



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2180

Appeal MA-050455-1

Toronto Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

In the early morning hours of September 23, 2005, the requester was bitten by a dog while out on her morning walk. The requester submitted a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information related to the incident. The requester was specifically interested in obtaining access to:

...copies of the complete records pertaining to the incident, together with any further investigative reports in the possession of the Toronto Police Service.

The Police identified 15 pages of records as responsive to the request and issued two nearly-identical decision letters on December 6 and 12, 2005, denying access to the records in full, citing the same exemptions and reasons in both. In the second letter, the Police informed the requester that

... the matter is still under investigation. In order to prevent interference with the investigation process, access is denied to that information.

The Police explained that they were relying upon the discretionary exemptions in section 38(a) in conjunction with section 8(1)(b) (ongoing law enforcement investigation), and section 38(b), together with section 14(1) (personal privacy) and the presumption in section 14(3)(b) (information compiled as part of a law enforcement investigation), of the *Act*. The Police also informed the requester that other information contained in the records had been severed because it was non-responsive to the request.

The requester (now the appellant) appealed the Police's decision to this office. The appellant authorized another individual to represent her in the appeal.

Near the completion of the mediation stage of this appeal, the Police issued a revised decision letter, dated March 30, 2006, disclosing some of the information previously withheld and withdrawing their reliance upon sections 8(1)(b), and 38(a) of the *Act*. The appellant's representative advised that he still wished to pursue access to the balance of the information contained in the records. No further resolution of the appeal was possible at mediation and it was transferred to the adjudication stage of the appeal process where it was assigned to me to conduct an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, setting out the facts and issues in this appeal, to the Police, seeking their representations on the issues. Rather than submitting representations, the Police issued a second revised decision letter to the appellant, dated May 4, 2006, disclosing significant additional portions of the records remaining at issue. The Police maintain the position that the personal privacy exemption in section 38(b) applies to exempt certain information in the records that remains undisclosed.

When contacted by an Adjudication Review Officer from this office, the appellant confirmed her interest in obtaining access to the remaining portions of the records being withheld by the Police.

Not having received submissions from the Police on any of the issues outlined in the original Notice of Inquiry, I sought representations from them by means of a Supplementary Notice of Inquiry in letter form. The Police provided me with representations on section 38(b) of the *Act*.

I then sent a modified Notice of Inquiry to the appellant, along with the complete representations of the Police, seeking representations on the issues. The appellant declined to submit representations.

RECORDS:

Portions of 15 pages of records remain at issue. Pages 1 to 4 consist of an occurrence report while pages 5 to 15 are comprised of the handwritten notes of five different police officers.

DISCUSSION:

RESPONSIVENESS OF THE RECORDS IDENTIFIED BY THE POLICE

The Police have made severances to the records based, in part, on the assertion that certain portions are non-responsive to the appellant's request.

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

Representations

Neither party in this appeal submitted representations on the issue of responsiveness for my consideration. I note that during the mediation stage of this appeal, the mediator sought clarification from the Police about the specific information severed from the records as non-responsive to the request. The Police informed the mediator that this clarification would be provided during the adjudication stage of the appeal instead.

In addition, although the issue of responsiveness remained before me for adjudication, the Police only provided the requested clarification on responsiveness with regard to the information contained in page 9 of the records, and submitted no further representations on this issue in response to the Notice of Inquiry. As previously noted, the appellant declined to submit representations at all on this, or any other, issue.

In the circumstances, I must decide the issue without the benefit of submissions from the parties.

Analysis and Findings

Reviewing the records themselves, I note that portions of pages 5, 8, 9, 10, 11, 12, 13, 14, and 15 were redacted by the Police prior to their release to the appellant with the second revised decision letter of May 4, 2006.

These specific portions are those which were marked Non-Responsive ["N/R"] in the copies sent to this office. The exception to this is the information severed from PC Kung's notebooks at pages 5 and 8 which contained no such "N/R" notation. However, based on my own review of those pages, I am satisfied that the portions severed before and after the recounting of the incident by this officer were simply left without the "N/R" notation by oversight, and I will consider them with the other pages so marked.

Previous orders have established that, to be considered responsive to a request, the records must "reasonably relate" to the request [Order P-880]. In this appeal, I have adopted the approach taken by Inquiry Officer Anita Fineberg in Order P-880.

I am mindful of Inquiry Officer Fineberg's comments in Order P-880 about the responsiveness of information contained in a police officer's notebook:

... if an individual has made a request to a Police Services Board for "all the information you have on me", it is possible that some responsive records may be contained in a police officer's notebook. However, that does not mean that the entire notebook, page or even a paragraph is responsive to the request. By their very nature, such notebooks record the daily activities of an officer who may be involved in many different investigations at any one time. Accordingly, the portions of the notebook which are responsive to such a request may consist of scattered pages, paragraphs, lines or even words.

Following a careful review of the records for which portions are claimed to be non-responsive, including what appears implicitly claimed for the severed portions of pages 5 and 8, I am satisfied that these segments contain information about other investigations or activities of the police officers that is not reasonably related to the appellant's request. Accordingly, I find that these portions of pages 5, 8, 9, 10, 11, 12, 13, 14, and 15 are not responsive to the request and I remove them from the scope of this appeal.

PERSONAL INFORMATION

The Police have withheld certain information contained in the remaining records based on the assertion that their disclosure would constitute an unjustified invasion of another individual's personal privacy under section 38(b). However, in order for me to decide whether or not the disclosure of the record would constitute an unjustified invasion of personal privacy under that exemption, it is necessary to determine whether the record contains personal information and, if so, to whom it belongs.

Section 2(1) of the *Act* defines "personal information", in part, 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,
- ...
- (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, 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.)].

I have not received representations from either the Police or the appellant on the issue of personal information and so I must turn to a review of the records themselves to determine the issue.

Analysis and Findings

In my view, the records contain information about the appellant that meets the definition of "personal information" in paragraphs (a) (age and sex), (b) (medical, criminal and employment history), (d) (address and telephone number), (e) (appellant's personal views and opinions) (g) (views of other individuals about the appellant) and (h) (the appellant's name along with other personal information relating to her) of the definition in section 2(1) of the *Act*.

In already disclosing significant portions of the records to the appellant, the Police have, in my view, demonstrated their tacit acceptance that releasing the appellant's own personal information to her cannot constitute an unjustified invasion of another individual's personal privacy.

In addition, I find that four pages of the records also contain the personal information of three other identifiable individuals. This information qualifies as personal information for the purposes of the definition in section 2(1) of the *Act* because it includes information that fits within paragraphs (a) (age, sex, marital or family status), (b) (medical, criminal and employment history), (d) (addresses and telephone numbers), (g) (views or opinions about the individual), and (h) (name along with other personal information about them).

Specifically, I find that pages 2, 5, 9 and 11 contain the personal information of identifiable individuals other than the appellant. In relation to this particular information, I must review whether it qualifies for exemption under the discretionary exemption at section 38(b) of the *Act*.

However, before I proceed with my analysis under section 38(b), I will first review other information that the Police severed from the records. Certain information does not, in my view,

qualify as personal information for the purposes of section 2(1) of the *Act* and cannot, therefore, be withheld under section 38(b).

Seven digit code

I note that a single seven digit code has been severed from pages 1, 4, 5, 9, 11 and 13. Based on the evidence available to me, the Police did not cite an exemption, or provide any rationale, for redacting this seven digit code from the records at any point during either the request stage or the appeal process. While the definition of personal information contemplates, at paragraph (c), an identifying number, the Police have not provided me with any evidence which would allow me to draw a connection between this code and any identifiable individual. Accordingly, I find that this code does not qualify as personal information as contemplated by the definition of that term at section 2(1) of the *Act*.

Information severed from occurrence report

The Police severed a six line paragraph from page 2 of the occurrence report. From my own careful review of this paragraph, I note that it contains information about the efforts of police to capture the dog that had bitten the appellant, including the general location of its capture. In my view, none of the information in this paragraph qualifies as the personal information of an identifiable individual.

Municipal address of the location of the dog's capture

More specific information about the location of the dog's capture - a municipal address in the City of Toronto - is severed from pages 7, 10, 12 and 15 of the records. The street name without the number is also provided in the paragraph severed from page 2, as discussed above, and my reasoning in this section applies equally to the street name.

In my view, this municipal address does not, in and of itself, point to an identifiable individual and does not, therefore, satisfy the definition of "personal information" in section 2(1) of the *Act*.

In Order PO-2191, Adjudicator Frank DeVries confronted the issue of the release of a street address, which was related to a police investigation. In that appeal, the institution had released the street name, and had severed only the street number. Adjudicator DeVries stated:

It is clear ... that the address number referred to in the records is included in the records simply as a reference point for the purpose of the investigation into the incident. The incident is an accident involving the appellant's vehicle, and the police were involved in investigating the accident. For the purpose of identifying the location of the accident, an address number was used; however, there is no indication from either the records or the representations that the address number is referable to an identifiable individual, nor is there any suggestion that any individual at that address was in any way involved in the incident.

As set out above, "personal information" is defined in the *Act* as recorded information about an identifiable individual, including,

- (d) the address ... of the individual,

In the circumstances of this appeal, the street number (address) is not referable to any individual. Whether any individual lived at that address at the time of the incident, or currently lives there, or whether it is or was used as a business address, has no relevance to this appeal. The street number is simply the reference point used by the Police in their investigation. Indeed, one of the references to the street number in the records refers to the location of the incident as "east of [the identified number]". In my view, the street number in this appeal is not recorded information about an identifiable individual, and does not constitute the personal information of an identifiable individual for the purpose of the *Act*.

I am in full agreement with the approach taken by Adjudicator DeVries in Order PO-2191 and adopt it for the purposes of this appeal.

The address given to denote the location of the dog's capture has not been connected in any way, either by the Police in their submissions, or in the records themselves, with any identifiable individual. Accordingly, I find that the municipal address relating to the capture of the dog falls outside the scope of the definition of personal information in section 2(1) of the *Act*.

Other Municipal Address

The Police have severed a second municipal address from pages 6, 9 and 11 of the records at issue. In my view, it is evident from a review of the records that this address is given to situate the individual who initiated the call to the Police about the location where the incident took place.

I note that other information about this particular individual which was severed by the Police may render that individual "identifiable" and I have made a corresponding finding in a previous section that this particular information fits within the definition of personal information in section 2(1). I will be considering that information in the context of my analysis of the personal privacy exemption. However, in specific reference to the second municipal address only, I have no evidence before me to suggest that the individual who contacted Police is connected, in any way, with this particular address.

In my view, as with the address of the location of the dog's capture, the address given on pages 6, 9 and 11 simply constitutes a reference point used by the Police in their investigation. For this reason, and in accordance with the reasoning in Order PO-2191, I find that the second municipal address severed by the Police does not constitute personal information for the purposes of the definition of the term in section 2(1).

Miscellaneous

While certain information about the individual who contacted the Police may render that individual identifiable, and will be discussed further below, there is information severed from the record that does not fit within any of the paragraphs of the definition in section 2(1). I am referring to two one-word descriptive terms, with slight variations, that appear adjacent to the personal information of the individual who contacted the Police on pages 5, 6, 9 and 11. These two terms are “complainant”, or a short form thereof, or “passerby”. In my view, the generality of these terms is highlighted once the aforementioned personal information is extracted. I find that these terms do not constitute personal information for the purposes of the definition of that term in section 2(1) of the *Act*.

Summary of Findings

Because the Police cited no exemption other than the personal privacy exemption in this appeal, the information severed by the Police which does not fit the definition of personal information in section 2(1) of the *Act*, as discussed in the preceding pages, cannot be exempt under section 38(b), and I will order it disclosed to the appellant.

I will now determine whether the discretionary exemption in section 38(b) applies to the personal information on pages 2, 5, 9 and 11 of the records.

RIGHT OF ACCESS TO ONE’S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

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.

The Police take the position that the undisclosed portions of the record are exempt under the discretionary exemption in section 38(b). Under section 38(b), where a record contains the 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 one of the presumptions contained in paragraphs (a) to (h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion of privacy, unless the information falls within the ambit of the exceptions in section 14(4), or if the “public interest override” in section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In the circumstances, it appears that the presumption at section 14(3)(b) of the *Act* may apply. This section 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;

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].

Representations

The representations provided by the Police on this issue are general in nature and speak more to their exercise of discretion under section 38(b). However, the Police state that the personal information was collected from third parties who supplied it to the investigating officers in the course of a police investigation or law enforcement activity.

Findings

Although the representations of the Police were markedly brief on the subject, I am satisfied that pages 2, 5, 9, and 11 contain personal information pertaining to an investigation into a possible violation of the law, namely the contravention of animal control by-laws. Specifically, I find that the personal information on pages 2, 5, 9 and 11 of the records, which relates to three individuals other than the appellant, was compiled and is identifiable as part of an investigation into a possible violation of the law. This information relates to the incident, and was gathered both at the time of the incident, and in the course of the subsequent investigation into the same incident. Therefore, I find that the presumption in section 14(3)(b) of the *Act* applies to the personal information of identifiable individuals other than the appellant.

As previously noted, 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*, cited above]. None of the exceptions in section 14(4) apply in the

circumstances of this appeal. In addition, section 16 has not been raised and would not apply in any event. As a result, I find that the personal information of individuals other than the appellant which is found on pages 2, 5, 9 and 11 qualifies for exemption under section 38(b) of the *Act*.

EXERCISE OF DISCRETION UNDER SECTION 38(b)

My finding that the personal information of other identifiable individuals on pages 2, 5, 9 and 11 qualifies for exemption under section 38(b) does not conclude the matter. The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

The Commissioner, or her delegate, may also find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

This office has identified a number of considerations that may be relevant in exercising its discretion. A list of these considerations was provided to the Police in the Notice of Inquiry and may include those listed below. It should be noted that not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

- whether the requester has a sympathetic or compelling need to receive the information
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the historic practice of the institution with respect to similar information

The Police state that in exercising their discretion to withhold the information, the proper balance between the right of access and the protection of privacy was carefully considered, and the Police concluded that the “balance ... must be given in favour of protecting the privacy of the third party.” The Police also cite the sensitivity of the law enforcement context and the public trust in safeguarding information obtained in the course of law enforcement, as well as the absence of a public interest in the disclosure of the information, as factors considered in deciding to withhold the severed information. The remainder of the Police’s representations on the issue were general in nature.

While the Police’s representations on the exercise of discretion were, in my view, of a general nature, I took into consideration the information the appellant has already received as a result of the Police’s exercise of discretion in the second revised decision letter and the information she will receive as a consequence of this order. Overall, I am satisfied that the Police did not err in the exercise of their discretion and I will not interfere with it on appeal. Accordingly, the personal information of the three identifiable individuals founds on pages 2, 5, 9 and 11 of the records is exempt under 38(b).

ORDER:

1. I uphold the decision of the Police to deny access to the non-responsive information on pages 5, 8, 9, 10, 11, 12, 13, 14, and 15 and the personal information of three identifiable individuals on pages 2, 5, 9 and 11. For greater certainty, I have highlighted the non-responsive or exempt information in pink on the copy of the records provided to the Police with this order. The highlighted information is **not** to be disclosed.
2. I order the Police to disclose to the appellant the remaining information by providing it to the appellant by **May 7, 2007**, but not before **May 2, 2007**. For greater certainty, the information to be disclosed to the appellant is highlighted in green on the copy of the records provided to the Police.

3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records that are disclosed to the appellant.

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ March 30, 2007