



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1878

Appeal MA-040069-1

Port Hope Police



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Port Hope Police Service (the Police) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester made a request to the Cobourg Police Service for access to any police records involving her for a specified period.

By way of background, the records relate to allegations of domestic conflict between the requester and her husband (the third party appellant).

The Police issued a decision granting partial access to responsive records and denying access to the withheld information pursuant to section 38(a) read in conjunction with sections 8(1)(f) and 8(2)(a) (law enforcement) of the *Act*, and section 38(b) read in conjunction with section 14 (personal privacy). In raising the section 38(b) exemption, the Police cited the application of sections 14(2)(f) (highly sensitive) and (i) (unfair damage to reputation). The Police indicated in their decision letter that as some of the information they proposed to release contained the personal information of the third party appellant, this individual would be given an opportunity to appeal the Police's decision before the information was released to the requester.

The third party appellant appealed the Police's decision to disclose information to the requester. The requester did not appeal the Police's denial of access.

During the mediation stage, the mediator contacted the requester, the third party appellant and the Police to discuss the issues under appeal. No issues were resolved through mediation.

The file was then transferred to the adjudication stage for inquiry.

During the course of reviewing this file to commence my inquiry, I noted that the Police have withheld access to some of the records in their entirety under section 38(a) read in conjunction with sections 8(1)(f) and 8(2)(a). Therefore, these records and the application of sections 38(a) and 8(1)(f) and 8(2)(a) are not at issue in this appeal. The focus for this appeal is on the Police's decision to grant partial access to some of the records, pursuant to the section 38(b) exemption. As indicated above, the third party appellant has objected to the release of this information.

In an appeal of this nature, the third party appellant bears the onus of establishing the requirements of the exemption. I invited the third party appellant to provide representations on the possible application of the section 38(b) exemption to these records. The third party appellant submitted representations. I chose not to seek representations from the requester or the Police.

RECORDS:

There are four records at issue. They are described below in the following table:

RECORD #	DESCRIPTION	DISCLOSURE	SECTION
5	General Occurrence Report, dated July 30, 2003	Access in part	38(b)
6	General Occurrence Report, dated August 8, 2003	Access in part	38(b)
8	General Occurrence Report, dated September 4, 2003	Access in part	38(b)
13	General Occurrence Report, dated November 25, 2003	Access in part	38(b)

DISCUSSION:

PERSONAL INFORMATION

What constitutes “personal information”?

In order to determine whether the section 38(b) exemption 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,

...

- (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,

...

- (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].

Do the records contain “personal information” and, if so, to whom does it relate?

The appellant's representations do not address this issue.

On my review of the records, I am satisfied that the records contain the personal information of the third party appellant, including his name, information relating to his relationship with the requester and other named individuals, and the views of others about him. I also find that the records contain information about other identifiable individuals, including the requester. The information concerning the requester includes her name, her views about particular incidents and information relating to her relationship with the third party appellant.

**DISCRETION TO PROVIDE ACCESS TO THE REQUESTER'S INFORMATION/
INVASION OF PRIVACY**

Introduction

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 exceptions to this general right of access.

Section 38(b) of the *Act* provides:

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

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

In this case, I have determined that the records contain the personal information of both the third party appellant and other individuals, notably the original requester. As a result, I will consider whether the disclosure of the personal information at issue would be an unjustified invasion of the personal privacy of other individuals, notably the third party appellant, and is exempt from disclosure under section 38(b).

Under section 38(b) of the *Act*, where a record contains the 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. On appeal, I must be satisfied that disclosure *would* constitute an unjustified invasion of another individual’s personal privacy (see Order M-1146).

If the information falls within the scope of section 38(b), that does not end the matter as the institution may exercise its discretion to disclose the information to the requester. In this case, the Police have decided to provide the requester with partial access to the personal information contained in these records.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making a determination as to whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(3) lists the types of information whose disclosure is *presumed* to constitute an unjustified invasion of personal privacy. 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, 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], 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 section 14 exemption. (See Order PO-1764)

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

In addition, if any of the exceptions to the section 14(1) exemption at paragraphs (a) through (e) applies, then disclosure would not be an unjustified invasion of privacy under section 38(b).

Unjustified invasion of another individual’s personal privacy

In this case, the Police have decided to provide the requester with partial access to the personal information contained in these records and to deny access to other portions of the records, pursuant to the section 38(b) exemption. The issue for me to decide is whether the Police properly applied the section 38(b) exemption in agreeing to provide the requester with partial access to the records. As stated above, the third party appellant bears the onus of establishing the requirements of the section 38(b) exemption to the information that the Police have agreed to release to the requester.

The third party appellant submits that sections 14(2)(f) (highly sensitive) and 14(2)(g) (accuracy or reliability) are relevant factors in support of his position that the information at issue should not be disclosed to the requester.

In regard to the application of section 14(2)(f), the appellant provides convoluted details regarding his medical condition and his fears about how this information could be used should it get into the requester's hands. With respect to the relevance of section 14(2)(g), the appellant states that he believes that "most police reports have discrepancies and inaccurate information". While he does not say so expressly, he seems to be suggesting that, based on this conclusion, the information contained in these records would also have discrepancies and inaccuracies. He worries about how the information could be used against him if it is disclosed to the requester.

While I acknowledge the third party appellant's concerns, in my view his representations do not provide convincing evidence that the information at issue should not be disclosed to the requester. As stated above, the records contain the personal information of both the third party appellant and the requester. The portions of the records that the Police have decided to disclose to the requester contain the personal information of the third party appellant and the requester that is generally known to both of them. On the other hand, the Police have severed the portions of the records that are sensitive and which contain solely the personal information of the third party appellant and other individuals. To deny the requester access to information that is generally known to both her and the third party appellant would serve no reasonable purpose and would only give only rise to an absurd result (see Orders MO-1196, PO-1679 and MO-1755).

Based on my review of the records, I find that the Police have properly applied the section 38(b) exemption and exercised their discretion in the circumstances of this case.

The section 38(b) exemption is discretionary, and permits the Police to disclose information, despite the fact that it could withhold it. The Police must exercise their discretion. The exercise of discretion under section 38(b) involves a balancing principle. The Police must weigh the requester's right of access to his or her own personal information against the third party appellant's right to the protection of his privacy. If the Police determine that the release of the information would constitute an unjustified invasion of the third party appellant's personal privacy, then section 38(b) gives the Police the discretion to deny access to the personal information of the third party appellant. In my view, the Police have properly exercised their discretion in the circumstances of this case.

Accordingly, I will order the Police to release the information at issue to the requester.

ORDER:

1. I uphold the Police's original decision to disclose to the requester severed copies of the records at issue in this appeal.
2. I order the Police to disclose these records to the requester by providing her with copies of the records in severed form by **January 10, 2005** but not before **January 4, 2005**.

3. In order to verify compliance with provision 2 of this order, I reserve the right to require the Police to provide me with a copy of the information sent to the requester.

Original Signed by: _____
Bernard Morrow
Adjudicator

_____ November 30, 2004