

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3349

Appeal MA15-16

York Catholic District School Board

August 19, 2016

Summary: The appellant requested a copy of a surveillance video recording of an incident that occurred in a school board parking lot. The school board properly withheld the video recording under the exemption for personal information in section 14(1) of the *Act*.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2, 14.

OVERVIEW:

[1] The York Catholic District School Board (the board) received a request for a copy of the surveillance video of an incident in a high school parking lot where a student allegedly reversed his vehicle into the appellant's vehicle.

[2] The board denied access to the video surveillance record, referring to the personal information contained in the record and citing section 14(3)(b) (presumption against disclosure of personal information compiled for a law enforcement purpose) of the *Act*.

[3] The requestor (now the appellant) appealed this decision. At mediation, the board confirmed that it was relying on section 14(1) to deny access to the responsive record.

[4] Mediation did not resolve all the outstanding matters so the appeal moved to the

adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[5] The adjudicator sought representations from the board on the issues set out in a Notice of Inquiry. The board's representations were shared with an individual the board identified as appearing in the video (the affected party), who was also invited to provide representations at the inquiry. The affected party did not provide any representations.

[6] The board's representations were shared with the appellant and he was invited to provide representations on the facts and issues set out in a Notice of Inquiry. The appellant also did not provide any representations.

[7] In this order I find that the board appropriately applied the exemption in section 14(1) to the record.

RECORD:

[8] The record in issue is recorded video surveillance of an incident in a board parking lot. Two different surveillance cameras contain footage of the incident.

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 mandatory exemption at section 14(1) apply to the information at issue?

DISCUSSION:

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

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information," which is defined in section 2(1) as "recorded information about an identifiable individual," The list of examples of personal information contained in section 2(1) (a) to (h) is not exhaustive.

[10] To qualify as personal information, it must be reasonable to expect that an

individual may be identified if the information is disclosed.¹

[11] This office has previously held that information collected about identifiable individuals from video surveillance cameras qualifies as “personal information” under the *Act*.² It is clear that the record in issue contains “personal information” for the purposes of the *Act*. In particular, it contains the personal information of the affected party who appears in the video. The record of the incident does not contain recorded information of the appellant and therefore does not contain his personal information.

Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[12] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[13] The affected party did not consent to disclosure of their personal information.³

[14] Under section 14(1)(f), if disclosure of a record would not be an unjustified invasion of personal privacy, a record is not exempt from disclosure.

[15] If section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 14(1)(f). There is no evidence that any of the paragraphs in section 14(4) apply.

[16] 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 14(1)(f). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can be overcome if the “public interest override” at section 16 applies.⁴ The appellant did not raise the public interest override.

[17] Section 14(3)(b) provides that 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;

¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

² See *Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report* - Privacy Investigation Report MC07-68; Privacy Complaint Reports MC10-2, MC13-46 and MC13-60 and Orders MO-1570, PO-3510 and MO-3238.

³ An exception in section 14(1)(a).

⁴ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[18] The presumption applies to a variety of investigations, including those relating to by-law enforcement⁵ and violations of the Ontario Human Rights Code.⁶ The presumption only requires that there be an investigation into a possible violation of law.⁷

[19] The board cites section 14(3)(b) as a basis for not disclosing the record. However, its representations do not explain how this provision is relevant to the record. It is not apparent to me from the board's representations or from my review of the record how the personal information in the video recording is identifiable as part of an investigation into a possible violation of law. No such investigation appears to have been carried out.

[20] The board did not raise any other section 14(3) presumptions and I find that no other presumptions apply.

Do any of the section 14(2) factors apply?

[21] Section 14(2) lists potentially relevant factors to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 14(1)(f). Section 14(2) states:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;

⁵ Order MO-2147.

⁶ Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

⁷ Orders P-242 and MO-2235.

(g) the personal information is unlikely to be accurate or reliable;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[22] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.⁸

[23] However, the list of factors under section 14(2) is not exhaustive. The institution must also consider any other circumstances that are relevant, even if they are not listed in section 14(2).⁹ In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.¹⁰

[24] No section 14(2) factors were raised by the parties. From my review of the record, section 14(2)(d) is potentially relevant. That provision provides that a circumstance to consider in deciding whether disclosure is an unjustified invasion of privacy is whether the personal information is relevant to a fair determination of rights affecting the person who made the request. Because the appellant did not make representations in this inquiry I do not have the necessary information to determine whether the requirements for section 14(2)(d) to apply exist.

[25] Although I do not have any representations that directly address these factors, I do not consider any other listed factors in section 14(2) to be relevant. From my review of the record I find that disclosure of the information will not expose the affected party unfairly to pecuniary or other harm (section 14(2)(e)); is not highly sensitive (section 14(2)(f)); there is no issue about the information's accuracy or reliability (section 14(2)(g)); it was not supplied in confidence (section 14(2)(h)) and disclosure would not unfairly damage the reputation of the affected party (section 14(2)(i)).

Other factors/relevant circumstances

[26] In previous orders, other relevant considerations that have found to apply include:

⁸ Order PO-2265.

⁹ Order P-99.

¹⁰ Orders PO-2267 and PO-2733.

- inherent fairness issues;¹¹
- ensuring public confidence in an institution;¹²
- personal information about a deceased person;¹³ and
- benefit to unknown heirs.¹⁴

[27] I have considered whether any unlisted factors are relevant to the current appeal.

[28] To begin, it appears from the material provided to this office in the course of the appeal that the appellant may have viewed the video and/or is aware of its contents. In circumstances where an individual is requesting their own personal information, this office has, on occasion, found the information not to be exempt from disclosure because to withhold the information would be absurd and inconsistent with the purpose of the exemption.¹⁵ This “absurd result” principle has been applied where, for example, the requester sought access to his or her own witness statement,¹⁶ the requester was present when the information was provided to the institution,¹⁷ and where the information was clearly within the requester’s knowledge.¹⁸ However, in the circumstances of this appeal, I do not consider it would be an “absurd result” to deny access to the record. Although the appellant may well be aware of the content of the video and the identity of the affected party, this does not mean that the appellant ought to be provided with a copy of it, particularly when the record does not contain the appellant’s own personal information. As a result, I find that this is not a factor favouring disclosure in this appeal.

[29] I have also considered whether inherent fairness is a factor favouring disclosure. The appellant alleges that the affected party damaged his property. In these circumstances, it is possible that disclosing the record would make it more likely that the appellant could accurately establish the cause of the damage to his property, for example for insurance purposes. However, without the benefit of representations from the appellant on this issue I can only speculate that access to the actual recording will have this outcome. Further, as noted above, the appellant already appears to know the identity of the affected party, which is sufficient to pursue recovery against the affected party, if that is the appellant’s intent.

¹¹ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

¹² Orders M-129, P-237, P-1014 and PO-2657.

¹³ Orders M-50, PO-1717, PO-1923, PO-1936 and PO-2012-R.

¹⁴ Orders P-1493, PO-1717 and PO-2012-R.

¹⁵ Orders M-444 and MO-1323.

¹⁶ Orders M-444 and M-451.

¹⁷ Orders M-444 and P-1414.

¹⁸ Orders MO-1196, PO-1679 and MO-1755.

Summary

[30] Having found that there are no factors favouring disclosure of the record, I am satisfied that disclosing the recording of the incident to the appellant does not fall within any of the exceptions in section 14(1) that permit the record to be disclosed. In particular section 14(1)(f), which permits disclosure of personal information if it would not constitute an unjustified invasion of personal privacy, does not apply. Therefore, the board has properly withheld the information in issue under section 14(1) of the *Act*.

ORDER:

I uphold the board's decision to withhold the footage of the incident under section 14(1) of the *Act*.

Original Signed by: _____
Hamish Flanagan
Adjudicator

_____ August 19, 2016