

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4429

Appeal MA22-00222

London Police Services Board

August 25, 2023

Summary: The London Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a certain police occurrence report involving the requester. The requester seeks the narrative of the incident withheld on one page of the report. In this order, the adjudicator upholds the police's decision to withhold this narrative. She finds that this information is exempt from disclosure under the discretionary exemption at section 38(a) read with section 8(1)(d) (confidential source). This order explains why I uphold the police's decision not to release portions of a page of this report containing the narrative provided to the police by a confidential source.

Statutes Considered: *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"), 8(1)(d), and 38(a).

OVERVIEW:

[1] The London Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a certain police occurrence report involving the requester.

[2] In response to the request, the police issued a decision granting partial access to the report. The police withheld portions of the report on the basis of discretionary exemptions, including: the exemption at section 38(a) (discretion to refuse requester's own information), read with section 8(1)(d) (confidential source of information), and

the exemption at section 38(b) (personal privacy).¹

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

[4] The IPC appointed a mediator to explore resolution. Through mediation, issues were narrowed.² The appellant advised the mediator that he continues to seek access to the information that the affected parties provided to the police, in addition to information written by the police about the incident, on page 8 of the record.

[5] Further mediation was not possible and the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[6] I began a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the police. I asked the police for written representations in response. On my review of the police's representations, I invited the appellant to provide written representations in response to a Notice of Inquiry and the non-confidential portions of the police's representations.³

[7] For the reasons that follow, I uphold the police's decision, and dismiss the appeal. Due to my finding that the discretionary exemption at section 38(a), read with section 8(1)(d) applies.

RECORD:

[8] The information at issue is on page 8 of a police Occurrence Report (of a specified number).

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

¹ Taking into consideration the factor at section 14(2)(h) (the personal information was supplied in confidence) and the presumption at section 14(3)(b) (investigation into a possible violation of law).

² The appellant advised the mediator that he is not seeking access to information related to police codes, zones, or other internal police information (which removed section 38(a), read with section 8(1)(l) from the scope of the appeal). In addition, the appellant advised the mediator that he is not seeking access to names or contact information of the affected parties, nor is he seeking information about any vehicles described in the record (thus also removing those portions of the record from the scope of the appeal).

³ Portions of the police's representations have been withheld due to confidentiality concerns, in accordance with *Practice Direction 7* of the *IPC's Code of Procedure*, which deals with the sharing of representations.

- B. Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the section 8(1)(d) exemption, apply to the information at issue?

DISCUSSION:

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

[9] 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 Therefore, 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.

What is "personal information"?

[10] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."⁶ 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. 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.⁷

[11] Here, the information that the appellant seeks is the redacted portion of a case summary in an occurrence report. There is no dispute, and I find, that this information consists of statements made to police, which relate to the appellant and one or more affected parties.

[12] Based on my review of the appellant's representations, I find that the appellant agrees that names and addresses of others are personal information, but appears to disagree that a statement given to police is. However, it is.

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

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) of the *Act*.

⁶ "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps. See the definition of "record" in section 2(1) of *FIPPA*.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the views or opinions of an individual [at paragraphs (e) and/or (g)].⁸ 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."⁹ For example, the fact that a statement was given to police at all is "personal information" under the introductory wording of the definition of that term ("recorded information about an identifiable individual") because it reveals that the individual interacted with police. That is the case here.

Whose personal information is in the record?

[14] Based on my review of the information withheld, I find that it qualifies as the "personal information" of one or more affected parties under the introductory wording of the definition of that term ("recorded information about an identifiable individual") because it reveals the fact of interaction with police. I find that it is also "personal information" within the meaning of paragraph(s) (e) and/or (g) of the definition of that term at section 2(1) of the *Act*.¹⁰

[15] In the circumstances, I find that the personal information withheld is also inextricably linked with personal information relating to the appellant because it describes alleged events involving him.

[16] Since the record contains the appellant's personal information, I must assess any right of access he has to the information withheld under the discretionary exemptions in section 38 of the *Act*.

Issue B: Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the section 8(1)(d) exemption, apply to the information at issue?

[17] For the reasons that follow, I find that the information that the police withheld under section 38(a), read with section 8(1)(d), is exempt from disclosure.

[18] 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 general right of access to one's own personal information.

[19] Section 38(a) of the *Act* says:

⁸ See paragraphs (d), (e), (g), and (h) of the definition of "personal information" at section 2(1) of the *Act*.

⁹ Order 11.

¹⁰ Paragraphs (e) and (g) of the definition of "personal information" at section 2(1) of the *Act* say:
"personal information" means recorded information about an identifiable individual, including,
(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[.]

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, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[20] 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.¹¹

[21] In this case, the police rely on section 38(a), read with section 8(1)(d).

Does the discretionary exemption at section 8(1)(d) related to law enforcement activities apply to the record?

[22] Section 8 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement.

[23] There is no dispute, and I find, that the context of information withheld in the occurrence report is one that meets the definition of "law enforcement" in the *Act*.¹²

[24] Section 8(1)(d) says:

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

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source[.]

"Could reasonably be expected to"

[25] Many of the exemptions listed in section 8, including section 8(1)(d), apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record.

[26] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care

¹¹ Order M-352.

¹² The term "law enforcement" is defined in section 2(1) of the *Act* as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b).

must be taken not to harm ongoing law enforcement investigations.¹³

[27] However, parties resisting disclosure of a record cannot simply assert that the harms under section 8 are obvious based on the record. They must provide *detailed* evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act*.¹⁴

[28] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹⁵ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.¹⁶

Section 8(1)(d): disclose the identity of a confidential source or information furnished by a confidential source

[29] This section 8(1)(d) exemption is intended to protect the identity of people who provide information to an institution in the context of a law enforcement matter.

[30] The institution must show that it was reasonable to expect that the identity of the source, or the information given by the source would remain confidential in the circumstances.¹⁷

[31] The exemption also protects the information given by the confidential source.

[32] The police disclosed portions of page 8 to the appellant, including a line near the top of the page that indicates that what follows is a narrative of the case.

[33] The police submit that the information withheld identifies that a complaint was made to the police about the appellant, and that the personal information of the affected parties was most certainly given to the police with an expectation that it would not be shared with the appellant. The police submit that if individuals were given access to this information, it would undermine the police's ability to protect vulnerable persons (including complainants and witnesses) from retribution. The police submit that in addition, it would deter persons from contacting police for assistance in circumstances where it could be dangerous to provide the subject of the complaint their personal contact information.

¹³ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹⁴ Orders MO-2363 and PO-2435.

¹⁵ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁶ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

¹⁷ Order MO-1416.

[34] The appellant does not seek the identity of any affected party or parties. Rather, he seeks the information or narrative provided to the police. He seeks this information towards police accountability and determining whether the report is “filled with falsehoods” so that he can hire a lawyer and pursue the truth.

[35] Having reviewed the information remaining at issue on page 8 of the record, I find that what has been withheld on page 8 is narrative provided to the police by a confidential source. Therefore, I find that disclosure of this narrative could reasonably be expected to reveal information given by a confidential source to the police in the course of the police’s investigation, and is exempt under section 38(a), read with section 8(1)(d).

Exercise of discretion

[36] The section 38(a) 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, the IPC may determine whether the institution failed to do so.

[37] If an institution refuses to give an individual access to their own personal information under section 38(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[38] Here, there is no dispute that the police exercised their discretion to withhold the affected party’s statements captured on page 8 of the occurrence report.

[39] The police described the factors that they considered in doing so. In my view, what is relevant to their exercise of discretion under section 38(a) is that they considered:

- a balance between the requester’s right of access to their own information against the affected individual’s right to the protection of personal information that they provided to police during a law enforcement investigation, and
- access to the withheld information could hinder police operations and the confidence of the public in assisting in police investigations if the information was disclosed.

[40] I accept that these are all relevant factors to have considered in the circumstances.

[41] The police also explain that they tried to disclose as much information to the appellant without revealing the personal information of affected third parties involved in the incident.

[42] In addition, the police submit, and I find, that there is no evidence to suggest that they failed to consider relevant factors, took into account irrelevant factors, or otherwise exercised their discretion in an improper manner.

[43] As a result, I uphold the police's exercise of discretion to withhold the information at issue under sections 38(a), and dismiss the appeal.

[44] Since I have found that the information remaining at issue on page 8 is exempt from disclosure under section 38(a), read with section 8(1)(d), I uphold the police's decision. Therefore, it is not necessary to consider whether the information at issue on page 8 of the record is also exempt under section 38(b), and I dismiss the appeal.

ORDER:

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

Original Signed By: _____
Marian Sami
Adjudicator

_____ August 25, 2023