



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

ORDER MO-2582-F

Appeal MA09-402

York Regional 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/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is my final order in respect of the outstanding issues from Interim Orders MO-2558-I and MO-2575-I.

The appellant made a request to the York Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about an occurrence. The appellant specified that he is seeking all notes, records and material, including copies of the video interviews of the appellant and his two sons conducted by detectives.

The police located responsive records and granted partial access to them pursuant to the discretionary exemption in section 38(b)(personal privacy). In its decision letter, the police advised they take the position that releasing the video-taped interviews of the requester's sons would not be in their best interests.

The appellant appealed the police's decision. I conducted an inquiry under the *Act* in which I sought and received representations from the police and the appellant. Representations were shared in accordance with Section 7 of the IPC's *Code of Procedure and Practice Direction 7*. After reviewing the representations and the records at issue, which consisted of the severed portions of a General Occurrence Report and two videotaped interviews of the appellant's sons, I issued Interim Order MO-2558-I.

In that order, I found that the appellant was entitled to exercise the same access rights as his sons under section 54(c) of the *Act*, and for that reason, I ordered that the videotaped interviews be disclosed to the appellant. I further found that the police had failed to exercise their discretion under section 38(b) of the *Act*, which provides the police with discretion to balance the appellant's right of access to his personal information against other individuals' (the affected persons) right to privacy.

Order provision 2 of Order MO-2558-I required the police to exercise their discretion under section 38(b) with respect to the information I found subject to that exemption and to provide me with their representations as to the factors which they considered in doing so. In compliance with this provision, the police provided me with a copy of their earlier representations and submitted that they had already exercised their discretion to withhold the record under section 38(b).

After reviewing their representations, I came to the conclusion that the police had not properly exercised discretion in this instance, based on my view that the police had failed to consider a balancing of the appellant's right of access to his own personal information against the privacy interests of the affected persons whose personal interest was also contained in the records. Accordingly, in Order MO-2575-I, I ordered the police to again consider the exercise of discretion under section 38(b), and to provide me with representations as to the factors considered while doing so. I received representations from the police.

DISCUSSION:

With respect to their exercise of discretion, the Police state, in part:

The records that the appellant was denied access to were the video statements of his two sons and portions of the police report that contained the sex and date[s] of birth of the Principal, Vice-Principal and Secretary of his sons' public school, the Superintendent of the York Region School Board and three employees of the York Region Children's Aid Society. All business contact information of the School Board members and the York Regional Children's Aid Society employees, was released to the appellant.

...We looked at the information and weighed the requester's right of access to his own information against the affected individual's right to the protection of their privacy. The appellant does have a right to his own personal information, but not of the Principal, Vice-Principal and Secretary of his sons' public school, the Superintendent of the York Region School Board and three employees of the York Region Children's Aid Society. The affected parties also have rights to the protection of their privacy.

The following factors were also considered in exercising discretion not to disclose information:

The appellant was provided with written statements and/or affidavits as well as all business contact information of the School Board members and the York Regional Children's Aid Society employees. It is this police service's opinion that enough information regarding these parties were released to the appellant if he wishes to contact or identify these parties for any future purpose. Their sex and date of birth was not released and in the police's opinion this personal information is not accessible without consent and would be considered an invasion of privacy to release it.

As I noted in Interim Order MO-2575-I, an institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law (Order MO-1287-I). It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider its exercise of discretion (Order 58).

In the present appeal, having now asked the police twice to properly exercise their discretion, the majority of their representations continue to emphasize the privacy interests of the affected persons and the fact that disclosure of this information would be an unjustified invasion of their privacy. Nevertheless, I find that the police have also taken into account the appellant's right of access to his own personal information and have balanced that right against the privacy interests of the affected persons. Accordingly, I find that the police have properly exercised their discretion in favour of denying access to the information I have found exempt under section 38(b) of the *Act*.

ORDER:

I uphold the decision of the police and find that the personal information of the affected persons qualifies for exemption under section 38(b) of the *Act*.

Original Signed By: _____ December 16, 2010
Stephanie Haly
Adjudicator