



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2010

Appeal MA-050240-1

Halton Regional Police Services Board



Tribunal Services 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/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of the Privacy Act* (the *Act*) for information relating to a motor vehicle accident which occurred on a specified date. The request was submitted by an insurance adjuster on behalf of the insurer of the owner of the vehicle involved in this accident. Specifically, the requester is seeking access to “the statements and the investigating officer’s memo notes” taken by the Police that pertain to the specified accident. The requester is not representing the owner of the motor vehicle for the purposes of this request.

The Police located a number of responsive records maintained by seven police officers and denied access to them, in their entirety, claiming the application of the discretionary exemptions in sections 8(1)(a) and (b) (law enforcement), 8(1)(f) (right to a fair trial) and 8(2)(a) (law enforcement) of the *Act* and the mandatory exemption in section 14(1) (invasion of privacy), with reference to the presumptions in sections 14(3)(a) and (b) and the considerations in section 14(2)(f) and (i) of the *Act*.

The requester, now the appellant, appealed the decision of the Police to deny access to the records. During the mediation stage of the appeal, the Police located a videotaped statement taken by the Police from the owner of the motor vehicle that was involved in the accident. The Police also denied access to the videotape pursuant to the exemptions outlined above. I sought and received the representations of the Police, initially. A complete copy of the Police representations was provided to the appellant, who also made submissions in response to the Notice of Inquiry.

RECORDS:

The records remaining at issue consist of notebook entries from seven police officers relating to the investigation of the accident and a videotaped statement from the motor vehicle’s owner.

DISCUSSION:

PERSONAL INFORMATION

General principles

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. 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 where 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Do the records contain personal information?

I have reviewed the contents of the videotape and find that it contains personal information relating to the owner of the vehicle who was interviewed by the Police. The personal information includes his address, date of birth and his name along with other personal information relating to him. Further, I find that the videotape also contains the personal

information of another identifiable individual, the alleged driver of the vehicle, as it identifies him by name and describes his possible involvement in the commission of a crime.

The paper records identified by the Police as responsive consist of a number of notebook entries by the officers investigating the motor vehicle accident. These records also contain the personal information of the owner of the vehicle, as well as a passenger injured as a result of the accident and the alleged driver of the vehicle, as it identifies them by name, and describes their addresses, places of employment and dates of birth and also describes their involvement in the accident. Accordingly, I find that the information qualifies as their personal information, as defined in sections 2(1)(a), (d) and (h).

The records do not contain the personal information of the appellant.

INVASION OF PRIVACY

General principles

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. In the circumstances, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). If paragraph (a) or (b) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Police take the position that the presumption at paragraph (b) applies. This section 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 submit that the personal information contained in the records was compiled and is identifiable as part of its investigation into a possible violation of the *Criminal Code* and the *Highway Traffic Act*. It indicates that charges have been laid against the driver of the vehicle as a result of the accident and that those charges remain outstanding. As a result, the Police submit that the personal information falls within the ambit of the presumption in section 14(3)(b) and is, accordingly, exempt from disclosure under section 14(1).

I agree with the position taken by the Police that the personal information contained in the records is subject to the presumption in section 14(3)(b). The information was clearly compiled and forms part of the Police investigation into the circumstances surrounding the motor vehicle accident. The investigation resulted in various charges being laid against the driver of the vehicle under the *Criminal Code* and the *Highway Traffic Act*.

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The appellant argues that the disclosure of the personal information contained in the records is relevant to a fair determination of the rights of the insurer of the motor vehicle, thereby raising the possible application of section 14(2)(d), which reads:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

However, because of the operation of the presumption in section 14(3)(b), it cannot be rebutted by the consideration in section 14(2)(d) or any combination of other factors in section 14(2). I further find that section 16 has not been raised and the exceptions in section 14(4) have no application to the personal information in the records. As a result, I find that the records qualify for exemption under section 14(1).

Because of the manner in which I have addressed the application of the mandatory exemption in section 14(1) to the records, it is not necessary for me to consider whether they are also exempt under the discretionary exemptions in sections 8(1)(a), (b) and (f) or 8(2)(a).

ORDER:

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

Original signed by: _____
Donald Hale
Adjudicator

_____ December 20, 2005