



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1962

Appeal MA-050141-1

Peel Regional Police Services Board



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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the addresses and telephone numbers of two witnesses to a motor vehicle accident. The requester is the adjuster for the insurer of one of the parties involved in the accident.

After obtaining the consent of one of the witnesses, the Police located records containing the responsive information and disclosed that witness' telephone numbers to the requester. The Police attempted to contact the other witness to obtain his consent to the disclosure of his address and telephone numbers as well. However, using the information available from the record itself, the Police were not successful in contacting him.

The Police denied access to the address and telephone numbers of the second witness, claiming the application of the mandatory exemption found in section 14(1) of the *Act* (invasion of privacy), in conjunction with the presumption in section 14(3)(b) of the *Act* (information compiled as part of an investigation into a possible violation of law) to this information.

The requester (now the appellant) appealed the decision of the Police to deny access to the second witness' information. No issues were resolved during the mediation of the appeal and the matter was moved into the adjudication stage of the appeals process. I decided to seek the representations of the appellant, initially, and issued a Notice of Inquiry setting out the facts and issues in the appeal. I did not receive any representations from the appellant. I did not find it necessary in the circumstances to seek the representations of the Police.

RECORDS:

The information remaining at issue consists of the second witness' address and telephone numbers, found in the notebook of the investigating Police officer.

DISCUSSION:

PERSONAL INFORMATION

In order to determine whether the mandatory exemption at section 14(1) of the *Act* may apply, it is necessary to decide whether the undisclosed information contained in the record qualifies as "personal information" and, if so, to whom it relates. That term is defined, in part, in section 2(1)(d) as follows:

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

the address, telephone number, fingerprints or blood type of the individual,

In my view, the undisclosed information clearly qualifies as the personal information of the second witness as it consists of this individual's address and telephone numbers (paragraph (d)) of the definition of personal information in section 2(1).

INVASION OF PRIVACY

The undisclosed information contained in the record is the personal information of an individual other than the appellant. In that situation, the mandatory exemption at section 14(1) requires that the Police refuse to disclose the 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 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

In their decision letter to the appellant, 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 determining whether section 14(1) applies, I have carefully reviewed the information at issue and find that it was compiled by the Police in the course of their investigation into the circumstances surrounding the accident described in the appellant’s request. I find that the

undisclosed personal information relating to the second witness was compiled and is identifiable as part of the Police investigation into a possible violation of law; specifically, the provisions of the *Criminal Code* or the *Highway Traffic Act*, thereby triggering the presumption of an unjustified invasion of privacy at section 14(3)(b). In the circumstances of this appeal, I find that the section 14(3)(b) presumption is not rebutted by section 14(4) or the “public interest override” at section 16, which was not raised. The disclosure of the personal information of the second witness is, therefore, presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b).

Because the information remaining at issue is the personal information of an individual other than the appellant and its disclosure is presumed to constitute an unjustified invasion of that individual’s personal privacy under section 14(3)(b), I find that it is exempt under section 14(1) of the *Act*.

ORDER:

I uphold the decision of the Police to deny access to the second witness’ address and telephone numbers.

Original Signed By: _____
Donald Hale
Adjudicator

_____ September 13, 2005