

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3514

Appeal MA15-313

York Regional Police Services Board

October 31, 2017

Summary: The police received a request under the *Act* for access to a particular motor vehicle collision report (MVCR) created in connection with an accident in which the requester was involved. The police denied access to the MVCR on the basis of the exemptions in section 38(a) (discretion to deny requester's own information) in conjunction with section 15(a) (information published or available). In this order, the decision of the police is upheld, as the MVCR is available to the public through a regularized system of access.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) "personal information", 15(a), 38(a).

Orders and Investigation Reports Considered: MO-1573, MO-1703, MO-3216.

OVERVIEW:

[1] The York 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 "the full, unredacted motor vehicle collision report (MVCR)" created in connection with a particular motor vehicle accident in which the requester was involved. The request was made by the requester's legal representative.

[2] The request also noted that the police had "increased the fee for [MVCRs]" and

intended to further increase the fee.¹ The request letter asked that a fee estimate be prepared for any estimated fee of more than \$25.00, as required by section 45(3) of the *Act*. In addition, the letter identified the author's concerns about the significant increases in the fees for MVCRs.

[3] In response, the police identified a General Occurrence Report relating to the motor vehicle accident as a responsive record, and granted partial access to this five-page report. Access to portions of this record were denied on the basis of the exemptions in sections 38(b) and 14(3)(b) (personal privacy). Issues regarding access to this record are not at issue in this appeal.

[4] The decision also read:

.... [the police] routinely disclose [MVCRs] ... for investigations involving motor vehicle collisions and have an established policy and fee schedule in place for requesting this type of information.

If you require further records regarding this accident then upon receipt of the appropriate fees, we will be able to respond to your request. Attached is a copy of our current fee schedule which will assist you.

[5] By separate correspondence, the police also provided the requester's representative with a letter from their legal counsel explaining the rationale for their recent fee change for MVCRs. A portion of that letter also addressed the question of access to these records. The relevant portion of that letter stated:

[The police make their] MVCRs available to the public through a regularized system of access. As you have noted in your letter, MVCRs may be obtained from our Insurance Request Processor for a prescribed fee. Accordingly, as these records are publicly available, sections 15(a) [information published or available] and 38(a) [discretion to refuse requester's own information] of [*MFIPPA*] apply. Since the MVCRs are lawfully exempt from disclosure under *MFIPPA*, ... section 45 of that *Act* does not apply to our prescribed fee.

[6] The requester, through their legal representative (hereafter referred to as the appellant), appealed the decision of the police. In the appeal letter, the appellant indicated that she was appealing the decision to deny access to the MVCR on the basis of the exemptions in sections 15(a) and 38(a). The appellant took the position that MVCRs are not readily available to the public; that they contain personal information regarding multiple parties involved in accidents, and she questions whether anyone not

¹ The appellant referenced the fee increase for MVCRs from \$67.50 to \$293.80, inclusive of HST, which reflects the fee increase established by the police under their Bylaw No. 02-15 "A bylaw to impose fees and charges for services and activities provided by the York Regional Police."

named in the police report can simply pay the fee and obtain a copy. As a result, the appellant disputed that these reports, which are regularly completed in the investigation of accidents, are exempt under the *Act*.

[7] As an additional matter raised in her appeal letter, the appellant noted the recent significant increase in the fees payable for these MVCRs under the police's alternate fee schedule.

[8] During mediation, the police issued a supplemental decision letter that specifically identified the one-page MVCR as a responsive record. In that decision, the police maintained their position that this record is currently available to the public and therefore exempt pursuant to section 15(a) of the *Act*. The police provided this office with a copy of the one-page MVCR.

[9] Also during mediation, the appellant confirmed that she is only appealing the police's decision to deny access to the MVCR under the *Act* on the basis that the reports are publicly available. She also reiterates her concerns about the fee increases imposed by the police for MVCRs.

[10] Mediation did not resolve this appeal, and this file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry to the police, initially, and the police provided representations in response. I then sent a Notice of Inquiry to the appellant, along with a complete copy of the police's representations, and the appellant also provided representations.

[11] As the one-page MVCR at issue in this appeal appeared to contain the personal information of the appellant and others, I also invited the parties to address the issue of whether the information contained in the record constitutes personal information, whether disclosure would be an unjustified invasion of privacy, and whether the discretionary exemptions in sections 38(a) and/or (b) apply.

[12] In this order, I uphold the decision of the police, and find that the MVCR is available to the public through a regularized system of access.

RECORDS:

[13] The record at issue is a one-page form titled: "Motor Vehicle Accident Report." The form is a standard form with room for various categories of information as set out below. Only some of the categories of information were completed in the form at issue. A number of the categories were left blank.

[14] The form includes the following information:

- Report type (checkboxes for Original or Amended, and Fail to Remain)

- Accident number, date, and time
- Name of Investigating Officer (including identifying information and Police Force)
- Location (including identifying location)
- Driver 1 and 2 information (including spaces for names, addresses, telephone numbers, driver's licence numbers (including type and status), sex, date of birth, and whether a breathalyzer/blood test was administered)
- Vehicle 1 and 2 information (including vehicle identification information and numbers, number of occupants, insurance company information, and information the load and approximate speed of the vehicle)
- Investigating Officer's Description of Accident and Diagram
- Information about where the vehicle was taken, whether a person was charged and what the charges were
- Date, identity and signature of Investigating Officer
- Other information about involved Persons

[15] The form also includes spaces for other information, which are blank on the record at issue. This includes spaces for additional information about the accident, trailer information, and information about individuals who may also have been involved in the accident.

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(a) in conjunction with the section 15 (a) exemption apply to the information at issue?
- C. Did the police exercise their discretion under sections 15 and 38? If so, should this office uphold the exercise of discretion?

DISCUSSION:

PERSONAL INFORMATION

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

[16] 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;

[17] 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.²

[18] 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.³

[19] 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.⁴

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

Representations and findings

[21] The police submit that the record contains the personal information of both drivers involved in a motor vehicle collision (the appellant and the other party to the collision). They identify that the record contains the date of birth, sex, address and phone number of both drivers, and relates to them in their personal capacity. The police state that, despite the record containing personal information, that is not the exemption they rely on to withhold the record.

[22] The appellant acknowledges that the record contains her personal information as well as that of one or more other individuals.

[23] On my review of the MVCR, I agree with the parties that the record contains the personal information of two individuals involved in a motor vehicle accident. The personal information includes their date of birth, sex, address and phone number. The personal information relates to the appellant and one other individual.

[24] Because the record contains the personal information of the appellant, I will review the possible application of the section 38(a) exemption in conjunction with the exemption in section 15(a).

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Issue B: Does the discretionary exemption at section 38(a) in conjunction with the section 15(a) exemption apply to the information at issue?

Introduction

[25] Section 36(1) 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.

Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[26] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁶

[27] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

Section 15(a): information currently available to the public

[28] In this appeal, the police rely on section 38(a) in conjunction with section 15. Section 15(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

[29] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.⁷

[30] To show that a "regularized system of access" exists, the institution must demonstrate that

- a system exists

⁶ Order M-352.

⁷ Orders P-327, P-1387 and MO-1881.

- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information⁸

[31] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.⁹

[32] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the record that is responsive to the request.¹⁰

[33] Section 15(a) does not permit an institution to sever a small amount of information from a larger record, particularly where the entire record is otherwise subject to disclosure under the *Act*. A requester should not be required to compile small pieces of information from a variety of sources in order to obtain a complete version of a record that could be disclosed.¹¹

[34] Examples of the types of records and circumstances that have been found to qualify as a "regularized system of access" include:

- unreported court decisions¹²
- statutes and regulations¹³
- property assessment rolls¹⁴
- septic records¹⁵
- property sale data¹⁶
- police accident reconstruction records¹⁷
- orders to comply with property standards¹⁸

⁸ Order MO-1881.

⁹ Orders P-327, P-1114 and MO-2280.

¹⁰ Order MO-2263.

¹¹ Order PO-2641.

¹² Order P-159.

¹³ Orders P-170 and P-1387.

¹⁴ Order P-1316.

¹⁵ Order MO-1411.

¹⁶ Order PO-1655.

¹⁷ Order MO-1573.

[35] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.¹⁹ However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply.²⁰

[36] In the Notice of Inquiry sent to the parties, I noted that previous orders of this office have addressed the issue of whether certain types of records held by police forces are exempt from disclosure under section 15(a), including Orders MO-1573, MO-3216 and MO-3217. The parties were invited to refer to these orders in making their representations.

Representations

[37] The police submit that section 15(a) applies to the record on the basis that the information contained in the record is currently available to the public.

[38] The police state that the record "is available in its entirety to the public through a regularized system of access", and is "readily available upon request and upon payment of the prescribed fee". They state:

... The record in issue is a Motor Vehicle Accident Report ('report'). It is prepared by an officer called to the scene of a motor vehicle collision who investigates the scene, takes observations and makes determinations. The report itself is prepared from technical information gathered in the course of the police investigation into a particular accident. The report is readily available upon request and upon payment of the prescribed fee as set out in the institution's fee schedule.

[39] The police then provide a copy of the Police Services Board's Bylaw No.02-15, which is a bylaw to impose fees and charges for services and activities provided by the police. They also provide a copy of the schedule which sets out the fees imposed by the by-law for various records, services or activities provided by the police. The police then state:

For any member of the public who requests a report, they will be informed that there are two ways to obtain this record. They may attend a York Regional Police customer service counter and obtain the report on the spot, or they may submit a written request to the attention of the institution's insurance desk and obtain the report within a few days.

¹⁸ Order MO-2280.

¹⁹ Orders P-159, PO-1655, MO-1411 and MO-1573.

²⁰ Order MO-1573.

Both of these options are available to ensure that a member of the public may have access to a report and information. ...

[40] The police then refer to other decisions of this office in support of their position that the section 15(a) exemption appropriately applies to the record at issue. They state:

In Order MO-1573, the [Niagara Regional Police Services Board] relied on the section 15(a) exemption when a requester wanted a Traffic Reconstruction Report. The IPC ordered that the balance of convenience favoured Police. Though the Police system was not formalized, there was a detailed procedure for access spelled out in both law and policy. The pricing structure was clearly set out in detail in the By-law issued under the *Municipal Act*. Senior Adjudicator Goodis was satisfied that the system of obtaining this record would apply to any member of the public who sought access, despite the fact that practically speaking, it would be unlikely that a non-party would be interested in obtaining the record. The decision of the Police that section 15(a) applied to the record as issue was upheld.

[41] The police also refer to Order MO-1703, which similarly upheld a decision of the Hamilton Police Services Board that section 15(a) of the *Act* applied to the records at issue. That order dealt with 30 photographs and a "Fatal Collision Reconstruction Report" which the police state are similar to the records that were at issue in Order MO-1573. The police refer to the reasoning in Order MO-1703 which referenced that the police ordinarily dealt with requests for those kinds of records through the regularized access scheme that was in place, and state that this was "highly persuasive" in the decision to uphold non-disclosure of the records.

[42] The police then state:

Both aforementioned decisions refer to Order 01-51, where British Columbia Commissioner David Loukidelis articulates in reference to [the provincial equivalent to] the section 15(a) exemption that a record will be available for purchase by the public where a public body has formally decided, in accordance with any law or policy or rules applicable to it, that particular records or kinds of records are available for purchase by the public and are held out to the public as being available for purchase. In this case, the institution has formally decided, and has a procedure in place, to make this type of record available for purchase.

[43] The police then distinguish Order MO-3216, a recent decision of this office which concluded that the section 15(a) exemption did not apply to the records at issue in that appeal. The police state that the facts of that case were substantially different, as the records were only available to the *appellant* under a regularized process and not the

general public.

[44] The police then state:

Pursuant to our institution's policies, any member of the public is able to request and receive a report, not just the party involved in the collision. ...

... if the requestor were requesting an occurrence report from the accident, the argument would be a different one, as the institution recognizes that it limits this information to involved parties only and thus, the information is not publically available. However, there is no such limit with respect to motor vehicle collision reports, which is the record at issue here.

[The police take the position that its records] are available to the public in much the same manner accepted by the IPC in MO-1573 and MO-1703 for public access to accident reconstruction reports, with the fee established by By-law pursuant to the *Municipal Act*. The institution's motor vehicle collision reports are accessible through the exact same process and subject to the same By-law as the accident reconstruction reports.

The institution's fees and service charges are established by the Regional Municipality of York Police Services Board through a By-law enacted in accordance with the *Municipal Act 2001*, S.O. 2001. Pursuant to Section 391 of the *Municipal Act*, a municipality is authorized to impose fees or charges on persons for services or activities provided or done by or on behalf of it. Section 391(4) of the *Municipal Act* discusses fees for services, stating that a fee may be imposed whether or not it is mandatory for the municipality or local board imposing the fee or charge to provide or do the service or activity, pay the costs or allow the use of its property.

Taking all this into account, the [police submit] that the IPC has already made determinations with respect to the section 15(a) exemption's applicability to accident reconstruction reports. These motor vehicle collision reports and the process for obtaining them are no different, thus this issue should be treated in a similar fashion.

[45] The appellant provides a number of arguments in support of her position that the section 15(a) exemption does not apply to the MVCRs.

[46] She begins by reviewing the nature of the record, and states that it is "a provincially mandated form" that is "specifically completed and distributed at first instance for a defined set of users including *'involved persons, their lawyers and insurance companies'*." She identifies that the standard MVCR has multiple copies for distribution, and refers to the Ontario MVCR Manual in support of her position. She

states that copies of the MVCR are provided to the drivers at the scene for no charge "to provide them immediately with basic information regarding other involved persons," but that "they should also be entitled to the full copy for free upon request." She then states:

Although completed in this case by [the police], it is a standard form established by the province for all police forces. [The police are] merely custodian of a copy of a form completed in trust for the province and should not be entitled to invoke *MFIPPA* restrictions to frustrate provincial intent.

Ontario gets its copies, presumably for free. Drivers like the Appellant are supposed to get their copies, also for free. The multi-part form has two copies earmarked for that purpose but it cannot be the intent of the Province to restrict free disclosure to "the first two drivers" when there are additional drivers involved. Similarly, since the stakeholder group identified in the MVCR manual refers to "*involved persons, their lawyers and insurance companies*", the provincial intent is clearly to give those persons or entities the same access. A passenger or a pedestrian struck by a motor vehicle has the same statutory obligation to notify the correct insurer (which could be the insurer of another person involved) and put potential defendants on notice at an early date (which requires full contact information).

The multi-part distribution of the form beyond [the York Regional Police] and these statutory considerations demonstrate that a regularized system of access is not in fact followed or is set up incorrectly. Not everyone who is entitled to obtain the MVCR is or should be subject to the price charged. See Order MO-1881.

[47] The appellant also takes issue with the police's position that the MVCR is available to all. She states:

Further, [the police have] not demonstrated that the general public will be granted access to the personal information that an involved person is entitled or required to obtain to identify and locate other involved persons for accident benefits or tort claims.

The province permits selected individuals or organizations ... to access MTO records based on driver licence or vehicle plate identification to facilitate such claims at modest cost. This is not a level of access granted to the general public. The form-filling by [the police] and other police forces is partly for such claims. Involved persons are amongst the "clients" for whom these records are made. The Appellant has a right distinct from

the "general public" to receive this information without charge or redaction.

[48] Lastly, the appellant identifies her concerns about the pricing structure set out in the bylaw. She states:

In any event, the [police's] pricing structure is not bona fide. It is an attempt to offload the cost of completing the provincial form on the very "stakeholders" for whom the province created the form: involved persons, their lawyers and insurance companies. As admitted by [police] counsel ..., the purpose of the significant fee increase "is to transfer the full cost of collision investigations from the general tax base to the insurance industry and involved drivers" – yet the same fee is chargeable to everyone including injured passengers, children struck by cars, etc.

These factors distinguish the MVCR from a traffic reconstruction report as in Order MO-1573. Also, [the police are] charging an access fee far in excess of all surrounding jurisdictions which is also a relevant consideration for IPC intervention.

The facts actually echo the decision in MO-3216 that differential availability of access is fatal to a claimed section 15(a) exemption.

[49] The appellant also takes the position that the "exorbitant fee increases" amount to an effective denial of access in many cases. She states that insurers are not required to pay for or reimburse the cost of police reports, but that these out-of-pocket costs are borne by the clients, "many of whom are in financial difficulties as a result of their injuries." As a result, she argues that the exemption should not apply to "involved persons", and refers to Orders P-159, PO-1655, MO-1411 and MO-1573 in support of her position.

Analysis and Findings

[50] As noted above, to find that a "regularized system of access" exists, I must be satisfied that:

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information²¹

²¹ Order MO-1881.

[51] I will review each of these requirements in turn.

System exists

[52] The police have indicated that the public is able to access the MVCRs through the procedures as set out in Bylaw No. 02-15. They confirm that any member of the public has two ways to obtain the MVCR through the bylaw: either by attending at a police customer service counter to obtain the report on the spot, or by submitting a written request to the attention of the institution's insurance desk and obtaining the MVCR within a few days.

[53] On my review of the information provided by the police, I am satisfied that a system exists to provide the public with access to the MVCRs held by the police. I am also satisfied that whether or not the MVCR Form is a "provincially mandated form" has no impact on this finding.

Records are available to everyone

[54] Based on the representations of the police, I am satisfied that the MVCRs are available to everyone.

[55] The police have specifically stated that the MVCRs are "available to all." Furthermore, section 1 of Bylaw No. 02-15 reads:

Every person making a request for a service or activity described in Column 1 of Schedule "A" annexed shall pay to the Board the fee plus applicable taxes set out in Column 2 of Schedule "A" opposite such service or activity, as of the applicable effective date.

[56] Schedule "A", referenced in section 1 of the bylaw, includes MVCRs as items available under the bylaw.

[57] I have considered the appellant's position that the records ought not to be considered to be "available to everyone" because not everyone gets exactly the same information in the records. The appellant notes that the general public may not be granted access to the personal information that an involved person is entitled to and, depending on who the requester is, some personal information of other individuals may be severed from the records. As a result, the appellant argues that the records are not "available to everyone" because some parties receiving the MVCRs may have certain personal information redacted, while others may be entitled to unredacted copies.

[58] I note that in Order MO-1573, Senior Adjudicator Goodis considered a similar argument – that is – that some information may be redacted from the publicly available records due to various exemptions. He stated:

The Police indicate that access to these records [a "Motor Vehicle Accident Report", "Field Sketch", photographs, and other records, all collectively

referred to as a "Traffic Reconstruction Report"] is variable, depending on whether there is an on-going law enforcement matter (in which case the section 8 exemption would be claimed) and who the requester is (in which case the section 14 may be claimed). In my view, it is reasonable for the Police, in this manner, to take into account the law enforcement and personal privacy interests under the *Act*, and this practice does not compel a conclusion that the Police do not have a regularized system of public access. By analogy, section 33 of the *Act's* provincial counterpart requires institutions to make certain documents such as manuals, directives and guidelines available to the public, yet permits institutions to delete portions which otherwise may be exempt under the *Act*. In my view, this supports the notion that records can be considered generally available to the public, even where portions might be withheld in certain circumstances.

[59] I agree the approach taken in MO-1573. The fact that some information may be redacted from the publicly available records in certain situations does not mean that the records cannot be considered generally available to the public.

[60] I have also considered Order MO-3216, which the appellant argues is similar to this appeal, and which she states supports the position that "differential availability of access" is fatal to a claimed section 15(a) exemption. On my review of that order, I find that the facts are quite different from the ones before me. In MO-3216, Adjudicator Higgins noted that the records were available *only to the appellant* through the regularized system of access set up by the institution in that case. On that basis, he found that the records were not generally available to the public. Unlike that situation, the police have confirmed that any member of the public is able to request and receive the MVCRs, not just the parties involved in the collision.

[61] Accordingly, in the circumstances, I am satisfied that the record at issue is available to everyone.

A pricing structure to access the MVCRs is in place

[62] Regarding the pricing structure established to enable the public to access the MVCRs, the police have referenced Appendix A to Bylaw No. 02-15, which is a fee schedule setting out the fees payable for each of the various types of records accessible under the bylaw. The schedule confirms that the amount to be paid for a copy of the MVCR at the time of the request is \$260 plus HST where applicable. Based on the information provided by the police, I am satisfied that anyone wishing to obtain a copy of the MVCR can, upon payment of the fee, receive a copy of it.

[63] I have considered the appellant's arguments that some parties may be entitled to a copy of the record for free, and that this impacts the application of the section 15(a) exemption. As noted above, the appellant states:

Ontario gets its copies, presumably for free. Drivers like the Appellant are supposed to get their copies, also for free. The multi-part form has two copies earmarked for that purpose but it cannot be the intent of the Province to restrict free disclosure to "the first two drivers" when there are additional drivers involved. Similarly, since the stakeholder group identified in the MVCR manual refers to "*involved persons, their lawyers and insurance companies*", the provincial intent is clearly to give those persons or entities the same access. A passenger or a pedestrian struck by a motor vehicle has the same statutory obligation to notify the correct insurer (which could be the insurer of another person involved) and put potential defendants on notice at an early date (which requires full contact information).

The multi-part distribution of the form beyond [the York Regional Police] and these statutory considerations demonstrate that a regularized system of access is not in fact followed or is set up incorrectly. Not everyone who is entitled to obtain the MVCR is or should be subject to the price charged. See Order MO-1881.

[64] The appellant's position appears to be that because some entities or individuals may be entitled to the records free of charge, the referenced pricing structure is not applied to all who wish to obtain the information. I do not accept the appellant's position. Whether or not certain entities or parties are entitled to a document through an identified statutory or regulatory scheme without being required to pay a fee does not lead to the conclusion that there does not exist a pricing structure that is applied to all who wish to obtain the information. The fact that an entity such as the Province of Ontario is entitled to a copy without charge, or that a party, by virtue of their particular involvement in a matter, is entitled to the document without charge, does not mean that a general pricing structure is not established. As an analogy, the fact that a party to a legal action may be entitled to access certain documents free of charge through the discovery process, does not mean that a general pricing structure does not otherwise exist for that document if members of the public wish to obtain a copy. I am satisfied based on the evidence provided by the police that a pricing structure that is applied to all who wish to obtain the information exists, notwithstanding that some parties may be otherwise entitled to the records as a result of different or parallel access entitlements.

[65] Accordingly, based on the representations of the police, I am satisfied that a pricing structure that is applied to all who wish to obtain the information is in place.

[66] I have also considered the concerns raised by the appellant about the increases in the fees, and her position that this increase affects access rights. I note that a similar issue was also addressed in Order MO-1573, where the police were charging \$2,500 for a requested collision reconstruction report. The adjudicator in that appeal stated:

The appellant argues that there is no correlation between the pricing structure and the actual costs to the Police of providing access. As indicated above, once it is established that the records are “publicly available”, the exemption applies, and this office is not in a position to inquire into whether (as the BC Commissioner put it) the alternative fee structure “includes a profit element or only covers the seller’s costs of production and sale.”

[67] The adjudicator also accepted that there may be circumstances where the cost of accessing a record outside the *Act* is so prohibitive that it would amount to an effective denial of access; however, he found that this did not apply to the circumstances of the appeal before him. I agree with the approach taken in MO-1573, and find that the fee structure established by the police is not so prohibitive as to amount to an effective denial of access.

[68] In summary, I find that a “regularized system of access” exists, and that the exemption in section 15(a) applies to the MVCR in this appeal, subject to my review of the police’s exercise of discretion.

Issue C: Did the police exercise their discretion under sections 15 and 38? If so, should this office uphold the exercise of discretion?

General principles

[69] The sections 15 and 38 exemptions are discretionary, and permit 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.

[70] 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.

[71] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²² This office may not, however, substitute its own discretion for that of the institution.²³

²² Order MO-1573.

²³ Section 43(2).

Relevant considerations

[72] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²⁴

- 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
 - 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.

Representations

[73] The police submit that they properly exercised their discretion. They state that they took all relevant circumstances into account, including the specific circumstances of this appeal, and decided that there was “no basis to determine that the record at issue should be dealt with under the *Act* and not properly through the public channels available within the York Regional Police Service.”

²⁴ Orders P-344 and MO-1573.

[74] They state that, in making this decision, they considered the following:

- In this case, the requester is seeking a motor vehicle collision report about a collision which York Regional Police were called to attend.
- Disclosing information to an involved party meets the objective of the *Act*.
- The requester is an individual directly involved with the information.
- The request is for a record that has already been created.
- The non-technical information has already been supplied to the requestor.
- The issues raised by the requestor include access to records and cost of records.
- The record is still relevant to civil proceedings.
- The nature of the information is that of a police investigation, and not simply personal information.
- The historic practice of the institution has always been to provide a scheme for accessing these records. There is a pricing schedule in place for service fees and charges.
- The requester does not have a sympathetic or compelling need to receive the information.
- The economic burden is significantly less than that of the scheme already in place for accessing motor vehicle reconstruction reports.

[75] The police also note that they provided the appellant with the General Occurrence Report relating to the accident which "contained the necessary information they would need to initiate a claim. The report, called a general occurrence report, included the insurance information, drivers' information, and charge information along with some additional information." The police then state:

The reason the [MVCR] has a specific request policy in place is because of the technical information and investigative information that goes into the report. The discretion of the institution to not disclose the record was exercised to direct the requester to follow the standard procedure as any other public member would. No irrelevant factors were considered, and the failure to provide the requestor with the [MVCR] was not done in bad faith or for an improper purpose.

[76] The appellant submits that her client and other involved parties have an absolute right to free and complete disclosure of the MVCRs independent of the general public, and that in establishing a fee requirement for these parties, the police are

“contravening the provincial purpose” for the MVCRs. The appellant also argues that the police are charging the fees for an improper purpose: to “transfer the full cost of collision investigations from the general tax base to the insurance industry and involved drivers.” In raising the fees in the manner in which they have, the appellant argues that the police are “penalizing accident victims (including passengers and pedestrians).” The appellant also refers to the much higher fees for MVCRs charged by the York police in comparison to other local police services.

[77] Having regard to the submissions of the parties, I am satisfied that the police properly exercised their discretion in withholding the records under section 38(a) in conjunction with section 15(a). Although I appreciate that the appellant is unhappy with the fees established under the revised fee schedule set up in the bylaw, this dissatisfaction, as well as some of the other matters she raises concerning the “purpose of the MVCRs”, relate to matters outside the scope of this appeal. In my view, the appellant has not adduced sufficient evidence to demonstrate that the police exercised their discretion in bad faith or took into account irrelevant considerations in applying section 38(a) to withhold records.

Summary

[78] In summary, I find that the MVCR is available to the public and qualifies for exemption under section 38(a) in conjunction with section 15(a) of the *Act*.

[79] Having found that the MVCRs qualify for exemption under section 15(a), it is not necessary for me to review the alternative argument that the records qualify for exemption under the personal privacy exemption in section 38(b).

ORDER:

I uphold the decision of the police that the records qualify for exemption under section 38(a) in conjunction with section 15(a), and dismiss the appeal.

Original signed by _____
Frank DeVries
Senior Adjudicator

_____ October 31, 2017