

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4500

Appeal MA23-00266

Windsor Police Services Board

March 14, 2024

Summary: The Windsor Police Services Board (the police) received a request for a general occurrence report related to a collision between a cyclist and a pedestrian. The police granted partial access to the report and the appellant continued to seek the name and address of an affected party, withheld under section 38(b) (personal privacy) of the *Act*.

In this order, the adjudicator finds that the name and address of the affected party are not exempt from disclosure under section 38(b) and orders them disclosed.

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) and 38(b). *Highway Traffic Act*, R.S.O. 1990, c. H.8, section 200.

Orders Considered: Orders MO-3631, MO-2442, and MO-4213.

OVERVIEW:

[1] The Windsor Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information related to a collision between a cyclist and a pedestrian. The request was as follows:

...[Requester's name] with respect to injuries she suffered on January 1, 2023. We would like to obtain a copy of the accident report available.

[2] The police located and granted partial access to a general occurrence report, with

portions withheld pursuant to section 38(b) of the *Act*. The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant, through her counsel, stated that they are seeking access to the portions of the withheld information specifying the full name and address of the cyclist (the affected party). They clarified that they are not pursuing access to the remainder of the withheld information in the general occurrence report, or to the 911 call service report.

[4] The police notified the affected party but were unable to obtain his consent. They issued a revised decision letter confirming their decision, stating that they are withholding the requested information pursuant to section 38(b) of the *Act*.

[5] The file moved to the adjudication stage, and I conducted an inquiry in which I sought and received representations from the police and the appellant. The affected party provided information about the incident underlying the request and stated that he did not consent to the disclosure of his personal information but did not otherwise provide representations. Representations were shared in accordance with the IPC's *Code of Procedure*.

[6] For the reasons that follow, I order the police to disclose the name and address of the affected party to the appellant.

RECORDS:

[7] The information at issue is the full name and address of the affected party contained in a general occurrence report (the report).

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 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?

[8] Before I consider the exemption claimed by the police, I must first determine whether the occurrence report contains "personal information." If it does, I must

determine whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

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

[10] There is no dispute among the parties that the report contains the personal information of the appellant, the affected party, and other individuals.

[11] I have reviewed the report and I find that it contains the names and addresses of the appellant and other individuals, including the affected party, which constitutes personal information under the *Act*. Having found that the report contains the personal information of the appellant and other individuals, I will consider the application of 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?

[12] 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.

[13] Under section 38(b), where a record contains personal information of both the 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. This involves a weighing of the appellant's right of access to their own personal information against the other individual's right to protection of their privacy.

[14] 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.

[15] 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). Additionally, 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

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

of another individual's personal privacy.²

[16] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). If any of the five exceptions in sections 14(1)(a) to (e) apply, the section 38(b) exemption does not apply to the report. Section 14(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. None of the parties provided representations on the section 14(1) exceptions or the section 14(4) situations, and based on my review of the information at issue they are not relevant to the appeal.

[17] Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. In their representations, the police have relied on or discussed the presumption in section 14(3)(b) and the factors in sections 14(2) (d), (e), (f), and (h):

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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

(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

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm

(f) the personal information is highly sensitive

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

[18] In determining whether the disclosure of the affected party's name and address would be an unjustified invasion of personal privacy under section 38(b), therefore, I will consider and weigh the relevant factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.³

² Order PO-2560.

³ Order MO-2954.

Representations

Police representations

[19] The police submit that the report relates to their investigation following an injury involving a bicycle and a pedestrian. They state that officers attending the scene would have been investigating if any violations occurred under the *Highway Traffic Act*,⁴ but note that it was determined that no violations occurred, and no charges were filed. They do not explicitly state it in their representations, but based on their decision letter and the above explanation, I understand the police to be claiming the application of the section 14(3)(b) presumption against disclosure.

[20] With respect to the section 14(2)(d) (fair determination of rights) factor, the police state that "while there [is] existing [legislation] outlining the rights to bring civil litigation such as the Highway Traffic Act this report was determined [to] not qualify as [an] accident under this act." They also state that they reviewed existing legislation that would allow for the release of personal information to the appellant and found that "none met the threshold to release." They cite Orders MO-3631 and MO-2442 in support of their position.

[21] They submit that section 14(2)(e) (unfair exposure to pecuniary harm) applies to the appeal, stating that the affected party has clearly indicated his objections to the release of his personal information. They state that the appellant has stated that they are seeking damages related to the incident and note that there are no independent witnesses to the incident underlying the request. They state that releasing the information would expose the affected party to unfair pecuniary harm.

[22] The police also state that the information at issue is highly sensitive, engaging the factor in section 14(2)(f), based on the affected party stating their objections and relaying "the stressfulness of the whole process." They also state that the information was supplied in confidence by the affected party, who remained at the scene of the collision and was cooperative with the police, engaging the factor in 14(2)(h) (information supplied in confidence). They state that there was no indication that the affected party was responsible for the incident and that when an individual speaks with police officers it is commonly assumed that the information that they provide will remain confidential.

Appellant representations

[23] The appellant's legal counsel provided background information about the incident underlying the request, stating that the incident caused serious injuries to the appellant and raising concerns that the affected party's behaviour in the events leading up to the incident was unlawful under the *Highway Traffic Act*. They also raised concerns about the police's handling of the incident and initial processing of the access request, but as this

⁴ R.S.O. 1990, c. H.8.

information is not relevant to the issues before me, I will not address it further.

[24] The appellant's counsel states that "common sense, let alone natural justice should require the disclosure of the identity and contact information of a party who causes such injury to another human being." They do not dispute that the information at issue was collected as part of a law enforcement investigation, but state that the information at issue is basic and not highly sensitive. They also state that the affected party did not supply the information in confidence as the police stated, but was instead required to do so as a result of his actions in the incident underlying the request.

[25] With respect to section 14(2)(d) factor, the counsel states that the appellant does not have the funds necessary to fund a court application requiring disclosure, and states that the interests of the appellant should outweigh the interests of the affected party in trying to hide behind the *Act* to avoid liability. They state that the disclosure of the personal information of the affected party is necessary for the appellant to start court proceedings to recover damages from the affected party related to the incident underlying the request and the injuries that they submit she sustained.

[26] For the section 14(2)(e) factor, the appellant's counsel states that any possible pecuniary harm faced by the affected party is not unfair. Referencing the police's submission that there are no independent witnesses to the incident, they state that the determination of liability is properly dealt with by a judge or jury and should not be dealt with by the police in the context of the *Act*.

Police reply representations

[27] The appellant's representations were provided to the police for a response. Replying to the appellant's submissions on section 14(2)(d), the police submit that the ability of the appellant to fund a court motion is relevant when considering if the factor applies, but submit that the funds of the affected party are also relevant.

[28] With respect to the appellant's submission that determination of liability is best properly addressed by a judge or jury, the police submit that they agree, and that an application for a court proceeding for the release of the contact information, where if the information should be released would be decided by a judge, is therefore the appropriate access method. They reiterate that the section 14(3)(b) presumption against disclosure applies to the contact information and refer to Orders MO-2069-F, MO-4370, and MO-2388 as examples where similar information was found to be exempt from disclosure.

Analysis and finding

[29] As stated above, the issue in this appeal is whether disclosure of the name and address of the affected party would be an unjustified invasion of their personal privacy under section 38(b).

Presumptions and factors

Investigation into a possible violation of law

[30] Under section 14(3)(b), the disclosure of an individual's personal information to another individual is presumed to be 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 of law or to continue the investigation.

[31] Even if no criminal proceedings were commenced against any individual, as is the case in this appeal, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.⁵ Based on my review of the report, the information in the report was compiled as part of a police investigation into an incident between a cyclist and a pedestrian, engaging the presumption against disclosure in section 14(3)(b).

[32] In the circumstances of this appeal, where the record at issue contains the personal information of the affected party and the appellant, this presumption is not determinative, but instead a rebuttable presumption that can be weighed against the other relevant factors in section 14(2) below.⁶

Highly sensitive information

[33] The police submit that the information at issue is highly sensitive, engaging the factor weighing against disclosure in section 14(2)(f). While I agree that it is generally the case that information provided to the police by individuals involved in the context of a law enforcement investigation is highly sensitive, I do not find that this is the case in all situations. Previous IPC orders have found that whether the name and address of an individual is highly sensitive information should be decided on the facts of the particular case.⁷ Additionally, in Order MO-4213, this factor was found to not apply in the case of an incident involving a collision between a motor vehicle and a bicycle where the requester sought the name and address of one of the parties.

[34] In this particular appeal, the information at issue is the name and address of an individual who was involved in a collision with the appellant. Although it is disputed whether the *Highway Traffic Act* applies to this situation, I do not find that this situation is significantly different from other collisions where the *Highway Traffic Act* applies and

⁵ Orders P-242 and MO-2235.

⁶ Order MO-2954.

⁷ See, for example, MO-2980.

requires the exchange of information between parties.⁸ In any case, regardless of whether the *Highway Traffic Act* applies, individuals in similar situations routinely exchange this type of information and provide it to the police. Considering this, I find that the information is not highly sensitive and that the factor is not relevant when considering if disclosure of the information would be an unjustified invasion of personal privacy.

Information supplied in confidence

[35] The police point to section 14(2)(h) as a factor weighing against disclosure. This factor applies 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. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.⁹

[36] The appellant submits that the information was required to be provided to the police, and was not done so in confidence. Previous decisions have found that personal information provided to the police is generally done so in confidence.¹⁰ I agree with and adopt this reasoning in the present appeal. However, as described above, considering the context of the information at issue, where such information is routinely exchanged between parties involved in collisions, I only give this factor minimal weight in determining whether disclosure of the information would be an unjust invasion of personal privacy.

Fair determination of rights

[37] Both the police and appellant addressed this factor. The IPC uses a four-part test to decide whether this factor applies. For it 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?¹¹

⁸ See section 200(1)(c) of the *Highway Traffic Act*, which imposes certain obligations related to the exchange of information on persons in charge of vehicles involved in an accident.

⁹ Order PO-1670.

¹⁰ See, for example, Order MO-3028.

¹¹ 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.).

[38] The police and appellant dispute whether the incident underlying the request resulted in any violations of the *Highway Traffic Act*, with the police stating that it did not and the appellant stating that it did. As discussed below, I find that whether such a violation occurred is not relevant to my analysis of the section 14(2)(d) factor.

[39] The appellant's counsel has provided evidence of injuries allegedly caused by the affected party,¹² and has shown that they intend to bring a court action to recover damages related to these injuries. Whether their claim will be successful is outside the scope of this appeal, but based on the information before me, I accept that they require the contact information of the affected party for the court proceeding.

[40] The police state that section 14(2)(d) does not apply, or at least that it should be given little weight because of the possibility of a court ordering disclosure of the information, referencing Orders MO-3631 and MO-2442 in support of their position. I agree that these orders address similar situations as the present appeal, and that the adjudicators supported withholding the information in those situations. In these orders, along with the others the police referenced in their reply representations, the adjudicators found that the existence of alternative means to obtain the information at issue diminished the weight that should be placed on the section 14(2)(d) factor, ultimately leading to the information at issue being withheld.

[41] I agree that, in this situation, there are also alternative means that the appellant could use to access the information at issue. However, I adopt the adjudicator's analysis in Order MO-4213, where it was found that a requester should be entitled to seek the information in the most cost-efficient manner possible.¹³ Additionally, as was stated in Order MO-4213, the existence of an alternative route for accessing the information does not preclude a requester from exercising their rights under the *Act*. Based on this, I find that the section 14(2)(d) factor applies, favouring disclosure.

[42] I do not agree that, as the police submit, the financial ability of the affected party to respond to a court action is relevant here. Any financial costs would be due to the court action brought by the appellant, and would be imposed by the court. The fact that the affected party may be subjected to financial penalties does not mean that the appellant, having satisfied the four criteria above, should be prevented from using the access provisions in the *Act* prior to bringing a court action.

Unfair exposure to pecuniary harm

[43] Similarly, I do not agree with the police's submission that the section 14(2)(e) factor, weighing against disclosure, applies. The police reference the lack of independent witnesses to the incident and state that disclosure of the information may lead to unfair pecuniary harm to the affected party. I find that, as the appellant states, the relevance

¹² The appellant provided medical documentation, but this was not shared with the other parties as it was determined to meet the IPC's confidentiality criteria.

¹³ See also, for example, Order PO-4459.

of the lack of independent witnesses is something that should be addressed by a court determining liability, rather than by the access-to-information process. I accept that a court proceeding related to the incident could lead to some form of monetary penalty against the affected party. However, I do not agree that this exposure, resulting from a legal proceeding, would be unfair within the meaning of section 14(2)(e). I find that this factor does not apply.

Inherent fairness issues

[44] Throughout her representations, the appellant stated that natural justice requires that an individual who is harmed by another individual be provided the identity of the individual who caused the harm. While I do not find that this is necessarily always the case, in this situation I find that the appellant is raising an inherent fairness issue, favouring disclosure.¹⁴ Based on the information provided by the appellant, the incident resulted in significant injuries to her, and the appellant submits that, aside from any potential legal claims, this gives rise to a reason that the affected party should be identified to the appellant. I agree with this analysis in this particular case, and find that this raises an inherent fairness issue that, while not determinative, favours disclosure.

Balancing the factors

[45] I have considered and weighed the presumption in section 14(3)(b) and the factors discussed above. I find that, despite the presumption (investigation into a possible violation of law) and factor (information supplied in confidence) weighing against disclosure, the importance of the affected party's name and address to the determination of the appellant's rights, along with inherent fairness issues, means that disclosure of the affected party's name and address would not be an unjustified invasion of the affected party's personal privacy under section 38(b). Accordingly, I will order this information disclosed.

ORDER:

1. I order the police to disclose portions of the report related to the affected party as described above. I order the police to disclose this information by **April 22, 2024** but not before **April 17, 2024**. I have provided the police with a copy of the record, highlighting this information in blue. To be clear, only the information that is highlighted in blue should be disclosed to the appellant.
2. In order to verify compliance with Order provision 1, I reserve the right to require the police to provide me with a copy of the report disclosed to the appellant.

Original Signed By: _____

March 14, 2024

¹⁴ See Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014 as examples of how the IPC considered inherent fairness issues in assessing what constitutes an unjustified invasion of personal privacy.

Chris Anzenberger
Adjudicator