



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2008

Appeal MA-050304-1

Peel Regional Police Services Board



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NATURE OF THE APPEAL:

The Peel 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 all Police reports relating to the requester, from 1999 to the date of the request. The Police located nine responsive records and granted full access to one of them and partial access to eight others. The Police denied access to portions of Records 2, 3, 6, 7, 11, 12, 14, 17, 19, 20, 22, 24 and 28, claiming the application of the discretionary exemption in section 38(b) of the *Act* (invasion of privacy).

Top of Form

During mediation, the appellant clarified that she is appealing the denial of access to those portions of the occurrence reports which were not disclosed. Further mediation was not possible and the appeal was moved into the adjudication stage of the process. I sought and received the representations of the Police, initially, and shared the non-confidential portions of them with the appellant, who also provided me with submissions.

RECORDS:

The records at issue consist of the undisclosed portions of eight occurrence reports totalling 28 pages. I will refer to each individual page of the occurrence reports as a record in this order.

DISCUSSION:

PERSONAL INFORMATION

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 if 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].

The meaning of “about” the individual

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].

The meaning of “identifiable”

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations of the parties

The Police submit that the undisclosed portions of the records consist of the personal information of individuals other than the appellant, including their names, addresses, telephone numbers, ages, dates of birth, along with other information about them. In addition, the Police submit that the undisclosed portions of the records contain the views and opinions of these individuals about the appellant, thereby qualifying as the personal information of the appellant under section

2(1)(g). The Police argue that the undisclosed information in the records qualifies as the personal information of these individuals, as well as the appellant.

The appellant's representations do not directly address this issue.

Findings with respect to "personal information"

I have reviewed the undisclosed portions of Records 2, 3, 6, 7, 11, 12, 14, 17, 19, 20, 22, 24 and 28 and find that because the records were created as a result of the involvement of the appellant with the Police, all of them contain the personal information of the appellant. I also find that the information consists of the names, addresses, telephone numbers, dates of birth and other information, of other identifiable individuals (the affected persons), thereby qualifying as their personal information.

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 the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Representations of the parties

In this case, the Police submit that the information contained in all the records, with the exception of Records 14 and 17, falls within the ambit of section 14(3)(b), which states:

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;

The Police submit further that, “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].”

The Police submit that the undisclosed portions of Records 14 and 17 do not relate to law enforcement issues but are more generally concerned with Police contact with certain identified individuals who expressed concerns about the mental health, and subsequent safety, of the appellant. The Police argue that this information was provided implicitly in confidence by the individuals who spoke to the Police and that it falls within the ambit of the consideration listed in section 14(2)(h) which favours privacy protection, and reads:

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,

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

The appellant has not addressed the application of section 38(b) or the factors and presumptions in sections 14(2) and (3) to the information in the records.

Findings under section 38(b)

I find that the personal information that remains undisclosed in Records 2, 3, 6, 7, 11, 12, 19, 20, 22, 24 and 28 was compiled and is identifiable as part of an investigation by the Police into a possible violation of law. Each of these records were prepared as a result of a Police investigation of a complaint with a view to making a determination as to whether charges ought to be laid under the *Criminal Code* or some other statute. As such, I find that the personal information of the affected persons in these records falls within section 14(3)(b), and its disclosure is presumed to constitute an unjustified invasion of personal privacy. I have not been provided with any evidence to support a finding that section 16 applies to this information and the exceptions in section 14(4) clearly do not apply. Accordingly, I find that the undisclosed personal information in Records 2, 3, 6, 7, 11, 12, 14, 17, 19, 20, 22, 24 and 28 is exempt from disclosure under section 38(b).

The undisclosed information in Records 14 and 17 was compiled by the Police, but did not form part of an investigation into a possible violation of law. Rather, these records were prepared as a result of the Police being notified by two identifiable individuals about certain mental health concerns which they had respecting the appellant. The information describes their concerns, and also identifies the individuals who raised them with the Police. In my view, this information was provided to the Police with an expectation that it would be treated confidentially and the factor favouring the non-disclosure of personal information in section 14(2)(h) applies to it. As I have not been provided with any submissions describing any considerations favouring the release of this information, I find that its disclosure would constitute an unjustified invasion of personal privacy, and that it qualifies for exemption under section 38(b). Again, I have not been provided with any submissions in favour of a finding that section 16 applies, and the exceptions in section 14(4) have no relevance. Accordingly, I find that the undisclosed portions of Records 14 and 17 are exempt under section 38(b).

Exercise of discretion

The Police have provided me with representations describing the reasons behind their decision to exercise their discretion under section 38(b) not to disclose the remaining portions of the records to the appellant. Much of the information provided to me by the Police in support of this decision was made in confidence and I am, accordingly, unable to reproduce it in the text of this order.

I am satisfied, based on the submissions of the Police respecting the manner in which they exercised their discretion, that it was done in an appropriate fashion and I will not disturb it on appeal.

ORDER:

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

Original Signed by: _____
Donald Hale
Adjudicator

December 16, 2005
