



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1673

Appeal MA-020126-1

Ottawa Police Services Board



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NATURE OF THE APPEAL:

Through an access to information request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), an individual asked the Ottawa Police Services Board (the Police) to provide him with all records “[the Police] control that are about [him] which have and had [his] date of birth written incorrectly”.

Initially, the Police gave the individual only some of the records. The Police’s decision letter, however, did not indicate on what basis they had denied him the remainder of the records. Therefore, the individual appealed the decision.

Subsequent to the commencement of mediation of the appeal, the Police issued another letter to the individual (now the appellant) which explained that the information withheld from him was not responsive to his request and that he had, in fact, been given all of the information he requested. The appellant then clarified that he was seeking the complete records, rather than just the individual pages listing his incorrect birth date.

Accordingly, the Police issued a final decision letter in which they indicated the sections of the *Act* under which they had denied the appellant access to the remaining information. Those sections are

- section 8 (law enforcement),
- section 14 (unjustified invasion of personal privacy),
- section 38(a) (discretion to refuse requester’s own information) in conjunction with section 8, and
- section 38(b) (discretion to refuse requester’s own information) in conjunction with section 14.

During the course of mediation, the Police released additional information to the appellant and withdrew their reliance on sections 8 and 38(a).

The matter then proceeded to the inquiry stage.

The Police provided representations in response to my Notice of Inquiry and I shared the non-confidential portions of those representations with the appellant. The appellant provided representations in response. I have carefully considered all of the representations before me.

RECORDS:

The information at issue is contained in general occurrence reports, person/vehicle reports and narratives.

CONCLUSION:

The information the Police withheld from the appellant is exempt from disclosure under the section 38(b) personal privacy exemption.

ANALYSIS:

PERSONAL INFORMATION

The first issue for me to determine is whether the records contain personal information and, if so, to whom that information relates. The term “personal information” is defined in section 2(1) of the *Act*, in part, as recorded information about an identifiable individual.

The Police submit that the records contain the personal information of both the appellant and of other identifiable individuals.

The appellant asserts that the information to which he wants access is not “personal information” because it is, instead, “about an individual’s professional or official governmental capacity”.

Previous decisions of this office have drawn a distinction between an individual’s personal and professional, or official government capacity, and have found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be “about the individual” within the meaning of the section 2(1) definition of “personal information” [Orders P-257, P-427, P-1412, P-1614].

The distinction between whether information is “about the individual” within the meaning of the section 2(1) definition or whether it is merely associated with a person in his/her professional capacity or official government capacity such that it is not “personal information” rests on whether that information is *personal to the individual* or, to put it another way, *personal in nature*.

Findings

I have examined the information contained in the records in this appeal.

The information at issue is not information associated with **persons** in their professional or official government capacity. In Reconsideration Order R-980015, Adjudicator Donald Hale reviewed the history of the Commissioner’s approach to this issue, extensively examined the approaches taken by other jurisdictions, and considered the effect of the decision of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385. He came to the following conclusion:

I find that the information associated with the names of the affected persons, which is contained in the records at issue, *relates to them only in their capacities as officials with the organizations that employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein.*

Essentially, the information is not about these individuals and, therefore, does not qualify as their “personal information” within the meaning of the opening words of the definition. [emphasis added]

The information at issue in this appeal is personal to the individual rather than related to the individual in their capacity as an official of their employer. Much of this information is the “personal information” of other identifiable individuals, including their

- ages
- names
- addresses
- telephone numbers
- other identifying numbers
- personal opinions or views

Hence, the information squarely meets the definition of “personal information” set out in paragraphs (a), (c), (d), (e), and/or (h) of the section 2(1) definition.

The records also contain the personal information of the appellant.

UNJUSTIFIED INVASION OF ANOTHER INDIVIDUAL’S PERSONAL PRIVACY

General principles

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 this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold under section 38(b) is met. The 38(b)/14 analysis proceeds as follows:

1. **Does the information fit within section 14(1)(a)-(e)?**

If so, the information is *not* exempt under section 38(b). If not, proceed to step 2.

2. **Does the information fit within section 14(4)(a)-(c)?**

If so, the information is *not* exempt under section 38(b). If not, proceed to step 3.

3. **Does the information fit within section 14(3)(a)-(h)?**

If so, the information qualifies for exemption under section 38(b), and the institution must exercise its discretion and decide whether or not to disclose it. If not, proceed to step 4.

4. **Would disclosure of the information constitute an unjustified invasion of another individual's privacy, taking into account any relevant factors listed in section 14(2), and any other relevant unlisted factors?**

If so, the information is exempt under section 38(b), and the institution must exercise its discretion and decide whether or not to disclose it. If not, the information is not exempt under section 38(b).

Sections 14(1) and (4) exceptions and limitations

In the circumstances, it is clear that none of the exceptions or limitations under section 14(1) or (4) applies.

Section 14(3) presumptions

Section 14(3)(b): possible violation of law

The Police rely on the "presumed unjustified invasion of personal privacy" in section 14(3)(b) of the *Act*, which 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 continue the investigation

The Police submit:

...The information was compiled by members of the Ottawa Police Service during an investigation into allegations that offences under the Criminal Code of Canada may have been committed. The offences in these cases were threats and criminal harassment. The information contained in these records was used to investigate these offences and to prosecute the offender(s). After investigation it was determined that no criminal charges would be laid.

The appellant submits:

The information the [Police] is withholding under subsection 14(3)(b) of the Act, is an absurd application of the Act. Because the [Police] abused its power, fabricated information and harassed me and my family, to suppress our complaints.

It is evident from an examination of the records and the circumstances of this appeal that the Police compiled the information at issue during the course of their investigations into possible violations of the *Criminal Code*. If a record contains personal information and that information was compiled during the course of an investigation and is identifiable as such, the presumption at 14(3)(b) applies, whether or not the investigation is complete (see Orders MO-1568, M-701, MO-1256, MO-1431) and even where charges are not laid (Orders P-223, P-237, P-1225, MO-1181, MO-1443).

Therefore, disclosure of the information in the records is presumed to constitute an unjustified invasion of personal privacy, and thus the records qualify for exemption under section 38(b).

As a result, it is not necessary for me to consider the application of any of the factors under section 14(2).

Severance

In the circumstances, I am satisfied that the Police carefully considered the records and did a reasonable job under section 4(2) of the *Act* in severing exempt information from the records and disclosing as much information to the appellant as possible.

Exercise of discretion

As indicated, section 38(b) is a discretionary exemption. Therefore, once it is determined that a record qualifies for exemption under this section, the Police must exercise their discretion in deciding whether or not to disclose it.

It is evident from the representations of the Police on this issue that they considered all the circumstances of the appeal in exercising their discretion to withhold information from the appellant. I am not persuaded that the Police erred in the exercise of discretion in this case.

Conclusion

All of the information the Police withheld from the appellant qualifies for exemption under section 38(b). In addition, the Police did not err in exercising discretion under section 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Rosemary Muzzi
Adjudicator

July 30, 2003 _____