

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2898

Appeal MA12-487

Niagara Regional Police Services Board

June 14, 2013

Summary: The appellant requested records from the Niagara Regional Police Services Board relating to a 911 call she made to the police and all police reports relating to a particular incident. The police located responsive records and granted partial access to them. The police withheld certain portions of the records pursuant to section 38(a), in conjunction with section 8(1)(l) (refusal to disclose appellant's own information/law enforcement). The police also withheld some information on the basis that it was not responsive to the request. On appeal, the appellant indicated that she believed more records exist. In this decision, the adjudicator finds that the police properly withheld non-responsive information. She also finds that the search conducted by the police was reasonable and that the discretionary exemptions at sections 38(a) and 8(1)(l) apply to exempt police codes from disclosure.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, 2(1) definition of personal information, 8(1)(l), 17, 38(a).

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Niagara Regional Police Services Board (the police) for access to the recording and transcript of a 911 call she made to the police and all police reports relating to a particular incident.

[2] In response to the access request, the police identified 10 pages of records comprised of a three-page call report and a seven-page occurrence report and granted partial access to them. The police denied access to some portions of the records pursuant to the discretionary exemption at section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1)(l) (law enforcement) of the *Act*. Some portions of the records were denied on the basis that the information was not responsive to the access request. In its decision, the police also advised the requester to submit a request to the ambulance dispatch for access to a copy of the 911 call recording.

[3] The appellant appealed the police's decision.

[4] During mediation, the appellant confirmed that she made a separate request to the ambulance dispatch for a copy of the 911 call recording. However, the appellant believed that additional records should exist. In response, the police conducted a further search for records and subsequently identified an additional two pages of responsive records that were comprised of a "duplicate record" of a call report that was disclosed to the appellant as part of the original access decision. The police issued a supplementary decision to the appellant granting partial access to the additional two pages of the record, denying access to some portions of the record pursuant to sections 38(a) and 8(1)(l) of the *Act*. In addition, access to certain portions of these two pages was denied on the basis that the information was not responsive to the request.

[5] In response to the supplementary decision, the appellant indicated that she is not satisfied and continues to believe that additional records should exist. Accordingly, the issue of whether the police's search for records was reasonable is an issue in this appeal.

[6] The appellant confirmed with the mediator that she is pursuing access to the information that was withheld pursuant to sections 38(a) and 8(1)(l) of the *Act*, that withheld on the basis that it was not responsive to the access request.

[7] Further mediation could not be effected and the file was forwarded to the adjudication stage of the appeal process. I sought and received representations from the police and the appellant. These representations were shared in accordance with section 7 of the *Code of Procedure* and *Practice Direction 7*.

[8] In this decision, I find that certain portions of the records are not responsive to the request. I also find the search conducted by the police to be reasonable and uphold the discretionary exemptions at sections 38(a) and 8(1) for police codes.

RECORDS:

[9] The records at issue are the withheld portions of pages 1-12 of the records located by the police, comprised of two call reports and an occurrence report. The

withheld portions contain police codes¹ and information that the police claim is not responsive to the appellant's request.

ISSUES:

- A. What is the scope of the request? What records are responsive to the request?
- B. Did the institution conduct a reasonable search for records?
- C. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[10] The police take the position that portions of the records are not responsive to the appellant's request.

[11] 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;

...

- (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).

¹ Withheld under sections 38(a)/8(1)(l).

[12] 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.²

[13] To be considered responsive to the request, records must "reasonably relate" to the request.³

[14] The police note that the appellant asked for a recording of her 911 call and any police reports from a specified occurrence. They indicate that the appellant was directed to access the call from the ambulance services and confirmed that she had done so. The police indicate further that they located a general occurrence report and a call hardcopy, which is the transcript of the 911 call. They subsequently located a second report, which appears to relate to the same 911 call. The police state that, with minor exceptions, the records were disclosed to the appellant in full. The police indicate that they withheld two confidential police codes from the call hardcopies pursuant to section 8(1)(l), and removed other administrative information from the records as it was not responsive to the appellant's request. The police take the position that this latter information was created at the time the records were being compiled and printed in response to the appellant's access request.

[15] The appellant does not believe that the only portions withheld by the police are those described above. She believes that certain information was provided to other parties involved in the incident. She refers to specific statements that she believes the police made to the attending emergency doctor at the hospital she was taken to, and notes that the records disclosed to her do not contain this information.

[16] After reviewing the appellant's representations, I decided to seek representations in reply from the police. In particular, I asked the police to respond to the appellant's representations regarding information that she believes was verbally given to or discussed in front of witnesses and which was not contained in the records identified as being at issue. In doing so, I asked the police to confirm the efforts made to search for responsive records and to explain whether there may be other records, in their custody or control, that contain the information the appellant has requested, such as police officers' notes. In this regard, I stated in the reply Notice of Inquiry:

Although the appellant restricted her request to access to the 911 transcript and police reports, I note from the representations made by the police that the appellant was not contacted at the time of her request in order to confirm or clarify her request. If the information she is seeking is contained in any notes made by the attending officers at the time, the police are asked to consider whether these records could or should be included as records that are reasonably related to the request.

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

[17] The police responded to the reply Notice of Inquiry. First, the police state that the issue of police officers' notes was discussed during the mediation stage of the appeal and note that the appellant confirmed that she was not seeking them. With respect to the appellant's contention that there should be references in the notes to statements that she believes were made by the police to others, the police indicate that, other than one unrelated comment made by the appellant's mother, the police officers' notes do not contain any additional information to that found in the reports identified as responsive to the appellant's request. The police confirm that their records do not contain any information of the nature described by the appellant. They suggest that the appellant might wish to contact the hospital or ambulance service to determine whether they have additional information.

[18] After reviewing the submissions made by the parties and the records that have been identified as responsive to the appellant's request, I am satisfied that the portions that have been withheld as non-responsive are, in fact, not responsive. These portions of the records post-date the date the records were created and contain only administrative information unrelated to the content of the records.

[19] I agree with the police that the scope of the appellant's request was clear; she sought only the 911 call and police reports. I am satisfied that the police have identified all of the records that respond to the appellant's request as worded. I accept the submissions of the police that the question of the police officers' notes was addressed during mediation, and that the appellant confirmed that she was not seeking them. Moreover, I accept the submissions made by the police that the police officers' notes do not contain the information the appellant believes is missing from the records that were provided to her.

B. Did the institution conduct a reasonable search for records?

[20] 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 17.⁴ 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.

[21] 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.⁵ To be responsive, a record must be "reasonably related" to the request.⁶

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

[22] 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.⁷

[23] 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.⁸

[24] 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.⁹

[25] The police provided affidavits sworn by a Freedom of Information Clerk (the clerk) and a Freedom of Information Analyst (the analyst). The clerk indicates that, in response to the appellant's request, she searched the in-house computer system and located the general occurrence report and call hardcopy. At that time, she contacted the appellant to advise her that the 911 call in question had been transferred to the ambulance dispatch and it was ambulance dispatch that contacted the police to attend. The clerk indicated that she advised the appellant to submit a request to the ambulance service.

[26] The analyst affirmed that she conducted a search through the in-house computer system for a copy of the second report that was generated from the call hardcopy.

[27] As I indicated above, the appellant believes additional records should exist based on her belief that the police provided certain information to the attending doctor at the hospital, which, she states, was then disclosed to all of the nurses and doctors involved in her care at that time.

[28] I have reviewed the exact wording of the appellant's access request. In this request, she clearly indicated that she was looking for records regarding a specific incident number. I am satisfied that the police conducted an appropriate search for records relating to that particular incident as the search was conducted by an experienced employee knowledgeable in the subject matter of the request in a location where responsive records would reasonably be expected to be found.

[29] Similarly, I find that the search that was conducted for the second occurrence report was also conducted by an experienced employee knowledgeable in the subject matter of the request in a location where responsive records would reasonably be expected to be found. I note that the second report was given a different incident

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

⁹ Order MO-2246.

number, which explains why it was not initially identified as responsive to the appellant's request.

[30] The appellant believes that the police provided certain information to a hospital doctor verbally. I have reviewed the copies of the records provided to this office by the police and confirm that the only information that the police have withheld is that discussed above. If certain comments were made at the time the appellant was taken to the hospital, they were not documented in writing in the records that the police located. Nor are they located in other records that the police have relating to the incident. The appellant's recollection of this incident does not persuade me that other records should exist in the custody or control of the police.

[31] Based on the submissions made by the police, I am satisfied that they conducted a reasonable search for records responsive to the appellant's request, and I dismiss this part of the appeal.

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

[32] 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) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

[33] 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.¹⁰ Nevertheless, 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.¹¹

[34] To qualify as personal information, it must also be reasonable to expect that an individual may be identified if the information is disclosed.¹²

[35] The police indicate that the records contain only the personal information of the appellant. The appellant does not directly address the issue.

[36] The records relate to a 911 call that resulted in the attendance of the police. The records document the information obtained by the police as a result of their contact with the appellant, including her name, birthdate, address, personal characteristics and

¹⁰ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹¹ Orders P-1409, R- 980015 and PO-2225.

¹² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the particulars of the incident involving her. In the circumstances, I find that the records contain the appellant's personal information.

D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?

[37] Section 36(1) 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.

[38] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[39] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.¹³

[40] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[41] In this case, the police rely on section 38(a) in conjunction with section 8(1)(l).

Law Enforcement

[42] Section 8(1)(l) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

[43] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁴

¹³ Order M-352.

¹⁴ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[44] The police state that the portions of the records withheld under this section contain "confidential police codes," and refer to previous orders of this office which have consistently upheld the exemption in section 8(1)(l) for this type of information. The police state that in exercising their discretion to withhold this information from the appellant, they took into consideration that the police codes were withheld "for law enforcement reasons which outweigh the appellant's right or need to receive such information."

[45] The appellant does not specifically address this issue, although it does not appear that she has strong views on the disclosure of this information, as she states: "I do not believe that *only* confidential police codes have been severed from the record..."¹⁵

[46] As the police note in their submissions, this office has issued many orders regarding the release of police codes and has consistently found that section 8(1)(l) applies to this type of information.¹⁶ The appellant has not provided sufficient evidence to persuade me that a different result is warranted in the circumstances of this appeal. I am satisfied that the police have taken appropriate factors into consideration in exercising their discretion to withhold these portions of the records. Accordingly, I find that the police codes contained in the records are exempt under section 8(1)(l) of the *Act*.

ORDER:

1. The search conducted by the police was reasonable and this part of the appeal is dismissed.
2. I uphold the decision of the police to withhold certain information as non-responsive to the request and pursuant to section 38(a), in conjunction with section 8(1)(l).

Original signed by: _____
Laurel Cropley
Adjudicator

_____ June 14, 2013

¹⁵ My emphasis.

¹⁶ For example, see Orders M-93, M-757, MO-1715 and PO-1665.