

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-4245

Appeal MA20-00168

York Regional Police Services Board

August 26, 2022

**Summary:** 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 a police report relating to a specified incident. The police issued a decision granting partial access to a report withholding information under the discretionary personal privacy exemption at section 38(b) of the *Act*. The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario. In this order, the adjudicator upholds the police's decision, and dismisses the appeal.

**Statutes Considered:** The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of *personal information*), 14(3)(b), and 38(b).

### OVERVIEW:

[1] This order determines the issue of access to a specified police report. 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 a copy of a report relating to a specified incident.

[2] The police issued a decision granting partial access to the responsive record, a General Occurrence Report, with severances pursuant to section 38(b) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.

[4] During mediation, the appellant advised that she is pursuing access to some of the withheld information in the report, and that she was pursuing access to video surveillance footage relating to the specified incident. The police conducted a further search, and disclosed a supplementary report, which summarizes their conclusions from watching the video surveillance footage, to the appellant.

[5] The appellant advised that she wished to pursue the appeal.

[6] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal commenced an inquiry by inviting representations from the police, initially. She received representations from the police, which she shared with the appellant, and invited representations from the appellant. The appeal was then transferred to me, and I received representations from the appellant.

[7] During the inquiry process, the police issued a revised decision disclosing the withheld information on page 11 of the report to the appellant. Accordingly, page 11 is no longer at issue in this appeal.

[8] In this order, I uphold the police's decision, and dismiss the appeal.

## **RECORD:**

[9] The information remaining at issue in this appeal is the withheld information on pages 2 and 3 of a police General Occurrence Report. This report contains police notes and statement summaries relating to an investigation into an alleged assault.

## **ISSUES:**

- A. Does the report contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the personal information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Does the report contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[10] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>1</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>2</sup>

[11] Personal information is defined in section 2(1). The relevant portions are 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,
- (g) the views or opinions of another individual about the individual, and

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<sup>1</sup> Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their 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>2</sup> Sections 14(1) and 38(b), as discussed below.

(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.

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

### ***Representations of the parties***

[13] The police submit that the report contains the personal information of several identifiable individuals and the appellant, and this information includes their name, sex, occupation, employment information, and ethnicity. They state that this information was collected during an investigation into an alleged assault. They state that the withheld personal information at issue in this appeal is the ethnic origin and sex of the other identifiable individuals contained in the report.

[14] The appellant submits that the report contains personal information as defined in section 2(1) of the *Act*, including the ethnic origin and sex of the management staff at a long-term care centre.

### ***Analysis and findings***

[15] Based on my review of the report and the representations of the parties, I find that the report contains the personal information of the appellant and other identifiable individuals. I will refer to the other identifiable individuals as the affected parties.

[16] Specifically, the report contains the following types of personal information of the appellant and the affected parties: their sex, ethnic origin, employment information, views or opinions about them, and their name along with other information, which fits within paragraphs (a), (b), (g), and (h) of the definition of "personal information" in section 2(1) of the *Act*. I also find that the report contains the appellant's address, age, email address, telephone number, driver's licence, and her views and opinions, which fits within paragraphs (a), (c), (d), and (e).

[17] From my review of the report, the police have disclosed all of the report to the appellant except for the sex and ethnicity of the affected parties, which is the only information remaining at issue in this appeal.

[18] Having found that the report contains the personal information of both the appellant and the affected parties, I will now determine whether the withheld personal information of the affected parties is exempt from disclosure under section 38(b) of the *Act*.

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<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

[19] 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.

[20] 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.

[21] 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.

[22] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[23] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). In this appeal, none of the section 14(1) exceptions apply to the circumstances before me and I will not discuss them further in this order.

[24] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply. The parties do not rely on section 14(4), and I find that it does not apply in the present appeal.

[25] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>4</sup>

***Representations, analysis and findings***

[26] The police submit that disclosure of the affected parties' personal information would be an unjustified invasion of their personal privacy.

[27] The appellant's representations outline her concerns with the police's

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<sup>4</sup> Order MO-2954.

investigation, and she disputes the contents of the report. She states that she appealed the police's decision to object to the police's conduct, to review how the investigation was conducted, and to dispute the veracity of the report. She also states that she wants a fair investigation into the incident. The concerns raised by the appellant are beyond the scope of the *Act*, and they are not relevant to my determination of whether section 38(b) applies to exempt the withheld personal information from disclosure. Therefore, I will not discuss the appellant's concerns with the police, their investigation, and the contents of the report.

[28] In her representations, the appellant also requests that I order the disclosure of video surveillance footage of the alleged assault to her and the police. This video surveillance footage is not at issue in this appeal<sup>5</sup>, and I therefore will not summarize these portions of the appellant's representations, or discuss it further.

[29] The appellant has not specifically addressed the application of section 38(b) to the personal information at issue.

*Section 14(3)(b) presumption: investigation into a possible violation of law*

[30] The police argue that the section 14(3)(b) presumption applies to the withheld personal information because it was compiled and is identifiable as part of an investigation into a possible violation of law, specifically allegations of assault. The police state, however, they determined the allegations to be unfounded.

[31] Section 14(3)(b) states:

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;

[32] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. The personal information at issue appears in a police report about an investigation into an alleged assault. As noted above, after the investigation was completed, the police determined the allegations were unfounded. However, even if no criminal proceedings were commenced against an individual, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>6</sup> Therefore, I find that section 14(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the affected parties.

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<sup>5</sup> The police do not have a copy of the footage.

<sup>6</sup> Orders P-242 and MO-2235.

[33] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant. The police and the appellant have not argued that any section 14(2) factors apply to the personal information of the affected parties, and I find that none apply in the circumstances of this appeal. In considering whether there are any unlisted factors favouring disclosure, I considered the appellant's desire to ensure a fair investigation, and to review the police's conduct in the investigation. However, given the nature of the withheld personal information, and the fact that the appellant's submissions on these issues are assumptions, I give this factor little weight.

[34] Since I have found that the section 14(3)(b) presumption applies above, and the section 14(2) factors do not weigh in favour of disclosure, balancing the interests of the parties, the facts of this appeal weigh against disclosure of the affected parties' personal information. Therefore, I find that disclosure of the personal information at issue would result in an unjustified invasion of the personal privacy of the affected parties, and I find that the personal information is exempt under section 38(b) of the *Act*, subject to my findings on the police's exercise of discretion below.

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

[35] The section 38(b) exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, I may determine whether the institution failed to do so.

[36] In addition, I 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; or
- it fails to take into account relevant considerations.

[37] In either case, I may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>7</sup> I cannot, however, substitute its own discretion for that of the institution.<sup>8</sup>

[38] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:<sup>9</sup>

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<sup>7</sup> Order MO-1573.

<sup>8</sup> Section 43(2).

<sup>9</sup> Orders P-344 and MO-1573.

- 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, and
  - the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- 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, and
- 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.

### ***Representations of the parties***

[39] The police state that they properly exercised their discretion under section 38(b) to withhold the personal information of the affected parties from the appellant. The police state that they took into consideration the purpose of the *Act* – individuals have a right of access to their own personal information, and the privacy of individuals should be protected. The police submit that they disclosed all of the appellant's personal information to her, and the only information not disclosed was the ethnic origin and sex of the affected parties.

[40] The appellant acknowledges that the police exercised their discretion under section 38(b) to not disclose the personal information to her, and she states that she does not disagree with the police's discretion. She further states that the IPC "should uphold the exercise of discretion."

### ***Analysis and findings***

[41] After considering the representations of the parties and the circumstances of this appeal, I find that the police did not err in their exercise of discretion with respect to



their decision to deny access to the withheld personal information of the affected parties under section 38(b) of the *Act*. I am satisfied that the police considered relevant factors, and did not consider irrelevant factors in the exercise of discretion. In particular, it is evident that the police considered the fact that the report contains the appellant's own personal information. I am satisfied that the police provided her with all of her personal information, and only withheld the personal information of the affected parties.

[42] Accordingly, I find that the police exercised their discretion in an appropriate manner in this appeal, and I uphold it.

**ORDER:**

I uphold the police's decision and dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ August 26, 2022