Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3611

Appeal MA16-599

Toronto Police Services Board

May 25, 2018

Summary: The appellant seeks access to a police occurrence report which does not contain information about himself. Initially, the police issued a decision letter refusing to confirm or deny the existence of the report under section 14(5). The police subsequently took the position that disclosure of the report to the appellant would constitute an unjustified invasion of personal privacy under section 14(1), taking into consideration the presumption in section 14(3)(b). In this order, the adjudicator finds that the presumption against the invasion of personal privacy under section 14(3)(b) applies despite the appellant's claim that he is already aware of the information contained in the report. The police's decision to withhold access to the report 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, ss. 2(1) definition of "personal information", 14(1) and 14(3)(b).

Orders and Investigation Reports Considered: Order MO-1524-I.

OVERVIEW:

[1] The appellant filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the police) for a copy of a specific police report.

[2] The police issued a decision letter to the appellant refusing to confirm or deny the existence of the report under section 14(5).

[3] The appellant appealed the police's decision to this office and a mediator was assigned to the appeal.

[4] During mediation, the police issued a revised decision letter to the appellant claiming that disclosure of the report would constitute an unjustified invasion of personal privacy taking into consideration the presumption at section 14(3)(b).

[5] Mediation did not resolve the appeal and the file was transferred to the adjudication stage of the appeal process in which an adjudicator conducts an inquiry.

[6] During the inquiry, the parties provided representations to this office.

[7] In this order, I uphold the police's decision to deny the appellant access to the requested record under section 14(1), taking into account the presumption under section 14(3)(b) and dismiss the appeal.

RECORDS:

[8] The record at issue in this appeal is a 7-page computer print-out of a general occurrence report.

DISCUSSION:

[9] The sole issue in this appeal is whether disclosure of the record to the appellant would constitute an unjustified invasion of personal privacy under section 14(1).

[10] There is no dispute between the parties that the records contain the personal information of individuals other than the appellant. The term "personal information" is defined in section 2(1). Having reviewed the records, I am satisfied that the records contain the personal information of other individuals, such as their name, age, address, views and opinions as defined in paragraphs (a), (d), (e), (g) and (h) of the definition of "personal information" in section 2(1). The police's representations state that the records do not contain the personal information of the appellant and I confirm that the records do not.

[11] 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. The parties have not claimed that any of the exemptions in paragraphs (a) to (e) apply and I am satisfied that none apply. Accordingly, the only exception that could apply is section 14(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

[12] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. However, the parties have not claimed that any of the situations in section 14(4) apply and I am satisfied that none apply.

[13] 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). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.[1]

[14] The police claim that the presumption at section 14(3)(b) and the factor favouring privacy protection in section 14(2)(f) apply to the circumstances of this appeal. The appellant did not specifically raise any of the factors favouring disclosure but his submissions appear to give rise to the factor favouring disclosure at section 14(2)(d).[2] The appellant also takes the position that the records should be disclosed to him as he is aware of the circumstances leading up to the police's involvement.

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

[15] Section 14(3)(b) states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> > 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] 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.[3] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[4]

[17] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[5]

[18] In support of its position that the presumption at section 14(3)(b) applies, the police state:

> The nature of law enforcement institutions, in great part, is to record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police. An important principle contained in the Freedom of Information legislation is that personal information held by institutions should be protected from unauthorized disclosure. The information collected was supplied to the investigating police, in the

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[1] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[2] The appellant takes the position that disclosure of the records would help him defend a civil action filed against him.
[3] Orders P-242 and MO-2235.
[4] Orders MO-2213, PO-1849 and PO-2608.
[5] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

> course of an investigation into a law enforcement matter. The appellant was not present during this investigation nor was he named as involved party.
>
> The individuals supplied their personal information, believing there to be a certain degree of confidentiality. Police investigations imply an element of trust that the law enforcement agency will act responsibly in the manner in which it deals with recorded personal information. This is in addition to the possibility that based on any potential release of their personal information; the affected parties could be exposed to further negative attention from the appellant.

[19] The appellant's submissions did not specifically address this issue. However, the appellant provided lengthy submissions in support of his claim that he is already aware of the personal information at issue contained in the records. In support of his position, the appellant advises that he had a personal relationship with some of the affected parties and claims that he is aware of the information contained in the records.

[20] While the fact that information is known to a requester could be considered as an unlisted factor favouring disclosure under section 21(2), it cannot overcome the presumption at section 21(3)(f). However, given the emphasis the appellant placed on his submission that he is already aware of the information at issue I will consider whether the absurd result principle applies in the circumstances of this appeal.

Absurd Result

[21] Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[6]

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

- the requester sought access to his or her own witness statement[7]
- the requester was present when the information was provided to the institution[8]
- the information is clearly within the requester's knowledge[9]

[23] If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is

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[6] Orders M-444, MO-1323.
[7] Orders M-444, M-451.
[8] Orders M-444, P-1414.
[9] Orders MO-1196, PO-1679, MO-1755.

within the requester's knowledge.[10]

[24] The possible application of absurd result principle has been considered in appeals involving the personal information of individuals other than the requester. Many previous decisions from this office have found that the fact that a record does not contain the requester's personal information weighs significantly against the application of the "absurd result" to the record.[11] For example, in Order MO-1524-I, Adjudicator Laurel Cropley stated:

> One of the primary purposes of the *Act* (as set out in section 1(b)) is to protect the privacy of individuals. Indeed, there are circumstances where, because of the sensitivity of the information, a decision is made not to apply the absurd result principle (see, for example, Order PO-1759). In other cases, after careful consideration of all of the circumstances, a decision is made that there is an insufficient basis for the application of the principle (see, for example, Orders MO-1323 and MO-1449). In these situations, the privacy rights of individuals other than the requester weighed against the application of the absurd result principle.

[25] In this case, the appellant does not claim that he originally supplied the information at issue to the police. Instead, he argues that he is aware of the information supplied to the police on the date in question as a result of communications he received from one of the affected parties.

[26] In my view, the absurd result principle has no application in the circumstances of this appeal. I have reviewed the records along with the police's submissions and am satisfied that the appellant was not present when the affected parties supplied information to the parties. Furthermore, the appellant's submissions do not demonstrate that the information at issue is clearly within his knowledge.

Summary

[27] Having regard to the nature of information at issue along with the submissions of the parties, I am satisfied that the records were created as part of the police's investigation into a possible violation of law, namely a *Criminal Code* matter.

[28] Accordingly, I find that the presumption at section 14(3)(b) applies in the circumstances of this appeal. As stated above, once a presumed unjustified invasion of personal privacy under section 14(3) is established it can only be overcome if section 14(4) or the "public interest override" at section 16 applies. Accordingly, it is not necessary that I also consider whether any of the section 14(2) factors favouring disclosure or privacy protection apply.

[29] As section 14(4), the "public interest override" at section 16 and the absurd

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[10] Orders M-757, MO-1323, MO-1378.
[11] Order MO-1323.

result principle have no application to the circumstances of this appeal, I find that disclosure of the records to the appellant would constitute an unjustified invasion of personal privacy under section 14(1) taking into account section 14(3)(b). Accordingly, I dismiss the appeal.

ORDER:

The police's decision to withhold the records is upheld and the appeal is dismissed.

Original Signed By
Jennifer James
Adjudicator

May 25, 2018