

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3624

Appeal MA16-728

Peterborough Police Service Board

June 21, 2018

**Summary:** The police withheld information in a police occurrence report relating to the appellant under section 38(a), in conjunction with the law enforcement exemptions in sections 8(1)(c), (e) and (l). This order finds a police officer's name and some police codes can be withheld under section 8(1)(e) and section 8(1)(l) respectively. The remaining withheld information in the report must be disclosed to the appellant.

**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"), 38(a), 8(1)(c), 8(1)(e), 8(1)(l).

**Orders and Investigation Reports Considered:** Order MO-1515, Order MO-2199.

### OVERVIEW:

[1] The appellant made a request to the Peterborough Police Service Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to an incident involving her.

[2] The police granted partial access to the one-page occurrence summary report (report) they located. Access to some of the information in the report was withheld under section 38(a) in conjunction with the law enforcement exemption, particularly sections 8(1)(c) (investigative techniques and procedures), (e) (endanger life or physical safety) and (l) (facilitate commission or hamper control of crime) of the *Act*.

[3] The appellant appealed the police's decision to withhold information in the

report. At the heart of the appellant's issue is her objection to a comment in the report stating that the appellant possibly has mental health issues.

[4] Mediation did not resolve the outstanding issues and the appellant asked for this appeal to move to the adjudication stage, where an inquiry is conducted.

[5] During the inquiry, I invited and received representations from the police and the appellant on issues I set out in a Notice of Inquiry. I shared the non-confidential representations of the police with the appellant when inviting her representations.

[6] This order upholds the police's decision to withhold a police officer's name under section 8(1)(e) and some police code information under section 8(1)(l). The remaining withheld information in the report must be disclosed to the appellant.

## **RECORDS:**

[7] The withheld portions of a one-page police occurrence summary report (report) are at issue in this appeal. The withheld information comprises:

- populated fields in the report, including the occurrence status (e.g. resolved, open etc.), patrol zone codes, and other codes;
- one portion of information in the "summary" field of the report.

[8] The police withheld this information citing section 8(1)(c), (e) and (l).

## **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 8(1)(c), (e) or (l) exemptions apply to the withheld information?
- C. Did the police exercise its discretion under section 38(a)? If so, should I uphold the exercise of discretion?

## **DISCUSSION:**

### **A. Does the record 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). 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.<sup>1</sup>

[10] The police submit that the report contains the personal information of the appellant, including her name, date of birth, gender and address. I agree and note that the report also contains other personal information of the appellant including her driver's license number. Most of the appellant's personal information has been disclosed to her.

[11] In the Notice of Inquiry, I asked the police to address whether a police officer's name they withheld in the record was personal information. In their representations on the issue the police did not claim the name is personal information but that they were withholding it under the law enforcement section in section 8.<sup>2</sup>

[12] I find that the withheld police officer's name is not personal information. It is information about an individual in their professional capacity and does not reveal something of a personal nature about them. I will consider the withheld officer's name further below when considering the law enforcement exemption.

**B. Does the discretionary exemption at section 38(a) in conjunction with either of the section 8(1)(c), (e) or (l) exemptions apply to the withheld information?**

[13] As noted above, the report contains the appellant's personal information. 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.

[14] 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.

[15] 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.<sup>3</sup>

[16] Where access is denied under section 38(a), the institution must demonstrate

---

<sup>1</sup> Order 11.

<sup>2</sup> Specifically section 8(2)(c). Due to my findings below I do not need to address section 8(2)(c) in this order.

<sup>3</sup> Order M-352.

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. The police's exercise of discretion is discussed further under Issue C below.

[17] In this case, the institution relies on section 38(a) in conjunction with sections 8(1)(c), (e) and (l).

[18] Sections 8(1) states in part:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

...

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

...

(e) endanger the life or physical safety of a law enforcement officer or any other person;

...

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[19] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.<sup>4</sup> The institution must provide evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>5</sup>

[20] The police's representations do not directly address how the withheld information in the summary meets the requirements of any of the section 8(1) provisions they rely on. The police cite Order MO-1515 in their representations, but without discussing how that order applies to the present appeal. Order MO-1515 dealt with a request to correct records and therefore did not consider whether any of the information at issue could properly be withheld under section 8(1) of the *Act*.

---

<sup>4</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>5</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

***Information withheld in summary section***

[21] I will first consider the withheld information in the summary section of the report, because that is the focus of the police's representations. I cannot describe the information in the summary section of the report more specifically without revealing the information at issue. I received the police's arguments regarding this piece of information in confidence for the same reason. I can say that the police's submission that directly addresses the link between disclosing the information and the claimed harms in section 8(1) is that disclosing the information could interfere with their ability to perform their duties safely, effectively and in a timely manner.

*Section 8(1)(c)*

[22] To meet the "investigative technique or procedure" test under section 8(1)(c), the police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization.<sup>6</sup> I am satisfied that the police have not met that requirement.<sup>7</sup> In my view, the nature of the information means that it can continue to be utilized by police just as effectively with or without the the appellant's knowledge of it.<sup>8</sup> Therefore, section 8(1)(c) cannot be the basis for withholding it.

*Section 8(1)(e)*

[23] The police provided information supporting their submission that the appellant has a history of harassment of police officers, sometimes escalating into threats regarding their physical safety. However, the police do not address how disclosing the withheld information in the report summary could "endanger the life or physical safety of a law enforcement officer or any other person" for the purpose of section 8(1)(e), except regarding the disclosure of a police officer's name.<sup>9</sup> The police submit that if the name of the officer is disclosed, the officer will become a target for the same type of harassing behaviour.

[24] In response, the appellant submits that she has the names of many police officers and has not made any phone calls to them.

[25] I am satisfied that the evidence of the appellant's past behaviour meets the evidentiary threshold to withhold the officer's name in the summary under section

---

<sup>6</sup> Orders 170 and PO-2751.

<sup>7</sup> For clarity, I am not finding that the information qualifies as an "investigative technique or procedure." I do not need to decide that issue.

<sup>8</sup> I note that Order MO-2269-I reached the same conclusion in regard to section 8(1)(c).

<sup>9</sup> Though the police provided this evidence in arguing that section 8(2)(c) applies to exempt the officer's name from disclosure, it is more relevant to the police's application of section 8(1)(e) to the name.

8(1)(e).<sup>10</sup> Though there is no evidence that the appellant has actually acted on any of her threats of harm, the need to exercise caution in considering the section 8(1) harms,<sup>11</sup> and the nature of the threats, satisfies me that section 8(1)(e) is met. For the remaining information, as I found with regard to section 8(1)(c), I am satisfied that disclosing the withheld information does not impact its effectiveness at deterring any section 8(1)(e) harm the police may be concerned about. The link between disclosure and harm has not been established for the withheld summary information except the officer's name.

### *Section 8(1)(l)*

[26] I do not find the police's submission that disclosing the information could interfere with their ability to perform their duties safely, effectively and in a timely manner satisfies section 8(1)(l). The police do not address how disclosing the information could bring about the specified harms. As I found above when discussing section 8(1)(c), disclosing the withheld information will not diminish the ability of the police to use the withheld information for its intended purpose.

[27] The withheld information in the summary section contains two withheld codes. Previous orders of this office have found certain police generated codes are exempt from disclosure pursuant to section 8(1)(l).<sup>12</sup> In Order MO-2199, (then) Assistant Commissioner Brian Beamish stated:

A number of decisions of this office have consistently found that Police ten codes or "900" codes, and zone and sector codes qualify for exemption under section 8(1)(l) of the *Act* (see for example Orders M-393, M-757 and PO-1665). These codes have been found to be exempt because of the existence of a reasonable expectation of harm to an individual or individuals and a risk of harm to the ability of the police to carry out effective policing in the event that this information is disclosed. I adopt the approach taken by previous orders of this office. I have carefully reviewed the representations of the parties and find that the Police have provided me with sufficient evidence to establish a reasonable expectation of harm with respect to the release of this information.

[28] The police have not provided representations that establish a reasonable expectation of harm from disclosing the codes, as the institution did in Order MO-2199.

---

<sup>10</sup> As noted earlier, this finding means I do not need to consider the argument raised in the police's representations that the officer's name can be withheld under section 8(2)(c). I note that section 8(2)(c) would not apply to the officer's name, even setting aside the late raising of it in the police's representations.

<sup>11</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>12</sup> For example, Order M-781 regarding patrol zone numbers.

It is also not apparent from the records themselves what the function of the codes is, but they are not codes of the type described in Order MO-2199. Therefore, I do not uphold the police's decision to withhold the codes that appear in two places in the withheld information in the summary portion of the report.

[29] In summary, except for the name of the police officer that can be withheld under section 8(1)(e), I am satisfied, considering the nature of the withheld information in the summary that there is no link between disclosing the information and the section 8(1) harms claimed.

### ***Other information***

[30] As noted above, the police's representations focus on the withheld information in the summary section of the report. The police also withheld other information in various fields in the report, including the occurrence status field, patrol zone codes and other codes. The police do not address the basis for withholding this information in their representations.

[31] Section 8(1)(c) has been found not to apply to codes of the type at issue in this appeal<sup>13</sup> and section 8(1)(e) does not have any apparent connection to the withheld information.

[32] As noted above, previous orders of this office have found certain codes used by police are exempt from disclosure pursuant to section 8(1)(l). I uphold the application of section 8(1)(l) to the withheld codes in the report that have been withheld under section 8(1)(l) in previous orders such as MO-2199. This means I uphold the police decision to withhold the police patrol zone codes in the report. I do not uphold the police's decision to withhold information in other fields in the report, for example the field that discloses the final status of the occurrence. For the information other than the patrol zone codes, I am not satisfied that disclosing this information will result in any of the section 8(1) harms claimed.

### **C. Did the police exercise its discretion under section 38(a)? If so, should I uphold the exercise of discretion?**

[33] The section 38(a) 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.

[34] 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; or it fails to take into account relevant

---

<sup>13</sup> See, for example, Orders MO-2269-I and MO-3451.

considerations.

[35] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>14</sup> I may not, however, substitute my own discretion for that of the institution.<sup>15</sup>

[36] The appellant did not provide representations on the police's exercise of discretion.

[37] The police's representations address only the balancing exercise they submit they conducted with regard to the information in the summary section of the report they say would reveal investigative techniques, procedures and information.

[38] Despite this, I am satisfied that the police exercised their discretion in good faith when they relied on section 38(a) to withhold the police officer's name and the police patrol zone codes. The police disclosed the majority of the information in the report at issue, which demonstrates that they appropriately considered the appellant's right to access her own personal information. The police adhered to the principle that exemptions from the right of access should be limited and specific. There is no evidence that the police acted in bad faith.

[39] Therefore, with respect to the information I found could be withheld under section 38(a), I uphold the police's exercise of discretion.

## **ORDER:**

1. I uphold the police's decision to withhold the police officer's name in the summary section of the report under section 38(a) in conjunction with section 8(1)(e) and police patrol zone code information under section 38(a) in conjunction with section 8(1)(l).
2. I have highlighted the withheld information that must be disclosed to the appellant in a copy of the records accompanying the police's copy of this order. I order the police to disclose the highlighted information to the appellant by **July 30, 2018** but not before **July 24, 2018**.
3. I reserve the right to require the police to provide me with a copy of the information disclosed to the appellant in accordance with provision 2 of this order.

Original Signed by: \_\_\_\_\_

June 21, 2018 \_\_\_\_\_

<sup>14</sup> Order MO-1573.

<sup>15</sup> Section 43(2).



---

Hamish Flanagan  
Adjudicator