

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3009

Appeal MA12-375-2

Kingston Police Services Board

February 7, 2014

Summary: The appellant sought access to police occurrence and complaint reports involving his son. Access to these records was denied under the personal privacy exemptions in sections 14(1) and 38(b). The decision of the police to deny access to the personal information of individuals other than the appellant is upheld. Those portions of one record which contained either no personal information or only the personal information of the appellant are ordered disclosed to him.

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

Order Considered: Order MO-2954.

Case Considered: *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

OVERVIEW:

[1] The Kingston Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

My son [named individual] caused many reports in the last few months. I would like to know all the incidents and reports numbers including his name and our address since Nov. 2011 till this date (June 5, 2012).

[2] On July 19, 2012, the police issued a decision granting access to a list of police reports associated with the requester's son, though not the actual reports identified. The decision listed four occurrence reports as being responsive. In addition, the police cited two other occurrence reports which were dated after the request and, therefore, fell outside the scope of the request. The police also listed three complaint reports and explained that complaint reports refer to requests/calls for assistance where a formal report is not necessarily filed.

[3] The requester appealed the decision of the police and appeal number MA12-375 was opened. The appellant explained that his request was for the actual reports associated with the report numbers, not only a list of the reports.

[4] During the mediation of that appeal, the police agreed to issue an access decision regarding the actual reports associated with the report numbers. Prior to issuing that decision, the police notified several individuals (the affected persons) of the request under section 21 of the *Act* on the basis that their interests may be affected by the disclosure of the information in the records. The police provided the affected persons with an opportunity to make submissions regarding the possible disclosure of their personal information to the appellant. One individual provided consent for the disclosure of her personal information to the appellant. The remaining affected persons either refused to consent or did not respond.

[5] The police then issued a subsequent decision dated December 17, 2012, granting partial access to the responsive police records associated with the report numbers. Access was denied to the withheld portions of the records pursuant to the mandatory exemption in section 14(1), with reference to the presumption in section 14(3)(b) of the *Act*.

[6] With regard to some information relating to the appellant's son, the police stated that:

... As you are aware, your son has made allegations of assault/abuse against you. Any statements attributed to your son regarding those allegations are being excluded on the basis that the release of this information is not in your child's interest.

[7] The requester (now the appellant) notified the mediator that he wished to appeal the police's decision to deny access to the withheld portions of the records. Appeal number MA12-375-2 was opened to address that appeal.

[8] During the mediation of that appeal, the appellant confirmed that he wished to pursue access to all the withheld information relating to the affected persons, including his son, and wanted the mediator to notify the affected persons of his request. The appellant noted that the police had not made an access decision on the three complaint reports listed in the initial decision. The appellant advised that he wanted the police to issue an access decision for these reports. The appellant also explained that he was specifically seeking access to a report of an incident that occurred on May 24, 2012.

[9] The mediator notified the affected persons of the request and asked if they would consent to the disclosure of their personal information. Two of the affected persons declined to provide consent to disclose their personal information to the appellant. The other two affected persons did not respond to the mediator.

[10] The mediator had discussions with the police regarding the three complaint reports which were not included in their December 17, 2012, decision. As a result, the police issued a further decision respecting access dated May 15, 2013, regarding the three complaint reports, granting partial access to them. With regard to the information withheld, the police advised the following:

All third party personal information – with the exception of the personal information of [named individual, who previously provided consent for disclosure of her personal information] is being refused as an unjustified invasion of personal privacy. Further where it is deemed that the release of your child's personal information may not be in their interests, access to this information is refused. With respect to file [numbered file] and, specifically pages 2 through 6, these pages contain CPIC information which is directly derived from CPIC databases. The RCMP as the administrator of this database would be the Agency with the greater interest. Application for CPIC information should be addressed to the RCMP. I would note, however, that the CPIC information contains either a nil response or relates to other parties.

[11] The police clarified with the mediator that they were relying on the presumption in section 14(3)(b) of the *Act* to deny access to the withheld portions of the records. The mediator noted that the records at issue for both the December 17, 2012, and May 15, 2013, access decisions may contain information that relates to the appellant. Accordingly, the mediator raised the possible application of section 38(b) of the *Act*. The police agreed that the section 38(b) exemption is the appropriate personal privacy exemption to rely upon.

[12] As no further mediation was possible, the appeal was moved to the inquiry stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the police, initially. A complete copy of the

submissions of the police was then shared with the appellant, who also provided representations.

[13] In this order, I uphold the decision of the police to deny access to some of the withheld portions of the responsive records. I order the police to disclose certain other portions to the appellant. Further, I urge the appellant to attend at the institution to obtain access to the records which are not exempt from disclosure as a result of the earlier decisions of the police and the disclosure required under this order.

RECORDS:

[14] The records remaining at issue consist of the withheld portions of three complaint reports dated May 6, 25 and 26, 2012.

ISSUES:

- A. Do the records contain "personal information" as that term is defined in section 2(1) of the *Act* and if so, to whom does it relate?
- B. Is the undisclosed personal information exempt from disclosure under the discretionary personal privacy exemption in section 38(b) or the mandatory personal privacy exemption in section 14(1) of the *Act*?
- C. Did the police properly exercise their discretion to deny access to the undisclosed portions of the May 26, 2012 record?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[15] 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. That term is defined in section 2(1) as follows:

"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 if 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;

[16] 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].

[17] 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.)].

[18] The records consist of the undisclosed information relating to three incidents which occurred and were recorded on May 6, 2012 (two pages), May 25, 2012 (1 page) and May 26, 2012 (6 pages).

[19] I find that the May 6, 2012 report includes information that qualifies as the personal information of one of the affected persons as it includes this individual's personal views and opinions, as contemplated by paragraph (e) of the definition. Further, I find that the May 6, 2012 report does not include any of the appellant's personal information.

[20] The one-page report dated May 25, 2012 contains information relating to two of the affected persons as it includes their names, addresses and telephone numbers. This information qualifies as the personal information of these individuals under paragraph (d) of the definition in section 2(1). Again, this record does not contain any of the appellant's personal information.

[21] Page 1 of the six-page record dated May 26, 2012 includes the address of one of the affected persons, as well as personal information relating to the appellant's views and opinions, which the police have made available to him. In addition, information located in a CPIC search of this affected person is indicated on pages 4 and 6 of this record, as is similar information about an unrelated individual on page 4 of the record. Finally, information from the CPIC database pertaining only to the appellant is found on pages 2 and 3 of the May 26, 2012 record. Page 5 of this record does not contain any personal information whatsoever. I find that this information qualifies as the personal information of the affected persons and the appellant under paragraph (b) of the definition in section 2(1).

[22] To summarize, I find that the records dated May 6 and 25, 2012 contain only the personal information of the affected persons, while the May 26, 2012 record contains the personal information of the appellant, as well as several affected persons.

B. Is the undisclosed personal information exempt from disclosure under the discretionary personal privacy exemption in section 38(b) or the mandatory personal privacy exemption in section 14(1) of the *Act*?

General principles

[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.

[24] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[25] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 14(1)(f)].

[26] In applying either of the section 38(b) or 14(1) exemptions, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

Sections 14(2) and (3)

[27] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy.

[28] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the appellant's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

[29] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure [Order P-239].

[30] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy [Order MO-2954].

[31] The police take the position that all of the personal information contained in the records was compiled and are identifiable as part of an investigation into a possible violation of law, thereby falling within the ambit of the presumption in section 14(3)(b), which reads:

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;

[32] The appellant has not addressed the possible application of the presumption in section 14(3)(b), or to the possible application of sections 14(4) or the public interest override provision in section 16, to the personal information contained in the records. Rather, the appellant's representations focus on the fact that the police have not disclosed to him all of the information about events involving his son. The appellant also disputes the manner in which the police have responded to his requests generally. However, I note that the appellant has refused to attend at the police station to obtain the records which are being disclosed to him. Because of his refusal to do so, he is unaware of the nature of the information that was made available to him by the police and his argument about the lack of disclosure is somewhat diminished.

[33] Based on my review of the contents of the records, I find that the police have established the application of the presumption in section 14(3)(b) with respect to the undisclosed personal information pertaining to the affected persons in the May 6, 2012 and May 25, 2012 records. I find that the disclosure of these records is presumed to constitute an unjustified invasion of the personal privacy of the affected parties and they are, accordingly, exempt under section 14(1).

[34] I also find that the section 14(3)(b) presumption applies to the undisclosed personal information of the affected persons in pages 1, 4 and 6 of the May 26, 2012 record. As a result, I conclude that the disclosure of this personal information would constitute an unjustified invasion of the personal privacy of the affected persons and it is properly exempt under section 38(b), subject to my review of the police's exercise of discretion below.

[35] However, the disclosure of pages 2 and 3 of the May 26, 2012 record would not constitute an unjustified invasion of another individual's personal privacy because these records only contain the appellant's personal information. The disclosure of page 5 of this record would also not give rise to an unjustified invasion as it does not contain any personal information whatsoever. Accordingly, I will order that pages 2, 3 and 5 of the May 26, 2012 record be disclosed to the appellant.

C. Did the police properly exercise their discretion to deny access to the undisclosed portions of the May 26, 2012 record?

[36] I have found above that pages 1, 4 and 6 of the May 26, 2012 record are exempt from disclosure under the discretionary exemption in section 38(b). 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.

[37] 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.

[38] 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)].

[39] The police indicate that they have disclosed as much of the information contained in the records as possible, without revealing personal information pertaining to other identifiable individuals. It notes that the matters which are described in the records relate to very personal concerns and that the only information not disclosed was that relating to the affected persons.

[40] I have reviewed the representations of the police and the manner in which they have exercised their discretion to not disclose the affected persons' personal information in this appeal. I find that the police have not exercised their discretion in bad faith or for any improper purpose and that they took into account only relevant considerations in making their determination to do so.

[41] Finally, the appellant's refusal to pick up the records which were made available to him in this appeal acted as a real impediment to a successful mediation and a more timely outcome for him. I would urge him to obtain the records which were originally made available to him, along with those that are ordered disclosed as a result of this order.

ORDER:

1. I order the police to disclose to the appellant pages 2, 3 and 5 of the May 26, 2012 report by providing him with a copy by **March 17, 2014** but not before **March 12, 2014**.
2. I uphold the decision of the police to deny access to the remaining records.

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

Original Signe by: _____
Donald Hale
Adjudicator

_____ February 7, 2014 _____