



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2437

Appeal MA08-470

Halton Regional Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an identified incident.

In response to the request, the Police issued a decision letter stating that, following third party notification, the Police were granting access to portions of the records, but denying access to other portions on the basis of identified exemptions. In particular, the Police denied access to some portions of the records based on section 38(a) (discretion to refuse requester's own information) in conjunction with sections 8(2)(a) and 8(1)(e) and (l) (law enforcement), and to other portions of the records based on section 38(b) (personal privacy), with reference to the presumptions in sections 14(3)(a) and (b), and the factors in sections 14(2)(f) and (i) of the *Act*.

The requester (now the appellant) appealed the Police's decision to deny access to the portions of the records that were withheld.

During mediation, the Mediator contacted four individuals whose information was contained in the records and who might have an interest in the disclosure of the information (the affected parties). Three of the affected parties consented to the disclosure of their personal information to the appellant, and one of the affected parties declined to provide consent. The Police then issued a revised decision letter, in which they provided access to the portions of the records that contained the personal information of the three affected parties who had provided consent to disclosure.

After receiving the Police's revised decision letter, the appellant indicated that he wished to pursue access to the remaining portions of the records.

Mediation did not resolve the remaining issues, and this appeal was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and received representations in response. I then sent the Notice of Inquiry, along with a severed copy of the representations of the Police, to the appellant. The appellant did not provide representations in response.

RECORDS:

The records remaining at issue consist of the undisclosed portions of a six-page occurrence report.

DISCUSSION:

PERSONAL INFORMATION

The Police take the position that the records contain the personal information of the appellant and other identifiable individuals. Section 2(1) of the *Act* states:

“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].

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].

Findings

The Police take the position that the records contain the personal information of the appellant, and that the withheld portions of the records contain the personal information of other identifiable individuals, including their name, address, date of birth, telephone numbers and statements.

I have examined the records at issue, which relate to an incident involving the appellant and others. The records contain the name, address and telephone number of the appellant, as well as other information about the appellant, including information about the appellant's actions. In my view, the records contain the personal information of the appellant in accordance with paragraphs (d) and (h) of the definition of the term "personal information" in section 2(1) of the *Act* (Orders MO-1245, MO-1795).

In addition, most of the brief portions of the records which were withheld contain the personal information of other identifiable individuals, including their name, address, telephone number and/or other information about them. Accordingly, I find that most of the withheld portions of the records contain the personal information of other identifiable individuals in accordance with paragraphs (d) and (h) of the definition of the term "personal information" in the *Act*.

Small portions of the withheld records do not contain the personal information of identifiable individuals other than the appellant. The Police have claimed the discretionary exemption in section 38(a), in conjunction with section 8(1)(l), to those portions of the records, and I will review the possible application of those sections to these portions of the records, below.

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.

Under section 38(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 38(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) of the *Act* provide guidance in deciding 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 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. 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].

A section 14(3) presumption 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. [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.

Section 14(3)(b)

In this appeal, the Police rely on the “presumed unjustified invasion of personal privacy” in section 14(3)(b) of the *Act*, which 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;

The Police state:

The Police were called to investigate an alleged assault ... thereby quite possibly a violation of law. The undisclosed information was compiled as part of a law enforcement investigation and disclosure would constitute an unjustified invasion of the privacy of the affected party

The Police then refer to previous orders of this office in which similar information was found to fall within the presumption in section 14(3)(b), and confirm that the information “was compiled in order to investigate the alleged assault.”

I have carefully reviewed the records at issue in this appeal and I am satisfied that they were compiled by the Police in the course of their investigation of the circumstances surrounding the incident involving the appellant and others. I find that all of the information at issue in this appeal was compiled and is identifiable as part of the Police investigation into a possible violation of law under section 14(3)(b). Accordingly, I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of the affected persons under section 14(3)(b) of the *Act*. In addition, I find that the exception set out in section 14(4) does not apply, and the appellant has not raised the application of the “public interest override” in section 16. As a result, I find that the undisclosed portions of the records which contain the personal information of other individuals are 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).

The Police disclosed large portions of the records to the appellant, and denied access to discrete portions of them. In addition, as identified above, during the mediation stage of this appeal, and after three affected parties consented to the release of their personal information, the Police released additional information to the appellant. The personal information remaining at issue is the personal information of the affected party who did not consent to release, and of another named individual. I have reviewed the circumstances surrounding this appeal, as well as the Police’s representations on the manner in which they exercised their discretion, and I am satisfied that the Police have not erred in the exercise of their discretion not to disclose the remaining portions of the records under section 38(b).

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION/FACILITATE COMMISSION OF AN UNLAWFUL ACT

As set out above, section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

The Police have relied on section 38(a) to deny access to certain undisclosed portions of the records (the severed patrol zone and radio code information found in the records). Under section 38(a), an institution has the discretion to deny access to an individual’s own personal information in instances where the exemption in section 8 would apply to the disclosure of that personal information.

The Police claim that section 8(1)(l) applies to the patrol zone and radio code information in the records. Section 8(1)(l) states:

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.

The Police review previous orders of this office, in which this exemption was applied to police codes, and then state:

If individuals intent on engaging in criminal activity become aware of the procedures represented by these various codes, they could be used to counter the actions of police in response to a variety of situations. This could result in the risk of harm to either police or members of the public involved in a police situation.

Previous orders have established that the disclosure of police radio codes and police patrol zone information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime (see Orders M-781, MO-2065). Based on the representations of the Police and in keeping with the findings made in those previous orders, I find that the radio code and patrol zone information is properly exempt under section 38(a), in conjunction with section 8(1)(l). I am also satisfied that the Police have not erred in the exercise of their discretion to apply section 38(a) to this information.

ORDER:

I uphold the decision of the Police, and dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

July 13, 2009 _____