

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3195

Appeal MA13-346

York Regional Police Services Board

May 8, 2015

Summary: The appellant requested “police reports” pertaining to police attendances at her address on two specific dates. The York Regional Police Services Board identified two General Occurrence Reports as being responsive to the request and granted partial access to them. The police relied on the discretionary exemption at section 38(b) (personal privacy) of the *Act* to deny access to the portion they withheld. At mediation, the appellant’s request was narrowed to include only a withheld portion of one of the General Occurrence Reports. This order upholds the decision of the police to deny access to the withheld portion of page three of the specified General Occurrence Report.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1), 14(2)(a), 14(3)(b) and 38(b).

OVERVIEW:

[1] The York Regional Police Services Board (the police) received a two-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to the following information:

1. A police report for a “call” on a specified date “to” the requester’s address.
2. A police report for an “additional call” on a specified date.

[2] The police identified two General Occurrence Reports as being responsive to the two-part request and granted partial access to them. The police relied on section 38(b) (personal privacy) of the *Act* to deny access to the portion they withheld.

[3] The requester (now the appellant) appealed the police's decision.

[4] During mediation, the appellant clarified that she was not interested in the personal information of other individuals found on the first and second page of each of the two General Occurrence Reports. As a result, only access to certain information on the third page of the General Occurrence Report pertaining to the "additional call" remains at issue in this appeal. Also during mediation, in response to the appellant's request, the police provided a letter to the appellant setting out the names of the officers who attended at her residence on the "additional call".

[5] Mediation did not completely resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I commenced my inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the police, initially. The police provided representations in response to the Notice. I then send a Notice of Inquiry to the appellant, along with the police's non-confidential representations. The appellant provided responding representations.

RECORDS REMAINING AT ISSUE:

[6] Remaining at issue in this appeal is a portion of the third page of a General Occurrence Report.

DISCUSSION:

Issue A: Do the records contain personal information?

[7] The discretionary exemption in section 38(b) of *MFIPPA* applies to "personal information". Consequently, it is necessary to 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,
- (e) the personal opinions or views of the individual except where 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.

[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.¹

[9] 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.²

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

¹ Order 11.

² Order 11.

(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.

[11] 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.³

[12] 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.⁴

[13] I have reviewed the portion of the record at issue and find that it contains the personal information of the appellant, which is inextricably intertwined with the personal information of another identifiable individual, within the meaning of the definition of personal information set out in section 2(1) of *MFIPPA*.

Issue B: Does the discretionary exemption at section 38(b) apply to the personal information at issue?

[14] Section 38(b) states:

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.

[15] Because of the wording of section 38(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in the records which also contain the requester's personal information.⁵

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order M-352.

[16] In other words, 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.

[17] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁶

[18] The police refer to the presumption at section 14(3)(b) of the *Act* in support of their decision to withhold the information at issue on page three of the General Occurrence Report. The appellant’s representations do not specifically refer to the application of any presumption under section 14(3) of the *Act*, nor do they refer to any specific factors in section 14(2) that might favour disclosure. That said, the appellant challenges the reason for the police attendance and takes issue with their conduct on the day in question which is described in the specified General Occurrence Report. I infer that she is seeking the information to understand why the attendance took place and the reason for their conduct. This may raise the possible application of the factor favouring disclosure at section 14(2)(a) of the *Act*.

[19] Section 14(2)(a) reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

[20] 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.

⁶ Order MO-2954.

Section 14(2)(a)

[21] The objective of section 14(2)(a) of the *Act* is to ensure an appropriate degree of scrutiny of government and its agencies by the public. After reviewing the materials provided by the appellant and the records, I conclude that disclosing the subject matter of the withheld personal information at page three of the General Occurrence Report would not result in greater scrutiny of the police. The appellant's assertions challenging the reason for the police attendance and/or the conduct of the police are not sufficient to displace my determination in this regard. Additionally, in my view, the subject matter of the information sought does not suggest a public scrutiny interest.⁷

[22] Accordingly, in the circumstances, I find that the factor at section 14(2)(a) is not a relevant consideration.

Section 14(3)(b)

[23] 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.⁸ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁹

[24] I have reviewed the record at issue and it is clear from the circumstances that the personal information in it was compiled and is identifiable as part of the police's investigation into a possible violation of law, namely the *Criminal Code* of Canada.

[25] Accordingly, I find that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law, and falls within the presumption in section 14(3)(b). Accordingly, the disclosure of the withheld personal information is presumed to constitute an unjustified invasion of personal privacy of other identifiable individuals.

[26] Given the application of the presumption in section 14(3)(b) and the fact that no factors that favour disclosure were established, I am satisfied that the disclosure of the remaining withheld personal information at page three of the General Occurrence Report would constitute an unjustified invasion of another individual's personal

⁷ See Order PO-2905 where Assistant Commissioner Brian Beamish found that the subject matter of a record need not have been publicly called into question as a condition precedent for the factor in section 21(2)(a) of *FIPPA* (the provincial equivalent of section 14(2)(a) of *MFIPPA*) to apply, but rather that this fact would be one of several considerations leading to its application.

⁸ Orders P-242 and MO-2235.

⁹ Orders MO-2213 and PO-1849.

privacy.¹⁰ Accordingly, I find that this personal information is exempt from disclosure under section 38(b) of the *Act*.

[27] Furthermore, I have considered the circumstances surrounding this appeal and the police's representations and I am satisfied that the police have not erred in the exercise of their discretion with respect to section 38(b) of the *Act* regarding the withheld information that will remain undisclosed as a result of this order.

ORDER:

I uphold the decision of the police and dismiss this appeal.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ May 8, 2015

¹⁰ In that regard, because the personal information of the appellant is inextricably intertwined with that of another identifiable individual, it would not be possible to sever the appellant's personal information, without revealing information that is exempt or result in disconnected snippets of information being revealed. See in this regard Orders PO-1663 and *Ontario (Minister of Finance v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).