Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3649

Appeal MA17-627

Peel Regional Police Services Board

August 15, 2018

Summary: The appellant made a request to the Peel Regional Police Services Board (the police) for specific occurrence reports relating to herself, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The police withheld portions of the responsive record on the basis of the various exemptions, but later issued a revised access decision. The police continued to withhold some information on the basis of the personal privacy exemption at section 38(b) of the *Act*, relying on the factor listed at section 14(2)(f) that the information withheld is highly sensitive. This order upholds both the access decision of the police and the reasonableness of their search for responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(2)(f), 17 and 38(b).

Orders Considered: Order MO-2954.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received the following two-part request, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

1. I want the police arrest report on [specified dates] at [a specified location]

2. I want the arrest report of [specified year] in Guelph. [Specified location].

[2] The police forwarded part 2 of the request to the Guelph Police Service, pursuant

to section 18 of the *Act*. This is the subject of another appeal, appeal MA17-610.

[3] In response to part 1 of the request, the police located an occurrence report.

[4] The police then issued an access decision to the appellant, granting her partial access to the record based on a number of exemptions in the *Act*. They released the name of the affected party to the appellant because the affected party had attended the scene and was therefore known to the appellant. The information released to the appellant also indicates that the police attended under the *Mental Health Act*. However, the police determined that the information provided by the affected party was personal information and that disclosing it would be an unjustified invasion of the affected party's personal privacy. They, therefore, withheld that information from the appellant.

[5] The requester, now the appellant, appealed the police's decision to this office.

[6] During mediation, the issues were narrowed and the police issued a revised decision to the appellant, granting access to further information. However, other issues could not be resolved at mediation so the case moved to adjudication.

[7] The remaining issues at adjudication concern the information withheld pursuant to the discretionary exemption at section 38(b) (personal privacy) with reference to the presumption in section 14(3)(b) (investigation into possible violation of law), the police's exercise of discretion, and whether the police conducted a reasonable search for records. I have decided the issues in this case after considering written representations from both the police and the appellant.

[8] This order upholds both the access decision of the police and the reasonableness of their search for responsive records.

RECORDS:

[9] The information at issue consists of pages 1 and 4 of an 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 police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

D. Did the police conduct a reasonable search for records?

DISCUSSION:

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

[10] The record contains the personal information of both the appellant and an affected party, as explained below.

[11] 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.

[12] The term "personal information" is defined in section 2(1) as meaning recorded information about an identifiable individual, including:

> …
>
> (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;

[13] 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.[1]

[14] The record contains the personal information of the appellant, including her name and the affected party's views or opinions of her (as defined in paragraphs (g) and (h), above).

[15] Having reviewed the record, I agree with the police that the record contains the personal information of the affected party as well. The record is an occurrence report created because the affected party, in their personal capacity, contacted police for assistance for the appellant, and described the affected party's interaction with the appellant. This is the affected party's personal information under the introductory wording of the definition of personal information in the *Act*.

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

[16] As explained below, the police, as the party resisting disclosure, have met their burden to show that the information that they have withheld is exempt from disclosure under the personal privacy exemption at section 38(b).

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

[17] 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.

[18] Under section 38(b), if 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 requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.[2]

[19] 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 (3) and balance the interests of the parties.[3] Section 14(4) lists situations that would not be an unjustified invasion of personal privacy, but it does not apply in this case.

Do any of the section 14(3) presumptions apply?

[20] Although the police initially found that section 14(3)(b) (investigation into possible violation of law) applied, I agree with their revised assessment at adjudication that it does not apply. Previous IPC decisions have found that the requirements of section 14(3)(b) are not met when the police exercise their authority under the *Mental Health Act*.[4] The record disclosed to the appellant clearly indicates that the occurrence type was one under the *Mental Health Act*. Therefore, section 14(3)(b) does not apply to the record.

[21] No other section 14(3) presumptions apply to the record either.

Do any of the section 14(2) factors apply?

[22] The police persuasively argue that section 14(2)(f) is a relevant factor in determining whether disclosure of the affected party's personal information would constitute an unjustified invasion of personal privacy.

[23] The appellant's representations did not address factors that would favour disclosure, and none were evident to me from my review of the record.

14(2)(f): highly sensitive

[24] To be considered highly sensitive, there must be a reasonable expectation of

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[2] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).
[3] Order MO-2954.
[4] Orders MO-1384, MO-1428, MO-3063, MO-3465, and MO-2954.

significant personal distress if the information is disclosed.[5]

[25] The police submit that the information in the record is highly sensitive and there is a reasonable expectation of significant personal distress to the affected party if it is disclosed, and I agree. The context of the record is key: the affected party, in relative confidence, called the police about the appellant to obtain help for her. This involvement makes the affected party's personal information intertwined with the appellant's. As the police argue, previous IPC orders[6] have found that information about 9-1-1 calls for assistance can be highly sensitive, and I find that these cases apply here. In this case, the affected party had a reasonable expectation that their 9-1-1 call would "only be shared with the appropriate services in order to provide assistance and not become a public record".[7] It is reasonable to expect that the affected party would be significantly personally distressed if the intertwined severed personal information is disclosed.

[26] Having found that section 14(2)(f) weighs in favour of non-disclosure and that there are no factors favouring disclosure, I find that the personal information of the affected party is exempt under section 38(b), subject to my review of the police's exercise of discretion below.

Issue C: Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[27] On the basis of the following, I find that the police properly exercised their discretion.

[28] The section 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.

[29] 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.

[30] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[8] This office may not, however,

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[5] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[6] See, for example, Order PO-3093 and PO-1764.
[7] Order MO-3229, para 27.
[8] Order MO-1573.

substitute its own discretion for that of the institution.[9]

[31] Here, the police considered and balanced the right of an individual to have access to her own personal information with the need to protect highly sensitive information. They made information available to her about an affected party that was within her knowledge, but withheld highly sensitive information. These were proper and relevant considerations, and I am satisfied that they were made in good faith and not in bad faith. There is no evidence before me that the police took into consideration any irrelevant factors. Therefore, I uphold the exercise of discretion by the police.

Issue D: Did the police conduct a reasonable search for records?

[32] In response to the appellant's request, the police conducted a search that was reasonable in the circumstances, so I uphold their decision and have no reason to order a further search.

[33] The appellant claims that additional records exist beyond those identified by the police, so I must decide whether the police have conducted a reasonable search for records as required by section 17.[10]

[34] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[11] To be responsive, a record must be "reasonably related" to the request.[12]

[35] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[13]

[36] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[14]

[37] However, the details in the affidavit provided by the police demonstrate why that is not appropriate here. The search was conducted by a police employee who has applied the *Act* in the course of her regular duties since 2011, and has been trained in the application of the *Act* to keep current with it. She applied her knowledge in the subject matter of the request by making the following reasonable efforts to locate responsive records:

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[9] Section 43(2).
[10] Orders P-85, P-221 and PO-1954-I.
[11] Orders P-624 and PO-2559.
[12] Order PO-2554.
[13] Orders M-909, PO-2469 and PO-2592.
[14] Order MO-2185.

a. confirmed that no clarification was needed from the requester since the request contained sufficient detail;

b. interpreted the *Act* liberally and did not limit her search to a particular timeframe (though the request was restricted to particular dates) but rather, searched all databases which might have responsive records;

c. conducted searches of the appellant's name in all specified databases which might have responsive records;

d. conducted a query of the intersection specified in the request;

e. located one responsive record in which the appellant was named;

f. confirmed that no responsive records related to the Guelph incident (part two of the request) existed with the Peel police;

g. forwarded a copy of the appellant's letter to the Guelph police, as the relevant police service that could respond to the request.

[38] In contrast to the detailed evidence of the police, the appellant's representations do not address the search issue. Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[15] She did not do so, and given the details provided in the police affidavit, there is no evidence before me to suggest that there is a reasonable basis to believe that further response records exist.

ORDER:

I uphold the access decision and the search of the police. Accordingly, this appeal is dismissed.

Original Signed by: August 15, 2018

Marian Sami
Adjudicator

[15] Order MO-2246.