

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3783

Appeal MA18-516

York Regional Police Services Board

June 7, 2019

**Summary:** At issue in this appeal is the appellant's request for access to the withheld portions of a general occurrence report relating to a matter she was involved in. The police relied on section 38(b) (personal privacy) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to deny access to the portions they withheld. In this order, the adjudicator upholds the decision of the police to deny access to the withheld information and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(3)(b) and 38(b).

### 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*) for access to information pertaining to a matter she was involved in.

[2] The police identified responsive records and granted partial access to them, relying on section 38(b) of the *Act* to deny access to the portion they withheld.

[3] The requester (now the appellant) appealed the access decision.

[4] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[5] I commenced my inquiry by sending a Notice of Inquiry setting out the facts and

issues in the appeal to the police and a person whose interests may be affected by disclosure (the affected party). Only the police provided representations in response. I then sent a Notice of Inquiry to the appellant along with a copy of the police's representations. Instead of specifically addressing the issues in the Notice of Inquiry and the police's representations, the appellant provided documentation with two attached handwritten notes in response.

[6] In this order, I uphold the police's decision to deny access to the withheld information and dismiss the appeal.

## **RECORDS:**

[7] At issue in this appeal are the withheld portions of a general occurrence report.

## **ISSUES:**

- A. Does the general occurrence report 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?

## **DISCUSSION:**

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

[8] 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;

[9] 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 records contain the personal information of the appellant as well as other identifiable individuals. The appellant provided no representations on this issue.

[11] I have reviewed the general occurrence report at issue and I am satisfied that it contains the personal information of the appellant, as well as other identifiable individuals that fall within the scope of the definition of "personal information" at section 2(1) of the *Act*. This is because, amongst other things, it contains the names of the appellant and other identifiable individuals along with other personal information relating to them, as set out at section 2(1)(h) of the definition of "personal information".

[12] Having found that the records contain the mixed personal information of the appellant and other identifiable individuals, I will consider the appellant's right to access the remaining withheld information under section 38(b) of the *Act*.

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<sup>1</sup> Order 11.

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

[13] 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. Under section 38(b), where 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.

[14] Section 38(b) reads:

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

if the disclosure would constitute an unjustified invasion of another individual’s personal privacy

[15] Section 14 of the *Act* provides guidance in determining whether the unjustified invasion of personal privacy threshold is met. If the information fits within any of the paragraphs of sections 14(1) or 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[16] 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 also consider, and weigh, the factors and presumptions in sections 14(2) and 14(3) and balance the interests of the parties.<sup>2</sup> 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 38(b). In this appeal, the police assert that the factors at sections 14(2)(e), 14(2)(f), 14(2)(h), 14(2)(i) and the presumption in section 14(3)(b) apply.

[17] The presumption at section 14(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

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;

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<sup>2</sup> Order MO-2954.

[18] The police submit that the general occurrence report was generated in the context of the investigation of a criminal harassment complaint. The appellant provided no specific representations on this issue. However, notes attached to the documents provided by the appellant indicate that she takes issue with the credibility and conduct of certain individuals.

### **Analysis and finding**

[19] I agree with the position of the police that the presumption against disclosure in section 14(3)(b) applies in this appeal because the personal information in the general occurrence report was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*<sup>3</sup>. The presumption only requires that there be an investigation into a possible violation of law<sup>4</sup>, which I find occurred in this case. I have also considered whether any section 14(2) factors favouring disclosure may apply, but I find that they do not.

[20] Given the application of the presumption in section 14(3)(b), and the fact that no factors favouring disclosure were established, and balancing all the interests, I am satisfied that the disclosure of the remaining withheld personal information would constitute an unjustified invasion of another individual's personal privacy<sup>5</sup>. Accordingly, I find that this personal information is exempt from disclosure under section 38(b) of the *Act*. In light of the amount of information the appellant has already received, I am also satisfied that the undisclosed portions of the general occurrence report cannot be reasonably severed without revealing information that is exempt under section 38(b) or resulting in disconnected snippets of information being revealed.<sup>6</sup>

[21] Finally, I have considered the circumstances surrounding this appeal and I am satisfied that the police have not erred in the exercise of their discretion with respect to section 38(b) of the *Act*, regarding the withheld information that will remain undisclosed as a result of this order. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose. The police considered the purposes of the *Act* and have given due regard to the nature of the information in the specific circumstances of this appeal. Accordingly, I find that the police took relevant factors into account and I uphold their exercise of discretion in this appeal.

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<sup>3</sup> R.S.C., 1985, c. C-46.

<sup>4</sup> Orders P-242 and MO-2235.

<sup>5</sup> As I have found that the presumption in section 14(3)(b) applies, it is not necessary for me to consider whether the factors favouring non-disclosure at sections 14(2)(e), 14(2)(f), 14(2)(h) and 14(2)(i) might also apply.

<sup>6</sup> See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

**ORDER:**

I uphold the decision of the police and dismiss the appeal.

Original signed by \_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_ June 7, 2019