



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2075

Appeal MA-050197-1

Hamilton Police Services Board



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NATURE OF THE APPEAL:

The Hamilton 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 copy of a police report in relation to a specific incident in which the requester had been involved.

The Police identified the record that was responsive to the request and, after notification of one affected party under section 21 of the *Act*, granted partial access to it. In their decision not to grant full access, the Police relied on:

- section 38(a) (discretion to refuse requester's own information, in conjunction with sections 8(1)(c) and (e), 8(2)(a) and (c) (law enforcement) and
- section 38(b)(personal privacy) in conjunction with the factors at sections 14(2)(e),(f),(h) and (i), as well as the presumption at section 14(3)(a).

The requester (now the appellant) appealed the Police's decision to this office. During mediation, the appellant confirmed that she was pursuing access to the withheld portions of the record.

This appeal was not resolved in mediation and was moved to the adjudication stage. I sent a Notice of Inquiry to the Police and to an affected person and sought their representations. In response, I received the representations of the Police and the affected person. Because the affected person did not consent to the release of their personal information, I summarized those representations in a Notice of Inquiry, which I sent to the appellant, along with the non-confidential portions of the Police's representations. Although the appellant did not submit representations, she confirmed that she continues to seek access to the withheld portions of the record.

RECORDS:

The record at issue in this appeal consists of the withheld information from a two-page occurrence report.

DISCUSSION:

PERSONAL INFORMATION

The Police have claimed that sections 38(a) and (b) apply to the withheld portions of the record. In order to evaluate the application of these exemptions, I must first address the question of whether the records sought by the appellant contain "personal information", and if so, to whom the information relates.

The Police submit that the portions of the record at issue contain the personal information of the affected person, provided to the Police during their investigation of an occurrence, thereby qualifying as "personal information" within the definition of that term in section 2(1).

Under section 2(1) of the *Act* “personal information” is defined, in part, as 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 where 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;

I have carefully reviewed the withheld portions of the occurrence report and find that it contains the personal information of the appellant and other identifiable individuals, including the affected person, as it includes their names, dates of birth, addresses and telephone numbers, as mentioned in paragraphs (a) and (d) of the definition. I also find that the record at issue contains personal information which falls within paragraphs (e) and (h) of the definition.

RIGHT OF ACCESS TO ONE’S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

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 the appellant and other individuals.

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 appellant 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, 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 appellant with partial access to the personal information contained in the record and to deny access to other portions of the record, under the section 38(b) exemption. The issue for me to decide is whether the Police properly applied the section 38(b) exemption in deciding to withhold portions of the record.

The Police rely on the factors at sections 14(2)(e),(f),(h) and (i), as well as the presumption at section 14(3)(a). In reviewing the record and the evidence, I find that sections 14(2)(f) (highly sensitive) and 14(2)(h) (supplied in confidence) are relevant factors in support of the Police's position that the information at issue should not be disclosed to the appellant.

The factors in section 14(2)(f) and (h) read:

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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence...

I have carefully reviewed the record. The withheld portions of the record, in my view, consist of sensitive information, which was clearly provided to the Police in confidence. Additionally, the appellant did not provide representations and, in the absence of evidence supporting disclosure, I find no reason to disturb the Police's decision. I find that the withheld parts of the record are therefore exempt under section 38(b).

As noted above, the section 38(b) exemption is discretionary and permits the Police to disclose information, despite the fact that they could withhold it. The exercise of discretion under section 38(b) involves a balancing principle: the Police must weigh the appellant's right of access to her own personal information against other individuals' right to the protection of their privacy. If the Police determine that the release of the information would constitute an unjustified invasion of the affected party's personal privacy, then section 38(b) gives the Police the discretion to deny access to the personal information of the affected parties. The Police state that they weighed the appellant's right to know against the right to privacy of the other individuals whose personal information appears in the records and they maintain that they considered relevant factors in their exercise of discretion. I agree. In my view, the Police considered relevant factors in their exercise of discretion and did not consider irrelevant ones.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Beverly Caddigan
Adjudicator

August 15, 2006 _____