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

ORDER MO-2607

Appeal MA10-456

Halton Regional Police Services Board

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NATURE OF THE APPEAL:

The appellant submitted a request to the Halton Regional Police Service (the Police) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of "every & all records related to [three identified] incident/occurrence numbers and dates and officers notes."

The Police located responsive records and issued the following decision:

> Occurrence [first identified occurrence number and date], a provincial statistics report, was cleared as UNFOUNDED/CALL CANCELLED by dispatch; therefore a police occurrence report and investigating officer's notebooks do not exist.
>
> [Named officer] has advised he does not have any notebook entries for [second identified occurrence number], a general information report dated [date].
>
> [Two named officers] have advised they do not have any notebook entries for [third identified occurrence number], a provincial stats report dated [date].
>
> Following careful consideration of section 38(a) [refusal to disclose requester's own information] and (b) [personal privacy], a decision was made to grant partial access to a copy of [second and third police occurrence reports], along with the investigating officer's notebook entries for [third occurrence report]. Even though some of the information pertains to you, some of the information has been removed because disclosure would constitute an unjustified invasion of another individual(s) personal privacy.

The Police advised that the following sections of the *Act* were considered in making this decision: 14(1) (personal privacy), 8(1)(c), 8(2)(a), 8(1)(e) and 8(1)(l) (law enforcement).

The appellant appealed the Police's decision.

In discussions with the mediator, the appellant indicated that her primary issue in this appeal is that she believes there should be an occurrence report and officers' notes for the first occurrence number, which relates to an incident involving tainted food. Contrary to the position taken by the Police, the appellant does not believe that this call was determined to be unfounded. She believes that there should be a report for this incident. Accordingly, the reasonableness of the Police's search was raised as an issue in this appeal.

With respect to the records that she received in response to her request, the appellant indicated that she wishes to pursue access to all of the withheld portions of the records. Accordingly, section 38(a), in conjunction with sections 8(1)(c), 8(2)(a), 8(1)(e) and 8(1)(l) as well as section 38(b), in conjunction with the presumption at section 14(3)(b), remain at issue in this appeal.

Finally, it should be noted that throughout the processing of this request and appeal, the appellant raised a number of concerns regarding the accuracy of the records in this appeal, and she has, accordingly, submitted a correction request directly to the Police. The Police have since attached the appellant's corrections to her files as a statement of disagreement. Accordingly, the correction of information in the records is not at issue in this appeal.

To address the appellant's concerns regarding the existence of the first occurrence report relating to tainted food, the Police agreed to conduct a second search for responsive records. The appellant provided the names of two officers whom she believed should have records relating to this incident, and the FOI Coordinator contacted those individuals during mediation to see whether they had any responsive records. The FOI Coordinator subsequently advised the mediator that both officers confirmed that they have no records pertaining to the appellant's tainted food incident. However, in response to a new request from the appellant relating to the same incident, the FOI Coordinator advised the mediator that she has agreed to retrieve information which addresses the tainted food incident originating from CAD – the Computer Aided Dispatch System. The FOI Coordinator indicated that she would provide this record to the appellant as part of her new request, and provided a copy of this record to this office in support of her position that, apart from the CAD record, no records relating to the first occurrence number exist.

Upon further discussions with the mediator, the appellant suggested that the Police should expand the time frame of the search for records relating to the tainted food incident, as she had visited the Police station during the newly identified time period in order to obtain the occurrence report. The appellant was not satisfied with the search conducted by the Police for the report and officers' notes relating to the tainted food incident, and accordingly, reasonable search remains an issue in this appeal. As well, the appellant advised the mediator that she wishes to include the existence of notebook entries for three named officers relating to the other two occurrence reports as part of the reasonable search issue in this appeal.

As no further mediation was possible, this file was transferred to the adjudication stage of the appeal process. I sought representations from the Police, initially, and they submitted representations in response. In their submissions, the Police indicate that they issued a revised decision letter to the appellant disclosing additional portions of the records. As a result, the Police indicate that the discretionary exemption in section 38(b), in conjunction with section 14(3)(b), is no longer at issue in this appeal. As well, the Police note that one of the named officers (identified in the search portion of the appeal) located a notebook entry relating to the appellant and this portion of the record was disclosed to her.

I then sought the appellant's representations on the issues remaining on appeal and provided her with a copy of the Notice of Inquiry, amended to reflect the withdrawal of section 38(b) as an issue, and a copy of the non-confidential portions of the Police's representations.

In the Notice of Inquiry that I sent to the appellant, I noted that the Police had indicated on certain records that portions are not responsive to the appellant's request. I noted that if the appellant disputed this claim, she was invited to comment on whether or not she believes that the withheld portions are responsive to her request.

The appellant also submitted representations.

RECORDS:

The records remaining at issue consist of the withheld portions of two police occurrence reports and officers' notes.

PRELIMINARY MATTER:

NON-RESPONSIVE INFORMATION

As I indicated above, portions of two police officers' notes were withheld as being non-responsive to the appellant's request. Although I asked the appellant to indicate whether this was an issue for her, she did not comment on it. Based on my review of these records, I am satisfied that the withheld portions identified as non-responsive pertain to other matters dealt with by the police officers during the course of their duties and are, therefore, not responsive to the appellant's request.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

The appellant believes there should be an occurrence report and officers' notes pertaining to a tainted food incident, which she identifies with a specific occurrence number (the first occurrence number cited in her request). The appellant also believes there should be notebook entries for three named officers relating to the other two occurrence numbers cited by her in her request.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221 and PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [Order MO-2246].

Representations

The Police indicate that upon receipt of the appellant's request, which the Information Privacy Officer found to clearly state the information that the appellant was seeking, their FOI Clerk conducted a search for responsive records and confirmed that the first occurrence report was identified as "UNFOUNDED/CALL CANCELLED". The Police also provided an affidavit sworn by the FOI Clerk who searched for the first occurrence report and accompanying officers' notes. She states that she conducted an additional search for records responsive to the first part of the appellant's request as follows:

> 1) Upon receiving the request to double check the Records Bureau to determine whether there is a police occurrence report for [the first occurrence] on this date, I once again checked the shelf. There was no report and there were no auxiliary reports.
>
> 2) I then checked the occurrence number again on Niche. None of the regular pieces of information that would be associated to this occurrence, if it was a reportable occurrence are there. Also, a further investigation of the Call history indicates that the complainant left 30 Division and the Staff Sergeant was advised. The call was unfounded and cancelled at that time.

The Police state that because the call was labelled unfounded/call cancelled, a police officer was not dispatched to the call. Accordingly, no records would exist. The Police noted, however, that during mediation, two named police officers were identified and they were contacted and asked to search their notebooks for the time period identified by the appellant. The Police indicate that neither officer located responsive records. The Police state further that these two officers conducted two further searches of their notes during the processing of this appeal, but no records were located. The Police provided affidavits sworn by these two officers who affirm that they searched their notebooks and did not locate responsive records. Moreover, they affirm that they have no knowledge of the event that led to the appellant's initial complaint.

Referring to another access request made by the appellant (noted above), the Police indicate that the CAD record was identified as being responsive to that request and was disclosed to the appellant. The Police note that this record confirms that the call was unfounded and cancelled by dispatch.

With respect to the three officers identified by the appellant, the Police outline the steps taken to search their notebooks. The Police note that the first officer (connected to the second occurrence report identified by the appellant) is retired. Prior to retiring, however, he submitted his notebooks to the Police's Information Privacy Officer for safe storage in accordance with Police policy. The Information Privacy Officer provided an affidavit in which she affirms that she searched the officer's notebook for the date and occurrence number provided by the appellant.

She did not locate any responsive records. Having reviewed the records in their entirety, I note that the occurrence report identifies this named officer as the "Dispatcher." The headings "Dispatched Officer" and "Reporting Officer" are not filled in on the occurrence report. The occurrence report sets out the named officer's actions and observations on the date the appellant arrived at the station to make her complaint.

The Police note that the appellant has been provided with a severed copy of the third occurrence report and the notes made by one officer. Initially, the Police indicated that no other officers' notes existed. However, following a second search conducted by one of the named officers, this officer's notes were located. The Police explain:

> Upon his initial check, [named officer] advised he did not have notebook entries but when requested a second time to check, he noticed an entry for a liquor call and realized that this was indeed the requested information but logged incorrectly. The notebook entry has since been released to the appellant.

The Police confirm that the third officer identified by the appellant in relation to the third occurrence report does not have notes from that incident. The Police indicate that this officer advised them that she did not attend the call, but was, rather, there to check on an officer. This officer provided an affidavit confirming that she does not have any responsive records in her notebook.

The appellant has submitted lengthy representations in which she rejects the information provided by the Police and maintains that the records she is seeking exist. The appellant also indicates that she believes that a fourth occurrence report should exist for a date she provided in her access request. She describes an incident to support her belief.

Regarding the fourth occurrence report, I find that the appellant has expanded the scope of her request in requiring the Police to search for this record, particularly at this point in the process. Although the appellant provided the date in question as part of her request, it was clearly connected to the third occurrence report identified by her. Accordingly, I will not consider whether the Police should have searched for a fourth report and accompanying officers' notes. If she wishes, the appellant may submit another access request to obtain this information, if it exists.

The appellant believes that she is being harassed, threatened and harmed by corrupt members of the Royal Canadian Mounted Police (RCMP). She believes that these "corrupt" officers have infiltrated all levels of government, including various departments within the Police and the office of the Information and Privacy Commissioner of Ontario. Much of her representations focus on perceived incidents and her suspicions regarding the authenticity of sworn affidavits, signatures, documents and other actions taken by various individuals involved in her Police complaints and in her access request and appeal.

Analysis and Findings

Based on my consideration of the submissions made by the Police, the affidavits sworn by the individuals that were involved in searching for responsive records and the records that were located, I am satisfied that the search conducted by the Police for responsive records was reasonable. The search was conducted by knowledgeable individuals in locations where records could reasonably be expected to be found. Moreover, the records support the position taken by the Police that no records exist relating to the first occurrence report identified by the appellant, as that complaint was determined to be unfounded. In addition, the second occurrence report identifies the role of the named officer at the time the appellant entered the police station to submit her complaint. The information set out in the occurrence report is consistent with the position taken by the Police.

One of the concerns expressed by the appellant is that she does not understand why one of the officers identified on the third occurrence report does not have any notes. This officer provided an explanation, indicating that she did not attend the call in order to investigate, although the occurrence report indicates that she was dispatched. Rather, she indicates that she was sent to "check on an officer." I am satisfied that this officer does not have responsive information in her notebook.

Accordingly, having found that the search conducted by the Police was reasonable, this part of the appeal is dismissed.

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 acknowledge that the records contain the appellant's personal information.

The records were created as a result of complaints made by the appellant and, as such, contain her personal information. The records do not contain the personal information of any other identifiable individual.

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 sections 8(1) (c), (e), (l) and 8(2)(a).

Law enforcement

General principles

The relevant portions of sections 8(1) and (2) state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

(2) A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children's aid society investigation under the *Child and Family Services Act* [Order MO-1416]
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997* [Order MO-1337-I]

The term "law enforcement" has been found *not* to apply in the following circumstances:

- an internal investigation by the institution under the *Training Schools Act* where the institution lacked the authority to enforce or regulate compliance with any law [Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.)].
- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions [Order P-1117].

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.)].

Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to," the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (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* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(1)(l)

The Police indicate that section 8(1)(l) was used to remove the patrol zone information from the records. Citing Orders M-393, M-831, M-757, MO-1715, MO-2148 and PO-1777, all of which have applied the exemption in section 8(1)(l) to ten-codes, location and zone-codes, the Police state:

> This institution relates patrol zone information in much the same manner as ten-codes. While in isolation they do not provide a specific meaning, when you put them together within the context of all the records, they can generate the number of patrol officers in a particular zone per platoon/shift. Releasing this information puts officers at risk …
>
> If the individuals intent on engaging in criminal activity become aware of the procedures represented by these various codes, they could be used to counter the actions of police in response to a variety of situations. This could result in the risk of harm to either police or member of the public involved in a police situation.

The appellant indicates that she wants to know what these codes mean. I note that the Police express an offer in their submissions to explain as much information to the appellant as they can without revealing the code information. The appellant may wish to contact the Police for additional explanation.

This office has issued many orders regarding the release of Police codes and has consistently found that section 8(1)(l) applies to this type of information (for example, see Orders M-93, M-757, MO-1715 and PO-1665). The appellant has not provided sufficient evidence to persuade me that a different result is warranted in the circumstances of this appeal.

Accordingly, I find that the patrol zone information contained in the records qualifies for exemption under section 8(1)(l) of the *Act*.

Section 8(1)(c): investigative techniques and procedures

The Police have applied section 8(1)(c) to one paragraph on the second occurrence report. In order to meet the "investigative technique or procedure" test, the Police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487]. Moreover, the techniques or procedures must be "investigative." The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

The submissions made by the Police on this issue are contained in the confidential portion of their representations. I am, therefore, unable to provide details that would describe the technique in any way and/or explain its purpose and use for to do so would reveal the very information that the Police seek to withhold. Essentially, the Police take the position that the technique described in the paragraph at issue is used in law enforcement for investigative purposes and is consistently maintained in a confidential manner. The Police also explain how its disclosure could reasonably be expected to hinder or compromise its effective utilization by law enforcement agencies.

The appellant's submissions do not specifically address this issue.

Having reviewed the information at issue and the submissions made by the Police, I am satisfied that the information at issue discloses an investigative technique, and that its disclosure could reasonably be expected to hinder or compromise its effective utilization by law enforcement agencies [Order PO-2582]. Accordingly, I find that the discretionary exemption at section 8(1)(c) applies to this paragraph.

EXERCISE OF DISCRETION

The section 38(a) and 8 exemptions are discretionary, and permit 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

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

With respect to their exercise of discretion, the Police indicate that they have given the appellant everything they could without disclosing the exempt information contained in the records. The Police have provided additional confidential representations relating to their exercise of discretion in the circumstances of this appeal. I find that, in the circumstances, the Police have properly exercised their discretion in withholding portions of the records. In coming to this conclusion, I note that the Police have disclosed the vast majority of the information in the records to the appellant. I find that the remaining information is properly exempt under sections 38(a), read in conjunction with sections 8(1)(c) and (l).

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

ORDER:

1. The search for responsive records conducted by the Police was reasonable and this part of the appeal is dismissed.

2. I uphold the decision of the Police to withhold the records remaining at issue from the appellant.

Original signed by: March 25, 2011
Laurel Cropley
Adjudicator