



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1961

Appeal MA-050024-1

York Regional Police Services Board



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NATURE OF THE APPEAL:

The York Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the Police investigation of two complaints made against the requester by an identified school on two specified dates. Specifically, the requester sought access to “copies of files, incident reports and notes, and any and all information”, in the possession of three named Police Officers.

The Police located records responsive to the request and denied access to them, on the basis that they qualified for exemption under the discretionary exemptions in sections 8(1)(a), 8(1)(b), 8(1)(f), 8(2)(a) and 38(a) of the *Act*.

The requester (now the appellant) appealed the decision of the Police.

During the mediation stage of the appeals process, the Police located additional records in the possession of two of the three identified Police Officers and denied access to them, as well. The Police conducted a further search for records pertaining to the third Police Officer but did not locate any further records. Finally, the Police confirmed that because their investigation is now complete, they were no longer relying on the application of sections 8(1) and 8(2) of the *Act* to the records and, instead, would be relying solely on the discretionary exemption in section 38(b), in conjunction with the presumption in section 14(3)(b) of the *Act*.

No further mediation was possible and the appeal was moved into the adjudication stage of the process. I sought and received the representations of the Police, initially, which were shared, in their entirety, with the appellant. I also received representations from the appellant.

RECORDS:

The records remaining at issue consist of two sets of Police Officers’ notes comprising five and four pages, as well as a seven-page incident report.

DISCUSSION:

PERSONAL INFORMATION

General principles

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) 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,

(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 where 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;

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 [Order 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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Representations and findings

The Police submit that the responsive records contain the personal information of the appellant, along with several other identifiable individuals, consisting of their names, dates of birth,

telephone numbers and addresses, occupations, their views or opinions and other information of a personal nature about them. As a result, the Police submit that the information meets the definition of “personal information” contained in sections 2(1)(a), (d), (e), (g) and (h).

The appellant’s representations do not address this issue but are instead focused on the manner in which the Police exercised their discretion under section 38(b) of the *Act*.

I have reviewed the contents of the records and find that all of them contain information that qualifies as the personal information of the appellant as it relates to him directly or to the potential charges that the Police considered laying against him. The six-page narrative occurrence report, one-page supplementary occurrence report and the officer’s notes relating to the Police investigation also include the personal information of other identifiable individuals, including the appellant’s former spouse, his son and several other persons. These records contain information about these individuals, including their ages and marital status (section 2(1)(a)), addresses and telephone numbers (section 2(1)(d)), their personal views or opinions (section 2(1)(e)), the personal views of another individual about that individual (section 2(1)(g)) and the individual’s name, along with other personal information relating to that person (section 2(1)(h)).

INVASION OF PRIVACY

General principles

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. Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

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 requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy. Sections 14(1) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold under section 38(b) is met.

If any of paragraphs (a) to (h) of section 14(3) apply, the disclosure of the personal information is presumed to constitute an unjustified invasion of personal privacy [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In the present appeal, the Police rely on the presumption in section 14(3)(b), which reads:

A 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;

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

If no section 14(3) presumption applies, 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 [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

The Police argue that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, the *Criminal Code* provisions relating to criminal harassment, by officers assigned to its #4 District and the Criminal Investigation Bureau of that District.

I have examined the records at issue and agree that the information was compiled and is identifiable as part of an investigation by the Police into a possible violation of the criminal harassment provisions in the *Criminal Code*. Accordingly, I find that the personal information contained in the records falls within the ambit of the presumption in section 14(3)(b). The appellant has not raised the possible application of section 16 to the records and the exceptions contained in section 14(4) do not apply. Because of the operation of the presumption in section 14(3)(b), I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of the individuals other than the appellant whose personal information appears in the records. Since the records also contain the personal information of the appellant, I find that they qualify for exemption under section 38(b) of the *Act*.

EXERCISE OF DISCRETION UNDER SECTION 38(b)

In support of its decision not to exercise its discretion in favour of disclosing the contents of the records to the appellant, the Police submit that:

. . . section 38(b) of the *Act* introduces a balancing principle. We looked at the information and weighed the requester's right of access to his own information against the affected individuals' right to the protection of their privacy. The appellant does have a right to his own personal information. In this case he is listed as a suspect in a criminal harassment complaint received from the victim. This information is therefore information pertaining to the victim and the

appellant. This institution considered providing information to the appellant that he was listed as the suspect in a criminal harassment complaint, which the appellant already knows. The decision was made not to release this information as it would not satisfy the appellant.

The Police go on to explain the factors which they took into account when deciding not to exercise their discretion in favour of the disclosure of the personal information in the records to the appellant, stating:

The institution considers the narrative of the police report to be the statements and opinions of all of the affected individuals; therefore they qualify as personal information under section 2(1) of the *Act*. The policy established by this institution allows for the exercise of discretion in matters where the investigation or the involved persons could be compromised by the disclosure. In this case, the victim and the other involved individuals feel they are being harassed by the appellant and the disclosure of this record would be considered a further continuation of this harassment. The disclosure of the record definitely constitutes an unjustified invasion of the victim and the other individuals named in the record[s'] personal privacy.

The appellant suggests that in fact he is the victim of others' harassment and unfounded allegations. He argues that he ought to have received access to the records in order to defend himself from the allegations contained therein.

I have examined the representations of the Police and the contents of the records carefully in coming to the conclusion that the Police have exercised their discretion not to disclose the records to the appellant in accordance with the requirements of the *Act*. I find nothing in the manner in which the Police exercised their discretion which would warrant my review.

ORDER:

I uphold the decision of the Police to deny access to the records.

Original signed by: _____
Donald Hale
Adjudicator

September 12, 2005 _____