

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-4462

Appeal MA22-00182

York Regional Police Services Board

November 16, 2023

**Summary:** The appellant made a request under the *Act* to the police for access to records relating to a specific case number. The police issued a decision granting the appellant partial access to the responsive record, a general occurrence report. The police withheld portions of the record under the personal privacy exemption in section 38(b). The appellant appealed the police's decision. 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, sections 2(1) (definition of "personal information"), 14(3)(b), and 38(b).

### OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the York Regional Police Services Board (the police) for access to records relating to a specific case number, which documented the police's response to a complaint reported by the appellant. Specifically, the appellant sought access to information about "complaints to the police and how do they resolve the complaints details."

[2] The police located responsive records and issued an access decision granting the appellant partial access to a general occurrence report. The police withheld portions of the report under the discretionary personal privacy exemption in section 38(b) of the *Act*.

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

[4] During mediation, the appellant confirmed his interest in obtaining access to the information that was withheld. The mediator attempted to notify an individual as an affected party, but was unable to obtain their consent. The police maintained their access decision.

[5] Mediation did not resolve the issues and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator originally assigned to the appeal began the inquiry by inviting the police to submit representations in response to a Notice of Inquiry, which summarizes the facts and issues under appeal. The adjudicator then invited the appellant to submit representations in response to the notice and the police's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations.

[6] The appeal was then transferred to me to complete the inquiry. I reviewed the parties' representations and decided I did not need to seek further representations.

[7] In the discussion that follows, I uphold the police's decision and dismiss the appeal.

## **RECORD:**

[8] There is a nine-page occurrence report at issue. Specifically, the police withheld portions of pages 2 to 4, 6 and 7.

## **ISSUES:**

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

[9] The police rely on the discretionary personal privacy exemption at section 38(b) of the *Act* to withhold portions of the general occurrence report. Given this exemption claim, it is necessary to decide whether the report contains personal information and, if so, to

whom it relates. The term *personal information* is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.”

[10] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect an individual may be identified if the information is disclosed.<sup>1</sup>

[11] The police state they investigated a criminal harassment complaint reported by the appellant. During the course of their investigation, the police collected personal information of the involved individuals. This information includes the name, sex, date of birth, address, occupation, employment information, drivers license information, marital status, physical descriptors, and the ethnicity of these individuals. The police submit the general occurrence report contains the personal information of an affected party and they would be identified if the information related to them was disclosed to the appellant.

[12] The appellant did not address whether the record contains his or any other individual’s personal information in his representations.

[13] I find the record contains the personal information of the appellant and another individual (the affected party). Specifically, I find the record contains their names, dates of birth, sex, contact information, personal views or opinions, and opinions or views of another individual about them, which is considered to be personal information under paragraphs (b), (d), (e), (g) and (h) of section 2(1) of the *Act*. Also, I find the information to fit under the introductory wording of section 2(1) as “recorded information about an identifiable individual.”

[14] In addition, I confirm that, aside from the statements or opinions of the affected party, the police have only severed the personal information of the affected party; the remainder of the report has been disclosed to the appellant. I find the affected party’s statements contain the mixed personal information of both the appellant and the affected party and this personal information is intertwined. The statement contains the personal views and opinions of the affected party and, in some parts, those views and opinions relate to the appellant (paragraphs (e) and (g) of the section 2(1) definition of personal information).

[15] Having found the occurrence report contains the personal information of both the appellant and the affected party, I must now determine whether the personal information at issue is exempt from disclosure under section 38(b) of the *Act*.

**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

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<sup>1</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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 requester and another individual, and disclosure of the information would be an *unjustified invasion* of another individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[18] Under section 38(b), if any of the exceptions in sections 14(1)(a) to (e) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). None of the section 14(1)(a) to (e) exceptions are applicable here.

[19] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), sections 14(2) to (4) offer guidance. If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). None of the circumstances in section 14(4) are present here.

[20] If, as in this case, section 14(4) does not apply, 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>2</sup>

[21] If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). 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.<sup>3</sup> 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).<sup>4</sup>

[22] The police submit disclosure of the information at issue would constitute an unjustified invasion of personal privacy. The police raise the application of the presumption in section 14(3)(b), where 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. The police submit the general occurrence report was created as part of an investigation into a possible *Criminal Code of Canada* (the *Criminal Code*) violation, criminal harassment. Given these circumstances, the police submit the disclosure of the

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<sup>2</sup> Order MO-2954.

<sup>3</sup> Order P-239.

<sup>4</sup> Order P-99.

personal information at issue would constitute a presumed unjustified invasion of personal privacy.

[23] The appellant does not directly address the personal privacy exemption in his representations. However, he submits he should have access to any statements made about him.

[24] The police argue the presumption against disclosure at section 14(3)(b) is a relevant consideration because the record was compiled for an investigation into an alleged incident of criminal harassment, which is a violation of the *Criminal Code*. I agree.

[25] Based on my review of the general occurrence report, I am satisfied it was compiled and is identifiable as part of an investigation into a possible violation of law. Given the nature of the incident which resulted in allegations of criminal harassment, it is possible the investigation into that incident could have resulted in charges under the *Criminal Code*. It does not appear charges were laid after this investigation. In any case, even if no criminal proceedings were commenced against an individual in relation to the incident or if they were later withdrawn, section 14(3)(b) may still apply. The presumption only requires there be an investigation into a *possible* violation of law.<sup>5</sup> Upon review of the record before me, I find section 14(3)(b) applies to the personal information at issue and its disclosure is presumed to be an unjustified invasion of the affected party's personal privacy.

[26] Under section 38(b), the presumptions in section 14(3) must be weighed with any factors in section 14(3) that are relevant, and those presumptions and factors must be balanced against the interests of the parties. No other presumptions in section 14(3) have been claimed or are relevant to this appeal. Neither the police nor the appellant have claimed the application of any of the factors in section 14(2).

[27] I note the appellant posed a number of questions relating to the incident that is the subject of his request. Specifically, the appellant questioned the affected party's behaviour regarding his property. I cannot answer any of these questions as they are outside of the issue of whether he is entitled to access to the information withheld from disclosure.

[28] However, it appears the appellant takes the position the police did not properly consider the affected party's intentions in relation to their actions. The appellant appears to seek further clarification regarding the reason why the police decided to conclude its investigation without filing charges. In this regard, it appears the appellant may be raising the unlisted factor of inherent fairness<sup>6</sup> to support his position that the personal information at issue ought to be disclosed to him. The appellant did not make any further submissions in support of his claim that the withheld personal information of the affected party ought to be disclosed for reasons of fairness. I reviewed the information that

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<sup>5</sup> Orders P-242 and MO-2235.

<sup>6</sup> Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

remains at issue and I am not satisfied it ought to be disclosed to the appellant for reasons of fairness. Therefore, I find the unlisted factor of inherent fairness does not apply to weigh in favour of disclosure in the circumstances of this appeal.

[29] Based on my review, I find that none of the factors in section 14(2), listed or unlisted, apply and weigh in favour of disclosure of the affected party's personal information to the appellant. I also find that none of the factors weighing against disclosure apply. I have found the presumption against disclosure at section 14(3)(b) applies. Balancing the interests of both parties, the facts of this appeal weigh against the disclosure of the personal information at issue.

[30] Having considered the information at issue and the factors and presumptions in sections 14(2) and (3), I find its disclosure would constitute an unjustified invasion of the affected party's personal privacy within the meaning of the exemption in section 38(b). I note neither party has raised the possible application of the absurd result principle and I find it does not apply to the information that remains at issue.

### ***Exercise of Discretion***

[31] The exemption at section 38(b) is discretionary, meaning the institution can decide to disclose information even if it qualifies for exemption. The institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[32] In addition, the IPC may find the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it considers irrelevant considerations or fails to consider relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>7</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>8</sup>

[33] In exercising their discretion, the police submit they considered the purpose of the *Act* which states that individuals should have a right of access to their own personal information and the privacy of individuals should be protected. The police state all of the appellant's personal information was disclosed to him. The police submit the only information that was not disclosed to him is limited identifiers and the affected party's statement. The police submit they weighed the appellant's access interests with the affected party's right to privacy and found that protecting their privacy rights outweighed any other factor in this case.

[34] The appellant did not make submissions on the police's exercise of discretion.

[35] I have considered the parties' representations, the information at issue and the circumstances of this appeal. I find the police exercised their discretion under section

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

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

38(b) properly in withholding the information from disclosure. I am satisfied the police considered relevant factors when exercising their discretion. Specifically, the police considered the purposes of the *Act* and the personal privacy exemption at section 38(b), the nature of the information at issue, the privacy interests of the affected party and the appellant's right of access. I am satisfied the police considered the relevant factors and did not take irrelevant factors into account when they made their decision. Finally, there is no evidence before me that the police exercised their discretion in bad faith or for an improper purpose.

[36] For these reasons, I find the police properly exercised their discretion under section 38(b) not to disclose the information at issue to the appellant and I uphold it.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

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November 16, 2023