

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3124

Appeal MA13-539

Toronto Police Services Board

November 21, 2014

Summary: The appellant requested information about incidents which were investigated by the police with respect to a specific business at an identified address. The police denied access to the responsive records on the basis that they contained personal information and were exempt under the mandatory personal privacy exemption in section 14(1). The appellant stated that he was not pursuing access to any information that qualifies as "personal information" under the definition in the *Act*. This order determines that certain information in the records consists of "personal information," and that information is, therefore, not at issue. It also finds that other information in the records does not constitute "personal information" as it is not "recorded information about an identifiable individual." This information is ordered disclosed.

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

Orders and Investigation Reports Considered: Orders M-875 and MO-3076.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to any police involvement at a specified address, which was at

the time a "multiple unit commercial/residential complex", according to the police. The appellant sought access to the following:

- Address history pertaining to: [given address]
- All history, all calls, all reports originating from and relating to: [given address]
- All history, all calls, all reports pertaining to nightclub called "[given name]" and/or "[given name]" located in: [given address]
- Please provide all information from the year 2003 to 2013

[2] The police located records responsive to the request and granted partial access to certain information, but denied access to other portions of the records and to "all reports originating from and relating to the aforementioned address" on the basis of the mandatory personal privacy exemption in section 14(1) of the *Act*, relying on the application of the presumption in section 14(3)(b) of the *Act*.

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

[4] During mediation, the police located additional records and granted partial access to them. Access to the remaining information was denied on the basis of the exemption in section 14(1) and on the basis that some information was not responsive to the request. After resolving issues regarding the scope of the request and adequacy of the search conducted by the police, the parties agreed that the records remaining at issue are the police reports which contain details of occurrences relating to the address in question, not including a record relating to the appellant, which was the subject of a separate request and appeal.

[5] The police denied access to some of the responsive records, in their entirety, on the basis that it was exempt under section 14(1) and because some of the information was not responsive to the request.

[6] In addition, during mediation the appellant stated that he is not pursuing access to other individuals' personal information such as their name, contact information or other identifying information. In addition, he confirmed that he was not pursuing access to any information identified by the police as non-responsive to the request. Accordingly, the information that the police described as not responsive, consisting of "the date the records were printed, event or file numbers, employee identification numbers and police codes" is not at issue in this appeal. All of this was confirmed in a Revised Mediator's Report sent to the parties on March 26, 2014.

[7] As mediation did not completely resolve the appeal, it was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the police, a complete copy of which was provided to the appellant, along with a Notice of Inquiry. In response, the appellant advised that he intended to rely on the representations which he submitted in another appeal.

[8] In this order, I find that portions of the records contain the personal information of identifiable individuals and I uphold the police decision to deny access to it on the basis that it falls outside the ambit of the appellant's revised request. However, I also find that portions of the records do not contain the personal information of identifiable individuals and order that this information be disclosed to the appellant.

RECORDS:

[9] The records at issue consist of the responsive portions of 15 pages of police reports relating to two complaints against the business operating at the address identified in the request.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and if so, to whom does the personal information relate?
- B. Does the mandatory personal privacy exemption in section 14(1) apply to the personal information in the records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) of the *Act* and if so, to whom does the personal information relate?

[10] 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;

[11] 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.¹

[12] Section 2(2.1) also relates to the definition of personal information. This section states:

(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.

¹ Order 11.

[13] 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.² 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.³

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[15] The records contain the names of individuals, along with details about certain criminal charges laid against them in relation to police investigations that took place at the business which is the subject matter of the request.

[16] The police take the position that the records contain the personal information of identifiable individuals other than the appellant. The police also take the position that it is not possible to sever the records, and state that even if the personal identifiers of individuals are removed, the records still contain information that qualifies as "personal information" as that term is defined in section 2(1). They submit that "the content of the records also reveals personal information" relating to individuals other than the appellant. The police elaborate upon this point as follows:

The story and synopsis still contain personal information that may not be desirable by the affected parties for public consumption. Release of this information without consent from the affected parties would constitute an unjustified invasion of their personal privacy.

Under section 2(1) of the *Act*, 'personal information' is defined, in part, to mean recorded information about an identifiable individual, including 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.

[17] The police rely upon Order M-875 which held that, in the factual circumstances of that case, the disclosure of information with the names of individuals severed would still result in the disclosure of personal information, as there existed a reasonable prospect of the individuals being identified. The police do not, however, provide any submissions on how the disclosure of the information in the records at issue, with the personal identifiers removed, could reasonably be expected to result in the release of information that could lead to the identification of any of the individuals mentioned in

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the record. I note that the events described in the record were not notorious in nature and appear to describe routine police investigations that took place in 2008 and 2009. These investigations resulted in criminal charges being brought against several individuals.

[18] I have reviewed the records at issue and find that they contain the names, physical description, sex, dates of birth, home addresses and telephone numbers of individuals as well as information about charges laid against them. I find that this information constitutes the personal information of these identifiable individuals within the meaning of the definition of that term in paragraphs (a), (b), (d) and (h) of section 2(1).

[19] However, once the personal information of the individuals arrested and charged with criminal offences has been removed from the records, the remaining portions of the records do not contain information that qualifies as "personal information" within the meaning of the *Act*. The information that is left at issue in the appeal does not qualify as "personal information" as it is not "recorded information about an identifiable individual." As only personal information can qualify for exemption under section 14(1), the police cannot claim its application for information that does not meet the definition of that term in section 2(1). No other exemptions have been claimed for this information and I find that no mandatory exemptions apply to it.

[20] With respect to the portions of the records which contain the personal information of identifiable individuals, the appellant has clearly indicated that he is not seeking access to personal information relating to any individuals that may be included in the records. The appellant has also clearly indicated that he is not seeking access to information in the records which the police described as "not responsive", in this case the date the records were printed, event or file numbers, employee identification numbers and police codes. As a result, the information which I have found constitutes the personal information of identifiable individuals and the information described as "not responsive" is no longer at issue in this appeal and is not to be disclosed.

[21] As a result of my findings, I will order that the responsive portions of the records which I have found do not contain "personal information" be disclosed to the appellant. I have attached a highlighted copy of the records to the copy of this order which I am providing to the police, highlighting the portions of the records which contain the personal information of identifiable individuals. The highlighted information is **not** to be disclosed to the appellant.

ORDER:

1. I order the police to disclose to the appellant the information in the records which is **not** highlighted on the copy provided to them with this order by providing him with a copy by no later than **December 29, 2014** but not before **December 22, 2014**.
2. I uphold the decision of the police to not disclose the highlighted portions of the records, which contain the personal information of identifiable individuals.
3. In order to verify compliance with Order Provision 1, I reserve the right to require the police to provide me with copies of the records that are disclosed to the appellant.

Original Signed By: _____
Donald Hale
Adjudicator

_____ November 21, 2014