



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2212

Appeal MA-060131-2

Toronto Police Services Board



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NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) an individual made a request to the Toronto Police Services Board (the Police) for access to information relating to a motor vehicle accident that occurred while she was a passenger in a taxi. Specifically, the requester sought any “Call Tracking Event Report and/or officer’s memo book notes” relating to the incident.

In their initial decision letter the Police stated that they were unable to locate any records that were responsive to the request. The requester (now the appellant) appealed the decision and Appeal file MA-060131-1 was opened. That appeal file was closed when the Police located two responsive records, namely an I/CAD Event Details Report and the notes of a police officer.

In a supplementary decision letter, the Police granted partial access to the responsive records. The Police relied on the exemption in section 38(b) (personal privacy) with particular reference to the presumption in section 14(3)(b) (information compiled and identifiable as part of an investigation) of the *Act* to deny access to some of the remaining information in the responsive records. The Police also advised that some of the withheld information contained in the records was not responsive to the request. The appellant appealed the decision denying access and this appeal file was opened.

During mediation the appellant accepted that the remaining information that the Police withheld from the I/CAD Event Details Report was not responsive to the request and confirmed that she was not seeking access to it. As a result, the I/CAD Event Details Report is no longer at issue in this appeal. Also at mediation, the appellant agreed that a portion of the information severed from the Police officer’s notes was similarly non-responsive to the request. As a result, that information is also no longer at issue in the appeal. Accordingly, only the withheld responsive portion of the Police officer’s notes remains at issue in the appeal.

No further issues could be resolved at mediation and the matter moved to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police, initially. The Police asked that a portion of their representations be withheld due to confidentiality concerns. A Notice of Inquiry, along with the non-confidential representations of the Police, was then sent to the appellant. The appellant chose not to file any representations in response to the Notice.

RECORDS

The sole remaining record is a page of a Police officer’s notebook. At issue is the withheld responsive portion of those notes.

DISCUSSION:

PERSONAL INFORMATION

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.

Section 2(1) of the *Act* defines “personal information”, in part, 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,
- (g) the views or opinions of another individual about the individual, and
- (h) 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.

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.)].

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], but even if information relates to an individual in a professional, official or business capacity, it may still qualify as “personal information” if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225, PO-2435].

In my view, the record does not contain any personal information of the appellant.

The record does, however, contain the personal information of an individual other than the appellant, as it reveals something of a personal nature about that individual. I find that this information qualifies as the personal information of this individual, specifically, an identifying number, symbol or other particular assigned to the individual (paragraph (c)) and their name along with other personal information about them (paragraph (h)).

PERSONAL PRIVACY

Where an appellant seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads:

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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the affected party’s personal privacy.

Section 14(2) provides some criteria for the institution 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 has been established under section 14(3), 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 (*John Doe*)] 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 exemption. [See Order PO-1764]

Section 14(3)(b)

Section 14(3)(b) reads as follows:

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.

In their supplementary decision letter and representations, the Police claim that the information falls within the section 14(3)(b) presumption.

Analysis and Findings

I find that section 14(3)(b) applies in the circumstances of this appeal. I have reviewed the portions of the notes remaining at issue and in my opinion, the personal information severed from the notes was compiled and is identifiable as part of an investigation into a possible violation of law, namely the *Highway Traffic Act*. The presumed unjustified invasion of personal privacy at section 14(3)(b) therefore applies to this information. Section 14(4) does not apply to this information and the appellant did not raise the possible application of the public interest override at section 16 of the *Act*. Accordingly, I conclude that the disclosure of the personal information relating to the identifiable individual contained in the severances remaining at issue would constitute an unjustified invasion of the personal privacy of this individual.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Steven Faughnan
Adjudicator

July 25, 2007
