



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

ORDER MO-2625

Appeal MA10-376

Hamilton Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request to the Hamilton Police Service (the Police) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a specific police occurrence report.

The Police located the record and issued a decision in which they provided partial access to it, citing sections 38(a) (discretion to refuse requester's own information), in conjunction with sections 8(1)(e) and 8(1)(l) (law enforcement), and section 38(b), with reference to the factors in section 14(2)(f), 14(2)(i), and the presumption in section 14(3)(b) (personal privacy) of the *Act*.

The appellant appealed this decision.

During mediation, the Police reviewed the record and issued a revised decision, in which they disclosed some additional information. In addition, the appellant agreed not to pursue those portions of the records withheld under sections 8(1)(e) and 8(1)(l). Accordingly, these exemptions, and section 38(a), are not at issue in this appeal.

Further mediation could not be effected and the file was forwarded to the adjudication stage of the appeal process. I sought representations from the Police, initially. The Police submitted representations. During the adjudication stage of the appeal, the Police decided to disclose additional information to the appellant. The Police subsequently sent a copy of the revised decision letter to this office, along with a copy of the record as disclosed. The sole portions of the record remaining at issue comprise information about one affected party. Although requested to do so, the Police did not make additional submissions about this information.

I also sought submissions from the appellant on the issues on appeal, and provided him with a summary of the submissions made by the Police. The appellant submitted representations in response.

RECORDS:

The record at issue is the withheld portions of the specified occurrence report. Following the disclosures made by the Police during the processing of this appeal, only one paragraph on page two of the record remains at issue.

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. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual [paragraph (h)].

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, 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.)].

The Police take the position that the record (including the information remaining at issue) contains “mixed personal” information, meaning that it contains the personal information of the appellant and the two affected persons identified in it.

The record pertains to an incident involving the appellant and two other individuals. The portion remaining at issue contains information about the contact the Police had with affected party #2. I find that the record at issue contains the personal information of the appellant and this affected party. The information in this paragraph pertains primarily to affected party #2. I find that the information about both the appellant and affected party #2 contained in this paragraph is so intertwined that it is not severable.

PERSONAL PRIVACY

General principles

I have found that the record at issue contains the personal information of the appellant and another identifiable individual. 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 the presumptions contained in paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to constitute an unjustified invasion of privacy, unless the information falls within the ambit of the exceptions in section 14(4), or if the “public interest override” in section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Police submit that the presumption at section 14(3)(b) applies to the withheld portions of the records. This section states that:

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;

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 [Order P-242].

The Police indicate that the information was obtained by the police during the course of an investigation into a possible violation of law relating to “domestic violence,” which is a *Criminal Code* offence.

The appellant’s representations set out details about the incident and the appellant’s views as to what transpired and his opinion regarding the veracity of the statements made by affected party #1 to the Police. He believes that a false police report was filed against him and seeks the record to “clear my name.”

As I indicated above, the record at issue is one paragraph contained in an occurrence report. The record, in its entirety, relates to a matter in which the Police responded to a complaint. The record describes the complaint and the actions taken by the Police in responding to it. I am satisfied that the personal information contained in the record at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Even though it does not appear that charges were laid in the circumstances, the presumption still applies since it only requires that there be an investigation into a possible violation of law.

Accordingly, I find that the presumption at section 14(3)(b) applies to the personal information of the individual other than the appellant who is identified in the record at issue. As a result, the record at issue qualifies for exemption under section 38(b) of the *Act*.

Exercise of Discretion

The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, 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

I am satisfied that the Police have balanced the appellant's right to access his own personal information and affected party #2's right to privacy, taking into account the relationship between the parties, the type of record at issue and the nature of the dispute.

I find that, in the circumstances, the Police have properly exercised their discretion in exempting the record at issue. In coming to this conclusion, I note that the Police have disclosed the majority of the record to the appellant, including the statements made by affected party #1 about him. Because the disclosure of the personal information of affected party #2 in the record is presumed to constitute an unjustified invasion of personal privacy, I find that the remaining portion of the record is exempt from disclosure under section 38(b).

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ May 19, 2011