



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

ORDER MO-2560

Appeal MA08-417-2

Hamilton Police Services Board



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NATURE OF THE APPEAL:

The Hamilton Police Services Board (the Police) received a request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) which stated, in part:

I require copies of all records (written documents only) maintained about me by Hamilton Police Services. While I have made requests previously, I am asking for copies of reports again for the following reasons:

1) In previous documents a great deal of data was removed prior to those documents being provided to me. I would like complete documents since I believe that the police acted on false and/or misleading information provided to them by [named individuals]. I have a right to know what those individuals alleged about me, especially since some (or all) of those allegations led [named officer] to mark me as a “suspect” ...

In response, the Police sent a letter to the requester noting that her request was “very broad” and asking her to be more specific about the records she was seeking. They cited section 17(1)(b) of the *Act*, which requires a requester to “provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.”

The requester (now the appellant) appealed this decision to this office because “[the Police] waited until the end of the 30-day response period to send me a letter indicating that they did not understand my request. My request is abundantly clear ... I would like [the Police] to immediately provide me with the requested documents ...” Consequently, this office opened appeal file MA08-417.

Shortly after the appeal was filed, the Police located 28 pages of occurrence reports that were responsive to the request and sent the appellant a decision letter stating that she had already received “partial access” to these records in response to previous access requests submitted to them. The decision letter also stated that the occurrence reports contain information relating to both the appellant and other individuals, and that the Police were denying access to portions of these records pursuant to the discretionary exemption in section 38(b) (personal privacy) of the *Act*, read in conjunction with the factors in section 14(2)(f) and (i) and the presumption in section 14(3)(b).

The decision letter further stated that the occurrence reports contain “10-codes, patrol zone information and statistical codes” and that access to this information was denied 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) (law enforcement) of the *Act*.

The appellant appealed the Police’s decision. Consequently, this office closed appeal file MA08-417 and opened appeal file MA08-417-2.

During the mediation stage of the appeal process, the Police stated that the appellant had previously submitted a request for the same records, on November 23, 2007 and did not appeal

the decision made at that time. The Police further stated that when they processed the appellant's previous request, they contacted three other individuals to determine whether they would consent to the disclosure of the information relating to them. The Police submit that all three individuals objected to such disclosure. As a result, they did not re-notify these individuals after receiving the appellant's new request for the same records.

The appellant advised the mediator that she is not pursuing access to the 10-codes, patrol zone information, and statistical codes in the occurrence reports. 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.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. The assigned adjudicator began his inquiry by issuing a Notice of Inquiry to the Police, who submitted representations in response. The adjudicator then issued a Notice of Inquiry to the appellant, along with a severed copy of the Police's representations. Portions of the Police's representations were withheld because they fell within this office's confidentiality criteria on the sharing of representations. The appellant chose not to submit representations in response to the Notice of Inquiry. The appeal file was recently transferred to me to complete the inquiry.

RECORDS:

The information at issue in this appeal consists of the withheld portions of 28 pages of occurrence reports.

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 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.

Similarly, the occurrence reports also contain the same sort of personal information about several other identifiable individuals whose names appear therein (the affected persons). This is not surprising as the Police were obtaining information to assist in their determination of whether to initiate criminal proceedings against either the appellant or the affected persons in response to allegations made by each against the other.

Accordingly, I conclude that the records 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). I note that 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 an investigation into various allegations of criminal wrongdoing made by or against the appellant over the course of 2007 and 2008. 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 the records and have determined that all of the information which they contain was compiled as part of a number of investigations into possible violations of law. As a result, I find that all of the personal information relating to the affected parties 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*. 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