

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2706

Appeal MA11-254

Waterloo Regional Police Services Board

March 23, 2012

Summary: The appellant made a request to the police for access to records relating to three specified occurrences. The police disclosed portions of the records to the appellant but withheld information pursuant to the discretionary exemptions at sections 38(a) and (b). The police's decision to withhold information under section 38(b) is upheld and the appeal is dismissed.

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

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Waterloo Regional Police Services Board (the police) for access to records relating to three specified occurrences.

[2] The police located the responsive records and issued a decision granting partial access to the records, citing the discretionary exemptions at section 38(a), with reference to the law enforcement exemptions at sections 8(1)(d) and (l), and 38(b) (personal privacy) with reference to the factors in sections 14(2)(h) and (i) and the presumption in section 14(3)(b).

[3] During mediation, the police confirmed that it was no longer claiming the application of section 8(1)(d) to the records. Further, the appellant confirmed that he is not seeking access to the information in the records withheld under section 8(1)(l). Accordingly, the information withheld under section 38(a) is no longer at issue in the appeal.

[4] The appellant also confirmed that he is seeking access to the severances that were made in accordance with section 14 of the *Act*. The mediator contacted the individual whose interests may be affected by the outcome of the appeal (the affected person). The affected person did not consent to the disclosure of her personal information.

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

[6] In this order, I uphold the police's decision to withhold the information at issue.

RECORDS:

[7] The records at issue consist of the withheld portions of three occurrence reports, totalling eight pages.

ISSUES:

- A. Do the records contain "personal information" within the meaning of section 2(1) of the *Act*?
- B. Would disclosure of this personal information be 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" within the meaning of section 2(1) of the *Act*?

[8] 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)].

[9] 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].

[10] 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.)].

[11] The police submit that the withheld information in the three occurrence reports is the affected person's personal information. Specifically, the information at issue contains the name, date of birth, address, phone number and personal statements of the affected person.

[12] Based on my review of the records, I find that the withheld information also contains information relating to the appellant, namely, the affected person's statements about him. The rest of the appellant's personal information has been disclosed to him. The affected person's views and opinions of the appellant is the appellant's personal information as set out in paragraph (g) of the definition of that term in section 2(1) of the *Act*. Unfortunately, the affected person's views and opinions of the appellant are inextricably linked to her own personal views and opinions and cannot be severed.

[13] Accordingly, I will now consider whether the information relating to the appellant and the affected person is exempt from disclosure under section 38(b) of the *Act*.

B. Would disclosure of this personal information be an unjustified invasion of another individual's personal privacy?

[14] I have found that the withheld information at issue contains the personal information of both the appellant and the affected person. 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.

[15] 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.

[16] 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 personal information would result in an unjustified invasion of the affected person's 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).

[17] The affected person was contacted during mediation and the inquiry process in order to determine whether she would provide consent to the disclosure of her personal information. The affected person did not provide her consent.

[18] The police submit that I should consider the factor set out in section 14(2)(h) and the presumption in section 14(3)(b) in determining whether section 38(b) applies to the information at issue. 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,

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(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;

[19] The police submit that victims, complainants and witnesses who provide information to the police expect that both their identities and the information provided will be kept confidential. The police submit that if it did not maintain this confidentiality then a fundamental element of policing, specifically community trust, would be undermined. As a result, the police argue that victims, complainants and witnesses would be wary of coming forward to provide information to the police. Accordingly, the police submits that the factor against disclosure in section 14(2)(h) is applicable in the circumstances.

[20] Further, the police submit that section 14(3)(b) applies as the personal information in the records were compiled and are identifiable as part of investigations into possible violations of law. Specifically, the police submit that in each of the occurrences, an officer responded to a call regarding a domestic dispute. The police state:

An investigation was conducted including the interviewing of individuals and writing a report to summarize the investigation. Domestic disputes are not always criminal, for example, if there was a loud argument, however every domestic dispute requires an investigation and a mandatory report to be completed. These types of incidents can be highly sensitive and must follow a very strict protocol for investigation.

[21] The appellant submits that while he is aware of the affected person's personal information he has a right to know what was said about him by the affected person. The appellant submits that he is a victim of what he believes to be the false accusations that are the subject of the withheld information and he has a right to know what was said about him. The appellant disputes the police's characterization of the occurrences as domestic disputes. The appellant argues that as he is completely aware of the affected person and the personal information in the records, it is absurd for the police to withhold this information from him.

[22] I have carefully reviewed the withheld portions of the records. As stated above, all of the appellant's personal information has been disclosed to him and the withheld information relates to either the affected person only, or is unseverable information about the appellant and the affected person.

[23] It is evident that the information at issue was compiled by the police in the course of investigations into matters involving the appellant. On the basis of the information at issue and the police's representations, I find that the personal information at issue was compiled and is identifiable as part of the police investigations into possible violations of law and falls within the presumption in section 14(3)(b). In addition, I am satisfied that the personal information contained in the withheld portions of the records was supplied to the police in confidence by the affected person.

[24] The appellant has raised the issue of the application of the absurd result principle.

Absurd result

[25] Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444 and MO-1323].

[26] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444 and M-451]
- the requester was present when the information was provided to the institution [Orders M-444 and P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679 and MO-1755]

[27] If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323 and MO-1378].

[28] The appellant submits that he is the complainant in one of the occurrences which is the subject matter of one of the records at issue. Further, the appellant submits that he is aware of the affected person, her personal information (contact information) and the circumstances around the other occurrences. The appellant argues that it would be absurd to withhold the personal information remaining at issue from him given the extent of his knowledge.

[29] The police argue that the absurd result principle does not apply as any information provided by the appellant has been released to him.

[30] Based on my review of the remaining information at issue, the personal information in the affected person's statements is not information that the appellant would have knowledge of or was present for when it was given to the police. Further, there is information in the records relating to the police's comments to the affected person which the appellant would have no knowledge of and clearly was not present for. The only information that is evidently within the appellant's knowledge is the name, address and phone number of the affected person. As the appellant submits that he already has this information, I find it is not necessary to disclose the affected person's contact information in the circumstances.

[31] Accordingly, I find that the absurd result principle does not apply in this appeal. As I have found the factor in section 14(2)(h) and the presumption in section 14(3)(b) apply to the withheld information, I am satisfied that disclosure of the information would constitute an unjustified invasion of the affected person's personal privacy. Accordingly, I find the withheld portions of the records to be exempt from disclosure under section 38(b), subject to my review of the police's exercise of discretion.

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

[32] 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.

[33] 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.

[34] 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)].

[35] The police submit that its exercise of discretion was appropriate and made in good faith. The police submit it upheld its responsibilities to the appellant, the affected person and the public. The appellant was given access to his own personal information that he provided to the police as well as any portions of the report not falling within any of the exemptions under the *Act*. The police note that other than the police codes which are not at issue in the appeal, the only information remaining relates to the affected person who did not consent to the disclosure of her personal information.

[36] The appellant submits that the police's exercise of discretion was not proper as the police continue to withhold statements made by the affected person about him. The appellant submits that he has a right of access to the information in the records relating to him.

[37] 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 the information at issue, I am satisfied that the police's exercise of discretion to not disclose the withheld information to the appellant to be proper.

[38] Accordingly, I find the withheld portions of the records qualify for exemption under section 38(b).

ORDER:

I uphold the police's decision to withhold the information at issue from disclosure.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ March 23, 2012