



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

ORDER MO-2506

Appeal MA09-298

Ottawa Police Services Board



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NATURE OF THE APPEAL:

The Ottawa Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to two identified Police files, as well as any Police officers' records relating to a Police call to an identified address.

The Police located records responsive to the request and granted partial access to them. The Police denied access to the withheld records or portions of records on the basis of the discretionary exemptions in section 38(b) (personal privacy) and section 38(a) (discretion to refuse requester's own information), read in conjunction with section 8(1)(l) (facilitate commission of unlawful act), of the *Act*.

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

During mediation, the appellant advised that he was not appealing the application of the exemptions at sections 38(a) and 8(1)(l) to certain records.

Mediation did not resolve this appeal, and it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. A Notice of Inquiry setting out the facts and issues on appeal was sent to the Police, initially, and the Police provided representations in response. The Notice of Inquiry, along with a complete copy of the Police's representations, was then to the appellant, who also provided representations to this office. In his representations the appellant identified that he was not appealing the application of sections 38(a) and 8(1)(l) to any of the pages or portions of pages for which this claim is made (including information involving the Canadian Police Information Centre (CPIC) system) and, as a result, the application of those exemptions and the corresponding portions of the records are no longer at issue in this appeal.

The file was subsequently transferred to me to complete the inquiry process.

RECORDS:

There are three responsive records in this appeal, totalling 34 pages of records. The portions of the records remaining at issue consist of the following:

Record 1 – Identified General Occurrence Report (portions of pages 1, 2, 4 and 6, and all of pages 12, 13, 15 and 18-20).

Record 2 – Officer's notes (portions of pages 21 and 25 and all of pages 22-24).

Record 3 – Identified General Occurrence Report (all of pages 26 to 30 and 33-34).

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “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,
- (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 if 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 Police state that the records contain the personal information of the appellant as well as other identifiable individuals, and that it is the type of information referred to in paragraphs (a), (b), (d) and (g) of the definition of personal information in section 2 of the *Act*. The Police also state:

The statements made by the other individuals are considered to be the mixed personal information of the appellant, the individuals who supplied the statements, and other individuals referred to in the statements.

The appellant agrees that the information in the records qualifies as personal information as defined in section 2(1) of the *Act*.

On my review of the records, I am satisfied that they contain the personal information of the appellant, including his name along with other personal information relating to him (paragraph (h)). I also find that all of the information remaining at issue contains the personal information of identifiable individuals other than the appellant. The information includes the race, age and sex of these individuals (paragraph (a)), their names, addresses and telephone numbers (paragraph (d)), the personal views and opinions of these individuals (paragraph (e)), and their names along with other personal information relating to them (paragraph (h)), including statements made to the Police.

DISCRETION TO REFUSE ACCESS TO APPELLANT'S OWN PERSONAL INFORMATION/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, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the Police must look at the information and weigh the appellant's right of access to his own personal information against the other individuals' right to the protection of their privacy. If the Police determine that release of the information would constitute an unjustified invasion of the personal privacy of others, then section 38(b) gives the Police the discretion to deny access to the appellant's personal information.

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 an individual's personal privacy. Section 14(2) provides some criteria for the Police 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, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) and that, once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Representations

The Police take the position that disclosure of the personal information of other identifiable individuals which is contained in the records remaining at issue is presumed to constitute an unjustified invasion of the privacy of other individuals under the presumption in section 14(3)(b) of the *Act*. That section reads:

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 that the personal information contained in the undisclosed records or portions of records “was collected for the sole purpose of interviewing all parties and ascertaining if charges are warranted.” The Police also state:

The personal information of the [individuals other than the appellant] was compiled by members of the Ottawa Police Service during an investigation into an [identified] incident and was used to determine whether an offence under the *Criminal Code of Canada* may have been committed. The information contained in these records was used to investigate this incident

With respect to the application of section 14(3)(b), the Police rely on the Divisional Court decision in *John Doe*, above, for the proposition that once a presumption against disclosure has been established under section 14(3)(b), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). The Police go on to submit:

However, factors in ... section 14(2), 14(4) and 16 of the *Act* were examined and we feel that nothing in either section would serve to mitigate the exemption claimed by section 14(3) of the *Act*. The personal information to which access is denied does not fall under section 14(4) or section 16.

In addition, as noted above, the Police have granted access to a number of pages or portions of pages of the records, and have severed the information which they believe qualifies for exemption under section 38(b). With respect to the information which was not disclosed, the Police state:

None of the [remaining] information which could be considered as the personal information of the appellant could be disclosed without revealing the personal information of the other individuals....

The Police conclude by stating that they believe that section 38(b) applies to the records to which access was denied.

The appellant does not appear to dispute that section 38(b) applies, and provides representations in support of his view that the institution erred in exercising their discretion, which I will address below.

Analysis and Findings

Section 14(3)(b) may apply to records 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 [Orders P-242 and MO-2235].

With respect to the application of the presumption in section 14(3)(b) to the records at issue in this appeal, on my review of the records and the representations, I am satisfied that the information in the records was compiled by the Police in the course of their investigation of incidents involving the appellant and others. The information at issue consists of statements made to the Police, or information contained in occurrence reports and police officers' notebooks compiled by the Police in the process of conducting their investigations into possible criminal wrongdoing. In my view, the information in these records was compiled as part of an investigation conducted by the Police into a possible violation of law, and fits within the presumption in 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 identifiable individuals under section 14(3)(b) of the *Act* and, as a result, it is exempt from disclosure under section 38(b).

In addition, I am satisfied that the Police have properly severed the records. They have provided the appellant with information relating exclusively to him, or which he provided or was directly aware of, but have severed out personal information relating to other identified individuals. To the extent that there is some overlap in some items of information contained in the records which were disclosed by the Police in one portion of the records but not disclosed in another portion of the records, on my review of this information and in the circumstances, I have decided that there is no purpose served in ordering disclosure of these snippets of information. Furthermore, as identified in previous orders, the Police are not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless" or "meaningless" information. [See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)]. Accordingly, I am satisfied that the records and portions of records remaining at issue qualify for exemption under section 38(b).

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). I will, therefore, review the Police's exercise of discretion.

Exercise of discretion

When a discretionary exemption such as section 38(b) has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the records. On appeal, the Commissioner may determine whether the institution failed to do so.

The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In such a case this office may send the matter back to the institution for an exercise of discretion based on proper considerations (Order MO-1573). This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

In their representations on the manner in which they exercised their discretion, the Police state that a number of factors were considered in exercising their discretion to deny the appellant access to the information, including:

- the privacy rights of the other individuals referred to in the records;
- the appellant's right of access to certain information.
- that the information was collected for a law enforcement purpose in order for the police to conduct investigations under identified statutes;
- that police investigations into the conduct of citizens are confidential and privileged in order to maintain fairness and a presumption of innocence.

The Police also state:

The circumstances of the incident were looked at to see if the right of access to the appellant outweighed the privacy rights of the other individuals. Disclosure of a record is in effect disclosure to the world and not just the appellant. We therefore feel that the privacy rights of the other individuals outweighs the appellant's right to access.

After careful consideration of the contents of the records at issue, to protect the process and to safeguard the rights and privacy of all parties involved we exercised our discretion to deny access to the requester.

The appellant provided confidential representations in which he identified the reasons why he believes the records ought to be disclosed, and why the Police's exercise of discretion ought not to be upheld. The appellant's representations can be generally characterized as expressing concerns about the veracity of information provided by others to the Police, the nature of the information which may be contained in the records, and other factors surrounding the circumstances that gave rise to the Police investigation.

I have carefully reviewed the records remaining at issue in this appeal. I note that a number of complete pages and partial pages of the records have been provided to the appellant. The severances made by the Police contain information which includes statements made by other individuals to the Police, or information obtained through contacts with these other individuals. On my review of the information remaining at issue in this appeal, I find no reason to disturb the manner in which the Police exercised their discretion to deny the appellant access to this information. In my view, the Police have carefully severed the records, and provided the appellant with as much information as possible without invading the privacy of other individuals.

Based on all of the circumstances, I am satisfied that the Police did not err in exercising their discretion not to disclose to the appellant the information remaining at issue, and I uphold the decision of the Police.

ORDER:

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

Original signed by: _____
Frank DeVries
Adjudicator

_____ March 18, 2010