



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2382

Appeal MA07-398

Thunder Bay 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:

The Thunder Bay Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

Access to records (copies kept by [named police officer]) or other [Police] staff that were created and sent to Interpol Ottawa. Copies of these records remain at [the Police]. Please include 1) occurrence report 2) incident report 3) all files sent to Interpol Ottawa regarding myself.

The Police identified records responsive to the request and relied on the discretionary exemption in section 38(a) (discretion to refuse requester's own information), in conjunction with sections 8(1)(a) (interfere with a law enforcement matter), 8(1)(b) (interfere with an investigation) and 9(1)(d) and (e) (information received in confidence from a government agency); as well as the discretionary exemption in section 38(b) (personal privacy), with reference to the considerations in sections 14(2)(f) (highly sensitive), 14(2)(h) (information supplied in confidence) and 14(2)(i) (unfairly damage reputation) along with the presumptions at sections 14(3)(a) (medical history), 14(3)(b) (investigation into a possible violation of law), 14(3)(d) (employment or educational history) and 14(3)(h) (racial or ethnic origin) to deny access to them, in full.

The requester (now the appellant) appealed the decision.

The appeal was not resolved at mediation and it was moved to the adjudication phase of the appeal process.

In my review of the records identified by the Police as responsive to the request, I determined that one of the Supplementary Occurrence Reports may not contain the personal information of the appellant and that the mandatory personal privacy exemption at section 14(1) might apply to that record. Accordingly, I added the possible application of the mandatory exemption at section 14(1) of the *Act* as an issue in the appeal.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police, initially. The Police provided representations in response to the Notice. I then sent a Notice of Inquiry, along with the non-confidential representations of the Police, to the appellant who also provided representations in response.

RECORDS:

The records at issue consist of a General Occurrence Report and three Supplementary Occurrence Reports.

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" in accordance with section 2(1) of the *Act* and, if so, to whom it relates.

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 where they relate to another individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where 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.

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.)].

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].

In my view, except for the second Supplementary Occurrence Report, all of the other records at issue contain the personal information of the appellant. This information qualifies as his personal information because it is recorded information about him that includes his name, along with other personal information about him (paragraph (h)).

All of the records also contain the personal information of other identifiable individuals. This information qualifies as their personal information because it includes their addresses and telephone numbers (paragraph (d)), or contains their names, along with other personal information about them (paragraph (h)).

As noted above, the second Supplementary Occurrence Report does not contain the personal information of the appellant.

PERSONAL PRIVACY

Where an appellant seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of another individual's personal privacy.

In addition, section 38(b) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

(b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

Accordingly, under section 38(b) where a record contains personal information of both the appellant and another identifiable individual, and disclosure of that information would constitute an unjustified invasion of the other individual's personal privacy, the Police may refuse to disclose that information to the appellant.

That does not end the matter however. Despite this finding, the Police may exercise their discretion to disclose the information to the appellant. This involves a weighing of the appellant's right of access to his own personal information against the other individual's right to protection of their privacy.

Under sections 14 and section 38(b), the factors and presumptions in sections 14(2) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold is met.

Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764]

The Submissions of the Police and the appellant

The Police claim that the presumptions at sections 14(3)(b), (d) and (h) and the factors at sections 14(2)(f), (h) and (i), as well as additional confidential unlisted factors apply to the information contained in the records.

The appellant’s submissions focus on his concerns about the conduct of the Police and what may be contained in the records. He asserts that there is no active investigation and that he should be provided access to any of his personal information in the responsive records.

I will first consider the application of the presumption at section 14(3)(b) of the *Act*.

Section 14(3)(b)

Section 14(3)(b) reads as follows:

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 that all of the withheld information is personal information that was compiled and is identifiable as part of an investigation into a possible violation of law. As a result, they argue that disclosure would result in a presumed unjustified invasion of personal privacy. The

appellant asserts that there is no active investigation and alludes to the factor favouring disclosure at section 14(2)(d) of the *Act* (the personal information is relevant to a fair determination of rights affecting the person who made the request).

I find that section 14(3)(b) applies in the circumstances of this appeal. I have reviewed the records remaining at issue and I conclude that the personal information contained in them was compiled and is identifiable as part of an investigation into a possible violation of law. Whether or not charges are laid does not affect the application of 14(3)(b) [Order PO-1849]. Because this presumption applies, in accordance with the ruling in *John Doe* cited above, I am precluded from considering the possible application of any of the factors or circumstances favouring disclosure under section 14(2). This would include any consideration of the factor in section 14(2)(d) that was alluded to by the appellant in his representations.

The presumed unjustified invasion of personal privacy at section 14(3)(b) therefore applies to this information. Section 14(4) does not apply. The appellant has not relied upon the "public interest override" provision in section 16.

Conclusions

As set out above, the Second Supplementary Occurrence Report does not contain the personal information of the appellant. I have concluded that it is subject to the section 14(3)(b) presumption. Accordingly, disclosure of the record is presumed to constitute an unjustified invasion of personal privacy. As a result, that record, in its entirety, is exempt under the mandatory exemption at section 14(1) of the *Act*.

I have also concluded that disclosure of the personal information that is contained in the other records at issue would also constitute a presumed unjustified invasion of personal privacy under section 14(3)(b) of the *Act*. As a result, this information is exempt from disclosure under section 38(b) as its disclosure would result in an unjustified invasion of personal privacy of other individuals. Remaining at issue is whether the records can be meaningfully severed to allow for disclosure of the appellant's own personal information. I will also consider whether the Police appropriately exercised their discretion to withhold the personal information of other identifiable individuals contained in the remaining records and whether, in all the circumstances, it would be absurd to withhold the information from the appellant.

SEVERANCES

Section 10(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. However, previous orders have found that no useful purpose would be served by the severance of records where exempt information is so intertwined with non-exempt information that what is disclosed is substantially unintelligible. The key question raised by section 10(2) is one of reasonableness. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further,

severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)]. In my view the personal information pertaining to the appellant in the records (other than the Second Supplementary Occurrence Report) is so intertwined with the personal information of other individuals that disclosing it would lead to disclosure of the personal information of the other identifiable individuals or would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Accordingly, I conclude that the records cannot reasonably be severed in the circumstances of this appeal.

EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because section 38(b) is a discretionary exemption, I must also review the Police's exercise of discretion in deciding to deny access to the information in the remaining records that they withheld. On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

I may find that the Police erred in exercising their discretion where, for example:

- they do so in bad faith or for an improper purpose
- they take into account irrelevant considerations
- they fail to take into account relevant considerations

In these cases, I may send the matter back to the Police for an exercise of discretion based on proper considerations [Order MO-1573].

In the circumstances of this appeal and based upon the representations of the Police on this issue, I conclude that the exercise of discretion by the Police to withhold the information was appropriate, given the circumstances and nature of the information.

ABSURD RESULT

The appellant appears to suggest that the absurd result principle should apply in the circumstances of this appeal.

Where the appellant originally supplied the information, or he is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Order MO-2341-I].

While some of the information in the records (other than the Second Supplementary Occurrence Report) relates to the appellant, he did not provide any information directly to the Police. Furthermore, even if it is arguable that information may have originated with the appellant, in the circumstances of this appeal, I find that disclosing the information would be inconsistent with the purpose of the personal privacy exemption. Accordingly, I find that the absurd result principle does not apply.

In light of my decision it is not necessary to consider the application of the discretionary exemption at section 38(a) in conjunction with sections 8(1)(a), 8(1)(b), 9(1)(d) and 9(1)(e) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Steven Faughnan
Adjudicator

January 16, 2009