

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3342

Appeal MA15-189

Cobourg Police Services Board

August 5, 2016

Summary: The appellant made a request to the police for records relating to a specific incident report. The police denied access to two records in full withholding information under the discretionary personal privacy exemption in section 38(b). The adjudicator upholds the police's decision in part.

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"), 14(3)(b), 38(b).

OVERVIEW:

[1] The appellant made a request to the Cobourg Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to a specified incident report. The appellant stated that she wanted "A false report filed by [a named company] Cobourg, ON [specified date] against me [name of the appellant]. Seeking legal copy of report."

[2] The police located responsive records and granted the appellant full access to a supplementary occurrence report, and denied access in full to a general occurrence report and an occurrence summary under the discretionary personal privacy exemption in section 38(b) of the *Act*.

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

[4] During mediation, the appellant confirmed that she would like access to all of the

information that has been withheld. The police confirmed that with consent from the affected parties, they would be prepared to disclose additional information to the appellant. The mediator attempted to obtain consent from two affected parties, one of whom provided consent to the disclosure of her name and work contact information to the appellant. The appellant thereafter advised that she is not seeking the names and contact information of any individuals whose information is contained in the records (affected persons), and accordingly the names and contact information of those affected parties are not at issue in this appeal.

[5] Mediation did not resolve the appeal and the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I sought representations from both the police and the appellant but only the police provided representations. The police's representations were shared with the appellant in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] In this decision, I uphold the police's decision in part.

RECORDS:

[7] The information at issue is a 1-page occurrence summary and a 1-page general occurrence report.

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?

DISCUSSION:

A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] 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;

[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.¹

[10] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²

Representations and findings

[11] The police submit that the withheld summary in the general occurrence report involves an incident relating to another individual and the complainants. The police submit that the appellant is not mentioned in the general occurrence report. The police submit that the occurrence summary contains information about the third parties (i.e. the employees) and that the summary of the report involves another individual, not the appellant. The police also note that the appellant was not interested in the information about the third parties (i.e. the employees).

[12] Based on my review of the records, I find that they contain the personal

¹ Order 11.

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information of both the appellant and an affected individual. In particular, I find that the records contain information that qualifies as the appellant's personal information within the meaning of paragraphs (a), (c) and (d) of the definition of that term in section 2(1) of the *Act*. Regarding the affected individual, I find that the portions of the withheld information in both records qualifies as his or her personal information within the meaning of paragraph (h) of the definition of that term in section 2(1).

[13] As disclosure of the appellant's personal information to her would not be an unjustified invasion of personal privacy under section 38(b), I will order the police to disclose this discrete portion of the record that only relates to the appellant to her.

[14] Accordingly, as I have found that the records contain both the personal information of the appellant and another individual, I will consider the application of section 38(b) to the remaining information.

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

[15] 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.

[16] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.³

[17] 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;

[18] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. If the information fits within any of the exceptions in paragraphs (a) to (f) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In the present appeal, only section 14(1)(f) is relevant which allows disclosure of the personal information if it would not be an unjustified invasion of personal privacy. Also, if any of the paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not

³ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

exempt under section 38(b). None of these paragraphs apply to the information at issue in this appeal.

[19] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁴

[20] 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).

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

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;

[22] 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.⁵ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁶

Representations and findings

[23] The police did not comment specifically on section 14(3)(b). Upon my review of the records at issue, it is apparent that the police attended a location to investigate an occurrence involving multiple phone calls from a customer to the complainants' place of business. No charges were laid. It is also apparent that the name of the individual discussed in the records does not bear the name of the appellant.

[24] Accordingly, I find that the withheld personal information at issue "was compiled and is identifiable as part of an investigation into a possible violation of law", and accordingly its disclosure to someone other than the named individual would constitute an unjustified invasion of his or her personal privacy. I find that section 14(3)(b) applies to the personal information at issue.

[25] While section 14(2) lists factors that weigh in favour of disclosure, the appellant did not make submissions on the application of these factors to the personal

⁴ Order MO-2954.

⁵ Orders P-242 and MO-2235.

⁶ Orders MO-2213, PO-1849 and PO-2608.

information at issue and I find that none apply.

[26] With respect to the application of the exemption in section 38(b) to the information for which it is claimed, I have found above that the records at issue contain the personal information of a named individual who is not the appellant. On my review of the information and the context within which the information was collected, I find that there are no factors favouring the disclosure of this personal information to the appellant. As a result, I find that disclosure of the information would constitute an unjustified invasion of the personal privacy of another individual, and that the information qualifies for exemption under section 38(b), subject to my finding on the police's exercise of discretion.

[27] Section 38(b) is a discretionary exemption and permits the police to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[28] In the present appeal, the manner in which the police applied the section 38(b) exemption indicates that they properly considered the appellant's right to her own personal information and balanced this right against the named individual's right to privacy. I find that this was a proper consideration in the circumstances and I uphold the police's application of section 38(b) to withhold the remaining information.

ORDER:

1. I order the police to disclose the portion of the occurrence summary containing the appellant's personal information to her by **September 6, 2016** in accordance with the copy of the highlighted record I have enclosed with the police's order. To be clear, only the highlighted information should be disclosed to the appellant.
2. I uphold the police's decision to withhold the remaining information.

Original signed by: _____

Stephanie Haly
Adjudicator

August 5, 2016 _____