

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3390

Appeal MA15-460

Waterloo Regional Police Services Board

December 20, 2016

Summary: The appellant sought access to records related to a specified occurrence involving him and another individual. The police located responsive records and issued a decision granting the appellant partial access to them. The police relied on the discretionary exemption in section 38(b) (invasion of privacy) to deny access to the portions they withheld. The police's decision to deny access to the withheld portions of the records is upheld and the appeal is dismissed.

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), and 38(b).

BACKGROUND:

[1] The Waterloo Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to "all records related to [specified occurrence number] (excepting the fax letters from [the requester] to [a named police officer])."

[2] The police identified responsive records and granted partial access to them. The police relied on section 38(b) of the *Act* (personal privacy) to deny access to the portion they withheld. The police also took the position that some withheld information was not responsive to the request.

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

[4] At mediation, the appellant agreed not to seek access to the withheld information that the police claimed was not responsive to the request. Accordingly, that information is no longer at issue in the appeal. The appellant continued to seek access to the balance of the withheld responsive information.

[5] As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced my inquiry by seeking representations from the police and an individual whose interests may be affected by the disclosure of the remaining withheld information (the affected party), on the facts and issues set out in a Notice of Inquiry. Both the police and the affected party provided representations. The police asked that portions of their representations be withheld due to confidentiality concerns. The affected party objected to the disclosure of any information and requested that the entirety of their representations be withheld due to confidentiality concerns. I then sent a Notice of Inquiry accompanied by the non-confidential representations of the police to the appellant. The appellant did not provide representations in response.

[7] In this order I uphold the police's decision and dismiss the appeal.

RECORDS:

[8] Remaining at issue in this appeal are the withheld responsive portions of an Occurrence Details report and police officers' notes.

ISSUES:

- A. Do the records 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 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), in part, 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,

...

(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,

...

(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] 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 To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.²

[11] I have reviewed the records and find that they contain the personal information of the appellant and the affected party that falls within the scope of the definition of personal information in section 2(1) of the *Act*.

[12] Having found that the records contain the mixed personal information of the appellant and the affected party, I will consider the appellant's right to access the withheld information under section 38(b) of the *Act*.

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

[13] Section 38 of the *Act* provides a number of exemptions from an individual's

¹ Order 11.

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

general right of access under section 36(1) to their own personal information held by an institution. Section 38(b) gives the police the discretion to refuse to disclose the appellant's personal information to him in this appeal if the record contains his personal information in addition to that of the affected party and disclosure of the information would constitute an "unjustified invasion" of the affected party's personal privacy. 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

[14] Section 14 of the *Act* provides guidance in determining whether the unjustified invasion of personal privacy threshold is met. If the information fits within any of the paragraphs of sections 14(1) or 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[15] 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 14(3) and balance the interests of the parties.³ 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). In this appeal, the police assert that the presumption in section 14(3)(b) and the factor at section 14(2)(h) apply. Those sections read:

14(2) 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,

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

14(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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; ...

[16] The factor at section 14(2)(h) applies if both the individual supplying the

³ Order MO-2954.

information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.⁴

[17] Even if no criminal proceedings were commenced against any individuals, the presumption at section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁵

Representations

[18] The police submit that the nature of the responsive records fall under a "domestic violence classification". They submit that:

... Any release of information to the appellant regarding the affected party involved in this dispute could aggravate the situation further and grossly violate the affected party's right to privacy.

[19] With respect to the application of the factor at section 14(2)(h), the police submit that the expectation of confidentiality is reasonable in these circumstances, and that:

... Any third parties listed in this domestic violence investigation may not have spoken with the police if they believed their account of the situation was to be forwarded to the subject of the occurrence. ...

...

... When victims, witnesses, and individuals under investigation provide information to the police, there is an expectation that the police will maintain confidentiality. If we did not, members of the public would be wary of providing information to police that could hinder the apprehension of a suspect in the future.

[20] With respect to the application of section 14(3)(b), the police submit that:

The appellant requested [records] pertaining to a harassment investigation. No charges were laid in this instance, however, the charge of criminal harassment under section 264(1) of the *Criminal Code* would have been considered when making a final determination regarding the outcome of the occurrence.

[21] The affected party objected to the disclosure of any of her personal information.

⁴ Order PO-1670.

⁵ Orders P-242 and MO-2235.

The appellant did not provide representations.

Analysis and findings

[22] I agree with the position of the police that the presumption against disclosure in section 14(3)(b) applies in this appeal because the personal information in the occurrence report was compiled and is identifiable as part of an investigation into a possible violation of law. The occurrence report at issue was created by the police as part of their investigation into a possible violation of law, namely section 264(1) of the *Criminal Code*⁶.

[23] As I have found that section 14(3)(b) applies and there are no factors favouring disclosure, it is not necessary for me to also consider whether section 14(2)(h) might also apply.

[24] Given the application of the presumption in section 14(3)(b), and the fact that no factors favouring disclosure were established, and balancing all the interests, I am satisfied that the disclosure of the remaining withheld personal information would constitute an unjustified invasion of another individual's personal privacy. Accordingly, I find that this personal information is exempt from disclosure under section 38(b) of the *Act*. I am also satisfied that the undisclosed portions of the records cannot be reasonably severed, without revealing information that is exempt under section 38(b) or resulting in disconnected snippets of information being revealed.⁷

[25] 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. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose. The police considered the purposes of the *Act* and have given due regard to the nature and sensitivity of the information in the specific circumstances of this appeal and I have upheld their decision with respect to the information they have claimed is exempt. Accordingly, I find that the police took relevant factors into account and I uphold their exercise of discretion in this appeal.

ORDER:

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

Original Signed by: _____
Steven Faughnan

December 20, 2016 _____

⁶ R.S.C., 1985, c. C-46.

⁷ See Order PO-1663 and Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1997), 102 O.A.C. 71 (Div. Ct.).

Adjudicator