

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-4136

Appeal MA21-00196

Hamilton Police Services Board

December 14, 2021

**Summary:** The appellant sought access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to a police report about him. On appeal to the IPC, the adjudicator largely upholds the police's decision to grant the appellant partial access to responsive records. She finds the police properly withheld the personal information of other individuals (including the names of complainants) under section 38(b) of the *Act* (personal privacy), and police codes and other operational information under section 38(a) (discretion to refuse own personal information), read with the law enforcement exemption at section 8(1)(l). Other withheld information is not reasonably related to the appellant's request. The adjudicator orders the disclosure of two discrete severances in the records concerning the police's investigation of the appellant, because they do not qualify for any of the claimed exemptions or for severance under any other ground in the *Act*.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 2(1) (definitions), 8(1)(e) and (l), 14(2)(f) and (h), 14(3)(b), 17, 38(a), and 38(b).

### OVERVIEW:

[1] This decision concerns an appellant's right of access to records created as a result of a report made about him to the Hamilton Police Services Board (the police).

[2] The appellant was the subject of a hearing by his union. Because of concerns about the appellant's behaviour at the hearing, some individuals (the complainants) filed a report with the police. In making this report, the complainants provided the police with information about themselves, including their names and the reasons for

their concerns.

[3] Some time later, the appellant filed a request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), seeking access to police records relating to the report that was made about him around the date of his union hearing.

[4] In response, the police issued a decision granting the appellant partial access to six pages of responsive records. The records consist of an occurrence report, an officer's handwritten notes, and a one-page "computer-automated dispatch record" capturing basic details of the call reporting the incident to the police.

[5] In withholding portions of these records, the police cited the discretionary exemption at section 38(a) of the *Act*, which permits an institution to refuse a requester access to his own information, in conjunction with sections 8(1)(e) (endanger life or safety) and 8(1)(l) (facilitate commission of an unlawful act) of the *Act*. The police withheld other portions of the records on the basis of the discretionary personal privacy exemption at section 38(b) of the *Act*. In addition, the police withheld small portions of the records on the ground these portions are not responsive to the appellant's request.

[6] The appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC). After an attempt at mediation, the file moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. During my inquiry, I sought and received representations from the police and the appellant, which were exchanged in accordance with the IPC's *Code of Procedure and Practice Direction Number 7*.

[7] In this decision, I largely uphold the police's decision to withhold portions of the records on the claimed grounds. I order the police to disclose two discrete severances in the occurrence report.

## **RECORDS:**

[8] At issue are six pages of police records relating to a report made about the appellant. The records are an occurrence report, officer's notes, and a computer-automated dispatch record.

## **ISSUES:**

- A. What is the scope of the request? Is some information not responsive to the request?
- B. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

- C. Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the law enforcement exemption at section 8(1), apply to the information at issue? Did the police properly exercise their discretion under sections 38(a) and 8(1)?
- D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue? Did the police properly exercise their discretion under section 38(b)?

## **DISCUSSION:**

### **A. What is the scope of the request? Is some information not responsive to the request?**

[9] The police withheld some discrete portions of the records on the ground they are not responsive to the appellant's request concerning the police report that was made about him.

[10] To be considered responsive to a request, the information at issue must "reasonably relate" to the request.<sup>1</sup> Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.<sup>2</sup>

[11] I have examined the portions of the records withheld on the basis they are not responsive to the request. I agree they are not reasonably related to the appellant's request, which is clear on its face. These withheld portions consist of printing information (such as print dates and codes) that appears to have been automatically generated when the records were printed for the purposes of this appeal. Also withheld on this basis are standard report headings that are not relevant to the account of the incident involving the appellant, and are followed by blank fields as a result. In the officer's handwritten notes, the withheld portions concern another incident entirely, one that is unrelated to the appellant.

[12] At adjudication, the appellant provided no basis to challenge the police's claim of non-responsiveness for this information. I also note he has not indicated any interest in accessing this information.

[13] I uphold the police's decision to withhold discrete portions of the records on the basis they are not responsive to the request.

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<sup>1</sup> Orders P-880 and PO-2661.

<sup>2</sup> Orders P-134 and P-880.

**B. Do the records at issue contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[14] In order to decide which sections of the *Act* may apply in the circumstances, it is first necessary to decide whether the records at issue contain “personal information,” and if so, to whom the personal information relates.

[15] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Information is “about” the individual when it refers to the individual in a personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in a professional, official or business capacity is not considered to be “about” the individual.<sup>3</sup>

[16] Section 2(1) of the *Act* gives a list of examples of personal information. It includes: information relating to race, sex, or family status of an individual [paragraph (a)], the individual’s address or telephone number [paragraph (d)], the views or opinions of another individual about the individual [paragraph (g)], and the individual’s name appearing with other personal information relating to the individual [paragraph (h)]. The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”<sup>4</sup>

[17] If a record contains the requester’s own personal information, the requester’s access rights to the record are greater than if the record does not.<sup>5</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions in the *Act* might apply.<sup>6</sup>

[18] In this case, there is no dispute that the records contain the personal information of the appellant. The records all contain, at a minimum, the appellant’s name in the context of a report made to the police about him. On this basis alone they would qualify as records of the appellant’s personal information within the meaning of paragraph (h) of section 2(1) of the *Act*.

[19] The records also contain the personal information of several other individuals, being the complainants to the police, and another individual with a connection to the appellant. The information about these individuals in the records reveals, at a minimum, that each has a connection with the appellant. I am also satisfied that this information relates to each of these individuals in a personal, and not in a professional, capacity. Because I find the records contain the personal information of these other individuals,

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<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Order 11.

<sup>5</sup> Under sections 36(1) and 38 of the *Act*, a requester has a right of access to the requester’s own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>6</sup> See sections 14(1) and 38(b).

their personal privacy may be implicated by the appellant's request for access to these records. In the remainder of this order, I will refer to these individuals as affected parties, because their interests may be affected by disclosure of the records.

[20] Having found the records contain the personal information of the appellant as well as the personal information of several affected parties, I will consider under the next headings the police's claims for withholding the information at issue under section 38 of the *Act*. This section permits an institution to withhold from a requester his or her own personal information.

**C. Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the law enforcement at section 8(1), apply to the information at issue? Did the police properly exercise their discretion under sections 38(a) and 8(1)?**

[21] 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 some exemptions from this right.

[22] Section 38(a) of the *Act* 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.

[23] The discretionary nature of section 38(a) ("may" refuse to disclose) 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 own personal information.<sup>7</sup>

[24] If the institution refuses to give a requester access to his or her own personal information under section 38(a), the institution must show that it considered whether a record should be released because the record contains the requester's personal information.

[25] In this case, the police rely on section 38(a) read with sections 8(1)(e) and (l) to withhold "10-codes" (police codes), patrol zones, and other operational codes contained in the records. I have also considered under this heading some additional severances to the records concerning the police's investigation of the appellant in response to the report they received.

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<sup>7</sup> Order M-352.

[26] These sections of the *Act* read:

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

(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.

[27] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context.<sup>8</sup> However, parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>9</sup>

[28] The IPC has consistently found that police codes, such as 10-codes, and other police operational information, such as patrol zones, qualify for the law enforcement exemptions at section 8(1)(l) of the *Act* and the equivalent in the *Act's* provincial counterpart. This is based on the IPC's acceptance of claims that disclosure of such information could reasonably be expected to lead to the harms outlined in those sections, including hampering the ability to control crime.<sup>10</sup>

[29] The appellant provided no reasons to challenge the police's reliance on section 8(1)(l) for this type of information. I further note that he has not indicated any interest in access to this particular information. In the circumstances, I see no reason to depart from the IPC's long-standing approach, and I accept that section 8(1)(l) applies to the police codes and related information that is at issue here.

[30] I also find no defect in the police's exercise of discretion in withholding this type of information from the appellant. The police acknowledged the appellant's right of access to his own personal information, but took the view that law enforcement interests outweighed the appellant's access rights in relation to this particular type of information. There is no evidence to suggest the police improperly exercised their discretion in doing so. I therefore uphold the police's decision to withhold police codes and related information under section 38(a), read with section 8(1)(l).

[31] I have also considered under this heading two additional severances to the occurrence report. These severances (of one word each) elaborate on certain steps the police took in investigating the appellant after receiving the complainants' concerns

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<sup>8</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>9</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>10</sup> Among others, see Orders MO-2112, MO-2014 and PO-1665, and more recent orders such as PO-3013 and MO-4128.

about him. The police have not explained how these discrete severances qualify for exemption under either section 8(1)(e) or (l), and it is not evident to me, either from the records or from the surrounding circumstances, how disclosure of these discrete severances could reasonably be expected to yield the harms described in those sections.

[32] Because these severances consist only of the personal information of the appellant, and not of any other individual, they cannot qualify for exemption under section 38(b).<sup>11</sup> In addition, no exclusion or mandatory exemption applies to them. As a result, I will order the police to disclose these severances to the appellant.

**D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue? Did the police properly exercise their discretion under section 38(b)?**

[33] The police withheld under section 38(b) of the *Act* the personal information of the complainants who reported their concerns about the appellant to the police. They also withheld the personal information of another individual who has a connection with the appellant, and who is described in the records.

[34] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[35] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[36] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[37] None of the exceptions in sections 14(1) or 14(4) applies in the circumstances.

[38] I turn to considering the factors and presumptions in sections 14(2) and (3). These factors and presumptions help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). On appeal, the IPC must consider and weigh the factors and presumptions in sections 14(2) and (3), and balance the interests of the parties.<sup>12</sup>

[39] In this case, the police rely on the presumption against disclosure at section 14(3)(b). They also cite the factors weighing against disclosure found at sections

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<sup>11</sup> Order PO-2560.

<sup>12</sup> Order MO-2954.

14(2)(f) and (h). These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence[.]

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

(b) 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[.]

[40] The presumption at section 14(3)(b) requires only that there be an investigation into a *possible* violation of law;<sup>13</sup> even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.<sup>14</sup>

[41] In this case, it is clear the records were created in the context of a police report and investigation into the complainants' concerns. I find the presumption at section 14(3)(b) thus applies to the personal information of the complainants and of the other affected party appearing in the records.

[42] In addition, given the circumstances in which the complainants provided their personal information to the police, I accept that this information was supplied in confidence, and is highly sensitive in nature, within the meaning of sections 14(2)(f) and (h). These factors too weigh against disclosure.

[43] The appellant's representations do not directly refer to any sections of the *Act*. They contain a thorough account of the appellant's perspective of the events leading up to the union hearing that resulted in the complainants' report to the police, along with the appellant's evidence in support of his position in disputes with a former employer and with his union. While I have considered the evidence provided by the appellant, it is not necessary for me to refer to it in any detail here in order to decide the issues before me, which concern only the appellant's right of access under the *Act*.

[44] To the extent the appellant's representations make a general argument for

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<sup>13</sup> Orders P-242 and MO-2235.

<sup>14</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).



disclosure in order to assist him in his other disputes and to achieve his goal of fairness, I have weighed these considerations against the factors and presumption favouring non-disclosure under the *Act*. For instance, I have considered whether the appellant makes a tenable case that disclosure of the affected parties' personal information is relevant to the fair determination of his rights, within the meaning of section 14(2)(d) of the *Act*. However, I am unable to see how this personal information relates to the ongoing disputes he describes with his former employer and with his union. I have also considered whether other, unlisted, factors favouring disclosure apply, and I find none does. As one example, I do not see how the information at issue would assist the appellant in addressing the general fairness concerns he raises about the conduct of union proceedings.

[45] I therefore find that section 38(b) applies to the personal information of affected parties appearing in the records.

[46] I also uphold the police's exercise of discretion under section 38(b). The police submit that they have exercised their discretion in good faith, taking into account relevant considerations, including the privacy interests of the affected parties, and no irrelevant considerations. I also recognize that the police have disclosed portions of the records to the appellant, in recognition of his right of access to his own personal information, and the limited and specific nature of exemptions from the right of access.

[47] I uphold the police's decision under section 38(b).

## **ORDER:**

1. I order the police to disclose to the appellant two discrete severances appearing on page 2 of the occurrence report. The portions to be disclosed are highlighted in the copy of the record provided to the police with this order. The police are to make this disclosure by **January 18, 2021** but not before **January 13, 2021**.
2. In order to verify compliance with order provision 1, I reserve the right to require the police to provide me with a copy of the disclosed record.
3. I uphold the police's decision in all other respects.

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

Jenny Ryu  
Adjudicator

December 14, 2021 \_\_\_\_\_