



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2194

Appeal MA-050329-1

Ottawa Police Services Board



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NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) a request was made to the Ottawa Police Services Board (the Police) for access to information about a specific incident that took place at a school involving a child. The request lists the child, his mother and her spouse as requesters. The request sought access to information about the nature of any telephone call from the school principal or the school board to the Police about the incident, any correspondence that was sent from the school's principal or the school board to the Police, and the notes or reports of the investigating officer with respect to the events. The request also inquired why three police cruisers were requested.

The Police identified records responsive to the request. Although the request appeared to be for records relating to a specific date, the Police also included records relating to other dates. After notifying an individual whose interests may be affected by the disclosure of the records (the affected party), under section 21 of the *Act*, and receiving a response, the Police granted partial access to the responsive records. The Police relied on the mandatory exemption in section 14(1) (personal privacy) with reference to the presumption in section 14(3)(b) of the *Act* (information compiled as part of an investigation into a possible violation of law) and the discretionary exemption in section 38(b) (personal privacy of another individual) to withhold access to the undisclosed information.

The decision was appealed. For the purposes of this appeal I am presuming that the mother was exercising her son's right of access under section 54(c) when she made the request. As a result, in the order that follows I will treat the wife and her spouse as the appellants.

During the mediation stage of the appeal, the appellants advised that they did not wish to have access to any names, addresses or information of other students, except as they relate to their child.

Mediation did not resolve the appeal and it moved to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police and the affected party, initially. Both provided representations in response. The affected party asked that portions of the affected party's representations be withheld due to confidentiality concerns. I sent the Notice, along with a copy of the non-confidential portions of the affected party's representations and a complete copy of the representations of the Police, to the appellants. The appellants did not submit representations in response.

RECORDS:

The information at issue consists of the severed portions of General Occurrence Reports numbered GO#2003-307826, GO#2004-124098 and GO#2004-269553.

DISCUSSION:

PRELIMINARY ISSUES

Section 54(c) of the *Act* permits the exercise of rights under the *Act* on behalf of persons under sixteen, in the following manner:

Any right or power conferred on an individual by this *Act* may be exercised,

if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

There is no dispute that the individual to whom the request relates is under the age of sixteen, and based on the information before me, I am satisfied that the mother has lawful custody of her son. Accordingly, in light of the wording of the request, I find that she is entitled to rely on section 54(c) of the *Act* and exercise her child's right of access to the records, on his behalf.

SCOPE OF THE REQUEST

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

Although the request appeared to be for records relating to an occurrence that took place on a specific date, the Police also provided records that related to events that occurred on other dates.

Accordingly, in the Notice of Inquiry, I asked the Police to explain their position on the appropriate scope of the request.

The Police responded that they provided additional records from other time periods because they thought that the information in those records would help address the appellants' concerns about the number of officers that responded on the specified date. I am content to treat these additional records as being responsive to the request, and I will consider them in the analysis that follows.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply to the information in the records, it is necessary to decide whether the record contains "personal information", and if so, to whom it relates.

Section 2(1) of the *Act* defines "personal information", in part, as follows:

- (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 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.

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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225], 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].

As set out earlier, all of the parts of the records at issue relate to incidents involving the appellants' child arising out of his interaction with other students. In my view, all of the records at issue contain information about him that meets the definition of "personal information" in paragraphs (a) (age and sex), (b) (education history), (g) (views of other individuals about the appellant) and (h) (the appellant's name along with other personal information relating to him). In my view, therefore, all of the records contain the personal information of the appellants' child.

In addition, parts of the records at issue also contain the personal information of other identifiable individuals who were involved with the appellants' child or who witnessed events involving him. This information qualifies as the personal information of these individuals because it includes information about their age (paragraph (a)), education history (paragraph (b)), or their names along with other personal information about them (paragraph (h)).

Finally, I find that some of the parts of the records at issue contain the personal information of the appellants, meeting paragraph 2(h) of the definition in section 2(1) of the *Act*.

To conclude, I find as follows:

1. The withheld portions of the General Occurrence Report numbered GO#2003-307826 contain the personal information of the appellants' child, and another identifiable individual, who is not one of the appellants.
2. Some of the withheld portions of the General Occurrence Report numbered GO#2004-124098 contain the personal information of the appellants, their child and other identifiable individuals. In my view, however, the fifth paragraph on page 4 does not contain information about another individual who is "identifiable". In addition, the withheld portion of paragraphs seven and eight on the same page is the personal information of the appellants and/or their child, only. Furthermore, the withheld portion of paragraph two on page 6 is an opinion of a Police officer that was made in his official capacity about the conduct of the school. I find that this does not qualify as the personal information of the officer or any other identifiable individual. Finally, the withheld portion of paragraph three on the same page qualifies as the personal information of the appellants' child, only, because no other individual is identifiable.
3. Some withheld portions of the General Occurrence Report numbered GO#2004-269553 contain the personal information of the appellants' child and another identifiable individual, who is not one of the appellants. In my view, however, the severed portion of paragraph seven on page 3 and the portion severed from the final paragraph on page 3 and continuing onto page 4 qualifies as the personal

information of the appellants' child, only, because it does not contain information about another individual who is identifiable.

PERSONAL PRIVACY

If a record contains the personal information of the requester along with the personal information of another individual, section 38(b) of the *Act* applies.

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

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

- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

Accordingly, under section 38(b) where a record contains personal information of both the appellants and an individual other than their child, and disclosure of that information would "constitute an "unjustified invasion" of the other individual's personal privacy, the Police may refuse to disclose that information to the appellants.

That does not end the matter however. Despite this finding, the Police may exercise their discretion to disclose the information to the appellants. This involves a weighing of the appellants' and the child's right of access to their own personal information against the other individual's right to protection of their privacy.

Under section 38(b), the factors and presumptions in sections 14(2) to (4) provide guidance in determining whether the "unjustified invasion of personal privacy" threshold is met.

Section 14(2) provides some criteria for the institution 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 under section 14(3), 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 (*John Doe*)] 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 exemption. [See Order PO-1764]

As I stated above, some of the information withheld from the records does not qualify as "personal information" about an identifiable individual or only relates to the appellants and/or

their child. Disclosing this information to the appellants, would not, therefore, constitute an unjustified invasion of another individual's personal privacy under section 38(b). Accordingly, I will order that the following information be disclosed:

1. With respect to General Occurrence Report numbered GO#2004-124098, the fifth paragraph on page 4, the withheld portion of paragraphs seven and eight on page 4 and the withheld portions of paragraphs two and three on page 6.
2. With respect to General Occurrence Report numbered GO#2004-269553, the withheld portion of paragraph seven on page 3 and the severed portion beginning in the final paragraph at the bottom of page 3 and continuing onto the top of page 4.

I will now address the withheld portions of the General Occurrence Report numbered GO#2003-307826, the portion severed from the second paragraph of General Occurrence Report numbered GO#2004-124098 and paragraphs five and six on page 3 and paragraph 2 on page 4 of General Occurrence Report numbered GO#2004-26955.

Section 14(3)(b)

Section 14(3)(b) reads as follows:

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.

The Police submit that the remaining information severed from the records at issue was compiled and is identifiable as part of an investigation into allegations that an offence of assault under the *Criminal Code* may have been committed. The affected party also submits that the presumption in section 14(3)(b) applies in the circumstances of this appeal.

Analysis and Findings

I find that section 14(3)(b) applies in the circumstances of this appeal. I have reviewed the portions of the records remaining at issue and in my opinion, the personal information severed from the records was compiled and is identifiable as part of an investigation into a possible violation of law, namely the *Criminal Code*. The presumed unjustified invasion of personal privacy at section 14(3)(b) therefore applies to this information. Section 14(4) does not apply to this information and the appellants did not raise the possible application of the public interest override at section 16 of the *Act*. Accordingly, I conclude that the disclosure of the personal

information relating to other identifiable individuals contained in the severances remaining at issue would constitute an unjustified invasion of personal privacy.

In conclusion, I find that because the remaining withheld portions of the records are subject to the section 14(3)(b) presumption, this information qualifies for exemption under section 38(b).

EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because section 38(b) is a discretionary exemption, I must also review the Police's exercise of discretion in deciding to deny access to the withheld information. On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

I may find that the Police erred in exercising their discretion where, for example:

- they do so in bad faith or for an improper purpose
- they take into account irrelevant considerations
- they fail to take into account relevant considerations

In these cases, I may send the matter back to the Police for an exercise of discretion based on proper considerations [Order MO-1573].

In the circumstances of this appeal, I conclude that the exercise of discretion by the Police to withhold the information that I have not ordered to be disclosed was appropriate, given the circumstances and nature of the information.

ORDER:

1. I uphold the decision of the Police to withhold the severed portions of General Occurrence Report numbered GO#2003-307826, the severed portion of paragraph two on page 1 of General Occurrence Report numbered GO#2004-124098 and the severed portions of paragraphs five and six on page 3 and paragraph two on page 4 of General Occurrence Report numbered GO#2004-269553. For greater certainty, I have highlighted the exempt information on the copy of the records provided to the Police with this Order. The highlighted information is **not** to be disclosed.
2. I order the Police to disclose to the appellants the balance of the withheld information in the records, by providing it to the appellants, by June 21, 2007 but not before June 15, 2007.

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 as disclosed to the appellants, upon request.

Original signed by: _____
Steven Faughnan
Adjudicator

_____ May 16, 2007