



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

ORDER MO-2593

Appeal MA10-328

LaSalle 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 appellant submitted a request to the LaSalle Police Service Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to police records relating to an incident that occurred on a specified date in 2002.

The Police located one responsive record and granted partial access to it. Access to some of the information was denied pursuant to section 38(b), in conjunction with the factor in section 14(2)(i) (personal privacy) and section 8(2)(e) of the *Act*.

The appellant appealed the Police's decision.

During the mediation stage of the appeal, the Police confirmed that they made an error in claiming section 8(2)(e) and instead intend to rely on section 38(a) (discretion to refuse requester's own information) in conjunction with section 8(1)(e) (law enforcement) of the *Act*, as well as section 38(b). Mediation could not resolve this appeal and accordingly, it was forwarded to the adjudication stage of the appeal process.

I sought and received representations from the Police, initially. I then sent a Notice of Inquiry seeking representations to the appellant and provided her with the non-confidential portions of the submissions provided by the Police. In the Notice of Inquiry, I noted that the confidential portions refer generally to the Police's concerns that resulted in their decision to claim the discretionary exemption in section 8(1)(e) of the *Act*. The appellant did not submit representations.

RECORD:

The record at issue in this appeal consists of the withheld portions of an occurrence report.

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.)].

Although the Police do not make specific representations on this issue, when the representations are read in their totality, it is apparent that the Police take the position that the record contains the personal information of the appellant and other identifiable individuals.

Having reviewed the record, I find that it contains the appellant's personal information as it pertains to an incident in which she was involved. I find further that the record contains the personal information of other identifiable individuals and thus contains their personal information. Some of the information that has been withheld pertains only to the appellant and/or its disclosure would not reveal the personal information of any other individual.

Having determined that the record contains the appellant's personal information, I will now turn to whether the withheld portions of it are exempt under sections 38(a) and 8(1)(e) of the *Act*.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

Introduction

Section 36(1) 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.

Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information [Order M-352].

Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. As I indicated above, in this case, the Police rely on section 38(a) in conjunction with section 8(1)(e).

Law Enforcement

General principles

Section 8(1)(e) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

endanger the life or physical safety of a law enforcement officer or any other person;

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(1)(e): life or physical safety

The term “person” in section 8(1)(e) is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

A person’s subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003]. Rather, I must determine whether there is evidence to establish a reasonable basis for believing that endangerment will result from disclosure.

In the confidential portion of the representations submitted by the Police, they describe the nature of the incident involving the appellant and its result, their interactions with the appellant and concerns that led them to claim the exemption in section 8(1)(e). Although portions of their non-confidential representations were shared with the appellant, these portions contain information about her that is highly sensitive and need not be set out in this order.

With respect to their exercise of discretion, the Police indicate that they have given the appellant everything they could without disclosing the withheld information. The Freedom of Information Co-ordinator indicates that she spoke to the appellant at the time of her request, and the appellant explained her reasons for seeking the record. The Co-ordinator states her belief that the portions of the report provided to the appellant gives her the information she said she was looking for.

Having reviewed the record, I find that it confirms and supports the position taken by the Police with respect to the application of sections 38(a) and 8(1)(e). In the circumstances, I am satisfied that the Police have provided a reasonable basis for believing that endangerment will result from disclosure. In my view, the concerns raised by the Police are not frivolous or exaggerated.

Moreover, I find that, in the circumstances, the Police have properly exercised their discretion in withholding portions of the record. In coming to this conclusion, I note that the Police have disclosed the vast majority of the information in the report to the appellant. I find that the remaining information is properly exempt under sections 38(a) and 8(1)(e).

Because of these findings, it is not necessary for me to consider the application of the other exemptions claimed by the Police.

ORDER:

I uphold the decision of the Police to withhold the record at issue.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ January 28, 2011