



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2310

Appeal MA07-102

Toronto Police Services Board



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BACKGROUND:

The Toronto Police Services Board (the Police) received three requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for information relating to the same workplace construction accident. The requests were filed separately by a lawyer on behalf of two of his clients who were both involved in the accident. Both clients provided the Police with authorization for the lawyer to act on their behalf with respect to the disclosure of any of their personal information which might be responsive to their requests. One of the individuals was injured in the accident. The other was a witness.

The three requests were subsequently appealed. Appeal Number MA07-135 deals with information relating to the injured individual. Appeal Numbers MA07-102 and MA07-120 deal with information related to the witness. This order deals specifically with Appeal Number MA07-102 which relates to information sought by the witness.

NATURE OF THE APPEAL:

The Police received a request under the Act for information relating to a specific workplace construction accident. Specifically, the request was for access to the following information:

[A] copy of the complete Toronto Police Services accident report, together with a transcription of the Toronto Police Services 911 Call Report.

After contacting the requester to clarify the request, the Police located an I/CAD Event Details Report and issued a decision letter.

The Police advised that access was denied to the I/CAD Event Details Report pursuant to section 38(a), in conjunction with sections 8(1)(a) and (b) (discretion to refuse a requester's own information/law enforcement) and section 38(b) (personal privacy) taking into account the presumption at section 14(3)(b) of the Act.

The Police also advised that portions of the record are non-responsive to the request.

With respect to the 911 Call Report, the Police advised:

Please be advised that the Freedom of Information Unit is not compelled to create a record, and therefore, does not create a verbatim transcript of a 911 call.

The requester, now the appellant, appealed the Police's decision.

During mediation, the Police advised that with respect to the part of the request relating to the accident report, no records exist. The Police explained that in fatal work related accidents such as the one at issue in this appeal, the Police do not issue accident reports.

During mediation, the appellant clarified that he is pursuing access to any statements made by his client to the Police. In response, the Police took the position that information relating to any

statements fell outside of the scope of the request in this appeal, but within the scope of the request in the appellant's related appeal, Appeal Number MA07-120. The appellant subsequently concurred that the responsiveness of the statements is no longer at issue in this appeal as it will be addressed in Appeal Number MA07-120.

Also during mediation, the Police specified the portions of the record which they had previously identified as non-responsive to the request. The appellant took the position that the record should be released in its entirety and that no portions should be considered non-responsive.

As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process.

I began my inquiry into this appeal by sending a Notice of Inquiry, setting out the facts and issues under appeal, to the Police. The Police responded with representations.

In their representations, the Police advised that pursuant to a revised decision letter sent to the appellant on the same day that I issued the Notice of Inquiry, they no longer rely on sections 38(a) and (b). Rather, the Police now rely on the mandatory exemption in section 14(1) and the discretionary exemptions at sections 8(1)(a) and (b) to deny access to the record. I modified the Notice of Inquiry to reflect that change.

I then sent the modified Notice of Inquiry to the appellant, along with a copy of the non-confidential representations of the Police. The appellant provided brief representations in response. The appellant's representations explain the background as to why he is requesting the information but do not specifically address the issues on appeal.

RECORD:

The record that remains at issue is an eight-page I/CAD Event Details Report.

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. 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].

Also, 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.)].

The Police submit that the record contains personal information as that term is defined in section 2(1) of the *Act*. They explain that the record provides the cellular telephone number of the

individual who called in to report the occurrence and the caller's first name. They submit that the report also contains personal information about the death of another individual.

The appellant does not specifically address whether the record at issue contains the personal information of either his client, or other individuals.

Having reviewed the record itself, in my view, it does not contain any information that might qualify as the personal information of the appellant's client. However, I find that the record contains the personal information of other identifiable individuals including the medical history of one individual (paragraph (b)), along with another individual's name and telephone number (paragraph (c)) and their personal views and opinions (paragraph (e)).

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 an individual'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.

Section 14(3)(b): identifiable as part of an investigation into a possible violation of law

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.

The Police claim that the information at issue falls within the presumption at section 14(3)(b) and provide a quotation from Order MO-1256 in which former Assistant Commissioner Tom Mitchinson found that section 14(3)(b) applied. The Police do not provide any further explanation as to why section 14(3)(b) applies and do not explain why the circumstances in Order MO-1256 are relevant to the circumstances before me in this appeal.

The appellant makes no specific submissions on the application of the presumption at section 14(3)(b) or whether the exemption at section 14(1) applies.

Analysis and finding

Section 14(1) is a mandatory exemption and, whether or not I receive representations on its application, it is incumbent on me to determine whether it applies. In the absence of helpful representations by either party, I have carefully reviewed the record itself, considering the possible application of the exemption at section 14(1) and taking into account the presumption at section 14(3)(b). In my view, the nature and content of the record demonstrates clearly that a police investigation was conducted into the circumstances surrounding a workplace construction accident that resulted in a sudden death. As a result, I find that the record was compiled by the Police and is identifiable as part of their investigation, the purpose of which was, in part, to determine whether there has been a possible violation of law under either the *Criminal Code* or the *Occupational Health and Safety Act*. Accordingly, I find that the presumption at section 14(3)(b) applies to the personal information in the record.

As section 14(4) does not apply to the information, and the appellant did not raise the possible application of the public interest override at section 16 of the *Act*, I conclude that the disclosure of the record at issue would constitute an unjustified invasion of personal privacy of the individual whose information appears in the record under section 14(1).

As I have found that section 14(1) applies to exempt the record from disclosure in its entirety, it is not necessary for me to examine whether the portions of the record that the Police claim are non-responsive to the request, are indeed non-responsive. Additionally, it is not necessary for me to determine whether the exemptions at section 8(1)(a) and (b) might apply.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Catherine Corban
Adjudicator

_____ May 29, 2008