

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-2657

Appeal MA10-344

Peel Regional Police Services Board

October 18, 2011

**Summary:** The appellant sought access to a police report and statements made against him. The police denied access to portions of the records pursuant to the discretionary personal privacy exemption in section 38(b) with reference to the presumption in section 14(3)(b) of the *Act*. The records contained the personal information of the appellant and other identifiable individuals. The presumption in section 14(3)(b) applies and the undisclosed personal information related to other identifiable individuals is exempt under section 38(b).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as am., ss. 14(3)(b), 38(b).

### OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy* (the *Act*) to the Peel Regional Police Services Board (the police) for access to a specific police report related to a complaint made against him. The appellant specified the police report by number and provided his address.

[2] The police located a responsive record and granted access, in part. Access to the remaining portions of the record were denied on the basis of the discretionary personal privacy exemption in section 38(b), with reference to the presumption in section 14(3)(b) of the *Act*.

[3] The appellant appealed the police's decision. During mediation, the appellant advised the mediator that he believed additional records should exist and, in particular, he believed that written statements were supplied to the police by the individuals who had filed the complaint against him. When the mediator conveyed the appellant's position to the police, the police agreed to conduct an additional search for records.

[4] The police located additional responsive records including written statements from affected persons (individuals whose interests may be affected by the outcome of the appeal). The police provided a follow-up decision and denied the appellant access to the newly-located records in full, pursuant to the discretionary personal privacy exemption in section 38(b) in conjunction with the presumption in section 14(3)(b).

[5] The mediator contacted the affected persons for their consent but they confirmed they did not consent to the disclosure of their information. The appellant advised that he is not seeking the birth date of any individuals, but he is seeking access to all other information. As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[6] During my inquiry into this appeal, I sought and received representations from the police, the affected persons and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction* number 7. The affected persons did not consent to the disclosure of the information relating to them in the records.

[7] In this order, I uphold the police's decision to withhold the records from disclosure.

## **RECORDS:**

[8] As the appellant does not wish to receive the birth dates of the affected parties, I have removed that information from the scope of this appeal. The information remaining at issue consists of the following:

<b>Record Name</b>	<b>Information at issue</b>
Occurrence Details	Information next to heading, "Occurrence status" on page 1
	Information under heading "General Reports" on page 6
Incident History	Withheld name and other information
Police officer's notes	Withheld information
Prepared statement by affected person entitled "Memorandum"	Whole statement withheld
Prepared statement by affected person entitled "Memorandum"	Whole Statement withheld

## **ISSUES:**

- A. Do the records contain personal information?
- B. Would disclosure of the records constitute an unjustified invasion of another individual's personal privacy?
- C. Was the police's exercise of discretion proper?

## **DISCUSSION:**

### **A. Do the records contain personal information?**

[9] 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. The police submit that the records contain the personal information of the affected persons within the meaning of paragraph (g) of the definition of that term in section 2(1) of the *Act*. I find that paragraphs (d), (e) and (h) are also relevant. Section 2(1) defines "personal information" in part as:

"personal information" means recorded information about an identifiable individual, including,

- (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,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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;

[10] 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].

[11] 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].

[12] 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.)].

[13] Before I consider whether the information in the record is personal information, I must first consider whether the information relates to the affected persons in a professional or personal capacity. Only information about individuals in a personal capacity can qualify as personal information for the purposes of the *Act*. The affected persons submit that the records contain information about themselves in both their professional and personal capacities. The professional information relates to their identities as the former solicitors for the appellant. The personal information relates to the specifics of their complaint to the police about the appellant<sup>1</sup>.

[14] The current approach of this office in determining whether information relates to an individual in a personal or professional capacity was set out by the former Assistant Commissioner Tom Mitchinson in Order PO-2225. This approach has been followed in numerous decisions of this office and essentially involves the consideration of two questions, set out in Order PO-2225, as follows:

...the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

...

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[15] I adopt this approach for the purposes of this appeal.

[16] The affected persons' names appear in the context of a complaint made to the police. Further, because of its personal nature, I find that the complaint was made in their personal and not professional capacities. While the relationship between the

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<sup>1</sup> As disclosure of the affected persons' representations would disclose the content of the records at issue, I did not provide the appellant with a copy of the representations.

affected persons and the appellant was in the context a professional retainer, the affected persons' complaint relates to events which took place following the termination of their relationship with the appellant. Accordingly, I find this to be a personal rather than professional context. Secondly, I find that disclosure of the information in the record would reveal something of a personal nature about the affected persons, namely the specifics of the complaint against the appellant including their views and opinions of certain events. Accordingly, I find that having considered the information in the records, the information of the affected persons relates to them in a personal, rather than professional capacity.

[17] I find that the records contain both the personal information of the appellant and the affected persons within the meaning of that term in section 2(1) of the *Act*. The views and opinions of the affected persons about the appellant, as described in paragraph (g) of the definition of "personal information", represents the personal information of the appellant. The affected persons' views and opinions of the events surrounding the complaint are their personal information, as defined by paragraph (e) of section 2(1). I further find that the record contains personal information about the affected persons within the meaning of paragraph (h) of the definition of that term.

[18] I note that while much of the appellant's personal information has been disclosed to him, the information remaining about him is in the statements made to the police by the affected persons. The affected persons and the police both provided confidential representations as to why this information should not be shared with the appellant. While I can not elaborate on those submissions, I find that the appellant's personal information that is included in the affected persons' statements is so intertwined with their own personal information that it cannot be severed.

[19] The affected persons' business address is not personal information for the purposes of the *Act*. Section 2(2.1) of the *Act* states:

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.

[20] Accordingly, the business address of the affected persons is not their personal information for the purposes of this appeal. The police concede this point, but submit that disclosing this information (the business contact information for the affected persons) alone would have been revealing "disconnected snippets" of information that the appellant already has in his possession. I accept the police's submissions on the practicality of severing the records to disclose only this information. The appellant already has the contact information of the affected persons and I will not order this information disclosed to him.

[21] As the records contain the personal information of the appellant and the affected persons, I will now consider the application of section 38(b) of the *Act*.

**B. Would disclosure of the records constitute an unjustified invasion of another individual's personal privacy?**

[22] 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.

[23] 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.

[24] 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.

[25] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) 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.

[26] Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of the personal privacy of another individual. Section 14(2) lists factors to consider in determining whether disclosure would constitute an unjustified invasion of another individual's personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[27] 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)<sup>2</sup>, though it can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the exemption (see Order PO-1764). The application of sections 14(4) and 16 has not been raised and, in my view, neither are available in the circumstances of this appeal.

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<sup>2</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

**Section 14(3)**

[28] The police submit that the presumption in section 14(3)(b) is relevant to the personal information remaining at issue. This section states:

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;

[29] The police submit that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code* that resulted in the appellant being cautioned for threatening.

[30] I have reviewed the records and find that they contain personal information of the appellant and other individuals which was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*, such that the presumption in section 14(3)(b) applies to its disclosure. Accordingly, I find that section 38(b) applies to exempt this information subject to my finding on the police's exercise of discretion set out below.

**C. WAS THE POLICE'S EXERCISE OF DISCRETION PROPER?**

[31] 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.

[32] 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.

[33] 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 43(2)].

[34] The police submit that in exercising its discretion to withhold portions of the records it considered the appellant's right of access and the affected parties' right to privacy and how to balance these competing interests. The police submit that its practice is to disclose whenever possible within the spirit of the *Act* and the appellant received information and the redactions done were limited and specific.

[35] The appellant's submissions focus on the fact that the allegations against him are false and that he needs to know what was said about him. I note that he has been given the actual substance of the complaint and he knows the identity of the complainants. While I appreciate the appellant's frustration at not having access to the affected persons' statement of events, I can find nothing improper in the police's exercise of discretion to withhold this information. The police properly considered the appellant's right to his own personal information, as well as the affected person's right to privacy. I find the police's severances to have been limited and specific in the circumstances. I uphold the police's exercise of discretion.

**ORDER:**

I uphold the police's decision and dismiss the appeal.

Original Signed By: \_\_\_\_\_

Stephanie Haly  
Adjudicator

October 18, 2011