Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2834

Appeal MA11-415

Peel Regional Police Services Board

January 25, 2013

Summary: The appellant sought police records related to a February 2007 incident. The records identified and disclosed in part to the appellant did not include a written incident report the appellant believes should exist. The appellant appealed the adequacy of the police's search, as well as the withholding of certain information under section 38(b). The adjudicator orders disclosure of additional personal information about the appellant, but otherwise upholds the access decision of the police. The adjudicator upholds the search conducted by the police as reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of "personal information"), 14(1)(f), 14(2)(h), 14(3)(b), 17(1), 38(b).

OVERVIEW:

[1] This order addresses the access decision of, and search conducted by, the Peel Regional Police Services Board (the police) in response to a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to an incident reported to the police by the requester.

[2] The request stated:

> I'm requesting written report from interview with police officers at Principal's Office at [an identified school]. I was a teacher there in 2007 and between Jan. and April 2007 I called police after I was repeatedly receiving death threats from my … student [an identified individual]. …

[3] Upon identifying records responsive to the request, the police issued a decision letter to the appellant, granting partial access. However, the police claimed that disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy under section 38(b), taking into consideration the presumption against disclosure in section 14(3)(b). The police also advised that the attending officers did not prepare a written report relating to the incident.

[4] Following the requester's appeal of the decision to this office, a mediator was assigned to explore resolution of the issues. During mediation, the appellant expressed her belief that a written report generated after an interview that took place in the school principal's office should exist. Accordingly, the reasonableness of the search by the police was added as an issue to this appeal, along with the possible application of section 38(b) to portions of the records.

[5] It was not possible to resolve this appeal through mediation and the file was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly responsible for this appeal started her inquiry by seeking the representations of the police, initially.

[6] Once the representations of the police were received, the adjudicator provided a complete copy of them to the appellant with a Notice of Inquiry outlining the issues, in order to seek her representations. When the due date specified in the Notice of Inquiry had passed with no response from the appellant, the former adjudicator wrote to the appellant to confirm her intentions with respect to the appeal. The appellant replied that she remained interested in pursuing her appeal, but she did not submit representations. Consequently, the appeal was moved to the order stage.

[7] As the adjudicator formerly responsible for this appeal was not available to prepare the order, the appeal was reassigned to me to do so.

[8] In this order, I find that some of the withheld information is not exempt under section 38(b), and I order it disclosed to the appellant. I find that the search for responsive records by the police was reasonable, and I dismiss that part of the appellant's appeal.

RECORDS:

[9] At issue are portions of an incident history report (3 pages) and officers' notes with a cover page (8 pages).

ISSUES:

A. Does the record contain "personal information" and, if so, to whom does it relate?

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

C. Did the police conduct a "reasonable" search for responsive records?

DISCUSSION:

Preliminary Issue: Non-responsive information

[10] I have decided to deal with certain severances made to the officers' notes by the police as a preliminary issue.

[11] According to the principle of severance in section 4(2) of the *Act*, an institution is obliged to disclose as much of a responsive record as it reasonably can without disclosing information that falls under one of the exemptions in sections 6 to 15. When severing a record, an institution is not obliged to disclose non-exempt "tidbits" or "snippets" of information that would essentially be rendered meaningless by the deprivation of context.

[12] During my review of the records at issue, I noted that the police had not recorded the basis for each of the severances applied to the records on the copies of the records provided to this office. In my view, however, notwithstanding this omission, the reason for the severance of each withheld portion is quite evident.

[13] In the officers' notes, there are several small pieces of text featuring police codes (on pages 3, 5 & 7) and two slightly longer portions on pages 2 and 8 that contain information such as shift times, weather, visibility, and other unrelated police matters, in addition to the police codes. In the context in which it appears, I have concluded that these portions of the records, which have been severed from pages 2, 3, 5, 7 and 8 of the officers' notes, were not withheld under section 38(b), but rather are not responsive to the request.

[14] Previous orders have established that to be responsive, information must be "reasonably related" to the request (Order P-880). I have reviewed all of these portions and I find that they relate to policing activities unrelated to the investigation into the incident reported by the appellant. The appellant's request is clear in its scope. In my view, information recorded in the officers' notes about, for example, details related to the officer's shift on the same day as the activities concerning the officers' attendance at the appellant's place of employment, are not reasonably related to her request. Therefore, I find that these withheld portions of the officers' notes on pages 2, 3, 5, 7 and 8, which I have marked on the copy of the records provided to the police with this order, are not responsive and may be withheld on this basis.

[15] In future appeals, the police should ensure that copies of records provided to this office for the purpose of processing an appeal contain the proper, relevant notations to indicate the basis upon which the record (or portion of the record) has been withheld.

A. Does the record contain "personal information" and, if so, to whom does it relate?

[16] For the purpose of determining the application of section 38(b) of the *Act*, it is necessary to determine if the records contain personal information according to the definition of that term in section 2(1) of the *Act* and, if so, to whom it belongs. The definition of personal information states:

> "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 where 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;

[17] The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information (Order 11).

[18] The police submit that the records contain the personal information of third parties, including their addresses, ages, dates of birth and telephone numbers, as well as their views and opinions about the events.

[19] The appellant did not submit representations.

[20] I have reviewed the records to determine whether they contain personal information and, if so, to whom the information relates. I find that the records contain information pertaining to the appellant that qualifies as her personal information within the meaning of paragraphs (a), (b), (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*. In addition, I find that some of the records contain personal information relating to identifiable individuals other than the appellant that satisfies the definition of personal information under paragraphs (a), (b), (g) and (h) of section 2(1).

[21] I conclude that it is not necessary for me to consider whether all of the appellant's own personal information qualifies for exemption under section 38(b) since its disclosure to her cannot result in an unjustified invasion of another individual's personal privacy, as required under that section. Accordingly, I will order the disclosure of the appellant's own personal information to her, as highlighted in the copy of the record at issue to be sent to the police with this order.

[22] I will now review the possible application of section 38(b) to the remaining withheld portions of the records that contain the mixed personal information of the appellant and of the other individuals.

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

[23] 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. In circumstances where records contain both the personal information of the appellant and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is section 38(b) (Order M-352). Some exemptions, including the personal privacy exemptions, are mandatory under Part I but discretionary under Part II. Under Part II, the police may disclose information that could not be disclosed under Part I (Order MO-1757-I).

[24] Section 38(b) states:

> A head may refuse to disclose to the individual to whom the information relates personal information:
>
> > if the disclosure would constitute an unjustified invasion of another's personal privacy.

[25] Essentially, section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this appeal, the police are obliged to review the information at issue and weigh the appellant's right of access to her own personal information against the right of the other identifiable individuals to protection of their privacy. If the police determine that release of the information *would* constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives the police the discretion to deny access to the appellant's personal information (Order MO-1146).

[26] Under section 38(b), sections 14(1) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy under section 38(b) is met. If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[27] Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Similarly, the personal information of individuals other than a requester may be disclosed if a finding is made under section

16 of the *Act* that a compelling public interest exists in disclosure of that personal information which clearly outweighs the purpose of the exemption (see Order PO-1764). In the circumstances of this appeal, section 16 was not raised and section 14(4) has no relevance, and I find accordingly that they do not apply.

[28] If a request is for a requester's own personal information, and a presumption in section 14(3) applies, it may be possible to override the presumption with the factors in section 14(2).[1]

[29] In this appeal, the police rely on section 38(b), together with the presumption against disclosure in section 14(3)(b) and the factor favouring non-disclosure in section 14(2)(h), to deny access.

Representations

[30] The police submit that disclosure of the personal information of the third parties that has been withheld under section 38(b) would constitute an unjustified invasion of their personal privacy. The police maintain that the exceptions in paragraphs (a) through (e) of section 14(1) were considered and determined not to apply. Further, the police submit that the information falls within the scope of the section 14(3)(b) presumption against disclosure.

[31] The police set out section 14(3)(b), which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

[32] According to the police, the personal information at issue in this appeal was gathered by the police as part of the investigation into a possible violation of federal law. The police note that none of the records were created after the completion of the investigation.

[33] With regard to the section 14(2) factors considered in deciding whether disclosure would constitute an unjustified invasion of privacy, the police indicate that their view is that none of the factors favouring disclosure apply. With regard to the factors favouring privacy protection, the police submit that section 14(2)(h) is relevant

---

[1] *Grant v. Cropley* [2001] O.J. 749.

because the information was implicitly provided in confidence and was essential for the police to properly investigate the possible violation of law.

[34] The police submit that the absurd result principle does not apply in this situation because the appellant did not provide any of the withheld information and was not present when it was provided to the police.

[35] With regard to the issue of severance, the police submit that a valid severance provides a requester with information that is responsive to the request while still protecting the confidentiality of the portions of the record covered by an exemption. The police maintain that the appellant was provided with as much information as possible and that the severances were limited and specific, with the result being that only the personal information of other individuals to which section 38(b) applies was withheld.

Analysis and findings

[36] As stated, 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). The information at issue does not fit within paragraphs (a) to (e) of section 14(1) and so under section 14(1)(f), I must determine whether disclosure of the information in the record at issue "does not constitute an unjustified invasion of personal privacy."

[37] In the circumstances of this appeal, I am satisfied that the investigation undertaken concerned possible charges under the *Criminal Code* of Canada related to the uttering of threats. Past orders have established that the fact that no charges were laid has no bearing on the application of section 14(3)(b), and that the only requirement is that there be an investigation into a possible violation of law.[2] Accordingly, I find that section 14(3)(b) applies to this information.

[38] The police argue that the factor in section 14(2)(h) weighs in favour of protecting the privacy of individuals other than the appellant. The test for the application of this factor is whether the context and the surrounding circumstances are such that a reasonable person would expect that information supplied by these individuals would be subject to a high degree of confidentiality (Order PO-1910). In this appeal, the police submit that section 14(2)(h) applies because "the information is implicitly provided in confidence to the police, the information being essential to the police properly investigating any possible violation of a law." In my view, this submission is too general to establish the factor's relevance in this appeal. Following this line of argument through to its logical conclusion could result in section 14(2)(h) always applying to information provided in the course of a police investigation into a possible violation of the law. Although I accept that individuals providing information to

[2] Orders P-242 and MO-2235.

police may have a certain expectation of confidentiality, I am not satisfied, in the circumstances of this particular appeal, that a "reasonable expectation of a *high degree* of confidentiality" exists for the purpose of the factor favouring disclosure in section 14(2)(h). Accordingly, I find that the application of section 14(2)(h) has not been established.

[39] Turning to the section 14(2) factors that might favour disclosure of the personal information of other individuals, however, I note that the appellant did not submit representations in this appeal. As the appellant has not, therefore, provided a basis for supporting a finding that any of the factors in sections 14(2)(a) to (d) apply to the withheld information, I find that none of them apply.

[40] I have reviewed the contents of the records at issue, as well as the circumstances surrounding the incident that is at the core of the appellant's request. I find that the presumption favouring non-disclosure in section 14(3)(b) applies. Further, since no section 14(2) factors favour disclosure of the remaining personal information in the records, its disclosure *would* result in an unjustified invasion of the privacy of the other individuals. I appreciate the appellant's interest in obtaining this information, but I note that the majority of the personal information remaining at issue in the records is about other individuals, with only a limited amount of the personal information about the appellant.

[41] In reaching this conclusion, I agree with the police that the absurd result principle does not apply. The personal information at issue was not provided by the appellant, nor was she present when it was provided or compiled. Moreover, this is an appeal in which the appellant is not aware of the specific content of the information. In my view, disclosure of the remaining personal information contained in the records would not be consistent with the purpose of the exemption, which is to protect the personal privacy of individuals other than the appellant.[3] Accordingly, I find that the absurd result principle does not apply to the personal information of other individuals, or their views about the appellant.

[42] I am also satisfied that in the circumstances of this appeal, the police exercised their discretion to disclose the information properly and have taken relevant factors into account. I will not disturb it on appeal.

[43] In conclusion, I find that disclosure of the personal information in the records – other than the information ordered disclosed in the previous section of this order – would constitute an unjustified invasion of the personal privacy of other individuals, and that it is exempt under section 38(b) of the *Act.*

[3] See Orders PO-2285, M-444 and MO-1323.

C. Did the police conduct a "reasonable" search for responsive records?

[44] The appellant has expressed concern that the police may not have identified all of the records responsive to her request, particularly a written report of an interview conducted at her place of employment in February 2007.

[45] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[46] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[4]

[47] Previous orders of this office have established that when a requester claims that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[5] If I am satisfied by the evidence before me that the search carried out was reasonable in the circumstances, this ends the matter. However, if I am not satisfied, I may order the police to carry out further searches.

[48] In this appeal, as stated previously, the appellant did not submit representations in support of her belief that a written incident report ought to exist.

[49] To support the adequacy of the searches conducted, the police provided written representations and two affidavits, one from the Information and Privacy Unit Coordinator and another from the Information and Privacy Unit Analyst. The police submit that all responsive records related to the appellant's request were located,

---

[4] Orders P-134 and P-880.

[5] Orders P-85, P-221, and PO-1954-I.

retrieved and reviewed, and they maintain that a written report of the interview in question does not exist.

[50] The police explain that no written report of the interview was identified in the search because no record other than the officer's notes was made. The police advise that an officer with the Information and Privacy Unit, who has over 38 years policing experience, searched the Records Management Systems. The police submit that the officers involved in the investigation confirmed that handwritten notes were the only record created by them. Further, the police submit that:

> Both the Incident Report and the Incident History indicate that the call for service was cleared by the investigating officers as a non-reportable incident. At the bottom of the one page incident report, on the second last line is the notation of:
>
> Report (Y/N) N.
>
> Attending officers have the option of submitting a written report when they believe a report is necessary. In [the] case of a written report being necessary, this notation would read Report (Y/N) Y, the 'Y' indicating a YES. When no report is made as in this case, the notation would read Report (Y/N) N, the 'N' indicating NO. This clearly shows that no written report was required and that one was not submitted.
>
> At the bottom of page two of the … incident history, on the second to last line and the last line is the notation of:
>
> D/N.
>
> The 'D' refers to the disposition of the call which in this case was a non-reportable incident that resulted in an 'N' for NO…

[51] The police conclude by noting that many previous orders of this office define a reasonable search as one in which an experienced employee, expending reasonable effort, conducts a search to identify any records that are reasonably related to the request. The police maintain that a reasonable search for records relating to the appellant's request was conducted and that no other records exist.

Analysis and findings

[52] As stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. If I am satisfied that the searches carried

out were reasonable in the circumstances, I will dismiss the appeal. If I am not satisfied, I may order further searches.

[53] The *Act* does not require the police to prove with absolute certainty that further records do not exist, but the police must provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.[6] The police correctly state that a reasonable search is one in which an experienced employee, who is knowledgeable in the subject matter of the request, expends a reasonable effort to identify and locate records which are reasonably related to the request.[7]

[54] In addition, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.

[55] In this appeal, the appellant has not provided submissions in support of her assertion that a written incident report ought to exist.

[56] I am persuaded by the available evidence and the overall circumstances of this appeal that the police made a reasonable effort to identify and locate any existing records that are responsive to the appellant's request. Moreover, I accept that relevant police staff conducted searches and that they were armed with knowledge of the nature of the records said to exist, at least partly because the appellant's specific interest was articulated in her request and in comments she made during the mediation stage of the appeal.

[57] Based on the evidence before me, I am satisfied that the questions raised about the potential existence of a written incident report have been adequately addressed in the representations of the police. Specifically, I accept the evidence of the police that a responsive record of the kind described by the appellant likely does not exist for the reasons stated.

[58] Accordingly, based on the information provided by the police and the circumstances of this appeal, I find that the search for records responsive to the request was reasonable for the purposes of section 17 of the *Act*, and I dismiss this part of the appeal.

ORDER:

1. I order the police to disclose the information that I have highlighted in green on the copy of the records provided to the police with this order by sending a copy to the appellant by **March 4, 2013** but not before **February 25, 2013.**

---

[6] Orders P-624 and PO-1954.

[7] Orders M-909, PO-2469, PO-2592 and PO-2831-F.

2. I uphold the decision of the police to deny access to the remaining withheld responsive portions of the records, which are highlighted in orange in the copies provided with this order.

3. In order to verify compliance with Provision 1, I reserve the right to require the police to provide me with a copy of the records that are disclosed to the appellant.

4. I uphold the police's search for records.

Original Signed by: January 25, 2013
Daphne Loukidelis
Adjudicator