

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-4346

Appeal MA21-00707

Peel Regional Police Services Board

March 17, 2023

**Summary:** The Peel Regional Police Services Board (the police) received an access request relating to the police's investigation into alleged criminal activities involving the appellant. The police provided access to the records, in part, but withheld portions of the records claiming the discretionary personal privacy exemption at section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In this order, the adjudicator upholds the police's decision and dismisses the appeal.

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

**Orders and Investigation Reports Considered:** Orders P-242 and MO-2235.

### OVERVIEW:

[1] Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the Peel Regional Police Services Board (the police) received the following request relating to the police's investigation into alleged criminal activities involving the requester:

... disclosure as well as any and all documents pertaining to this issue:  
[specified occurrence numbers].

[2] The police issued an initial decision granting partial access to the responsive

records pursuant to section 38(b) of the *Act*.

[3] Subsequently, the police gave notice and sought the consent from all the individuals whose interests may be affected by disclosure of the records (the affected parties). The police issued a revised decision granting additional access to certain information where consent was obtained. The police continued to withhold information under sections 38(b), and 14(1) of the *Act*.

[4] The requester, now the appellant, appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the police maintained their decision to deny access and confirmed the nature of the responsive records. The police also clarified that, upon request by the appellant, consent from all affected parties was sought at the request stage, and that all but one affected party refused consent.

[6] As no further mediation was possible this appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*. The original adjudicator decided to conduct an inquiry into this matter. She began by inviting representations from the police. Subsequently, I was assigned to this appeal. I shared the police's representations with the appellant who provided his own representations in response. Representations were shared in accordance with the IPC's *Code of Procedure*.

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

## **RECORDS:**

[8] The records at issue in this appeal consist of:

- Of the 21 pages of an occurrence report:
  - pages 1, 7-12 and 15-21 were partially withheld
  - pages 2-4, 13-14 were withheld, in full
- Of the 31 pages of police officer's notes:
  - pages 1-2, 5-6, 22-26, 28-29 and 31 were partially withheld
  - pages 3-4, 15 and 17-20 were withheld, in full
- Two video statements were withheld, in full.

## **ISSUES:**

- A. Do the records 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?
- C. Did the institution exercise its discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?**

[9] 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), in part, 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,

(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

(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;

[10] 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>

[11] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.<sup>2</sup>

[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>

[13] The parties do not dispute that the records contain information that qualifies as the personal information of affected parties and the appellant. The police submit that withheld information in the records meets the definition of personal information at paragraphs (a), (b), (c), (d), (e) and (g) in section 2(1) of the *Act*.

[14] The records concern an investigation into alleged criminal activities and contain information about the appellant as documented by a police officer investigating the allegations and surrounding circumstances. After my review of the withheld information, which includes an occurrence report, police officer’s notes and video statements, I find that they contain the personal information of the appellant and of identifiable individuals (the affected parties). The personal information includes the names, addresses and other personal identifiers such as age and gender. In addition, some of the information relating to the affected parties, includes their views and opinions concerning the investigation which constitutes their personal information. Most of the appellant’s own personal information contained in the records has already been provided to him except where it is mixed with the information of affected parties who did not provide consent to disclose their personal information.

[15] I have found that the withheld portions of the records contain the personal information of the appellant mixed with the information of the affected parties and will therefore consider whether this information is exempt under the personal privacy exemption at section 38(b)

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

[16] 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.

[17] Under section 38(b), where a record contains personal information of both the

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

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

appellant 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 appellant. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.<sup>4</sup> 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

[18] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the appellant’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

### ***Representations***

[19] The police submit that section 38(b) applies to the withheld personal information because they contain the personal information of the appellant and other identifiable individuals. They submit that they are required to look at the information and weigh the appellant’s right of access to his own personal privacy against the affected parties’ rights to protection of their personal privacy.

[20] The police submit that none of the listed exceptions to the general rule under section 14(1)(a) to (e) apply and disclosure of the withheld personal information would constitute an unjustified invasion of the affected parties’ personal privacy under section 38(b).

[21] The police submit that the presumption at section 14(3)(b) applies because the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[22] The police submit that none of the factors supporting disclosure in section 14(2) are relevant in this appeal and that the only relevant factors that apply are sections 14(2)(f) (highly sensitive) and (h) (supplied in confidence).

[23] The appellant provided representations in this appeal, however he did not specifically address the issues set out in the Notice of Inquiry. He submits that he wants all information that pertains to himself disclosed and information revealing the identity of affected parties should be redacted. He submits that the reports in this appeal are

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<sup>4</sup> See below in the “Exercise of Discretion” section for a more detailed discussion of the institution’s discretion under section 38(b).

essential to a civil matter he has in superior court.

[24] In a separate email to the IPC, the appellant requested that the Ministry of the Attorney General, Ontario (the ministry) be added to the appeal as it and the police are the two parties in his civil matter. He indicated that the ministry indicated that the only way to receive the requested documentation was by way of a *Wagg* motion<sup>5</sup> in front of a judge.

### ***Analysis and finding***

#### *Section 14(1)(a) – consent*

[25] As noted, when dealing with the request, the police received the consent of one affected party and it disclosed the information relating to that individual to the appellant. The police confirmed that all other affected parties refused their consent to release their personal information.

[26] Consequently, I find that section 14(1)(a) does not apply to the affected parties' personal information remaining at issue.

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

[27] The police claim that section 14(3)(b) applies to the withheld personal information. If this presumption applies to the information, then disclosure is presumed to be an unjustified invasion of personal privacy. This section states:

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;

[28] The police submit that the records contain police officer's notes, criminal records queries, interview videos and notes, and references to evidence pertaining to a possible violation of criminal law under the *Criminal Code of Canada*.

[29] I have reviewed the records and find that the section 14(3)(b) presumption applies to the withheld personal information that was compiled and is identifiable as part of an investigation into a possible violation of law. Even if criminal proceedings were never ultimately pursued and/or completed, this presumption requires only that there be an investigation into a *possible* violation of law.<sup>6</sup>

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<sup>5</sup> *D.P. v. Wagg*, [2004] O.J. No. 2053 (C.A.) ("*Wagg*")

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

[30] Under section 38(b), the presumption in section 14(3)(b) must be weighed and balanced with any factors in section 14(2) that are relevant.

*Section 14(2) factors*

[31] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. The listed factors relevant to this appeal are:

(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;

...

(f) the personal information is highly sensitive;

...

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

[32] Although the appellant did not specifically state so, it appears that he is raising the application of section 14(2)(d), the factor that favours disclosure if the personal information is relevant to a fair determination of his rights.

[33] The appellant was advised in the Notice of Inquiry that section 14(2)(d) supports disclosure of someone else's personal information where the information is needed to allow the appellant 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 of the following questions must be answered yes:

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?<sup>7</sup>

[34] The appellant did not address any of these questions specifically except to confirm that the records are essential to an ongoing civil matter he is involved with in the Superior Court involving the police and the ministry. He also referred to a process under the *Rules of Civil Procedure*<sup>8</sup> where he can obtain relevant information by a judge's order. As a result, I give this factor little weight. In my view, the existence of disclosure processes available to parties in the court context reduces the weight accorded the section 14(2)(d) factor in these circumstances.<sup>9</sup>

[35] Based on my review of the records and the parties' representations, I find that the factors supporting non-disclosure at section 14(2)(f) and (h) apply in this appeal. Given the nature of the records, I find that they contain personal information of affected parties that if disclosed would result in significant personal distress. Also, for similar reasons, I find that affected parties that provided information to the police would have done so with an expectation of confidentiality. I give each of these factors significant weight.

[36] In conclusion, I find that the presumption at section 14(3)(b) applies to all of the withheld information and also give significant weight to the factors at section 14(2)(f) and (h) which support non-disclosure of the information. I also find that the only factor that supports disclosure at section 14(2)(d) is given limited weight. As a result, I find that the withheld personal information qualifies for exemption under section 38(b), because its disclosure would constitute an unjustified invasion of the affected parties' personal privacy. Next, I will review the police's exercise of discretion.

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

[37] The section 38(b) exemption is discretionary and permits the police to disclose information, despite the fact that it could be withheld. On appeal, this office may review the police's decision in order to determine whether they exercised their discretion and, if so, to determine whether they erred in doing so.

[38] The police submit that they have complied with the relevant provisions of the *Act* and exercised their discretion appropriately in determining that disclosure of the withheld information would constitute an unjustified invasion of the affected parties' personal privacy. They submit that it disclosed as much of responsive record containing the personal information of the appellant as could reasonably be severed, without

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<sup>7</sup> 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.).

<sup>8</sup> R.R.O. 1990, Reg. 194, Rule 30.10.

<sup>9</sup> See Order PO-1715.



disclosing information that is clearly exempt.

[39] The appellant did not address the police's exercise of discretion in his representations.

[40] I am satisfied that the police weighed the interests in disclosure and non-disclosure and exercised their discretion to withhold the affected parties' personal information. I am not persuaded that they failed to take relevant factors into account or that they considered irrelevant factors in withholding those parts of the occurrence report and officers' notes and the video statements. I find, therefore, that they exercised their discretion under section 38(b) and did so in a proper manner.

[41] Further, I find that the police disclosed as much of the appellant's personal information to him as possible and find that providing any further information would be disclosing meaningless snippets.<sup>10</sup> Accordingly, I uphold the police's exercise of discretion.

**ORDER:**

The appeal is dismissed.

Original signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

\_\_\_\_\_ March 17, 2023

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<sup>10</sup> See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1997] OJ No 1465 (Div. Ct.).