

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-2972

Appeal MA13-15

Toronto Police Services Board

November 5, 2013

**Summary:** The appellant sought access to reports and event logs about complaints he made to the police on four dates. The police denied access to certain portions of the records as being non-responsive or subject to the discretionary personal privacy exemption in section 38(b). This order partially upholds the police's decision that portions of the records are non-responsive or exempt by reason of section 38(b). This order also finds the police's search for responsive records was reasonable.

**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), 17(1), 38(b).

### OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the Act) as follows:

I am Requesting Report Information.  
Report No. [#]  
Report No. [#]  
Event [#]  
From [#] Division.

I am enclosing my letter with more details.

I complain[ed] to [#] Division [on the] following dates: [four dates].

...

[Letter]

I wish to refer you about my safety and life threa[t] situation complaint to [#] Division on [four dates].

Please good enough to forward copy of the officer's report, and accuser statement and all documents relating Regarding my complaint of above my apartment Land Lord [#].

[2] In their decision, the police granted partial access to the I/CAD (Computer-Aided Dispatch) printouts and police reports. Access was denied to portion of the records pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*. Access to some information was removed as it was not responsive to the request.

[3] The police also advised that access could not be granted to the request for a report created on a specific date as it does not exist.

[4] The requester, now the appellant, appealed the decision.

[5] During the course of mediation, the appellant advised the mediator that further records should exist. He also confirmed that he took issue with the material deemed non-responsive in the decision issued by the police, as well as the exemptions claimed. Accordingly, the responsiveness of certain information in the records and the police's search for responsive records are also at issue.

[6] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were received and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[7] In this order, I find that certain information deemed non-responsive by the police is responsive to the request. I also partially uphold the police's decision that certain information is exempt by reason of the discretionary personal privacy exemption in section 38(b). Further, I uphold the police's search for responsive records.

## **RECORDS:**

[8] The records consist of two Field Information Reports and three I/CAD Event Details Reports.

## **ISSUES:**

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

## **DISCUSSION:**

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

[9] 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).

[10] 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.<sup>1</sup>

[11] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

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<sup>1</sup> Orders P-134 and P-880.

[12] The police state that the appellant was provided with records from three of the four requested dates. The analyst spoke with the appellant twice for further clarification.

[13] The police further state that the analyst conducted a broader search which proved negative. The appellant was unable to provide any additional details to confirm that he made a 911 call on the specific date. They state that it should be noted that calls made to the Toronto Police Service main line for non-emergency response are not recorded.

[14] The appellant states that he did make a call on the specific date, but it was not to the police's 911 emergency line.

### ***Analysis/Findings***

[15] The police and appellant's representations appear to focus on the scope of the request and the search for records. Concerning the scope of the appellant's request, the parties agree that the appellant was seeking records about the appellant's contact with the police on four specific dates.

[16] During mediation, the appellant took issue with the information in the records deemed non-responsive. Neither party provided representations on the non-responsiveness of certain information in the records. I have reviewed the information that was deemed non-responsive by the police in the records and I agree with them that most of this information is not responsive to the appellant's request as it concerns information not related to his request.

[17] However, I find that certain information deemed non-responsive on pages 2, 6, 8 and 9 is actually responsive to the request as it contains information about the appellant's complaints to the police referred to in his request.

[18] Accordingly, I uphold the police's decision concerning the non-responsiveness of certain information in the records. I will consider below whether the information that I have now found responsive is personal information, and, if so, whether the personal privacy exemption in section 38(b) applies to it.

### **B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[19] 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:

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<sup>2</sup> Orders P-880 and PO-2661.

“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 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;

[20] 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>3</sup>

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<sup>3</sup> Order 11.

[21] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) 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.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[22] 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.<sup>4</sup>

[23] 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.<sup>5</sup>

[24] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

[25] The police state that the records that were redacted contain the personal information of other individuals who did not provide their written consent to release. This information includes their name, address, apartment number, marital status and informal statements which they made in accordance with paragraphs (c), (d) and (f) of the definition of personal information in section 2(1) of the *Act*.

[26] The appellant did not provide representations on this issue.

### ***Analysis/Findings***

[27] I agree with the police that the records contain the personal information of individuals other than the appellant. I find that the records also contain the personal information of the appellant. The personal information in the records includes the appellant's and other individuals' names, addresses, apartment numbers, marital status

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<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

and views of these individuals, in accordance with paragraphs (c), (d), (e), (g) and (h) of the definition of personal information in section 2(1) of the *Act*.

[28] I will now consider whether the discretionary personal privacy exemption in section 38(b) applies to exempt the personal information at issue in the records.

**C. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?**

[29] 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.

[30] 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.

[31] The police state that the presumption in section 14(3)(b) of the *Act* applies as the records were created and compiled for the purpose of a law enforcement investigation into harassment complaints made by the appellant. They further state that the records were created by 911 call-takers and officers after the appellant contacted the police. The information collected from other parties was supplied to the investigating officer(s) as part of a law enforcement investigation. After a review of the circumstances of the calls, it was determined by the police that there would be no further police action.

[32] The appellant states that the records contain complaints he made to the police concerning assaults against him. He states that where the information relates to other individuals, then these portions could be redacted.

***Analysis/Findings***

[33] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met under section 38(b).

[34] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 38(b). In this appeal the information does not fit within paragraphs (a) to (e) of section 14(1) or within section 14(4).

[35] 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 under section 38(b). In *Grant v. Copley*,<sup>7</sup> the Divisional Court said the Commissioner could:

. . . consider the criteria mentioned in s.21(3)(b) [the equivalent provision in the provincial *Act* to section 14(3)(b)] in determining, under s. 49(b) [which is equivalent to section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

[36] In the circumstances, it appears that the presumption at paragraph (b) could apply. Section 14(3)(b) 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.

[37] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>8</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>9</sup>

[38] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.<sup>10</sup>

[39] Based on my review of the parties' representations and the information at issue in the records, I find that the presumption in section 14(3)(b) applies as the records were compiled as part of a police investigation into the appellant's complaints of criminal harassment. I also find that no factors favouring disclosure in section 14(2) apply. Accordingly, I find that, subject to my review of the absurd result principle and the police's exercise of discretion below, the information at issue in the records is exempt by reason of the personal privacy exemption in section 38(b).

### **Absurd result**

[40] 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),

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<sup>7</sup> *Grant v. Copley*, [2001] O.J. 749.

<sup>8</sup> Orders P-242 and MO-2235.

<sup>9</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>10</sup> Orders M-734, M-841, M-1086, PO-1819 and PO-2019.



because to find otherwise would be absurd and inconsistent with the purpose of the exemption.<sup>11</sup>

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

- the requester sought access to his or her own witness statement<sup>12</sup>
- the requester was present when the information was provided to the institution<sup>13</sup>
- the information is clearly within the requester's knowledge<sup>14</sup>

[42] 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.<sup>15</sup>

[43] In this appeal, certain information at pages 2, 3, 6 and 9 of the records was supplied by the appellant to the police. Although the police state that disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester, I find that the information for which the absurd result principle applies is information directly supplied by the appellant to the police. The information which I find subject to the absurd result principle is not the personal information of other individuals. Accordingly, I will order this information disclosed.

[44] The remaining information at issue in the records is the personal information of other individuals. As the appellant has indicated in his representations that he is not seeking this information, I uphold the police's decision not to disclose the remaining personal information withheld in the records.

#### **D. Did the institution conduct a reasonable search for records?**

[45] 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.<sup>16</sup> 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.

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<sup>11</sup> Orders M-444 and MO-1323.

<sup>12</sup> Orders M-444 and M-451.

<sup>13</sup> Orders M-444 and P-1414.

<sup>14</sup> Orders MO-1196, PO-1679 and MO-1755.

<sup>15</sup> Orders M-757, MO-1323 and MO-1378.

<sup>16</sup> Orders P-85, P-221 and PO-1954-I.

[46] 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.<sup>17</sup> To be responsive, a record must be "reasonably related" to the request.<sup>18</sup>

[47] 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.<sup>19</sup>

[48] 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.<sup>20</sup>

[49] 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.<sup>21</sup>

[50] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>22</sup>

[51] The police state that in his request, the appellant provided two report numbers, one event number and four dates where he made complaints to a specific police division staff. They state that the analyst spoke with the appellant on December 4, 2012 and December 12, 2012 for further clarification. At that time the appellant was advised that all records, except records for the appellant's October 24, 2012 call to police, had been located.

[52] The appellant was advised by the police that there was no record of any call or complaint by him on October 24, 2012. The police state that the analyst conducted a broader second search which proved negative. The police state that while the appellant contends that he made a call on that date, it was not on the recorded 911 line and that calls made to police main line for non-emergency response are not recorded.

[53] The police further state that during mediation, the mediator was advised by them that there was a record of police attendance at the appellant's apartment building on October 24, 2012; however, no record of involvement between the appellant and police on that day could be located.

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<sup>17</sup> Orders P-624 and PO-2559.

<sup>18</sup> Order PO-2554.

<sup>19</sup> Orders M-909, PO-2469 and PO-2592.

<sup>20</sup> Order MO-2185.

<sup>21</sup> Order MO-2246.

<sup>22</sup> Order MO-2213.

[54] The appellant states that that the police visited his home on three of the dates mentioned in his request and took a statement from him. None of the records contain either his statement or the police officers' notes of their visits on the three specified dates. He also states that his telephone call on the fourth date, October 24, 2012, to the police station named in his request resulted in a specifically numbered report being generated.

### ***Analysis/Findings***

[55] The appellant's request consisted of two pages. The first page was a police form entitled "Access/Correction Request." In this form, the appellant seeks access to two specific police reports and one specific event log. The second page of the appellant's request contains more details of his request, as quoted above.

[56] The police have located 10 pages of responsive records. The first two pages contain the event log referred to in the appellant's request. The third page is one of the reports referred to in the first page of the appellant's request. Pages 4 to 9 are event logs for three more incidents. Page 10 is the report for the second report referred to by the appellant in the first page of his request.

[57] The reports and event logs contain the investigating officers' notes about the reports or event logs for the specific dates set out in the appellant's request, other than for the appellant's phone call to police on October 24, 2012. The reports or event logs located by the police contain the statements the appellant made to the police.

[58] Based on my review of the records, I find that the police have located the reports or event logs requested by the appellant in his request and have provided a reasonable explanation why responsive records do not exist for the October 24, 2012 telephone call by the appellant to the police.

[59] Accordingly, I find that the police have made a reasonable effort to locate the responsive records and I uphold their search.

### **ORDER:**

1. I partially uphold the police's decision that certain information in the records is not responsive to the appellant's request. For ease of reference, I am providing the police with a copy of the records highlighting in the colour green the information that is non-responsive and should be withheld.
2. I partially uphold the police's decision under section 38(b). I order the police to disclose to the appellant by **November 27, 2013** the information in the records that I have found not exempt under section 38(b). The portions of the records to

be withheld under section 38(b) are highlighted in orange on the records sent to the police with this order.

3. I uphold the police's search for responsive records.
4. In order to verify compliance with order provisions 1 and 2, I reserve the right to ask the police for a copy of the records disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

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November 5, 2013