

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3869-F

Appeal MA17-630-2

Ottawa Police Services Board

November 29, 2019

Summary: This final order involves a review of the exercise of discretion by the Ottawa Police Services Board (the police) to withhold information under section 38(a) in conjunction with section 9(1)(c) (relations with other governments). In Interim Order MO-3837-I, the adjudicator found that section 38(a) in conjunction with section 9(1)(c) is applicable but she ordered the police to re-exercise their discretion with respect to one record. In this final order, the adjudicator upholds the police's re-exercise of discretion, 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, sections 9(1)(c) and 38(a).

OVERVIEW:

[1] The Ottawa 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 records relating to the requester from April 2009 to October 12, 2017.

[2] The police issued a decision granting partial access to the records responsive to the request. Access to the withheld information was denied pursuant to section 38(a) (discretion to refuse requester's own information) in conjunction with sections 8(1)(c) (reveal investigative techniques and procedures), 8(1)(i) (security), 8(1)(l) (facilitate commission of an unlawful act) and 9(1)(c) (foreign government), as well as the mandatory and discretionary personal privacy exemptions in sections 14(1) and 38(b) of *Act*. The police also relied on the exclusion at section 52(2.1) (ongoing prosecution) of the *Act* for a certain record.

[3] In Interim Order MO-3837-I, I found that section 38(a) in conjunction with section 9(1)(c) applied to the records, but I ordered the police to re-exercise their discretion with respect to pages 18 to 57 of Record 3 withheld under section 38(a) in conjunction with section 9(1)(c).

[4] In compliance with the interim order, the police re-exercised their discretion and submitted representations detailing their considerations in the exercise of that discretion. The police maintained their decision to withhold pages 18 to 57 of Record 3.

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

[6] In this final order, I uphold the police's re-exercise of discretion, and dismiss the appeal.

RECORDS:

[7] The information at issue is contained on pages 18 to 57 of Record 3.

DISCUSSION:

[8] 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
 - 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

¹ Orders P-344 and MO-1573.

- 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

[9] In their representations, the police submit that they considered a number of factors when re-exercising their discretion. In particular, they considered the appellant's right of access to his own personal information; the fact that some of the withheld information consists of a number of court documents relating to the appellant; the fact that the legal matter and investigations are no longer ongoing; and the passage of time.

[10] With respect to the court documents at pages 18 to 23 of Record 3, the police submit that they considered the appellant's right to these documents. They submit that although the appellant may already have access to these documents, they contain personal information of other parties along with information that would be considered proprietary to the Government of Bermuda's Supreme Court. As such, the police submit that, without knowledge of what (or if any) information may have been provided to the appellant, they chose to exercise their discretion to continue to protect the confidentiality of all these documents and the information contained within them.

[11] With respect to the remaining documents, the police submit they were provided, in confidence, to them from the Bermuda Police Service. The police explain that the Bermuda Police Service collected these documents as part of their investigations into the possibility of a criminal offence, and their disclosure could identify other parties, and would reveal information collected and shared by that agency.

[12] Although the appellant provided representations, his representations do not address the police's re-exercise of discretion under section 38(a). His representations consist of attachments, along with his submissions. I have reviewed his submissions and the attachments but find that they are not relevant to the issue in question. In his submissions, the appellant submits that the issue, at hand, are credibility and un-vetted information from Bermuda. He alleges that the Bermuda Police Service illegally arrested and imprisoned him and another Canadian citizen. The appellant also alleges that a specified named judge in Bermuda relied on manufactured evidence by the police to find him guilty of specific criminal charges.

Analysis and findings

[13] I have considered the circumstances surrounding this appeal and the police's representations which detail the factors that they considered when determining whether they should re-exercise their discretion to disclose pages 18 to 57 of Record 3. I am satisfied that the police have not erred in their exercise of discretion. I am also satisfied that they did not exercise their discretion in bad faith or for an improper purpose. The police properly considered the appellant's right to have access to his own personal information; the fact that some of the withheld information consists of a number of court documents relating to the appellant; the fact that the legal matter and investigations are no longer ongoing; and the passage of time. They have also 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 re-exercise of discretion in this appeal.

ORDER:

I uphold the police's exercise of discretion to withhold the information on pages 18 to 57 of Record 3 pursuant to section 38(a) in conjunction with section 9(1)(c).

Original signed by _____
Lan An
Adjudicator

November 29, 2019