



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2044

Appeal MA-050316-1

Deep River Police Services Board



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NATURE OF THE APPEAL:

The Deep River Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (Act)* for copies of two specified police reports which were referred to in a third report. The Police responded to the request by granting access to one of the reports in its entirety. The Police identified that, after notifying an individual whose rights might be affected by the disclosure of this record (the affected party), they were denying access to the second report on the basis that it is exempt under section 14(1) (invasion of privacy) of the *Act*.

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

During the mediation process, the Police issued a revised decision letter, and released to the appellant a portion of the report at issue. The Police also confirmed that access to the remaining portions of the report was denied on the basis of sections 14(1) and 38(b) (invasion of privacy) of the *Act*. In addition, the Police provided this office with a brief statement from the affected party indicating why the information relating to this individual should not be disclosed.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and the Police indicated that they would not be providing representations in response. I then sent the Notice of Inquiry to the affected party, who also did not provide a response. Finally, I sent the Notice of Inquiry to the appellant, inviting representations on the issues. The appellant did not provide a response to the Notice of Inquiry either; however, in his appeal letter he identifies a number of reasons why he ought to be entitled to have access to the information the Police have about him.

RECORD:

The record at issue is the undisclosed portion of a one-page General Occurrence 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].

The record at issue, a one-page General Occurrence Report, relates to an incident involving the appellant. Based on my review of the portions of the record remaining at issue, I am satisfied that it contains the personal information of the appellant as it contains his name along with information relating to his marital and family status (paragraph 2(a)), his phone number (paragraph 2(d)), as well as other personal information relating to him (paragraph 2(h)).

In addition, I am satisfied that the record contains the personal information of the affected party including the affected party's name as well as other personal information relating to this individual (paragraph 2(h)).

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 exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual.

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 own personal information against the other individual's right to protection of their privacy.

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 affected person's personal privacy.

Section 14(2) provides some criteria 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, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

On my review of the record, I am satisfied that section 14(3)(b) applies. That section of the *Act* states:

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;

On my review of the record at issue in this appeal, I am satisfied that it was compiled by the Police in the course of their investigation of the specific matter addressed therein. As a result, the personal information contained in the record was compiled and is identifiable as part of the Police investigation into a possible violation of law under section 14(3)(b).

The disclosure of the record is, therefore, presumed to constitute an unjustified invasion of privacy under section 14(3)(b). Accordingly, subject to my treatment of the absurd result principle set out below, the record is exempt from disclosure under section 38(b) of the *Act*.

The section 38(b) exemption is discretionary and permits the Police to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Police's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

In their revised decision letter to the appellant, the Police decided to disclose portions of the record at issue to the appellant. Upon review of all of the circumstances surrounding this appeal, and subject to the absurd result discussion below, I am satisfied that the Police have not erred in the exercise of their discretion to disclose portions of the record, and to decline to disclose the remaining portions of the record under section 38(b).

Absurd result

Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323 and MO-1378].

In my view, the reasoning in these past orders is applicable to some of the information at issue in this appeal. As identified above, the record contains the personal information of the appellant, as well as that of an affected party. Portions of the record identify that the appellant was contacted in relation to the matter, or describe information which is clearly within the appellant's knowledge. I find that applying the section 38(b) exemption to deny access to information of which the appellant was clearly aware would lead to an "absurd" result.

In coming to my conclusion, I have carefully examined the record at issue, as well as the appeal letter provided by the appellant and the affected party's statement contained in the file. In the circumstances, I am satisfied that that section 38(b) does not apply to the portions of the record containing information of which the appellant is clearly aware, and the relevant portions of the record should be disclosed to the appellant.

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 should disclose to the appellant.

ORDER:

1. I order the Police to provide the appellant with the highlighted portions of the record by sending him a copy by **May 30, 2006** but not before **May 23, 2006**.
2. I uphold the Police's decision to withhold the remaining parts of the record from disclosure.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the parts of the record which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

Frank DeVries
Adjudicator

April 25, 2006