

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-3310

Appeal MA15-496

Halton Regional Police Services Board

May 9, 2016

**Summary:** The name of the affected party complainant is not “personal information” under section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*, because it identifies the complainant in a business or professional capacity for the purpose of section 2(2.1) of *MFIPPA*. The name is therefore ordered disclosed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2.1 (definition of personal information).

**Orders and Investigation Reports Considered:** PO-2225.

### OVERVIEW:

[1] The Halton Regional 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 about a particular investigation on a specific date, including the identity of the “person requesting” the investigation.

[2] Prior to making a decision about the request, the police notified the complainant (the affected party), seeking that party’s views regarding disclosure of the records to the requester. The affected party did not consent to disclosure.

[3] The police then issued a decision granting partial access to the records, withholding the remaining information pursuant to the discretionary personal privacy

exemption at section 38(b) of the *Act* and the discretionary exemption at section 38(a) in conjunction with the law enforcement exemptions at sections 8(1)(e), 8(1)(l) and 8(2)(a) of the *Act*. In addition, the police withheld some of the information in the records as being not responsive to the request.

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

[5] During mediation, the appellant narrowed the scope of the information he sought to only the name of the complainant (the affected party). Accordingly, sections 8(1) and 8(2) of the *Act* and the responsiveness of some of the withheld information were no longer at issue. The remaining issue is the applicability of the personal privacy exemption at section 38(b) of the *Act*.

[6] The mediator sought consent from the affected party to release their name to the appellant, but the affected party did not consent. No further mediation could be conducted and the appellant confirmed that he wished to proceed to the adjudication stage of the appeal, where an adjudicator conducts an inquiry under the *Act*.

[7] The adjudicator sought and received representations from the police and affected party. The appeal was transferred to me and I sought and received representations from the appellant. I also provided the affected party with the opportunity to submit further representations. No additional representations were received. Representations were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*.

[8] In this order, I find that the name of the affected party is not personal information. Therefore, the personal privacy exemption cannot apply and I order the name to be disclosed to the appellant.

#### **RECORDS:**

[9] The information at issue is the name of the affected party, which appears on page 1 of the police's occurrence report for the investigation.

#### **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **A: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it 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. The term “personal information” is defined in section 2(1) and states in part:

“personal information” means recorded information about an identifiable individual including,

...

(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 in section 2(1) is not exhaustive.

[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.

[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.<sup>1</sup>

[14] 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>2</sup>

[15] As the record contains a complaint relating to the appellant, including the appellant’s name and other information about him, it contains the appellant’s personal information.

### ***Is the name of the affected party personal information?***

[16] The appellant and affected party’s submissions do not address the issue of

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<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>2</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

whether the affected party's name qualifies as personal information. The police's submissions acknowledge that whether the name falls within the business capacity category in section 2(2.1) or is of a personal nature is an issue. The police's submissions consider the contextual approach to deciding whether names of individuals constitute personal information set out in Order PO-2225. In that Order, former Assistant Commissioner Tom Mitchinson set out the following two-step analysis for determining whether information should be characterized as "personal" or "professional":

1. In what context do the names of the individuals appear? Is it in a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[17] The police submit that unlike in Order PO-2225, the affected party here is not a landlord, so the information does not fall into the "business capacity" category.

[18] It is clear that Order PO-2225 stands for a broader proposition than that a landlord's name can fall within the "business, professional or official government" category. Consistent with the wording of section 2(2.1), step 1 of the contextual analysis means that as a general rule any individual's name that appears in a business, professional or official government context is not personal information. Step 2 then requires examining whether the information, if disclosed, would reveal something of a personal nature about the individual, in which case the information may still be personal information.

[19] I will now consider this appeal in light of the two-step analysis.

[20] Considering step one, in my view, the affected party's name appears in a business or professional context. I conclude this based on the nature of the complaint and the context in which the complaint was made. The affected party's complaint to the police falls within and was carried out as part of that individual's employment responsibilities. I cannot explain further the rationale for finding that the name appears in a business or professional context without disclosing the identity of the affected party, which is the information in issue.

[21] Step two of the analysis in Order PO-2225 provides that even if the information appears in a business context, the question is whether its disclosure would reveal something that is inherently personal in nature. There is no suggestion in the parties' submissions that disclosure of the name would reveal something inherently personal in

nature about the affected party. In the circumstances, I am satisfied that disclosing the affected party's name would not reveal something of a personal nature about the individual.

[22] Having considered the representations from the police on the issue, and for the reasons outlined above, I conclude that the affected party's name at issue in this appeal does not qualify as "personal information" as that term is defined in section 2(1) of the *Act*. The name falls within the information excluded from the definition of personal information under section 2(2.1). Applying a contextual approach, the information is "about" the affected party in a business or professional rather than a personal capacity.

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

[23] Because the exemption at section 38(b) of the *Act* can only apply to "personal information", it has no application in the circumstances of this appeal and I do not need to consider its application to the affected party's name. The affected party's name does not qualify for exemption from disclosure under section 38(b) of the *Act*.

**ORDER:**

1. I order the police to disclose the name of the affected party which appears on page 1 of the police occurrence report to the appellant by **June 14, 2016**, but not before **June 9, 2016**.
2. I reserve the right to require the police to provide me with a copy of the record which is disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Hamish Flanagan  
Adjudicator

\_\_\_\_\_ May 9, 2016