



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

ORDER MO-2561

Appeal MA09-36

Hamilton Police Services Board



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NATURE OF THE APPEAL:

The Hamilton Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

- A copy of a specified police report from 2008;
- A copy of audio recording created on a specific date in October 2008 by [two identified police officers];
- A copy of audio/visual recording from another date in October 2008 taken during meeting in “fingerprint” room;
- Police reports relating to me created on the second date in October 2008;
- A copy of police reports related to the incident where two officers came to my door on another date in December 2008;
- A copy of the dispatch call (including an indication of time and date) from a Suicide Prevention Hotline in December 2008 related to the above incident; and
- Copies of any police reports related to me prior to August 2007. In particular, the Hamilton Police have several times referenced a “previous domestic” incident related to me. I have no idea what that is and would like a copy of the relevant report(s).

The Police located 46 pages of responsive records, including various occurrence reports and police officers’ notes. They then sent a decision letter to the requester stating that they were providing her with partial access to these records. This letter further stated that the Police were withholding some information from the records because its disclosure would constitute an unjustified invasion of another individual’s personal privacy. However, the letter did not specify whether this information was being withheld pursuant to any exemptions in the *Act*.

The decision letter further stated that the records contain “10-codes, patrol zone information and/or statistical codes,” and that the Police were denying access to those portions of the records pursuant to the discretionary exemptions in sections 8(1)(e) and (l) of the *Act*.

With respect to the part of the request relating to the “dispatch recording of a telephone call placed to the Suicide Prevention Hotline” in December 2008, the Police’s decision letter stated that they were denying access to this record because “you did not place this call and the release of it would be an unjustified invasion of another individual’s personal privacy as consent was not obtained.”

With respect to the search for the audio recording created on the first occasion in October 2008, the decision letter stated that this record no longer exists, because it was accidentally erased by a police officer. In addition, the letter further stated that the audio/visual recording taken during the requester’s fingerprint appointment on the second date in October 2008 also no longer exists, “due to the fact that the system only stores a month worth of data.”

The requester (now the appellant) appealed the Police’s decision to this office. In her appeal letter, the appellant indicated that she also wishes to file a complaint with respect to the erasing of both the audiotape and the videotape by the Police.

During the mediation stage of the appeal process, the Police specified that they were denying access to portions of the records pursuant to the discretionary exemption in section 38(b) (personal privacy) of the *Act*, read in conjunction with the factor in section 14(2)(f).

They further stated that they were denying access to the “10-codes, patrol zone information and statistical codes” pursuant to the discretionary exemption in section 38(a) (refuse to disclose requester’s own information), read in conjunction with sections 8(1)(e) and (l) of the *Act*. During mediation, the appellant informed the mediator that she is not pursuing access to the 10-codes, patrol zone information, and statistical codes in the records. Consequently, the discretionary exemption in section 38(a), read in conjunction with sections 8(1)(e) and (l), is no longer at issue in this appeal.

The appellant also agreed that her complaint about the Police’s erasing of the audiotape and videotape would be referred to this office’s Registrar and addressed separately. Consequently, that issue is no longer part of this appeal.

Further mediation was not possible and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. The adjudicator originally assigned to this file issued a Notice of Inquiry to the Police, who submitted representations in response. Included in those representations were submissions from the Police on the application of the presumption in section 14(3)(b) to the undisclosed information in the records. A second Notice of Inquiry was then forwarded to the appellant, along with a severed copy of the Police’s representations. Despite being provided with a number of extensions of time for the submission of her representations, the appellant ultimately did not do so.

RECORDS:

The information at issue in this appeal consists of the undisclosed portions of 46 pages of occurrence reports and police officers’ notes.

DISCUSSION:

PERSONAL INFORMATION

General principles

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 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;

I have carefully examined the occurrence reports, police officer notes, offense forms, supplementary reports, a citizen's report and two stolen vehicle reports which comprise the records at issue in this appeal and conclude that they all contain the personal information of the appellant, including her address, date of birth, telephone number, her views and opinions, the views and opinions of others about her and her name, along with other personal information relating to her. The appellant has received access to her own personal information in the records; what remains undisclosed is information that the Police claim to be the personal information of other identifiable individuals contained in Records 1, 2, 3, 4, 5, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 36, 37 and 38 within the meaning of that term as defined in section 2(1).

I have examined the undisclosed information contained in Records 1, 2, 3, 4, 5, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 36, 37 and 38 and conclude that they contain personal information about several identifiable individuals (the affected persons), including their address, telephone number, age, sex, their views and opinions, as well as their names, along with other personal information relating to them.

Accordingly, I conclude that Records 1, 2, 3, 4, 5, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 36, 37 and 38 contain the personal information of both the appellant and the affected persons within the meaning of the definition of that term in section 2(1). As noted above, the appellant has been

granted access to her own personal information where it appears in the records. The Police have severed and not disclosed to her only the affected persons' personal information.

INVASION OF PRIVACY

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.

Under section 38(b), where a record contains 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 is met.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). 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].

In the circumstances, it appears that the presumption at paragraph (b) could apply.

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Orders P-242 and MO-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders MO-2213, PO-1849 and PO-2608]. Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above].

Representations

The Police submit that the records were compiled as part of its investigations into various criminal matters involving the appellant between May 1989 and January 2009. Regardless of the fact that criminal charges were not brought as a result of these investigations, the Police submit that the records serve to document the investigations which were undertaken into possible violations of the *Criminal Code* and that the records fall within the ambit of the presumption against disclosure in section 14(3)(b) of the *Act*, which 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 appellant has not provided any representations in response to the Notice of Inquiry. The appellant informed the mediator that she wishes to pursue access to the undisclosed information contained in the records because it consists of false accusations made against her. She argues that access to this information is relevant to a fair determination of her rights, referring to the factor in section 14(2)(d) of the *Act*, which reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

Analysis and Findings

I have reviewed the undisclosed portions of Records 1, 2, 3, 4, 5, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 36, 37 and 38 and have determined that all of the personal information which they contain was compiled by the Police as part of their investigations into possible violations of law involving certain events that took place between May 1989 and January 2009. As a result, I find that all of the personal information relating to the affected persons in the records is subject to the presumption in section 14(3)(b).

As noted above, once it has been established that personal information is subject to one or more of the presumptions in section 14(3), it cannot be overcome by the considerations listed in section 14(2). The only way in which a presumption can be overcome is if a public interest in its disclosure is established under section 16 or if one of the exceptions in section 14(4) is found to apply. Based on my review of the information in the records, I conclude that the exceptions in section 14(4) have no application. I also note that the public interest override provision in section 16 has not been claimed, nor would it apply in the circumstances as the only interest favouring disclosure is a private one.

As a result of my findings above, I conclude that the undisclosed personal information in the records that relates to the affected persons is exempt from disclosure under section 38(b) of the *Act* as its disclosure would result in a presumed unjustified invasion of their personal privacy under section 14(3)(b). I have reviewed the considerations relied upon by the Police in exercising their discretion to deny the appellant access to the personal information of the affected persons. I find that the Police have exercised their discretion in an appropriate manner, taking into account only relevant considerations. As a result, I will not interfere with the decision to

exercise discretion in favour of not disclosing the affected persons' personal information to the appellant.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Adjudicator

October 27, 2010