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

ORDER MO-2148

Appeal MA-050294-1

Ottawa Police Service

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NATURE OF THE APPEAL:

The requester, filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Ottawa Police Service (the Police) for access to records relating to his client. Specifically, the requester sought "all of the incident reports and police notes, which contain information related to my client … this request includes all information relating to the arrest of my client, identification of my client or dispatch of officers for the purpose of arresting my client or the suspect for whom he was mistaken." The requester provided the Police with a written authorization signed by his client allowing the client's personal information to be disclosed to the requester.

The Police located records responsive to the request and granted partial access to them. Access was denied to portions of the records pursuant to section 8(1)(l), and 14(1) in conjunction with the presumption at section 14(3)(b) of the *Act*.

The requester, now the appellant, appealed the Police's decision.

During mediation, the appellant advised that he was concerned that the Police had failed to locate all of the records responsive to the request. Specifically, the appellant believed that records containing a description of the suspect provided by the complainants involved in the incident were not located.

The Police agreed to conduct a further search and subsequently located additional records relating to the information provided by complainants. The Police provided the additional records to this office and advised that their position was that the records could not be released under the *Act*.

The appellant advised that he was not interested in pursuing access to the additional records relating to the information and description of the suspect provided by the complainants. However, he advised that he continues to seek access to the records and portions of records related to his client's arrest.

As further mediation was unsuccessful, the appeal was transferred to the adjudication stage of the appeal process.

I began my inquiry into this appeal by sending a Notice of Inquiry to the Police. The Police provided representations in response. I then sent a copy of the Notice of Inquiry to the appellant along with a copy of the representations submitted by the Police. The appellant also submitted representations. I then sent a copy of the appellant's representations to the Police, providing them with an opportunity to reply. The Police chose not to provide reply representations.

RECORDS:

The records remaining at issue in this appeal consist of a 4-page computer printout entitled "Call Hardcopy" and two pages of handwritten police officer notes, each page written by a different officer. The police officer notes have been identified as pages 5 and 6.

Based on an Index of Records provided by the Police, the "Call Hardcopy" and the police officer notes on page 6 have been withheld in full under section 14(1). The Police have made two severances to the police officer notes on page 5 under section 8(1)(l); the rest of the information on that page has been disclosed.

DISCUSSION:

PERSONAL INFORMATION

For the purpose of deciding whether section 14(1) of the *Act* may apply to information contained in a record, it is necessary to determine whether the record contains personal information and, if so, to whom it belongs.

Section 2(1) of the *Act* defines "personal information", in part, 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,
>
> …
>
> (g) the view 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. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe,* [2002] O.J. No. 4300 (C.A.)].

As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Order P-257, P-427, P-1412, P-1621), but even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Representations

The Police submit that the records at issue contain "personal information" as defined in section 2(1) of the *Act*. They submit:

> Personal information contained throughout the records at issue pertain to the individuals that were involved in the robbery.
>
> The approximate ages, race, and physical descriptors is considered personal information and is listed in the records at issue in this appeal.

Later in their representations, the Police submit:

> Although the individuals who are described in this incident are not identified by name and address, the information was withheld in order to protect the identity of the suspects in the event that additional information is received at a later date which could assist the Police in the laying of charges or investigating further offences by the same suspects. It is not uncommon for petty criminals to violate victims in areas where they are familiar with their surroundings and areas where they are aware of the locations and possible escape routes, making it easier for the suspects to re-offend and escape without being apprehended by the Police.
>
> Most of the information withheld is personal information does not pertain to individuals working in their capacity as professionals. Although some information could be deemed corporate and not personal, I would like to point out that it is the opinion of the Police to safeguard investigative techniques used by Officers during a crime in progress without having to divulge the identity of the involved parties that are used to assist in apprehending suspects …

The appellant submits:

> The approximate ages, race and physical descriptors of the suspect or suspects of the robbery do not constitute "personal information" within the meaning of the *Act*. According to *Ontario (Attorney General) v. Pascoe* [2002] O.J. No. 4300,

> the information in question must be sufficient to reasonably expect the individual to be identified should said information be disclosed. It is submitted that the information in question as it was disseminated to the officers was insufficient to reasonably identify the actual perpetrators of the crime. Moreover, the generic description disseminated through the police call made [my client] a suspect just as much as the actual perpetrators of the crime. The distinction between "true" and "false" suspects is spurious, as is the contention that the information in dispute belongs to the "real suspects".
>
> It is a fact that the Ottawa Police mistakenly arrested [my client] based on the description provided in the call to officers. Presumably, if the information was sufficient to identify the persons in question to which the information ostensibly belongs, [my client] would not have been identified and arrested.
>
> Based on the information provided to it, the Ottawa Police apprehended [my client]. It is the position of the Ottawa Police that it had reasonable and probable grounds for [my client's] arrest. Accordingly, with reasonable certainty the impugned information could be as much of an identifier of [my client] as those who actually committed the robbery. To this end, [my client] has a right to the information, which identified him with reasonable certainty. There is clearly a rational and compelling connection between the information in dispute and [my client].
>
> The [Police's] contention that the information belongs to the actual perpetrator(s) of the crime, with all due respect, is a technical and vacuous argument without merit. The circumstances of the case and the fact of [my client's] arrest dispel any validity to the claim that the information could qualify as "personal information" within the meaning of the *Act*.

Analysis and finding

I have carefully reviewed the information in the two records that have been withheld in their entirety under section 14(1), that is, the Call Hardcopy and the police officer notes on page 6. I find that while some of this information qualifies as the personal information of an identifiable individual, the majority of it does not.

The first record, the 4-page Call Hardcopy printout, contains for the most part, information that, in my view, cannot be considered personal information belonging to an **identifiable** individual. The record contains information related to two incidents, reported by two different complainants, including: the location of the incident; general information about the type of incident and the way in which it was reported; the staff member that received the incident complaint; information about the complainants including the complainants' remarks about the incident; additional general remarks about the incident; identification of the reporting officer; and dispatch information including the names of the officers dispatched.

I do not accept that any of the information on the Call Hardcopy that describes a suspect can be said to be "personal information" belonging to an "identifiable individual" as set out in the definition in section 2(1). To qualify as personal information, it must be reasonable to expect that an individual will be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*]. In my view, it is not reasonable to expect that disclosure of the approximate ages and general physical descriptors of the suspect(s) in the context of these records could reasonably be expected to be referable to an identifiable individual. Therefore, I find that none of the information relating to the suspect(s) falls within the definition of "personal information" set out in section 2(1) of the *Act*.

Also, in my view, any information relating to officers or emergency personnel in the context of these records is information about these individual in a "professional" capacity and does not reveal anything of a personal nature about them. In responding to these incidents these individuals are doing so in the course of their employment. Therefore, I find that none of this information can be said to qualify as "personal information".

Similarly, the "Complainant Information" listed on page one belongs to a company; no particular individual from that company is identified. I do not accept that the information related to the first complainant qualifies as "personal information".

However, I do find that much of the "Complainant Information" and "Clearance Information" and one piece of information under the "Additional Remarks" heading on page two of the Call Hardcopy qualifies as "personal information" within the meaning of the definition of section 2(1). This information relates to an identifiable individual who contacted the Police about the second incident listed on the Call. This information includes the individual's age (paragraph (a)), address and telephone contact information (paragraph (d)) together with the individual's name (paragraph (h)).

Accordingly, the only information in the Call Hardcopy that I find to be the personal information is the information on page two that relates to the complainant. Specifically, this information consists of:

Under the heading "Complainant Information"

- the individual's name,
- the individual's address,
- the individual's telephone contact information

Under the heading "Clearance Information"

- the individual's name
- the individual's age

Under the heading "Additional Remarks"

- the individual's cell phone number

The second record at issue, page 6 which consists of police officer notes, are handwritten and provide details about an interaction between that officer and an individual. The notes describe the individual's physical description (including clothing), as well as the individual's actions before and after being addressed by the officer. There is no name or other identifying information recorded in the notes.

Again, the definition of "personal information" in section 2(1) of the *Act* lists types of information that are about an "**identifiable** individual". As with the descriptions found on the Call Hardcopy the description in the notes could describe any number of unknown individuals and, in my view, cannot be said to be about an **identifiable** individual. In the absence of the individual's name or other identifying information anywhere in the record, in my view, there is nothing in the officer's notes that can tie the information to a specific individual. Therefore, I find that none of the information in the first page of the police officer notes qualifies as "personal information" within the meaning of the definition of that term in section 2(1).

In sum, having reviewed both records for which section 14(1) has been claimed, the only information that I have found qualifies as "personal information" is the information about the complainant found on page two of the record entitled "Call Hardcopy". Accordingly, I will continue my analysis to determine whether the disclosure of this information would result in an unjustified invasion of privacy under the mandatory exemption at section 14(1).

I have found the remainder of the information contained in the Call Hardcopy and the first set of police officer notes does not qualify as "personal information" as its disclosure would not reveal information about an **identifiable** individual. As section 14(1) of the *Act* can only apply to personal information, it is not necessary for me to consider its application to that information and, subject to my findings with respect to the disclosure of ten-codes discussed below, should be released to the appellant.

I have noted ten-codes appear in five places on the Call Hardcopy: First, on page one under the "Remarks" portion under the heading "Complainant Information"; Second, on page two under the "Remarks" portion under the heading "Clearance Information"; Third, on page 2 under the "Additional Remarks" heading; Fourth and fifth, on page 3 in the "Additional Remarks" from page 2 that are continued at top of page 3. This information clearly does not qualify as personal information but as the Police have claimed that section 8(1)(l) applies to exempt ten-codes from disclosure, I will make the determination as to whether the ten-codes are properly exempt, later in this order.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, the mandatory section 14(1) exemption prohibits an institution from releasing this information unless one of the exceptions to the exemption found in paragraphs (a) to (f) of section 14(1) applies.

The factors and presumptions in section 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). If any of the presumptions in paragraphs (a) to (h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion of privacy, unless the information falls within the ambit of the exceptions in section 14(4), or if the "public interest override" in section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In this case, the Police rely on the application of section 14(3)(b). This section 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 investigations;

Section 14(3)(b) may still apply even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Representations

The Police submit that the information was collected for the sole purpose of investigating a robbery and information was received from the victims and witnesses in an attempt to locate the perpetrators. They submit that the information collected was compiled and shared with officers on duty in order to identify the suspects. The Police submit:

> The information in the printed Call is the information belonging to the actual suspects and it is their personal information. The investigations into the conduct of citizens are both confidential and privileged to the investigative body to maintain fairness and presumption of innocence. The information was compiled and is identifiable as part of an investigation into a possible violation of law. Clearly, robbery is a violation of section 344 of the *Criminal Code of Canada*.
>
> Although the appellant may have an interest in the information, the parties involved have a right to the protection of their privacy. Information collected by the police, from individuals, must be safe guarded in order to protect processes. If the information collected by the Police is released without the consent of the individuals who supplied the information, these individuals may be hesitant to assist Police in the future as there would be no guarantee that the information would not be released.

As the appellant takes the position that the information at issue does not qualify as personal information, he made no specific representations on the application of section 14(3)(b).

Analysis and findings

Application of section 14(3)(b)

On my review of the records at issue and the Police's representations, it is clear that the personal information contained in the records was compiled as part of an investigation into possible violations of law under the *Criminal Code of Canada*. I find that section 14(3)(b) applies to exempt the information that I have found to qualify as personal information, as outlined above.

I have considered the application of the exceptions contained in section 14(4) of the *Act* and find that the personal information at issue does not fall within the ambit of this provision. Additionally, the appellant has not raised the possible application of the "public interest override" at section 16.

As I have found that the presumption in section 14(3)(b) applies to the information that qualifies as personal information, I find that disclosure of the personal information is presumed to be an unjustified invasion of the personal privacy of an individual other than the appellant. Accordingly, the personal information of the complainant contained in page two of the Call Hardcopy record, as detailed above in the section entitled "Personal Information", is exempt from disclosure under section 14(1) of the *Act*.

LAW ENFORCEMENT

The Police have made two severances to the police officer notes on page 5 to remove certain "ten-codes". Additionally, as noted above, ten-codes are recorded under the "Remarks" portion of the "Complainant Information" on page 1 of the Call Hardcopy and under the "remarks" section under the heading "Clearance Information". The Police take the position that all ten-codes are exempt from disclosure under section 8(1)(l) of the *Act*.

Section 8(1)(l) provides:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

To establish the application of sections 8(1)(l), the Police must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.),

Ontario (Worker's Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 (C.A.)].

Representations

On the application of section 8(1)(l) the Police submit:

> The records that fall under section 8(1)(l) of the *Act* were not released because they fall under the Emergency 10 Code used by most Emergency Personnel. These codes are universally used to assist responding Officers to emergency calls and to assist in communication with the Communication/911 staff.
>
> These codes are used for Law Enforcement purposes and facilitate the information shared by responding officers and Call takers to help identify potential dangers and warnings and in some instances, these codes can help determine if additional officers will be needed on scene to ensure the safety of individuals involved as well as the safety of victims, or Officers. These codes are also used to inform Call Takers in the Communications Center if ambulance and Fire Services will be required to attend at an incident. When emergencies are under way, each minute saved can be detrimental in saving lives or preventing further harm or dangers. To release this information to the Public serves no purpose. In this particular file, the appellant will not gain any insight into the information withheld by the release of this 10 Code. Although most individuals are aware of the 10 Code used by Emergency Services, it is the practice of all institutions to collectively protect the Code to ensure it is withheld and used only by Emergency personnel to execute their duties.

The appellant submits:

> Disclosure of the ten code, as with all the items in dispute, are important components to understand the propriety of the Respondent Police Service's conduct in arresting [my client] and as such its disclosure is relevant to preservation of the reputation of the system of administration of justice.
>
> The Rule of Law requires that the Respondent Police Service act in conformity with the law. Given the fact that [my client] was mistakenly arrested, the circumstances, information and actions of the respondent Police Service's officers are germane to a natural and democratic scrutiny of the [Police].
>
> As per Orders P-344 and MO-1573, [my client] is effectively seeking information relating to himself, which militates in favour of disclosure. As noted above, it is legally incorrect to characterize the information in question as personal information belonging to the persons who committed the robbery.

> Additionally, [my client] seeks information that is relevant because of the [Police's] wrongful arrest of [my client]. [My client], who is a lawyer, was arrested in front of his place of work in plain view of bystanders and work personnel. This experience was traumatic and humiliating for my client. [My client] is interested in understanding how he became the target of an aggressive police arrest. The basis for his disclosure request is both sympathetic and compelling.
>
> In denying access of information in respect of both the suppressed ten-codes and other information, the [Police] has based its refusal on speculative harm. The [Police's] reasons for denying disclosure of information appear pre-textual and its characterization of descriptors of suspects as "personal information" is sophistic and without legitimate foundation under the *Act*.
>
> It is submitted that the [Police's] suppression of information is unrelated to concerns of general or specific criminal activity in the future, but is founded in the [Police's] self-interest of limiting its own liability for an improper and illegitimate arrest of an innocent and law abiding citizen. Significantly, were the [Police's] discretionary basis for suppressing information motivated by concern for an ongoing criminal investigation, the information could easily have been disclosed, while maintaining proper safeguards for disclosure through counsel.

Analysis and finding

As noted above, on the second page of police officer notes the Police have severed two ten-codes pursuant to section 8(1)(l).

In their representations, the Police have briefly explained what ten-codes are used for and submit that ten-codes are generally kept in confidence by those who perform emergency services and use the codes in the course of their duties. However, the Police have provided no specific explanation regarding the use of such codes or why their disclosure might reasonably lead to the harm sought to be prevented by the exemption at section 8(1)(l).

To provide context for this office's line of decisions that discuss the disclosure of police codes, including ten-codes, in Order MO-1715, Adjudicator Bernard Morrow quoted from the representations made by the institution in that appeal as follows:

> The use of ten-codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning. In fact, the word "code" implies the intention that the information not be widely disclosed.
>
> By encoding a particular meaning with a ten-code, the police seek to reduce the ability of those involved in criminal activity from using such knowledge to

> circumvent detection by police while committing criminal activities. This information could also be used to counter the actions of police personnel responding to situations. This could result in the risk of harm to either police personnel or members of the public with whom the police are involved; i.e., victims and witnesses.
>
> ….
>
> The ten-codes referred to in the records, do not, in isolation, provide a specific meaning, however, when read in the context of the records at issue, the corresponding meaning would easily be revealed. Thus, the security of those codes would be compromised if they were released …

In the context of the above-quoted submissions and earlier orders of this office, as cited by the Police in these appeals, Adjudicator Morrow went on to find that disclosure of the confidential police ten-codes in the records at issue could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. I agree.

In my view, the rationale provided for withholding ten-codes in Order MO-1715 is equally applicable in the current appeal. Based on my review of the record at issue in this appeal and past orders of this office, I accept that disclosing these confidential police codes could reasonably be expected to render law enforcement activities and police officers vulnerable to the interference of the kind contemplated – and sought to be avoided – by the exemption at section 8(1)(l) of the *Act*.

Accordingly, I find that the confidential police codes that were severed from the police notes and the ten-codes found in the Call Hardcopy qualify for exemption under section 8(1)(l).

ORDER:

1. I uphold the Police's decision to withhold the individual complainant information that I have found to qualify as personal information and all ten-codes from disclosure.

2. I order the Police to disclose the information other than that listed in Provision 1 to the appellant by March 6, 2007 but not before March 1, 2007+++

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3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the information that is disclosed to the appellant pursuant to Provision 2.

Original signed by: January 30, 2007
Catherine Corban
Adjudicator