

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2939

Appeal MA13-12

Toronto Police Services Board

August 30, 2013

Summary: The Toronto Police Services Board received a request for access to a specified motor vehicle accident report. The police initially granted partial access to the responsive record, an I/CAD Event Details Report, relying on the mandatory exemption in section 14(1) (personal privacy). The appellant appealed this decision. During mediation, the parties confirmed that the only information at issue is the name of the driver's insurance company, which is set out in another record, a motor vehicle accident report. The police refused access to this record under sections 14(1) and 15(a) (information published or publicly available). In this order, the adjudicator finds that the record is not publicly available to the appellant as the police refuse to make it available to individuals who are not parties to the accident. In addition, the information at issue in the record, the name of the insurance company, is not personal information and cannot be exempt under section 14(1). The name of the insurance company in the record is, therefore, ordered disclosed to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, definition of "personal information" in section 2(1), 14(1), 15(a).

Orders Considered: P-442, MO-1573 and MO-2711.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified motor vehicle accident report. The police identified an I/CAD Event Details

Report as being responsive to the request and issued a decision to the requester providing partial access to it. The police denied access to a portion of the record pursuant to the mandatory personal privacy exemption in section 14(1), with reference to the presumption against disclosure in section 14(3)(b) of the *Act*.

[2] The appellant appealed the decision to this office. During mediation, the appellant advised that he was only interested in obtaining the name of the insurance company of the driver of the motor vehicle involved in the accident. The mediator relayed this information to the police who confirmed that this insurance information is not located in the I/CAD Event Details Report found responsive to the request, but would be located in a separate record, the motor vehicle accident report. As this record had not been identified as responsive to the request, the mediator asked for the police to issue the appellant a decision respecting access to this record. The police then issued a revised decision to the appellant which stated as follows:

Pursuant to our decision letter dated December 27, 2012, and the mediation process, please be advised that all requests made for motor vehicle accident reports are disseminated ONLY through the following office:

Toronto Police Service
Records Management Services
Records Release Section
40 College Street, 4th Floor
Toronto, Ontario
M5G 2J3
Telephone (416) 808 - 8240

However, upon consultation with members of the Records Release Section, our office was advised that because your building was indirectly involved in the accident that occurred on August 2, 2012, a copy of the motor vehicle accident report cannot be provided to you.

As stated in the original request letter, a utility pole sustained damage as a result of the aforementioned motor vehicle accident and subsequently caused a power disruption to your apartment building [specified address]. As the hydro company was directly impacted by the damage to its property, you may wish to contact your service provider in order to receive the information you are seeking.

[3] The appellant took issue with the police's decision and asked that this appeal proceed to adjudication. The appellant also advised the mediator he wished to narrow the scope of his request to include only "the name of the insurance company of the driver of the motor vehicle involved in the aforementioned accident" that is included

within the requested motor vehicle accident report. Accordingly, the I/CAD report which was originally identified as the responsive record is no longer at issue in the appeal.

[4] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry to the police, initially inviting them to address whether the motor vehicle accident report constituted a "record" under the *Act* and if so, on what basis the information was being withheld. In their representations, the police acknowledge that the report is a record, but refer to the exemption in sections 15(a) (information published or publicly available) and 14(1) as the basis for denying access to the requested information. Because of the manner in which I dispose of the issues in this appeal, it was not necessary for me to obtain representations from the appellant.

RECORD:

[5] The sole information at issue in this appeal is the identity of the insurance company of the driver of the car who is identified in the motor vehicle accident report.

ISSUES:

A: Does the exemption in section 15(a) apply to the motor vehicle accident report?

B: Does the information sought by the appellant that is contained in the motor vehicle accident report qualify as "personal information" as that term is defined in section 2(1) of the *Act*?

C: If the information qualifies as "personal information", is it exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*?

DISCUSSION:

Issue A: Does the exemption in section 15(a) apply to the motor vehicle accident report?

Section 15(a): information currently available to the public

[6] Section 15(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

[7] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.¹

[8] To show that a “regularized system of access” exists, the institution must demonstrate that:

- a system exists;
- the record is available to everyone; and
- there is a pricing structure that is applied to all who wish to obtain the information [Order MO-1881].

[9] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution’s obligations under the *Act*.²

[10] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the record that is responsive to the request [Order MO-2263].

[11] Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include:

- unreported court decisions [Order P-159];
- statutes and regulations [Orders P-170, P-1387];
- property assessment rolls [Order P-1316];
- septic records [Order MO-1411];
- property sale data [Order PO-1655];
- police accident reconstruction records [Order MO-1573]; and
- orders to comply with property standards [Order MO-2280].

[12] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.³ However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply [Order MO-1573].

¹ Orders P-327, P-1387 and MO-1881.

² Orders P-327, P-1114 and MO-2280.

³ Orders P-159, PO-1655, MO-1411 and MO-1573.

[13] The police concede that the record which contains the information sought by the appellant is a "record" for the purposes of the access provisions in the *Act*. However, they go on to argue that there exists a "regularized system of access" in place whereby "involved parties" are only able to obtain copies of motor vehicle accident reports, "outside the parameters of the *Act*" from the Records Release Section of its Records Management Services. The police then argue that because this alternative access mechanism exists to enable "involved parties" to access motor vehicle accident reports upon payment of the required fee, the exemption in section 15(a) applies.

[14] The police rely on the reasoning in Orders MO-1573 and MO-2711 to support their position that motor vehicle accident reports are made available upon payment of the required fee and, therefore, reports of this nature are subject to the section 15(a) exemption. I agree that in the case of an "involved party" or its insurer, the police are entitled to rely on section 15(a) to deny access to a motor vehicle accident report as there exists a regularized system of obtaining access to such records *for these parties*. [my emphasis]

[15] However, the police then go on to add that because the appellant does not meet the requirements of an "involved person", he is unable to obtain access to the record through the regularized access mechanism operated by its Records Release Section. By acknowledging that the appellant cannot obtain access to the motor vehicle accident report because he is not an "involved person" or an insurer, the police can no longer rely on the application of the section 15(a) exemption to refuse to disclose the record to him.

Issue B: Does the information sought by the appellant in the motor vehicle accident report qualify as "personal information" as that term is defined in section 2(1) of the *Act*?

[16] 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 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 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;

[17] 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].

[18] The police submit that the motor vehicle report contains the personal information of the driver of the vehicle involved in the collision and that information relating to the insurance company of the driver constitutes that individual's personal information. The police rely on paragraph (c) of the definition, arguing that the insurance policy number which appears on the record represents an "identifying number . . . assigned to the individual" and that this information, taken with the name of the insurance company qualifies as the personal information of the vehicle's driver under the definition in section 2(1).

[19] I note that the appellant has clearly indicated that the only information he is seeking is the name of the driver's insurer, not the policy number or any other information which would serve to identify the driver of the vehicle. He is pursuing this information in order to make a claim for damage which he feels he incurred as a result of the motor vehicle accident.

[20] In my view, the name of the insurance company alone, without a policy number or other identifying information about the driver, does not constitute "personal information" within the meaning of that term in section 2(1). In addition, I find that accurate inferences about the personal information of the driver of the vehicle could not be drawn from the disclosure of the identity of this individual's insurance company, as was the case in Order P-442.

[21] The appellant is not seeking the policy number assigned to the driver, only the name of the insurance company. I find that this information does not constitute "personal information" under section 2(1) and it cannot, therefore, qualify for exemption under section 14(1). As no other exemptions have been claimed for this information and no mandatory exemptions apply, I will order that it be disclosed to the appellant. Because of my finding that the information sought by the appellant does not fall within the ambit of "personal information" in my discussion of Issue B, it is not necessary for me to address Issue C.

ORDER:

1. I order the police to disclose the name of the insurance company of the driver which appears in the motor vehicle accident report to the appellant by **September 23 2013**.
2. I reserve the right to require the police to provide me with a copy of the record that is disclosed to the appellant pursuant to Order Provision 1.

Original signed by: _____
Donald Hale
Adjudicator

August 30, 2013 _____