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

ORDER MO-2110

Appeal MA-060134-1

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to an investigation into an alleged assault involving the requester, including any occurrence reports and the notes of four named police officers.

In response to the request, the Police informed the requester that no entries relating to the request exist in the memorandum books of two of the named police officers.

The Police located records responsive to the request, including two occurrence reports and the notes of two other police officers, and granted partial access to them. In denying access to portions of the records, the Police applied the discretionary exemption in section 38(b) of the *Act*, read with section 14(1) (right of access to one's own personal information/personal privacy of another individual). With regard to its raising of section 14(1) the Police indicated that they are relying on the application of the presumption in section 14(3)(b) (investigation into violation of law). The Police also informed the requester that portions of the officers' memorandum books are not responsive to the request as they relate to other unrelated matters.

The requester (now the appellant) appealed the decision of the Police to deny access to portions of the responsive records while also claiming that additional records should exist, specifically, reports prepared and submitted by five named police officers.

During the mediation stage of the appeal process, the appellant agreed to remove the portions of the records identified as "non-responsive" from the scope of the appeal. Accordingly, this information is no longer at issue. Also during mediation, the Police explained to the mediator why records generated by the five named officers do not exist. The mediator passed this information on to the appellant, who accepted the explanation offered by the Police. Accordingly, the existence of additional records (reasonable search for responsive records) is no longer an issue in the appeal.

The appellant confirmed that the sole issue remaining at issue is the application of section 38(b), read with section 14(1), to the severed portions of the responsive records.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Police. The Police submitted representations in response and agreed to share the non-confidential portions with the appellant.

I then sought representations from the appellant and included with my Notice of Inquiry the non-confidential representations of the Police. The appellant submitted representations in response.

RECORDS:

There are four records at issue, comprised of the undisclosed, responsive portions of two occurrence reports and excerpts from two police officers' notebooks.

DISCUSSION:

In order to determine whether section 38(b) may apply, it is necessary to decide whether the records contain "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,
>
> …
>
> (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].

To qualify as personal information, the information must be about the individual in a personal capacity. 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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

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].

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.)].

The Police state that the records contain the personal information of identifiable individuals other than the appellant, including their names, telephone numbers and other personal information relating to them.

The appellant does not provide representations that address this issue, despite being invited to do so.

On my review of the records at issue, I am satisfied that they contain the personal information of the appellant, within the meaning of paragraphs (a), (d) and (h) of the definition of "personal information" in section 2(1), including his name, colour, date of birth, address, telephone number and other personal information relating to him. I also find that the records contain the personal information of four other individuals, as they include information that falls within the ambit of paragraphs (a), (d) and (h) of the definition of "personal information" in section 2(1). In the case of one individual, this includes his name, colour and other personal information relating to him. In the case of another individual, this includes his name and other personal information relating to him. With regard to the other two individuals, I find that records contain their names, telephone numbers and other personal information relating to them. I am, therefore, satisfied that the records contain the personal information of the appellant and other identifiable individuals.

I note as well that one of the records contains information about another individual, including his name and title. In my view, this is information that was provided by this individual to the Police in a professional or official capacity and I am satisfied that it does not reveal something of a personal nature about him. Accordingly, I find that this information does not qualify as this individual's personal information.

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

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. The Police take the position that the undisclosed portions of the records are exempt under the discretionary exemption in section 38(b). Under section 38(b), 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.

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. If the presumptions contained 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), if or 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 have raised the application of sections 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 investigation;

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 state that they responded to a complaint of assault brought by the appellant and undertook an investigation at the scene of the alleged assault, based on information provided by the appellant, to determine whether a crime had been committed under the *Criminal Code*.

In response, the appellant acknowledges that a Police investigation was undertaken in response to his complaint. The appellant states that he provided the alleged suspect's first name to the Police and that, as a result, an absurd result would ensue if the appellant was denied access to this information.

Analysis and findings

Application of section 14(3)(b) presumption

On my review of the parties' representations and the records at issue, it is clear that the personal information contained in the records was compiled as part of an investigation into a possible violation of law under the *Criminal Code*. Therefore, I find that the section 14(3)(b) presumption applies to the undisclosed information.

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. In addition, the "public interest override" at section 16 of the *Act* was not raised, and I find that it has no application in the circumstances of this appeal.

In conclusion, as a result of the application of the presumption in section 14(3)(b), I find that the disclosure of the personal information at issue would result in an unjustified invasion of the personal privacy of individuals other than the appellant. Accordingly, subject to my treatment of the absurd result principle set out below, the information at issue in the records is exempt 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).

Upon review of all of the circumstances surrounding this appeal and the representations of the Police on the manner in which they exercised their discretion, and subject to the absurd result discussion below, I am satisfied that the Police have not erred in the exercise of their discretion to decline to disclose the exempt information under section 38(b).

Absurd result principle

As stated above, the appellant takes the position that the absurd result principle should apply to the alleged suspect's first name since the appellant provided this information to the Police.

Where a requester originally supplied the information or 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, MO-1378].

In Order MO-1704, Adjudicator Shirley Senoff addressed a request for an occurrence report that had been created as a result of an extortion complaint made by the appellant in that case to the Police. In finding that the absurd result principle applied to some of the information at issue, Adjudicator Senoff stated:

> It is apparent from the record and the surrounding circumstances that the appellant himself provided much of this information to the Police when he made his complaint. The appellant clearly supplied the Police with the suspect's name and the basis for the appellant's complaint. Denying the appellant access to this information simply would not make sense.

I find the circumstances in this case very similar to those in Order MO-1704 and adopt the approach taken to the absurd result principle in that case to this one. On my review of the

information at issue, I am satisfied that the appellant did, in fact, provide the suspect's first name to the Police. Therefore, to deny the appellant access to this information would, in my view, lead to an absurd result. Accordingly, I will order the release of the suspect's name to the appellant, in accordance with order provision 1 below.

Severance

Section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be released without disclosing material which is exempt. The key question raised by section 4(2) is one of reasonableness. Where a record contains exempt information, section 4(2) requires the head of an institution to disclose as much of the record as can reasonably be severed without disclosing the exempt information.

On my review of the records at issue, the Police have released the appellant's personal information to him with one notable exception. One of the occurrence reports contains a statement about the appellant made by the Vice Principal of the school that the appellant was attending at the time of the alleged assault. In my view, since the statement only contains the appellant's personal information I find that it should have been disclosed to him. Accordingly, I will order its release, in accordance with order provision 1 below.

Subject to this exception, I am satisfied that the Police have otherwise disclosed to the appellant all of the information in the record that pertains to him with the exception of the information that qualifies for exemption under section 38(b).

ORDER:

1. I order the Police to disclose to the appellant the severed copies of two occurrence reports and notebook entries of two police officers by **December 6, 2006** but not before **December 1, 2006**, in accordance with the highlighted version of these records included with the Police's copy of this order. To be clear, the Police should not disclose the highlighted portions of these records.

2. I uphold the Police's decision to withhold the remaining parts of the records 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 records or parts of the records which are disclosed to the appellant pursuant to provision 1.

Original Signed by: October 31, 2006
Bernard Morrow
Adjudicator