

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-3382

Appeal MA16-216

Halton Regional Police Services Board

November 23, 2016

**Summary:** The appellant requested a police occurrence report that resulted from a call regarding a domestic dispute. The police identified responsive records and granted partial access, but denied access to some portions of the record citing the discretionary exemption at section 38(b) (personal privacy) read in conjunction with section 14(3)(b) (investigation into a possible violation of law). On appeal, the adjudicator upholds the police's decision.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 14(3)(b), 16, 38(b).

### OVERVIEW:

[1] The appellant made a request to the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a particular police occurrence report.

[2] The police issued a decision granting partial access to the responsive records.

[3] The police denied access to portions of the records pursuant to the discretionary exemptions at section 38(a) with reference to the law enforcement exemptions in sections 8(1)(e), 8(1)(l), 8(2)(a), and 38(b) (personal privacy) in conjunction with section 14(3)(b) of the *Act*.

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

[5] Mediation did not resolve the appeal and it was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. The police, the appellant and an affected party each provided representations in this appeal. Representations were shared in accordance with section 7 of IPC's *Code of Procedure* and Practice Direction 7.

[6] In his representations, the appellant states that he is not interested in the personal information of other individuals involved in the incident including any police officers. He also indicated that he is not interested in receiving the police Ten-codes and patrol zones or information concerning how the police conduct an investigation. Therefore, these parts of the record have been taken out of the scope of this appeal. As a result, section 38(a) with reference to the law enforcement exemptions in section 8 is no longer an issue in this appeal. The appellant also raised the public interest in his representations and this issue was therefore added to the appeal.

[7] In this order, I uphold the decision of the police.

## **RECORDS:**

[8] The records remaining in issue consist of portions of a 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?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?
- D. Does the public interest override at section 16 apply to the information at issue?

## **DISCUSSION:**

**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" 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,
- (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,
- (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;

[10] 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>

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

[12] In their representations, the affected party states that the record contains their personal information and it is reasonable to expect that an individual may be identified if the information is disclosed.

[13] In their representations, the police submit that the entire record contains information that qualifies as the personal information of individuals including the appellant. This information includes the names, addresses, dates of birth, telephone numbers and statements contained in the police occurrence report.

[14] In his representations, the appellant states that he is not interested in the personal information of anyone mentioned in the record involved in the incident

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

including the names of police officers. His interest is in obtaining information to show what led the police to seemingly conclude that he did not respect his wife's property and why it was him who was asked by the police to leave the house. The appellant states that the police are using the *Act* to refuse his right to access the record and is of the view that the "whole sentences and paragraphs" that were severed should not be.

### ***Finding***

[15] From my review of the record, I find that it contains the personal information of the appellant and that the withheld information also contains information that qualifies as the personal information of affected parties under the *Act*. This includes names, dates of birth, addresses and other information about identified individuals that fall within the ambit of paragraphs (a), (d), (e), (g) and (h) of the definition of personal information in section 2(1) of the *Act*.

[16] In his representations, the appellant notes that he is only interested in the "whole sentences and paragraphs" that were redacted from the record and it appears that his assumption is that this information is not personal information. However, all of the information that the police severed from the record was withheld on the basis that it was personal information and exempt under the personal privacy exemption.

[17] While it appears, from the appellant's representations, that his view is that personal information consists only of identifying information such as name and address, that is not the case. Section 2(1)(e) and (h) also includes personal opinion and views of the individual either about themselves or relating to another individual as personal information.

[18] In reviewing the record, the part of the records that was severed by the police, for which the appellant still takes issue, the "whole sentences and paragraphs" actually consist of the personal opinion or view of an affected party about themselves or other personal information about them (paragraphs (e) and (h)). As referenced above, personal information includes the personal opinions or views of the individual. This is considered personal information under the *Act*.

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

[19] Since I found that the record contains the personal information of both the appellant and the affected party, section 36(1) applies to this appeal. 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.

[20] 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 appellant.<sup>3</sup>

[21] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the appellant. This involves a weighing of the appellant’s right of access to his own personal information against the other individual’s right to protection of their privacy.

[22] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 38(b).

[23] If the information fits within any of paragraphs (a) to (h) of section 14(3), disclosure of the information is presumed to be an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[24] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>4</sup>

[25] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>5</sup> Neither party provided representations on the factors in section 14(2).

[26] The police submit that the presumption at section 14(3)(b) of the *Act* applies to the personal information at issue.

***14(3)(b): investigation into violation of law***

[27] 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;

[28] The presumption can apply to a variety of investigations, including those relating

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<sup>3</sup> See below in the “Exercise of Discretion” section for a more detailed discussion of the institution’s discretion under section 38(b).

<sup>4</sup> Order P-239.

<sup>5</sup> Order P-99.

to by-law enforcement<sup>6</sup> and violations of environmental laws or occupational health and safety laws.<sup>7</sup>

[29] 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.<sup>8</sup>

[30] In their representations, the police submit that section 14(3)(b) has application in this appeal and was used to exempt personal information from the record. They submit that the police were called to a domestic incident, "thereby quite possibly a violation of law had occurred." The police note that after receiving the access request, they notified the affected party who did not consent to releasing their personal information. They also submit that the undisclosed information was compiled as part of a law enforcement investigation and therefore disclosure would constitute an unjustified invasion of privacy under section 14(3)(b).

[31] The affected party made representations in this appeal noting that the record contained their personal information and that they did not consent to releasing this information.

***Analysis and Finding:***

[32] The general occurrence report at issue in this appeal relates to an occurrence at the appellant's home, which the police attended in order to investigate a complaint. I find that the personal information in the record was compiled and is identifiable as part of a police investigation as a result of a domestic dispute. Accordingly, the presumption in section 14(3)(b) applies to this personal information.

[33] As the presumption in section 14(3)(b) applies and no factors favouring disclosure have been raised by the appellant, in the circumstances, I find that the personal information at issue in the record is exempt by reason of the discretionary personal privacy exemption in section 38(b).

[34] I have also considered the absurd result principle. Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.

[35] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement

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<sup>6</sup> Order MO-2147.

<sup>7</sup> Orders PO-1706 and PO-2716.

<sup>8</sup> Orders P-242 and MO-2235.

- the requester was present when the information was provided to the institution
- the information is clearly within the requester's knowledge

[36] Based on the circumstances in this appeal, it is clear that the appellant would not have been aware or present at the time the affected party gave their personal information to the police. Therefore the absurd result principle does not apply.

**D: Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[37] The sections 38(b) exemption is discretionary, and permits an institution 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.

[38] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[39] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>9</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>10</sup>

[40] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>11</sup>

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific

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<sup>9</sup> Order MO-1573.

<sup>10</sup> Section 43(2).

<sup>11</sup> Orders P-344 and MO-1573.

- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[41] In their representations, the police submit that they properly exercised their discretion in applying section 38(b) to withhold the information at issue. They submit that they took into account all of the facts of the case while being considerate of the following principles:

- information should be available to the public;
- individuals should have access to their own personal information; and,
- exemptions to this right of access should be limited and specific.

[42] The police state that they contacted the affected party who did not consent to disclosing their information.

[43] The police further submit that they considered whether or not the records could be severed in a way that would allow the disclosure of the appellant's information without disclosing another individual's personal information. Although this was not possible in all cases as the personal information was so intertwined, the police disclosed as much of the personal information as possible to the appellant while respecting the wishes of the affected party.

[44] The police also submit that they looked at section 14 of the *Act* in deciding whether disclosing the personal information of other individuals would constitute an unjustified invasion of their privacy and concluded that section 14(3)(b) was relevant to



the request.

[45] In his representations, the appellant does not specifically address the exercise of discretion under section 38(b) except to submit that the police should have the capability and resources to disclose the report better than they did. He again states that he is not interested in the personal information in the record and wants disclosed, "the remaining part of sentences and paragraphs."

### ***Finding***

[46] In reviewing the record, I find that the police took into account relevant factors in weighing the factors both for and against the disclosure of the information at issue and did not take into account irrelevant considerations. The police's representations reveal that they considered the appellant's position and circumstances, balanced against their mandate to engage in law enforcement and the prevention and control of crime, in exercising their discretion not to disclose the information at issue. Further, I find that the appellant's representations are flawed with the general belief that "whole sentences and paragraphs" cannot be personal information.

[47] Also, I agree with the police that the severed information is the affected party's personal information, parts of which are intertwined with the appellant's information. After reviewing the record, I accept that the police disclosed as much of the information to the appellant as possible without disclosing the personal information of the affected party. Also, I find that it is not possible to further sever the appellant's personal information without revealing personal information belonging to the affected party.

[48] Under these circumstances, therefore, I am satisfied that the police have appropriately exercised their discretion under section 38(b).

### **E: Does the public interest override at section 16 apply to the information at issue?**

[49] In his representations, the appellant raised the potential application of the public interest override at section 16 which provides:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[50] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[51] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her

contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

[52] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

[53] A public interest does not exist where the interests being advanced are essentially private in nature. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.

[54] In his representations, the appellant refers to the public interest arguing that the police refused to disclose basic and critical facts, and that they conducted themselves unprofessionally and discriminated against him. He gives several examples of what the police should have done when they arrived at the appellant’s home. The appellant also states that the police could have withheld the personal information in the record but by severing “whole sentence or paragraph with confidential information” breached his access right, and that this is a violation of the public interest.

[55] I find that the appellant has failed to show that there is a compelling public interest in disclosure of the record at issue. The information in the record deals with a private matter and contains information about a domestic incident, and I find that disclosure would not serve the purpose of informing or enlightening the citizenry about the activities of government or its agencies.

**ORDER:**

I uphold the police’s decision to withhold the personal information of the affected party under section 38(b).

Original Signed by: \_\_\_\_\_  
Alec Fadel  
Adjudicator

\_\_\_\_\_ November 23, 2016