



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1704**

**Appeal MA-020359-1**

**Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

The requester made a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a specified occurrence report. The Police had created the occurrence report as a result of an extortion complaint made by the requester.

The Police granted partial access to the record. The Police denied access to the remaining portions of the record on the basis that they qualified for exemption under section 38(b) (invasion of privacy) with specific reference to section 14(3)(b) (compiled and identifiable as part of an investigation into a possible violation of law).

The requester (now the appellant) appealed the Police's decision to deny access.

Mediation did not resolve this appeal, and the file was transferred to adjudication. This office sent a Notice of Inquiry to the Police, initially, outlining the facts and issues and inviting the Police to make written representations. The Police submitted representations in response. I then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the Police's representations. The appellant did not make any representations or otherwise respond to the Notice.

In this appeal I must decide whether the exemption claimed by the Police applies to the record.

## **RECORD:**

The record is a three-page occurrence report. The undisclosed portions remain at issue.

## **BRIEF CONCLUSION:**

For the reasons set out in this order, I find that some of the information at issue is exempt from disclosure under section 38(b) of the *Act*, while the remaining information is not and must be disclosed.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The first issue I must decide is whether the record contains personal information, and if so, whose.

Under section 2(1) of the *Act*, personal information is defined, in part, to mean recorded information about an identifiable individual, including the individual's age (section 2(1)(a)) or address (section 2(1)(d)), or 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 (section 2(1)(h)).

The Police submit that the record contains the personal information of the individual identified as a suspect in the occurrence report (the “suspect”) and the appellant’s lawyer, who is identified as a witness (the “witness”). They submit:

The records [sic] contain the name, address, telephone number, and other information provided by and about [the suspect]. In addition, there is information provided by [the witness] about [the suspect].

The Police submit that they disclosed portions of the record relating to the witness on the basis that this information identifies her in her “official capacity” as the appellant’s lawyer and therefore constitutes professional, rather than personal, information. The Police take the position that the remaining information about the witness is personal because she was acting in a personal capacity when she provided it to the Police. Similarly, the Police submit that all the information in the record relating to the suspect is personal, not professional.

In addition, the Police appear to submit that the record contains the personal information of another individual (the “business associate”), whose name does not appear in the record. The Police also make certain confidential representations that I am not at liberty to disclose in this order.

In claiming section 38(b) of the *Act*, which applies to information relating to requesters, the Police also raise as an issue whether the record contains the appellant’s personal information.

I have reviewed the record and I find that it contains the personal information of the appellant, the suspect and the witness. Some of this information might ordinarily constitute professional information; however, because of the sensitive nature of the record and the surrounding circumstances, I find that it qualifies as personal information. I also find that the record contains the business associate’s personal information. Even though this individual is not identified by name in the record, he is at the very least identifiable by the appellant.

## **INVASION OF PRIVACY**

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from disclosure that limit this general right.

The Police rely on section 38(b) in conjunction with section 14 to support their denial of access to the record. More specifically, the Police rely on the “presumed unjustified invasion of personal privacy” at section 14(3)(b). In their representations, the Police also submit that they considered whether the criteria at sections 14(2)(a), (d), (e), (f), (g), (h) and (i) apply to the record. These sections read:

38. A head may refuse to disclose to the individual to whom the information relates personal information,

- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

14 (2) 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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) 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;

Under section 38(b), where a record relates to the requester but disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution may refuse to disclose that information to the requester.

Section 38(b) is a discretionary exemption. Even if the requirements of section 38(b) are met, the institution must nevertheless consider whether to disclose the information to the requester. In this case, section 38(b) requires the Police to exercise their discretion in this regard by balancing the appellant's right of access to his own personal information against other individuals' right to the protection of their privacy.

Sections 14(1) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy under section 38(b). Sections 14(1)(a) through (e) provide exceptions to the personal privacy exemption; if any of these exceptions apply, the information cannot be exempt from disclosure under section 38(b).

Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled 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 section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

I have reviewed the record and I have concluded that none of the exceptions at sections 14(1)(a) through (e) applies in this case.

With respect to the section 14(3)(b) presumption, the Police submit, among other things:

Police responded to a complaint of "extortion by threat/violence" which involved the [appellant]. An investigation was undertaken to determine if any offence under the Criminal Code of Canada was committed, such as extortion.

The Police take the position that some of the information in the record was "obtained directly from third parties," rather than from the appellant. The Police submit:

Although the appellant indicates that he provided the information to the primary investigating officer himself, the records [sic] do not clearly identify which information was provided by the appellant, and which information was provided by affected parties.

Rather, the occurrence report was written in such a manner as to provide a synopsis of the information gathered from various individuals, including the appellant, and may not reflect the exact information provided by the appellant, but may include information gathered from other individuals. Therefore, [the Police are] unable to specifically identify which information was provided solely by the appellant and which information was provided by the affected parties.

A release of records to an individual who provided that information should be based on clear identification of which information they provided in order to protect the privacy of personal information which was obtained from other individuals. It should not be based on a "presumption" that the appellant is aware of this information.

... For that reason, it is difficult, if not impossible, to separate the specific information provided by the appellant with the information provided by others.

The purpose of section 38(b) is to protect the personal privacy of individuals other than the requester (here, the appellant). The record at issue is an occurrence report that was initiated by the appellant's extortion complaint to the Police. The Police have denied the appellant access to the personal information of the suspect, the witness and the business associate. It is apparent from the record and the surrounding circumstances that the appellant himself provided much of this information to the Police when he made his complaint. The appellant clearly supplied the Police with the suspect's name and the basis for the appellant's complaint. Denying the appellant access to this information simply would not make sense. In addition, even if the appellant did not directly supply certain details in the record to the Police, he would already be apprised of this information in any event. For example, any information about or provided by the witness (the appellant's lawyer) would also be known to the appellant. Consequently, the suspect, the witness and the business associate have no privacy interest in this information vis-à-vis the appellant that warrants protection. Whether individuals other than the appellant may have provided some of this information to the Police independently (which is inconclusive at best) does not alter this finding.

Barring exceptional circumstances, withholding information in the record that was supplied by the appellant or that he would already know would not serve the purpose of section 38(b). In the language of previous orders, doing so would produce an "absurd result" (for example, Orders M-444, MO-1561). This conclusion makes it unnecessary to undertake an invasion of privacy analysis under section 38(b) for this information (Order MO-1680).

I do, however, agree with the Police's decision to withhold information in the record that the appellant clearly did not provide, or that he may not already know. My finding that the appellant is not already privy to these specific portions of the record turns on the dates of the entries and their contents. The "absurd result" principle does not apply to this information. Rather, I find that this information was compiled and is identifiable as part of an investigation into a possible violation of law, thereby triggering the presumption of an unjustified invasion of the suspect's privacy at section 14(3)(b). The presumption is not rebutted by section 14(4) or the "public interest override" at section 16, which was not raised in this case. This information is therefore exempt under section 38(b). In addition, I am satisfied that the Police did not err in exercising their discretion to withhold this information.

I am enclosing with the copy of this order being sent to the Police a copy of the record highlighting those portions that the Police must not disclose. I will order the Police to disclose the remaining information.

**ORDER:**

1. I order the Police to disclose the record to the appellant, except for those portions that I found to be exempt under section 38(b), by **November 24, 2003**. I am attaching a highlighted version of the record with the copy of this order being sent to the Police, identifying the portions that they must not disclose.
2. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Police to provide me with a copy of the record that is disclosed to the appellant, upon request.

Original signed by: \_\_\_\_\_  
Shirley Senoff  
Adjudicator

\_\_\_\_\_ October 31, 2003