

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3665-F

Appeal MA17-136

Kingston Police Services Board

October 4, 2018

Summary: This final order involves a review of the exercise of discretion by the Kingston Police Services Board (the police) to withhold information under section 38(b). In Interim Order MO-3623-I, the adjudicator upheld the police's decision, in part, finding that one of the general occurrence reports is not exempt as it only contains the personal information of the appellant. In addition, she found that the police did not exercise their discretion with respect to the information that was exempt, and ordered the police to exercise their decision. In this final order, the adjudicator upholds the police's exercise of discretion under section 38(b), and she dismisses the appeal.

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

OVERVIEW:

[1] The Kingston Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all police incident reports relating to the requester.

[2] In their decision, the police granted partial access to the records, and denied access to some information pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] During mediation, the mediator raised the possible application of the

discretionary personal privacy exemption at section 38(b) as the records contain information relating to the appellant and other individuals.

[4] In Interim Order MO-3623-I, I upheld the police's decision, in part, finding that one of the general occurrence reports is not exempt as it only contains the personal information of the appellant. Although I found that section 38(b) applies to the other information, I find that the police did not exercise their discretion in regard to the other general occurrence report. Accordingly, I ordered the police to disclose one general occurrence report to the appellant and to exercise their discretion with respect to the information in the other one.

[5] In compliance with the interim order, the police exercised their discretion and submitted representations detailing their considerations in the exercise of that discretion. The police maintained their decision to withhold the information.

[6] I invited and received the appellant's representations in response to the police's representations.

[7] In this final order, I uphold the police's exercise of discretion under section 38(b), and dismiss the appeal.

RECORDS:

[8] The information at issue is contained in the September 2015 general occurrence report.

DISCUSSION:

Should the police's exercise of discretion under section 38(b) be upheld?

[9] In the interim order, I set out a list of the considerations generally applied to a review of the exercise of discretion by an institution, noting that additional unlisted considerations could also be relevant.¹ The list of relevant considerations includes:

- 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

¹ Orders P-344 and MO-1573.

- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- 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.

Parties' representations

[10] In their representations, the police submit that they considered a number of factors when exercising their discretion. They submit that the personal information that was compiled was clearly compiled in the course of a police investigation. As such, the release of affected parties' personal information would constitute an unjustified invasion of personal privacy pursuant to section 14(3)(b) of the *Act*. The police submit that the withheld information was very limited and very specific; limited to personal information of the affected parties. They also submit that disclosing the withheld information would not impact the appellant's health or safety nor inform or promote public confidence in the actions and activities of the police. The police finally submit that the withheld information is highly sensitive and confidential in nature. In addition, they submit that they balanced the right of access against the affected parties' right to privacy and found the affected parties' right to privacy outweighs the factors in favour of the appellant's right to access.

[11] Although the appellant provided representations, her representations do not address this issue. Her representations consist of numerous medical reports, along with submissions dated July 23, 2018 and August 7, 10, 11, and 17, 2018. It appears that the appellant takes issue with my statement that the police were investigating allegations that the Kingston General Hospital and other hospitals were falsifying her personal health information (PHI). The appellant has provided copies of letters in which she has made numerous requests to have her PHI corrected in a number of her medical reports. Although I understand that the appellant is deeply concerned about what she views as the false information contained in her medical reports, it is not within my

jurisdiction to deal with that issue within the context of this appeal. As such, I am unable to make any further comments on this topic.

Analysis and findings

[12] I have considered the circumstances surrounding this appeal and the police's recent representations which detail the factors that they considered when determining whether they should exercise their discretion to disclose the withheld information to which section 38(b) applies. I am satisfied that the police have not erred in their exercise of discretion with respect to their application of section 38(b) of the *Act* regarding the withheld information. I am also satisfied that they did not exercise their discretion in bad faith or for an improper purpose. The police have considered the purposes of the *Act*, and have given due regard to the nature and sensitivity of the undisclosed information in the context of this appeal. 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 police's exercise of discretion to withhold the information to which section 38(b) applies.

Original Signed by: _____
Lan An
Adjudicator

_____ October 4, 2018