

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2754

Appeal MA10-478

LaSalle Police Services Board

June 21, 2012

Summary: The appellant made a request to the police for all records relating to him in their record holdings. The police granted partial access to the records withholding information under the discretionary exemptions in sections 38(a) and (b) (personal privacy). The appellant also believed that additional responsive records should exist. This order upholds the police's decision and finds their search for responsive records to be reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 38(b), 14(2)(f), (h), 14(3)(b).

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the LaSalle Police Services Board (the police) for:

...access [to] my records and personal information under the [*Act*].

[2] The police located the responsive records and granted partial access to them, withholding information on the basis of the discretionary exemption in section 38(a) with reference to the law enforcement exemptions in sections 8(1)(d) and (e) and the personal privacy exemption in section 38(b).

[3] The appellant appealed the police's decision to this office and raised the issue of the existence of additional responsive records. The police conducted a further search and located additional records granting partial access to them with reference to the exemptions claimed in their prior decision. After receiving this decision, the appellant informed the mediator that more records should exist.

[4] The police subsequently issued a further decision granting partial access to the police notebook entries with access denied pursuant to the discretionary exemptions in sections 38(a) and (b). The police also noted that no further responsive records exist.

[5] The appellant confirmed with the mediator that he is not interested in pursuing access to the police codes and information which was identified as not responsive to his request. Accordingly, this information is not at issue in this appeal. As the police code information was withheld under section 38(a) with reference to section 8(1)(e), this exemption is not at issue in this appeal. Finally, the appellant confirmed that he wishes to pursue access to the remaining withheld information and the issue of reasonable search as he believes additional records should exist.

[6] During the inquiry into this appeal, I sought and received representations from the police and the appellant. Representations were shared in accordance with *Practice Direction 7* and the IPC's *Code of Procedure*.

[7] In this order, I uphold the police's decision to exempt the information at issue in the records and find that their search for responsive records was reasonable.

RECORDS:

[8] The records remaining at issue consist of the following:

Record Number	Description	Exemption Claimed
2(a)	Occurrence Report	38(a), 8(1)(d), 38(b)
3	Occurrence Report	38(a), 8(1)(d),(e), 38(b)
5(a)	Occurrence Report	38(b)
7(c) and (d)	Occurrence Report	38(a), 8(1)(d), (e), 38(b)
11(a)	Occurrence Report	38(b)
12(a)	Supplementary Report	38(b)
19	Supplementary Occurrence Report	38(a), 8(1)(d), 38(b)
20	Picture attachment to Record 2(a)	38(a), 8(1)(d), 38(b)
22	Summary of Occurrences	38(a), 8(1)(e), 38(b)
35	Supplementary Occurrence Report	38(a), 8(1)(d), 38(b)

43	Supplementary Report	38(a), 8(1)(d), 38(b)
45	Supplementary Occurrence Report	38(b)
48, 49	Pictures	38(a), 8(1)(e), 38(b)
52 – 54	Notebook entries	38(a), 8(1)(d), (e), 38(b)
56, 57	Notebook entries	38(a), 8(1)(d), (e), 38(b)
63, 65, 67	Notebook entries	38(a), 8(1)(d), (e), 38(b)
69, 70, 72	Notebook entries	38(b)
74, 78	Notebook entries	38(b)
80 – 83	Notebook entries	38(a), 8(1)(d), (e), 38(b)
85 – 90	Notebook entries	38(a), 8(1)(d), (e), 38(b)
92	Notebook entry	38(a), 8(1)(e), 38(b)
97, 98	Notebook Entries	38(a), 8(1)(e), 38(b)

ISSUES:

- A. Do the records contain “personal information” as defined in section 2(1) of the *Act*?
- B. Does the discretionary exemption in section 38(b) apply to the information at issue?
- C. Was the police’s exercise of discretion proper?
- D. Did the police conduct a reasonable search for records?

DISCUSSION:

A. Do the records contain “personal information” as defined in section 2(1) of the *Act*?

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain “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)].

[10] 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].

[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)].

[12] The police submit that the records at issue contain the personal information of the appellant and other identifiable individuals within the meaning of section 2(1) of the *Act*. The police further submit that the appellant's own personal information has been disclosed to him and any remaining personal information relates to other individuals or would identify these other individuals. The appellant does not make direct representations on this issue but argues that he should have the right to know the complaints made against him and the information the police have against him.

[13] Based on my review of the information at issue, I find that the records contain the "personal information" of the appellant and other individuals within the meaning of that term in section 2(1) of the *Act*. In particular, I find the following:

- information relating to the age, sex, marital or family status of the individual [paragraph (a)];
- information relating to the medical, psychiatric, psychological, criminal or employment history of the individual [paragraph (b)];
- identifying number assigned to individual [paragraph (c)];
- the address, telephone number of the individual [paragraph (d)];
- the personal opinions or views of the individual [paragraph (e)];
- correspondence set to an institution by an individual that is of a confidential nature [paragraph (f)];
- the views or opinions of another individual about the individual [paragraph (g)];
- the individual's name...where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

[14] The police have disclosed most of the appellant's personal information to him. The personal information remaining at issue consists of other individuals' views or opinions of appellant and personal information solely relating to other individuals. Unfortunately, the views and opinions of the other individuals about the appellant are inextricably linked to the personal information of these individuals and cannot be severed.

[15] Accordingly, I will now consider whether the information relating to the appellant and the other individuals is exempt under section 38(b) of the *Act*.

B. Does the discretionary exemption in section 38(b) apply to the information at issue?

[16] I have found that the withheld information at issue contains the personal information of both the appellant and other individuals. 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, including section 38(b). 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.

[17] 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.

[18] In determining whether the exemption in section 38(b) applies, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of the personal information would result in an unjustified invasion of the other individuals’ personal privacy. Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b).

[19] The police submit that I should consider the factors set out in sections 14(2)(e), (f), (h) and (i) and the presumption in section 14(3)(b). These sections state:

(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,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) 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;

[20] The appellant submits that there is no expectation of harm to other individuals as he is not a threat to anyone nor does he have a history of violence. Further, he reiterates in his submission that he has a right to know what is said about him by the complainants.

[21] The police submit that the personal information in the records was compiled and is identifiable as part of several investigations into possible violations of the *Criminal Code*. The investigations were a result of complaints made by other individuals about the appellant.

[22] On the issue of the factors, the police submit that the personal information in the records was supplied in confidence to the police by individuals. The police submit that disclosure of the personal information would cause the individuals severe personal distress as they are worried about the repercussions of their accusations against the appellant. Finally, the police submit that disclosure of the personal information may unfairly damage the reputation of individuals who reported incidents to the police.

[23] I have carefully reviewed the withheld portions of the records. I agree with the police's submission that much of the appellant's personal information has been disclosed to him, including the allegations against him. The information remaining at issue includes the names, contact information of other individuals and the views and opinions of the appellant made by these individuals. I find the views and opinions of the appellant are not severable from the other personal information relating to other individuals.

[24] It is evident that the information at issue was compiled by the police in the course of investigations into matters involving the appellant and other individuals. 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 [Orders P-242 and MO-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders MO-2213, PO-1849 and PO-2608].

[25] Accordingly, I find that the personal information at issue was compiled and is identifiable as part of investigations into possible violation of law and falls within the presumption in section 14(3)(b).

[26] In addition, I am satisfied that given the nature of the allegations in the records, there is a reasonable expectation that disclosure of the personal information could cause the individuals, other than the appellant, involved significant personal distress. 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 such, I find that the factor against disclosure in section 14(2)(f) applies to the personal information at issue.

[27] Further, I find that some of the personal information in the records was supplied to the police in confidence and the factor in section 14(2)(h) is also relevant to my consideration. I note that the police also claimed section 38(a) with reference to section 8(1)(d) for information that was received from a confidential source.

[28] Because the factors in sections 14(2)(f) and (h) and, the presumption in section 14(3)(b), all apply to the withheld information, I am satisfied that disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties. Accordingly, I find that the withheld portions of the records are exempt from disclosure under section 38(b) of the *Act*, subject to my review of the police's exercise of discretion.

[29] As I have found that section 38(b) of the *Act* applies to the information at issue, I do not need to consider the application of section 38(a).

C. Was the police's exercise of discretion proper?

[30] 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.

[31] 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.

[32] 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)].

[33] In exercising their discretion to withhold the information at issue, the police submit they took into consideration the appellant's right to his own personal information and gave him as much information as possible without providing him the information that would identify other individuals mentioned in the records. The police also took into

consideration the privacy rights of the individuals who either were involved in the incidents set out in the records or were the complainants of the incidents. Finally, the police considered whether the appellant had a compelling reason for wanting the information and the relationship between the appellant and the other individuals mentioned in the information at issue. The appellant did not make representations on this issue.

[34] I have reviewed the circumstances surrounding this appeal and the police's representations on the manner in which they exercised their discretion. Based on this information, as well as on the fact that much of the information in the records was disclosed to the appellant, I am satisfied that the police properly exercised their discretion not to disclose the information remaining at issue to the appellant.

[35] Accordingly, I find that the withheld information in the records qualifies for exemption under section 38(b).

D. Did the police conduct a reasonable search for records?

[36] 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.

[37] 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].

[38] 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].

[39] 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].

[40] 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].

[41] The Freedom of Information Coordinator submits that the LaSalle Police Services Board is a small service and that she is one of two secretaries who also acts as their Freedom of Information coordinator. She submits that she conducted the search for records and is familiar with both the record holdings and the appellant. The coordinator notes that the appellant files numerous complaints with the police and also routinely sends in correspondence.

[42] The coordinator provided an explanation as to why during additional searches for records, more records were located. She notes that the appellant continually sends in letters and correspondence to be added to old occurrence files and reports. She submits that her search did not locate these new letters as the letters had come in after her initial search for responsive records. Further, the coordinator submits that the appellant's request for the officers' notes did not arise until after the appellant had spoken with the mediator. Finally, the coordinator submits that the appellant sends in letters which are copied to many different organizations. The police are often unsure of how to file and where to place the information mailed (as they are carbon copied on these letters) to them but addressed to the third party organizations.

[43] The appellant does not address issue of the police's search for records nor does he provide the basis for his belief that additional responsive records should exist.

[44] Based on the police's representations and their explanation as to the searches undertaken, I find the police's search for responsive records to be reasonable. The appellant did not provide a basis for his belief that additional responsive records should exist and I am unable to find a basis from my review of the records. Accordingly, I uphold the police's search as reasonable.

ORDER:

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

June 21, 2012

Stephanie Haly
Adjudicator