

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2883

Appeal MA13-47

York Regional Police Services Board

May 17, 2013

**Summary:** This order addresses an individual's request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to a specified investigation, including an "anonymous letter" written about him and sent to the police. The police disclosed officers' notes and an investigation report, but denied access to the "anonymous letter," in its entirety, based on section 38(b), in conjunction with section 14(1) (personal privacy) and the presumption against disclosure in section 14(3)(b). The adjudicator finds that the letter only contains the appellant's personal information and is not, therefore, exempt under section 38(b). The adjudicator orders the record disclosed to the appellant.

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

### OVERVIEW:

[1] This order addresses the issues raised by an individual's request to the York Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

all records regarding, and investigation leading up to, YRP Incident No. [specified incident number], including a copy of an anonymous letter sent to police including the front and back of any envelope in which letter was delivered...

[2] The police identified officers' notes, police reports and the "anonymous letter" as responsive to the request and issued a decision granting the requester partial access to them. The police withheld portions of the officers' notes and reports and the one-page "anonymous letter," in its entirety, pursuant to section 38(b) (discretion to refuse requester's personal information), together with the personal privacy exemption in section 14(1) and the presumption against disclosure in section 14(3)(b) (law enforcement investigation) of the *Act*.

[3] When the requester appealed the police's access decision to this office, a mediator was appointed to explore resolution of the issues. Based on discussion during mediation about the police's exemption claims, the appellant concluded that the severances made to the partially disclosed records did not concern him. Accordingly, those records were removed from the scope of this appeal. However, as the appellant still wished to pursue a copy of the "anonymous letter," the appeal was moved to the adjudication stage of the appeal process in which an adjudicator conducts an inquiry.

[4] I started my inquiry by sending a Notice of Inquiry outlining the facts and issues to the police, initially, seeking representations. Upon review of the representations provided by the police, I concluded that I did not require submissions from the appellant before moving this appeal to the order stage.

[5] In this order, I find that the record contains the personal information of only the appellant, because the author of the letter is not identifiable. I find that the disclosure of the record would not result in an unjustified invasion of another individual's personal privacy, and I order it disclosed to the appellant.

## **RECORDS:**

[6] The sole record at issue is a one-page typewritten letter.<sup>1</sup>

## **DISCUSSION:**

### **Does the record contain "personal information"?**

[7] For the purpose of deciding whether or not the disclosure of the record would constitute an unjustified invasion of personal privacy, it is necessary to determine whether the record contains personal information and, if so, to whom it belongs. Under section 2(1) of the *Act*, "personal information" is defined, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

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<sup>1</sup> The envelope in which the letter was enclosed is also photocopied on to this page.

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual, ...
- (c) any identifying number, symbol or other particular assigned to the 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 ...

[8] 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.<sup>2</sup> However, as I emphasized in the Notice of Inquiry sent to the police, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup> I asked the police to specifically consider the introductory wording to the definition of “personal information” – “recorded information about an identifiable individual” – in preparing their representations.

[9] Further, section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, such as the police, subject to a number of exceptions to this general right of access. One such exception is section 38(b) which gives the police discretion to deny access if disclosure would constitute an unjustified invasion of another individual’s personal privacy. In the Notice of Inquiry, I asked the police to specifically identify the “other individual” whose personal information is purportedly contained in the record, since section 38(b) can only apply if the record contains the personal information of another identifiable individual, as well as the appellant.

[10] In their representations, the police took the position that the representations were confidential and could not be shared with the appellant. Based on my consideration of the confidentiality criteria outlined in this office’s *Code of Procedure* and *Practice Direction Number 7* (Sharing of Representations), I did not agree with the police. Further, since I had concluded that it was not necessary to seek the appellant’s representations on the issues, I did not address sharing at that time. However, in order

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<sup>2</sup> Order 11.

<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

to properly describe the arguments presented by the police, I have decided that some portions of these submissions must be reproduced, or summarized, in this order. In my view, doing so is required to adequately explain my reasons for decision and would not disclose information that fits within this office's confidentiality criteria.

### ***Representations***

[11] According to police, a "typed letter [received] from an unknown source" had led to a specific investigation by them that involved the appellant. The appellant was identified because the letter provided the license plate of a vehicle that belonged to the appellant, who was subsequently contacted and interviewed with respect to the information provided in the letter. The police state that "there was no arrest made in connection with the complaint and the investigation was closed."

[12] The police explain why the complaint letter that led to the investigation was not disclosed to the appellant by saying that the author of the letter provides certain personal details and information about an alleged incident that would fit within paragraphs (a) and (f) of the definition of "personal information" in section 2(1) of the *Act*. The police argue that the provision of these details means that the record "contains the personal information of the unknown party." The police express concern that if the appellant obtains a copy of the record, he may be able to locate the unknown party.

[13] The police provided representations on the application of section 38(b), including submissions on the presumption against disclosure in section 14(3)(b), which relates to information compiled as part of an investigation into a possible violation of law. Given my findings, it is not necessary to set out these representations. However, I note the police's submission that they did not seek consent of the letter's author "to release his personal information to the appellant, as the identity of the affected party is unknown."

### ***Analysis and findings***

[14] The record at issue, a one-page letter, recounts events that allegedly involved the appellant. On my review of the record, I find that it contains the personal information of the appellant that fits within paragraphs (a), (c) and (g) of the definition in section 2(1) of the *Act*.

[15] The letter also sets out information about the author that the police argue constitutes that individual's "personal information." I disagree. In the police's own representations, the individual who wrote the letter is referred to as the "unknown source" or "unknown party." Further, the police admit that they could not notify the individual to seek consent to disclose the record pursuant to section 14(1)(a) of the *Act* because the individual's identity is unknown.

[16] Even if the personal details provided by the author fit within paragraphs (a) and (f) of the definition, there is no evidence before me that these details are connected with an *identifiable* individual, as the *Act* requires. Contrary to the speculative submissions of the police and with consideration of the overall circumstances of this appeal, I conclude that it is not reasonable to expect that the individual who wrote the letter could be identified if it were disclosed. For these reasons, I find that the record does not contain the personal information of another identifiable individual and that it is, in fact, anonymous.

[17] As indicated above, 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. In view of my finding that the record contains *only* the personal information of the appellant, I find that section 38(b) cannot apply. Disclosure of the appellant's own personal information to him cannot result in an unjustified invasion of another individual's personal privacy.

[18] As no other exemptions are claimed to deny access to this record, I will order it disclosed to the appellant, in its entirety.

**ORDER:**

1. I order the police to disclose the record to the appellant, in its entirety, by **June 24, 2013** but not earlier than **June 17, 2013**.
2. To verify compliance with provision 1, I reserve the right to require the police to provide me with a copy of the record disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator

\_\_\_\_\_ May 17, 2013