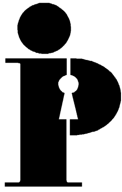

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2398

Appeal MA07-115

Ottawa Police Services Board

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NATURE OF THE APPEAL:

The Ottawa Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a journalist for access to:

> Documents released to the public in the past 12 months as a result of Freedom of Information requests … regarding Police calls to properties in [an identified] neighborhood.

In its initial decision letter, the Police stated that, based on the parameters supplied by the requester, they were unable to locate any responsive records. The requester (now the appellant) appealed this decision.

During mediation of the appeal, the appellant advised that he only sought access to information pertaining to certain streets in the identified neighborhood. He provided a list of forty specific street names to the Mediator.

The Mediator then forwarded the appellant's list to the Police. Relying on the discretionary provision found at section 14(5) of the *Act*, the Police then issued a supplementary decision letter refusing to confirm or deny the existence of responsive records. This decision did not resolve the appeal, which later moved on to the adjudication stage of the appeal process, in which an inquiry is conducted under the *Act*.

This office initiated the inquiry process by sending a Notice of Inquiry to the Police, setting out the facts and issues in the appeal and inviting their representations. The Police provided representations in response. This office then sent a Notice of Inquiry, along with the non-confidential representations of the Police, to the appellant, who provided representations in response. The appellant's complete representations were sent to the Police, who were invited to provide reply representations. The Police did not do so. This office then sent a Notice of Inquiry to an affected person, who provided representations. The appeal was subsequently re-assigned to me.

CONCLUSION:

In this order, I do not uphold the refusal of the Police to confirm or deny the existence of responsive records because, in my view, disclosure of the existence of records does not reveal personal information, and for this reason, section 14(5) of the *Act* does not apply, as outlined below.

Accordingly, I confirm that responsive records exist. In keeping with the usual practice of this office in such cases, I am disclosing this order to the Police and the affected party prior to disclosing it to the appellant, in order to preserve their ability to bring an application for judicial review or seek other relief if they deem it appropriate to do so before the order is disclosed to the appellant.

For the reasons outlined below, I am also ordering the Police to disclose the records to the appellant, subject to the severance of the street numbers (but not street names), and to make an access decision concerning the street numbers.

RECORDS:

The records consist of a group of printouts entitled "Calls in CAD to specific addresse(s)", and identify the street addresses of multi-residence buildings, the number of calls that were received in relation to each, and a breakdown of calls by month. This is the information that was previously disclosed to the affected party in response to her access request (the "previous request") during the time period stipulated in the request. The printouts contain additional information that was not disclosed in response to the previous request, and I agree with the Police that the remainder of the information on these pages is non-responsive for that reason, given that the appellant has asked for what was previously disclosed.

The Police have also provided this office with two additional pages (pages 4 and 6) that were not disclosed to the affected party in response to the previous request. The decision letter sent to the affected party indicates that they were withheld under the mandatory exemption at section 14(1) (personal privacy) in conjunction with section 14(3)(b) of the *Act*. Because the request sought access to records that *were* previously disclosed, I agree that these pages are also non-responsive.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

Section 14(5) of the *Act* states:

> A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Section 14(5) gives an institution the discretion to refuse to confirm or deny the existence of a record in certain circumstances.

A requester in a section 14(5) situation is in a very different position from other requesters who have been denied access under the *Act*. By invoking section 14(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power that should be exercised only in rare cases [Order P-339].

Before an institution may exercise its discretion to invoke section 14(5), it must provide sufficient evidence to establish both of the following requirements:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and

2. Disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

The Ontario Court of Appeal has upheld this approach to the interpretation of section 21(5) of the *Freedom of Information and Protection of Privacy Act*, which is identical to section 14(5) of the *Act*, stating:

> The Commissioner's reading of s. 21(5) requires that in order to exercise his discretion to refuse to confirm or deny the report's existence the Minister must be able to show that disclosure of its mere existence would itself be an unjustified invasion of personal privacy.
>
> [Orders PO-1809, PO-1810, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 4813 (C.A.), leave to appeal to S.C.C. dismissed (May 19, 2005), S.C.C. 30802]

In this case, the resolution of the section 14(5) issue turns on the second requirement articulated above, which is whether "disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy." An unjustified invasion of personal privacy can only result from the disclosure of personal information.

Would the disclosure of the existence of the records reveal personal information?

"Personal information" is defined in section 2(1) of the *Act*. This definition states, in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (d) the address, telephone number, fingerprints or blood type of 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].

Section 2(2.1) is also relevant. It states:

> Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

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].

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.)].

For several reasons, I am not satisfied that the records contain the affected party's personal information, nor that disclosure of the existence of the records would reveal the personal information of any individual. In order to simplify these issues, I will address them under the following headings:

(1) The request was generic;

(2) The affected party was acting in an official capacity when she asked for the previously disclosed information;

(3) Disclosure of the existence of the records would not reveal the personal information of any other individual.

The Request was generic

In this case, the appellant requested documents released to the public in the previous 12 months as a result of access requests under the *Act* regarding Police calls to properties in an identified neighborhood. The affected party, who submitted the previous request, was not identified in the appellant's request.

However, in their representations, the Police indicate that when the appellant first contacted them concerning this matter, he inquired as to whether a "particular individual" (the affected party) had made a formal request. The Police advised the appellant that this was personal information. The appellant then submitted the generic request summarized above, which did not name the affected person as the requester to whom the record was previously disclosed. As already outlined, the original parameters of the request produced no responsive records, and the Police advised the appellant of this in their initial decision letter. During mediation of this appeal, the appellant specified which street names he was interested in, and this produced the responsive records, whose existence the Police refused to confirm or deny in their revised decision letter. As with the initial request, the revised version submitted during mediation did not name the affected person as the requester to whom the previous disclosure was made.

It is therefore clear that the appellant did not request the identity of the affected party, and accordingly, that information does not form part of the responsive record.

Notwithstanding the generic nature of the appellant's request and revised request, and the fact that the record clearly contains no personal information of the affected party, the Police's representations explain in some detail that their decision to refuse to confirm or deny the existence of records under section 14(5) of the *Act* was intended to avoid an unjustified invasion of the affected party's personal privacy. In my view, the Police could have responded without claiming section 14(5). They were responding to a generic request and a simple access decision would not have revealed anything at all about the affected party. Had they done this, confirmation of the existence of the records would not, in my view, have revealed anything about the affected party, and would certainly not have constituted an unjustified invasion of her personal privacy. If the affected party had not been notified and brought into this matter, the foregoing analysis would have been sufficient to conclude that requirement 2 under section 14(5) is not met.

However, since the Police have relied on the need to protect the affected party's privacy in responding to the request by claiming section 14(5), I must consider whether disclosure of the existence of the records would be an unjustified invasion of her personal privacy.

The affected party was acting in an official capacity when she asked for the previously disclosed information.

In Order P-300, former Assistant Commissioner Tom Mitchinson took the view that correspondence submitted to an institution by a representative of a local organization was not the personal information of the author of the correspondence. Correspondence submitted to the institution on the letterhead of the organization, and signed by an individual acting as a spokesperson of the organization did not meet the definition of "personal information."

The affected party's representations make it clear that her request was made on behalf of a local association, and accordingly, in my view, it was submitted in an "official" capacity. There is nothing in the circumstances of this appeal to indicate that disclosure of the existence of records would reveal anything of a personal nature about the affected party. Accordingly, I find that even if confirming the existence of a record reveals anything about the affected party, it is not personal information and disclosure would not be an unjustified invasion of her personal privacy.

In her representations, the affected party also states that she has "no concerns about confirmation of the existence of the record." This supports my finding that disclosure of the existence of the records is not an unjustified invasion of her personal privacy.

Accordingly, requirement 2 is not met in relation to any information about the affected party that would be revealed by disclosing the existence of the record.

The only remaining question in relation to requirement 2 under section 14(5) is whether the personal information of any other individual or individuals would be revealed by disclosing the existence of the record.

Disclosure of the existence of the records would not reveal the personal information of any individual

As noted above, the responsive record identifies the street addresses of multi-residence buildings as well as the number of calls that were received, and a breakdown of calls by month. The Police disclosed this information to the affected person, but when they made that disclosure, they withheld records pertaining to buildings that do not contain multiple residences (presumably single family dwellings) under the section 14(1) exemption. This was done because the Police were of the view that the number of calls to these addresses constituted personal information, and disclosure would be an unjustified invasion of personal privacy.

It is evident that the Police concluded that the information they disclosed to the affected party in response to the previous request was not about identifiable individuals, and therefore did not qualify as personal information. Nevertheless, the affected party argues in her representations that disclosure of this information would be an unjustified invasion of the personal privacy of those residing at the identified street addresses. It therefore appears that the appellant takes a different view than the Police concerning the identifiability of individuals living at the multiple residence buildings whose street addresses were disclosed to her.

The issue of whether disclosure of the actual records about calls to multiple residence buildings would reveal the personal information of residents is different than whether disclosure of the *existence* of these records would reveal personal information. The specific addresses in question were not identified in the request, nor is there any indication that they are known to the appellant. Only street names are identified in the request. In my view, disclosure of the fact that responsive records exist could not possibly reveal information about identifiable individuals who reside at those addresses. Accordingly, no personal information about any such individuals is disclosed by revealing the existence of the records.

Conclusion

In the circumstances, I conclude that revealing the existence of the records does not disclose personal information, and therefore could not be an unjustified invasion of personal privacy. Accordingly, the second requirement under section 14(5) is not met, and the existence of the records should be revealed to the appellant.

PERSONAL PRIVACY

Having determined that section 14(5) does not apply, and that the existence of the records must therefore be revealed, I must now consider whether the records themselves are exempt from disclosure to the appellant under section 14(1), which in this case turns on whether disclosure

would be an unjustified invasion of personal privacy. The Police themselves do not make this claim, and have previously disclosed the records to the affected party.

However, in her representations, the affected party states that the association she represents did not give copies of the requested material to the media because it "did not want to have those addresses used by the media to stigmatize the law-abiding tenants in these problem buildings or to go to the owners of the buildings." The affected party submits that the group's purpose was to seek institutional changes that would result in faster compliance by problem landlords through regulatory changes. It further submits that disclosing the records would be an "unjustified invasion of the privacy of the residents of the properties and of the owners of the properties that were queried." The affected party states that if the records are disclosed to the appellant, the addresses should be severed from the document to protect the privacy of the tenants and owners of the properties.

In Order PO-2225, former Assistant Commissioner Tom Mitchinson concluded that information about non-corporate landlords was not personal information because it arises in a business context. I agree, and therefore find that although information about calls to the multiple residence addresses identified in the record might be the personal information of residents, it does not qualify as personal information of absentee owners who are landlords.

Based on the information provided to me, it appears that the multiple residence dwellings whose addresses are included in the records, in conjunction with the number of calls, may be small enough to result in the disclosure of information about identifiable individuals. More specifically, information about calls to these addresses may be about individuals who could reasonably be identified as being associated with calls made to the Police, and this would qualify as personal information (see *Ontario (Attorney General) v. Pascoe*, cited above). If these individuals are identifiable, the number of calls involving them is their personal information. This information may be exempt under the mandatory exemption provided by section 14(1) of the *Act,* which states that "[a] head shall refuse to disclose personal information to any person other than the individual to whom the information relates …" unless one of a list of exceptions applies. The only exception that could apply in this case is section 14(1)(f), which mandates disclosure if it "does not constitute an unjustified invasion of personal privacy."

If the street number is severed, however, and only the street name and the information about calls are disclosed, this could not relate to any identifiable individual. On this basis, I find that the record, in that form, does not contain personal information. As only personal information is exempt under section 14(1), the record, severed in this manner, is not exempt under that section.

The Police do not claim that any other exemptions apply in either their decision letter or their representations, and they have previously disclosed these records without the severances I am proposing to make. As well, in response to the affected person's request, the Police only claimed section 14(1), which they relied on to withhold information about buildings that did not contain multiple residences. Accordingly, I conclude that the Police do not intend to claim additional exemptions for the previously disclosed records.

I will therefore order the Police to disclose the records, with the street number (but not street name) severed, to the appellant. I will also order the Police to make an access decision concerning the street numbers. If they conclude that disclosing the street numbers would not reveal personal information, or that section 14(1) would not apply, then the street numbers may also be disclosed. If they decide to withhold the street numbers, the appellant's right to appeal that non-disclosure is preserved. If the appellant advises this office that he wishes to appeal such a decision within thirty days after receiving it, an immediate inquiry will be conducted, and a further order will be issued.

ORDER:

1. I do not uphold the decision of the Police to refuse to confirm or deny the existence of a responsive record in this appeal. If I do not receive an application for judicial review from the Police or the affected party on or before **March 16, 2009** in relation to my decision that section 14(5) does not apply, I will send a copy of this order to the appellant on or before **March 20, 2009.**

2. I order the Police to disclose to the appellant, on or before **March 20, 2009**, a copy of the record as previously disclosed to the affected party with the street numbers, but not the street names, severed.

3. I further order the Police to make an access decision under the *Act* with respect to the street numbers, in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request, and to provide their decision letter to the appellant and to myself. The appellant has the right to appeal this decision within thirty days of receiving it, as specified in the *Act*. If the appellant decides to appeal, he should direct his notice of appeal to my attention.

4. In order to verify compliance with this order, I reserve the right to require a copy of the record that has been disclosed pursuant to order provision 2.

Original Signed by: February 27, 2009

John Higgins
Senior Adjudicator