page)	Withheld	14(1)
4	Witness statement (1 page)	Withheld	14(1)
5	Vehicle safety checklist (2 pages)	Withheld	14(1), 8(2)(a)
6	Event recorder download request (6 pages)	Withheld	14(1), 8(2)(a)
7	On-scene measurement record (3 pages)	Severed	14(1), 8(2)(a)
8	Ambulance station attendance form (1 page)	Withheld	14(1), 8(2)(a)
9	Diagram of accident scene (1 page)	Withheld	14(1), 8(2)(a)
10	General occurrence report (37 pages)	Severed	14(1), 8(2)(a)

### **DISCUSSION:**

Since the Police have claimed the application of section 14(1) for all ten records, I will first examine the application of this exemption to the records.

## PERSONAL INFORMATION

### What constitutes “personal information”?

In order to determine whether section 14(1) applies, it is necessary to decide whether the records contain “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (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;

To qualify as personal information, the information must be about the individual in a personal capacity. Previous decisions of this office have held that information “about” an individual in

his or her professional or employment capacity does not constitute that individual's personal information (Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225).

### **The parties' representations**

The Police submit that the information contained in the records is solely the personal information of individuals other than the appellant and falls into paragraphs (a), (b), (c), (d), (g) and (h) of section 2(1) of the *Act*.

The appellant states that she "does not disagree with the [Police] that the records, particularly the witness statements, contain 'personal information'". However, the appellant emphasizes that she is not concerned with receiving the witnesses' personal information; on the contrary, she is interested in obtaining the witnesses' "statements" as they relate to the MVA. The appellant argues that "the personal information could be removed from the records in order to preserve its confidential nature".

### **Analysis and findings**

The records in this case contain the details of a Police investigation into a motor vehicle accident, which resulted in the deceased's death. While I acknowledge the appellant's position that she is not interested in any personal information contained in the witness statements, I must nevertheless decide whether the records at issue contain personal information and, if so, to whom it relates.

In general, the records contain information about named individuals who were involved in this incident in some manner including police officers, the deceased, medical personnel, VIA employees and several independent civilian witnesses. The records contain, among other things, the deceased's date of birth, address and medical history, police officers' observations of the accident scene and the deceased, the names, home addresses, dates of birth and statements of two VIA engineers who were operating the train at the time of the MVA (the VIA engineers), and the names, addresses and statements of independent civilian witnesses.

On my review, records 1, 2, 3 and 4 and portions of record 10 contain the personal information of the deceased and the independent civilian witnesses. I also find that portions of record 5 contain the deceased's personal information. In addition, although the VIA engineers were engaged in their employment at the time of the MVA, I find that the information about them in records 1, 2, 3, 4 and 10 is personal in nature owing to the type of information revealed about them and the circumstances surrounding the MVA and their involvement with it.

Records 6, 7 and 8 contain accident data. These records do not contain anyone's personal information. Accordingly, section 14(1) cannot apply to any of these records.

Record 9 is a diagram of the accident scene. It contains the deceased's personal information.

With respect to portions of record 10 several individuals are mentioned who were either involved in the investigation of the MVA or the clean-up of the accident site. On my review of these portions of this record I find that the information pertaining to these individuals is “about” them in their professional or employment capacity and, therefore, does not constitute their personal information. In addition, portions of record 10 contain accident data and information about the impact of the MVA on VIA’s operations. In my view, this information also does not qualify as personal information. As a result of my findings, section 14(1) cannot apply to these portions of record 10.

## **INVASION OF PRIVACY**

### **Section 14**

Having determined that records 1, 2, 3, 4 and 9 and portions of records 5 and 10 contain the personal information of individuals other than the appellant, the mandatory exemption at section 14(1) requires that the Police refuse to disclose this information unless disclosure would not constitute an “unjustified invasion of privacy”. Section 14(1) sets out a number of exceptions to the prohibition against the disclosure of personal information. In my view, the only exception which could have any application in the present appeal is set out in section 14(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 14(1)(f). Section 14(2) provides criteria 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 and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure in section 14(3) has been established, 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 falls within the ambit of section 14(4) or if the “compelling public interest” override provision at section 14 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Police take the position that disclosure of the information in the records is presumed to constitute an unjustified invasion of privacy under the presumption in section 14(3)(b) of the *Act*, which states:

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

is 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.

In response, the appellant takes the view that section 14(3)(b) is not applicable and relies on the factors in section 14(2)(b) and (d) to support disclosure of the information at issue. These sections read:

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,

- (b) access to the personal information may promote public health and safety;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

### **The parties' representations**

The Police state that the personal information collected was compiled and is identifiable as part of an investigation into a possible violation of law. The Police submit that the information was collected for the sole purpose of interviewing all parties connected to the MVA to determine whether an offence was committed under the *Criminal Code* or the *Highway Traffic Act*. The Police acknowledge that the appellant may have an interest in the information at issue. However, absent the consent of the individuals interviewed, the Police state that they will not disclose the personal information of those interviewed. The Police state that if information obtained through an investigation is shared without the consent of the individuals who supplied it then these individuals may be hesitant to assist in future investigations.

In response, the appellant states that the Police have failed to discharge the burden of proving that the information at issue falls within the scope of the section 14(3)(b) presumption. In support of her position the appellant submits:

This section requires that the information was compiled as part of an investigation into a *possible violation of law*. The appellant submits that in attending the scene and interviewing witnesses, the Police did not proceed with an investigation of a possible violation of law. Rather, given the collision between a train and a dump truck, the Police attended to ensure public safety. No charges were laid and no potential violation of the law was identified. The appellant respectfully submits that an adverse inference should be drawn from the fact that in its representations

the Police did not, as requested, identify which specific violation it claims to have been investigating. Further, disclosure of the witness statements would not constitute an unjustified invasion of personal privacy under section 14(3)(b) as any statements are facts pertaining solely to the accident. Once again, any personal information on the statements can be omitted at this time.

The appellant states that if I accept her submissions regarding section 14(3)(b), then the factors in section 14(2)(b) and (d) are relevant. With respect to section 14(2)(b), the appellant submits that access to the information at issue may promote public health and safety, “specifically regarding the safe travel on public roads and train crossings.” Regarding section 14(2)(d), the appellant submits that this information is relevant to a fair determination of her rights, in particular, “her right to pursue legal action and pursue damages for any negligence that contributed to [the deceased’s] death.”

### **Analysis and findings**

I have carefully reviewed the parties’ representations and the personal information at issue in records 1, 2, 3, 4, 5, 9 and 10. I find that this information was compiled by the Police and is identifiable as part of its investigation into a possible violation of law as a result of the MVA involving the deceased, pursuant to the section 14(3)(b) presumption.

In my view, the nature and contents of these records demonstrate clearly that a police investigation was conducted into the circumstances surrounding the MVA. The fact that criminal or quasi-criminal proceedings were not commenced does not have a bearing on this issue. The presumption only requires that there be an investigation into a possible violation of law (Order P-242, PO-1849). As well, while the Police were asked in the Notice of Inquiry to identify the precise law the violation of which was being investigated, the fact that they only identified the *Criminal Code* and *Highway Traffic Act* is not critical and does not vitiate the application of the section 14(3)(b) presumption. Again, the records on their face clearly reflect that a police investigation was conducted into this accident.

Having found that the section 14(3)(b) presumption applies, I am precluded from considering any of the factors weighing for or against disclosure under section 14(2), because of the *John Doe* decision. Therefore, while I acknowledge the appellant’s arguments under section 14(2)(b) and (d), I am precluded from considering them in the context of this appeal.

In the circumstances, I find that the section 14(3)(b) presumption is not rebutted by section 14(4). However, as noted above, the appellant has raised the application of the section 16 “public interest override” to this information. I will consider this issue below.

In conclusion, subject to the application of section 16, I find the personal information contained in records 1, 2, 3, 4, 5, 9 and 10 exempt under section 14(1) of the *Act*.



## PUBLIC INTEREST IN DISCLOSURE

Section 16 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.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption (see Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)). In Order P-1398, Senior Adjudicator John Higgins made the following statements regarding the application of section 23 (the provincial *Act* equivalent of section 16):

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions that have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information that has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

The appellant states that there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14 exemption. In support of her position, the appellant asserts that as a member of the public she has a right to be made fully aware of any dangerous public roads and train crossings on which she, and many other people, frequently travel.

I acknowledge the appellant's interest in the information at issue. However, I have not been provided with sufficient evidence to satisfy me that there exists a compelling public interest in the disclosure of the personal information in records 1, 2, 3, 4, 5, 9 and 10 that I have found exempt under section 14(1). In my view, the personal information contained in these records does not on its face reveal a compelling public interest and the appellant has failed to establish through her submissions the existence of a compelling public interest in disclosure. Accordingly, I find that section 16 does not apply in the circumstances of this appeal.

## LAW ENFORCEMENT

I will now explore the application of the section 8(2)(a) law enforcement exemption to portions of record 5 and to records 6, 7 and 8, which contain accident data, and to portions of record 10, which contain information regarding the investigation of the MVA and clean-up of the accident site.

### General principles

Section 8(2) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The term “law enforcement” is used in several parts of section 8, and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

### Section 8(2)(a): law enforcement report

Only a report is eligible for exemption under this section. The word “report” is not defined in the *Act*. For a record to qualify as a “report” it must consist of “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact (Orders P-200, MO-1238, MO-1337-I).

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue (Order MO-1337-I).

The Police state that they claimed the application of this exemption to “sever information contained in the police report” that was gathered during the course of their investigation into the MVA. The Police state the investigation was undertaken pursuant to their law enforcement

function under the *Police Services Act* to determine whether charges were warranted under the *Highway Traffic Act* as a result of the MVA. The Police state that the “investigation consists of formal statements or accounts of the results of the collation and consideration of information.”

In response, the appellant states that the general occurrence report [record 10] does not constitute a “report” within the meaning of section 8(2)(a). The appellant submits that this report consists “solely of observations and recordings of fact. The appellant also states that the vehicle safety checklist [record 5], event recorder [record 6], on-scene measurement record [record 7] and ambulance station attendance form [record 8] are a collection of “mere observations and recordings of fact, rather than factual statements regarding the investigation.”

Record 5 contains the personal information of the deceased, which I have found exempt under section 14(1). This record also contains a checklist of vehicle components for the deceased’s vehicle and the assessor’s comments regarding tire and brake wear to determine the vehicle’s condition prior to the MVA. I am not satisfied that this record meets the definition of “report” under the *Act*, in that it essentially consists of observations and recordings of fact.

Record 6 and 7 consist of raw numeric results, derived through observation, the recording of data and the completion of calculations. I am not satisfied that these records constitute formal statements or accounts of the results of the collation and consideration of this data.

Record 8 is a one-page attendance record documenting the timing of ambulance staff involvement at the scene of the MVA. Again, I am not satisfied that this record meets the definition of “report” under the *Act*, in that it essentially consists of recordings of fact regarding the attendance of ambulance staff at the scene of the accident.

My findings with respect to these records is consistent with this office’s treatment of similar records, including those I addressed in Order MO-1771-I.

Record 10 consists of a thirty-seven page general occurrence report compiled in relation to the MVA. Generally, occurrence reports generated by police forces have been found not to meet the definition of “report” under the *Act*, in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations (see Orders PO-1845, PO-1796, P-1618, MO-1771-I, M-1341, M-1141 and M-1120). In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a “report.”

On my review of the occurrence report at issue in this appeal, I am satisfied that it also does not meet the definition of “report” under the *Act*, in that it consists essentially of observations and recordings of fact. Although there are a few comments by police officers which might be considered evaluative, the records consist primarily and essentially of descriptive information.

Accordingly, I find that none of the information in records 5, 6, 7, 8 and 10 qualifies for exemption under section 8(2)(a) of the *Act* and I will order its release to the appellant.

## **SEVERANCE**

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

The Police did not submit representations on severance. The appellant asks that any portions of records that are not found to be exempt be disclosed.

The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information.

The Police have provided the appellant with portions of records 1, 7 and 10 that do not contain the personal information of other individuals.

With respect to records that contain both exempt and non-exempt information, in my view, no useful purpose would be served by the severance of records where the exempt information is so intertwined with the non-exempt information that what is disclosed is substantially unintelligible. A head will not be required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information. Further, severance will not be considered “reasonable” where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

With these principles in mind, I am satisfied with the Police’s decisions regarding severance with respect to records 1, 2, 3, 4 and 9.

As indicated above, I have found that records 6, 7 and 8 do not qualify for exemption under sections 14(1) or 8(2)(a). Accordingly, these records should be released to the appellants in their entirety. With regard to records 5 and 10, I have found some of the information at issue exempt under section 14(1). However, I also find that there are portions of records 5 and 10 that contain non-exempt information that can be severed from the exempt information. Accordingly, I will order its release to the appellant.

## **ORDER:**

1. I uphold the Police’s decision that the severed portions of record 1 and all of records 2, 3, 4 and 9 qualify for exemption under the *Act*.
2. I order the Police to disclose records 6, 7 and 8 in their entirety.

3. I order the Police to disclose portions of records 5 and 10 by **December 6, 2005** but not before **November 29, 2005**, in accordance with the highlighted versions of these records included with the Police's copy of this order. To be clear, the Police should not disclose the highlighted portions of these records.
4. In order to verify compliance with provisions 2 and 3 of this order, I reserve the right to require the Police to provide me with a copy of the records they disclose to the appellant.

Original Signed By: \_\_\_\_\_

Bernard Morrow  
Adjudicator

\_\_\_\_\_ October 31, 2005