

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4318

Appeal MA21-00733

Toronto Police Services Board

January 20, 2023

Summary: The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the police) for access to a copy of a specified General Occurrence Report. The police granted partial access to the identified General Occurrence Report with certain portions being withheld on the basis of section 38(b) (personal privacy) of the *Act*. In this order, the adjudicator upholds the decision of the police and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, RSO 1990, c M.56, sections 2(1) ("personal information"), 14(2)(d), 14(2)(h), 14(3)(b) and 38(b).

Order considered: Order MO-1436.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to a copy of a specified General Occurrence Report.

[2] The police granted partial access to the identified General Occurrence Report with certain portions being withheld under section 38(b) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy

Commissioner of Ontario (the IPC).

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

[5] I decided to conduct an inquiry and sent a Notice of Inquiry to the police setting out the facts and issues in the appeal. The police provided responding representations. I then sent a Notice of Inquiry to the appellant along with a copy of the police's representations. The appellant did not file responding representations but stated that he continued to seek access to the withheld information so that he could obtain a peace bond.

[6] In this order I uphold the decision of the police and dismiss the appeal.

RECORD:

[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, whose personal information is it?
- B. Does the discretionary personal privacy 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, whose personal information is it?

[8] 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.

[9] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[10] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

[11] Generally, information about an individual in their professional, official or

business capacity is not considered to be “about” the individual.¹

[12] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.²

[13] Section 2(1) of the *Act* gives a list of examples of personal information:

“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.

[14] The list of examples of personal information under section 2(1) is not a complete

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

list. This means that other kinds of information could also be “personal information.”³

[15] 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.⁴ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁵

The police’s representations

[16] The police submit that the report at issue deals with an investigation into an alleged assault. The police advise that no charges were laid in relation to the incident.

[17] The police submit that the withheld information qualifies as the personal information of the other individual involved in the incident that falls within the definition of personal information at paragraphs (a) (information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual), (c) (any identifying number, symbol or other particular assigned to the individual), (d) (the address, telephone number, fingerprints or blood type of the individual) and (h) (the individual’s name if it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual).

[18] The police submit that:

The record was created in relation to an assault. During the course of this investigation, Toronto Police Service (TPS) officers spoke to and took information from the involved parties. As such, the record contains personal information of the involved party, such as the first and last name, date of birth, address and telephone number. This individual can easily be identified should their information be released.

[19] I have reviewed the record and I am satisfied that it contains information about both the appellant and the other individual that would reveal something of a personal nature about them – that is, their involvement in the incident that led to the police investigation. Therefore, the record contains the personal information of the appellant as well as the personal information of the other individual that falls within the scope of the definition of personal information at section 2(1) of the *Act*.

[20] Because the General Occurrence Report contains the personal information of both the appellant and another individual, it is necessary to consider the police’s

³ Order 11.

⁴ 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.

⁵ See sections 14(1) and 38(b).

exemption claim under section 38(b) of the *Act*.⁶

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

[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] Under the section 38(b) exemption, if a record contains the personal information of both the requester (the appellant in this appeal) 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.

[23] 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).

[24] Also, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.⁷

Sections 14(2), (3) and (4)

[25] Sections 14(2), (3) and (4) 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.

[26] 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), the decision-maker⁸ must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁹

[27] Sections 14(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[28] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal

⁶ Order M-352.

⁷ Order PO-2560.

⁸ The institution or, on appeal, the IPC.

⁹ Order MO-2954.

privacy.¹⁰ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[29] The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).¹¹

[30] Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2) (e) to (i), if established, would tend to support non-disclosure of that information.

The presumption and factors relied upon by the police and the appellant

[31] In their representations the police rely on the presumption at section 14(3)(b) and the factor favoring non-disclosure at section 14(2)(h) of the *Act*. The appellant's position is that he requires the information to obtain a peace bond, thereby arguably raising the factor favouring disclosure at section 14(2)(d).

[32] Those sections read:

14(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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(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;

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

[33] This presumption requires only that there be an investigation into a possible violation of law.¹² So, even if criminal proceedings were never started against the

¹⁰ Order P-239.

¹¹ Order P-99.

¹² Orders P-242 and MO-2235.

individual, section 14(3)(b) may still apply.¹³ The presumption does not apply if the records were created after the completion of an investigation into a possible violation of law.¹⁴ I have reviewed the record and I am satisfied that even though no charges were laid, the personal information in it was compiled and is identifiable as part of an investigation into a possible violation of law, namely an assault. I therefore find that the presumption at section 14(3)(b) applies to the withheld information and weighs in favour of privacy protection

14(2)(h): the personal information was supplied in confidence

[34] This section weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."¹⁵ I am satisfied the personal information of the other individual involved in the incident was supplied in confidence by them to the police. Therefore, I find that the factor in section 14(2)(h) applies to the personal information of the other individual involved in the incident and weighs in favour of privacy protection.

14(2)(d): the personal information is relevant to the fair determination of requester's rights

[35] This section supports disclosure of someone else's personal information where the information is needed to allow the requester (the appellant here) to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?¹⁶

¹³ 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).

¹⁴ Orders M-734, M-841, M-1086, PO-1819 and MO-2019.

¹⁵ Order PO-1670.

¹⁶ See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

[36] The police take the position that the factor favouring disclosure at section 14(2)(d) does not apply. The appellant takes the position that he requires the withheld personal information to obtain a peace bond, a remedy available under the *Criminal Code*.¹⁷

[37] I have considered the parties opposing positions and I am satisfied that, in the circumstances of this appeal, section 14(2)(d) applies and weighs in favour of disclosure. In that regard, I find that the appellant has indicated he wishes to obtain a peace bond satisfying parts 1 and 2 of the test and that specific withheld information, at the very least the name of the other individual involved in the incident, is significant (part 3) and is required to obtain it (part 4).

Considering and weighing the factors and presumption

[38] As set out above, in deciding whether the disclosure of the personal information in the record 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. In this appeal, I found that the section 14(3)(b) presumption and the 14(2)(h) factor apply and weigh in favour of withholding the information. I also found that the factor weighing in favour of disclosure at section 14(2)(d) applied. In my view, the factor and presumption that favour privacy protection outweigh any interest in disclosure. I have formed this view in consideration of the information at issue and while weighing the competing interests of the parties.

[39] I therefore conclude that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of the other individual involved in the incident and that the section 38(b) exemption applies.

Exercise of discretion

[40] Because section 38(b) is a discretionary exemption, it is necessary to review and consider whether the police properly exercised their discretion in withholding the personal information at issue. If I find that the police failed to exercise their discretion or did so based on improper considerations, I may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁸ I cannot, however, substitute my own discretion for that of the institution.¹⁹

[41] Having considered the police's representations, I see no basis to conclude that the police improperly exercised their discretion under the *Act*. It is clear that the police understood the purpose of the appellant's request and attempted to disclose as much information to the appellant without revealing the personal information of the other individual involved in the incident. There is no evidence to suggest that the police failed

¹⁷ RSC 1985, c. C-46, section 810.

¹⁸ Order MO-1573.

¹⁹ Section 43(2).

to consider relevant factors, took into account irrelevant factors, or otherwise exercised their discretion in an improper manner. Taking into consideration the significant level of disclosure they have already made to the appellant, I am satisfied that the police exercised their discretion in accordance with the requirements of the *Act*.

[42] I have also considered whether the information that I have found to be subject to section 38(b) can be severed and portions of the withheld information be provided to the appellant. In my view, the record cannot be further severed without disclosing information that I have found to be exempt. Furthermore, an institution is not required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless” or “meaningless” information, which any other severance would result in here.²⁰

ORDER:

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

Original Signed By: _____
Steven Faughnan
Adjudicator

January 20, 2023 _____

²⁰ See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 192 O.A.C. 71 (Div. Ct.).