



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

ORDER MO-2640

Appeal MA11-77

Peterborough Lakefield Community Police Services Board



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NATURE OF THE APPEAL:

The Peterborough Lakefield Community Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to a specified incident.

In response to the request, and after notifying a number of affected persons pursuant to the notification requirements in section 21 of the *Act*, the Police issued a decision in which they denied access to the responsive record on the basis of the exemption in section 14(1) (personal privacy) of the *Act*.

The appellant appealed the Police's decision.

During mediation, the mediator attempted to notify a number of affected parties for the purpose of obtaining consent to disclose information to the appellant. The mediator was not successful in obtaining the consent of the affected parties.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the appellant, initially. The appellant did not provide representations in response.

RECORD:

The record at issue is a three-page General Occurrence report relating to an identified incident.

DISCUSSION:

PERSONAL INFORMATION

In order for section 14(1) of the *Act* to 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 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].

Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

The Police denied access to the record on the basis that disclosure would result in the unjustified invasion of the privacy of the affected parties. The affected parties also did not consent to the disclosure of the information.

I have reviewed the record at issue, which consists of a General Occurrence report relating to an identified incident. Based on my review of the record, I am satisfied that it contains the personal information of the affected parties only. The report describes an incident involving the affected parties, including information about their ages [(paragraph (a))] and address information [paragraph (d)]. It also includes their names along with a description of certain incidents involving them, and therefore also falls under paragraph (h) of the definition of that term in section 2(1) because it contains the names of the affected parties appearing with other information relating to them.

Accordingly, I find that the record contains the personal information of the affected parties. It does not contain the personal information of the appellant.

INVASION OF PRIVACY

Where a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies.

As the affected parties did not consent to the disclosure of the record, in the circumstances, the only exception which may apply in the present appeal is that set out in section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy (see, for example, Order MO-1212).

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) of the *Act*

refers to certain types of information the disclosure of which 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 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that contains personal information which clearly outweighs the purpose of the section 14 exemption. [See Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

In its decision letter, the Police referred to the factors listed under sections 14(2)(f) and (i) of the *Act*. These sections read:

(2) 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,

- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed [Orders PO-2518, PO-2617, MO-2262 and MO-2344].

As identified above, the appellant has not provided representations on the applicability of any factors favouring disclosure of the record.

Findings

In the absence of representations from the appellant, I find that the appellant has not demonstrated that any of the considerations favouring disclosure in section 14(2), listed or otherwise, are relevant in the circumstances of this appeal.

As identified above, in order to establish that section 14(1)(f) applies, the appellant must show that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. Since no factors favouring the release of the personal information of identified individuals apply, I find that disclosure of the record would constitute an unjustified invasion of the personal privacy of the affected parties. Therefore, the record is exempt under section 14(1) of the *Act*.

ORDER:

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

Original Signed by: _____
Frank DeVries
Adjudicator

_____ July 18, 2011