

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2875

Appeal MA12-49

Toronto Police Services Board

April 25, 2013

Summary: The Toronto Police Services Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to information related to a specific incident identified by its occurrence identification number. The police located one responsive record, an occurrence report, and granted partial access to it. The police denied access to portions of the record pursuant to section 38(a) (discretion to disclose a requester's own personal information), read in conjunction with section 8(1)(l) (law enforcement), and section 38(b) (personal privacy), read in conjunction with the presumption at section 14(3)(b) (investigation into a possible violation of law) of the *Act*. The appellant appealed the decision to deny access. During mediation, the appellant advised that she was of the view that additional records must exist. As a result, the reasonableness of the police search for responsive records was added as an issue in this appeal. In this order, the adjudicator finds that the police conducted a reasonable search for responsive records. The adjudicator also finds that the exemption at section 38(a) does not apply. Finally, as the adjudicator determined that the record does not contain the personal information of individuals other than the appellant, she finds that section 38(b) cannot apply. The adjudicator orders the police to disclose the occurrence report, in its entirety, to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(l), 14(1)(f), 14(3)(b), 38(a), 38(b).

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request submitted under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information related to a specified occurrence.

[2] The police located an occurrence report and granted partial access to it, denying access to portions pursuant to the discretionary exemptions at sections 38(a) (discretion to disclose a requester's own information), read in conjunction with section 8(1)(l) (facilitate commission of an unlawful act) and section 38(b) (personal privacy), read in conjunction with the presumption at section 14(3)(b) (investigation into a possible violation of law) of the *Act*.

[3] The requester, now the appellant, appealed the police decision to this office.

[4] During mediation, the appellant confirmed that she seeks access to the portions of the occurrence report that were withheld. She also advised that she is of the view that additional records exist. In particular, she explained that the investigation which is the subject matter of the occurrence report was assigned to another police service and that records documenting the transfer should exist. As the police advised that no further records exist, the reasonableness of the police search is at issue in the appeal.

[5] As the appeal could not be resolved during mediation, it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly assigned to this appeal began the inquiry by sending a notice of inquiry setting out the facts and issues to the police initially, and then to the appellant, seeking representations. Both parties provided representations in turn, which were shared in accordance with the practices of this office.

[6] The appeal was transferred to me to complete the inquiry. For the reasons that follow, I uphold the police search for responsive records and find that neither of the exemptions claimed to portions of the record apply. Accordingly, I will order the police to disclose the record, in its entirety, to the appellant.

RECORD:

[7] The record at issue is an occurrence report.

ISSUES:

- A. Did the police conduct a reasonable search for responsive records?
- B. Does the record contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

- C. Does the discretionary exemption at section 38(a), read in conjunction with the exemption at section 8(1)(l) apply to the record at issue?
- D. Does the discretionary exemption at section 38(b) apply to the record at issue?

DISCUSSION:

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

[8] 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 17.¹ 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.

[9] 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.² To be responsive, a records must be "reasonably related" to the request.³

[10] 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.⁴

[11] 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.⁵

Representations

[12] The police submit that they assigned an access and privacy analyst to locate the records responsive to the appellant's request and that analyst searched police databases using the information provided by the appellant. The police submit that the analyst located one responsive record through the database search, an occurrence report.

[13] The police explain that each division, unit, and bureau of the Toronto Police Service has an individual assigned to locate and forward memorandum books and any

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469, and PO-2592.

⁵ Order MO-2185.

other material requested by the access and privacy unit. They submit that the analyst contacted the appropriate person requesting memorandum book notes of the involved officers identified in the occurrence report. The police submit that the analyst reviewed the officers' memorandum book notes and did not locate any specific notes regarding the incident, other than a note that an occurrence report was taken.

[14] The police further submit that the analyst contacted the officer who prepared the report as well as other personnel, for more information. The analyst was advised that the occurrence report was generated as a courtesy to the appellant who attended the division as it was ascertained that it was not a matter within the Toronto Police Services' jurisdiction. The police explain that the report was provided to the York Regional Police Service since the relevant address involving the incident fell within their jurisdiction. The police submit that they did not conduct any further investigation or generate any further information regarding this case.

[15] The police note that in the appellant's freedom of information request she identifies a police officer by name and badge number who conducted an investigation into this incident. The police submit that as their internal search for an officer with that name and badge number generated no response, further investigation was done and it was determined that the officer identified in the appellant's request was a member of the York Regional Police Service, who has since retired.

[16] The police submit that the analyst contacted the York Regional Police Service and asked them to conduct a search. However, they submit that a response was never received, despite several attempts on their part.

[17] With respect to why additional records do not exist, the police make the following submissions:

In spite of the information provided in the text of the occurrence report, and no update included, the established practice when a report has been submitted that does not fall under the jurisdiction of the TPS [Toronto Police Service], all records will be forwarded to the involved service to assist in better facilitating their investigation of the incident. In this case, the records would not have been retained by the TPS as we would not have assigned TPS officers to follow up on an offence that occurred in York Region.

[18] The police conclude their submission by stating that they "made every effort to locate the responsive records, within and external to the institution, and released all responsive records in our custody as mandated by the *Act*."

[19] During mediation, the appellant took the position that because the police forwarded the incident to the York Regional Police "transfer documents" must exist.

The appellant's representations do not specifically address the reasonableness of the police's search for responsive records. However, she encloses with her representations, several documents relating to the incident that she reported to the police, including an occurrence report that she received through a separate access to information request submitted to the York Regional Police.

Analysis and finding

[20] Based on the evidence before me, I accept that an experienced employee, knowledgeable in the subject matter of the request expended a reasonable effort to identify and locate records reasonably related to the request in the police's custody or control.

[21] A privacy analyst employed by the police searched relevant databases using information provided the appellant and upon locating an occurrence report responsive to the request, sought the police notes of all the officers indicated on the report. When the police notes of those officers yielded no record of her reporting of the incident, the analyst sought further information both verbally and in writing from individuals who might have been able to provide further information. The analyst was informed that as the incident fell outside of the police's jurisdiction, the occurrence report was generated as a courtesy to the appellant at the time that she attended at the station. I accept the police submission that because the matter fell outside of their jurisdiction no further records related to the incident exist.

[22] As noted above, 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. In the circumstances of this appeal, I find that the police have provided such evidence.

[23] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must provide a reasonable basis for concluding that such records exist.⁶ In my view, the appellant has not done so in this appeal.

[24] The appellant's position that additional records exist is based on the supposition that because the matter was forwarded to another agency, "transfer documents" related to the incident should exist. However, the police have explained that as the matter fell outside of its jurisdiction, the occurrence report was filed as a courtesy to the appellant and that no additional records relating to the incident exist. Apart from her statement that such records must exist, in my view, the appellant has not provided

⁶ Order MO-2246.

me with a reasonable basis to conclude that “transfer documents” or any other records related to the incident exist in the custody or control of the police.

[25] In summary, I find that the police have provided sufficient evidence to establish that they have conducted a reasonable search for responsive records. I am therefore satisfied that the police’s search for records responsive to the appellant’s request is in compliance with its obligations under the *Act*. Accordingly, I uphold the police’s search.

B. Does the record contain “personal information” as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

[26] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.⁷ Where a record contains the requester’s own information, access is addressed under Part II of the *Act* and the exemptions at section 38 may apply. Where a record contains the personal information of individuals other than the appellant, access is addressed under Part I of the *Act* and the exemptions found at sections 6 to 15 may apply.

[27] Therefore, in order to determine which sections of the *Act* may apply, it is necessary to first determine 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,

⁷ Order M-352.

- (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 where 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;

[28] 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.⁸ To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁹

[29] However, section 2(2.1) of the *Act* excludes specific information from the definition of "personal information." It states:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[30] The police submit that some of the information that has been severed from the record consists of the personal information of an identifiable individual other than the appellant. Specifically, they submit that among the severed information is the address of an identifiable individual as contemplated by paragraph (d) of the section 2(1) definition of personal information.

[31] The appellant does not make any specific representations on whether the record contains personal information.

⁸ Order 11.

⁹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Analysis and finding

[32] I have carefully reviewed the record at issue in this appeal and find that it contains only the personal information of the appellant.

[33] The occurrence report relates to an incident that was reported to the police by the appellant and, as the complainant, the record contains information as contemplated in the definition of that term at section 2(1) including her age and sex (paragraph (a)), her address and telephone number (paragraph (d)), her personal opinions or views (paragraph (e)), as well as her name where it appears with other personal information related to her (paragraph (h)). This information has been disclosed to the appellant.

[34] The occurrence report also contains an address that is not the address of the appellant. The police submit that this is the address of an identifiable individual and it has been severed from the record pursuant to the discretionary exemption at section 38(b). As contemplated by paragraph (d) of the section 2(1) definition of personal information, the address of an identifiable individual consists of their personal information. However, the resident or residents of the address in the record are not named. Previous orders of this office have stated that a municipal address, on its own, would not necessarily reveal information about an identifiable individual and may not necessarily qualify as personal information.¹⁰ In my view, in the circumstances of this appeal, it is not reasonable to expect that the disclosure of this address alone may result in an individual being identified. Accordingly, I find that the address that is not the address of the appellant is not personal information within the meaning of section 2(1) of the *Act*. As this information is not personal information it cannot be subject to the discretionary exemption at section 38(b) claimed by the police and I will order it to be disclosed.

[35] The police have also severed the second half of a sentence in the middle of the occurrence synopsis on page one of the occurrence report. It is not clear to me whether they take the position that this information is personal information and therefore subject to their claim that the exemption at section 38(b) applies or that it is law enforcement information and subject to their claim that the exemption at section 38(a), read in conjunction with section 8(1)(l) applies. In my view, this information does not qualify as personal information as it is information related to a property and is not linked to an identifiable individual. Accordingly, I find that it is not personal information and therefore cannot be subject to the discretionary exemption at section 38(b). I will, however, determine whether the discretionary exemption at section 38(a), read in conjunction with the law enforcement exemption at section 8(1)(l) applies to exempt it from disclosure.

¹⁰ Orders M-176, M-181, and M-197.

C. Does the discretionary exemption at section 38(a), read in conjunction with the exemption at section 8(1)(l) apply to the record at issue?

[36] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38(a) provides a number of exemptions from this right. The police claim that the information that remains at issue which has been severed from the occurrence reports is exempt from disclosure under the discretionary exemption at sections 38(a) of the *Act* read in conjunction with the law enforcement exemption at section 8(1)(l). Section 38(a) can only apply if the record contains the requester's own personal information. As I have found that the occurrence report contains the personal information of the appellant, access to this information must be determined in accordance with the exemption at section 38(a).

[37] Section 38(a) provides:

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.
[emphasis added]

[38] The police take the position that one of the severances made to the record at issue is exempt pursuant to section 38(a), read in conjunction with section 8(1)(l). That section provides:

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.

[39] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting further events in a law enforcement context.¹¹

[40] For the purposes of section 8(1)(l), the police must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.¹²

¹¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹² Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div.Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

[41] It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption.¹³

[42] The police's representations on the possible application of section 8(1)(l) to the records state:

A review of what was not disclosed indicates that a TPS report was submitted to put the vehicle on federal notice if the vehicle was located. As there was no further investigation by TPS, and it was a [York Regional Police Services] case, all records would have been forwarded to York, including this report.

[43] I have carefully reviewed the information that the police have severed from the occurrence report to which the discretionary exemption at section 38(a), read in conjunction with section 8(1)(l), could apply, as well as the representations that the police have submitted on the issue. In my view, I have not been provided with any evidence, let alone "detailed and convincing" evidence, to demonstrate that the disclosure of this information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[44] Therefore, I find that section 38(a), read in conjunction with section 8(1)(l), does not apply to either the severance made to the bottom of page one of the occurrence report or the portion of the sentence that has been severed from the middle of the occurrence synopsis and I will order them disclosed.

D. Does the discretionary exemption at section 38(b) apply to the record at issue?

[45] Section 38(b) of the *Act* is the discretionary personal privacy exemption under Part II of the *Act*. It provides:

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 individual's personal privacy.

[46] As I have found that the occurrence report does not contain the personal information of any individuals other than the appellant, the discretionary exemption at section 38(b) cannot apply. Accordingly, it is not necessary for me to address this issue.

¹³ Order PO-2040; *Ontario (Attorney General) v. Fineberg*, *supra*, note 10.

ORDER:

1. I uphold the police's search for responsive records.
2. I order the police to disclose to the appellant, an un-severed copy of the occurrence report that is at issue in this appeal, by **May 24, 2013**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the police to provide me with a copy of the records as disclosed to the appellant.

Original Signed By: _____ April 25, 2013
Catherine Corban
Adjudicator