

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2839

Appeal MA12-449

York Regional Police Services Board

January 31, 2013

Summary: The appellant sought access to records held by the police relating to an incident which involved a dog attack. The police granted access to most of the responsive record, and denied access to portions of it (including the address and telephone number of an affected party) on the basis of the exemption in section 38(b) (personal privacy) of the *Act*. This order finds that the record at issue contains the personal information of the appellant and another identified individual. It upholds the application of section 38(b) to the withheld portions of the record.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 14(2)(d), 14(3)(b), 38(b).

Orders and Investigation Reports Considered: MO-1146, MO-1420.

OVERVIEW:

[1] The York Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the report relating to a particular dog attack.

[2] The police issued a decision to disclose the record in part, and denied access to portions of the record on the basis of the exemption in section 38(b) (personal privacy) of the *Act*.

[3] The appellant appealed the decision of the police.

[4] During mediation, an individual whose personal information is contained in the record (the affected party) was contacted. The affected party confirmed that he did not consent to the disclosure of any information relating to him.

[5] Also during mediation, the requester authorized another individual, who also has an interest in the records, to act on his behalf. I will refer to the requester and his agent as "the appellant" in this appeal.

[6] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the appellant and the police. Representations were shared in accordance with section 7 of the Code of Procedure and Practice Direction 7.

[7] In this decision, I find that the records contain the personal information of the appellant and another identified individual. I also find that the withheld portions of the record are exempt under section 38(b) of the *Act*.

RECORD:

[8] The record remaining at issue is the withheld information contained on pages 1 and 2 of the numbered Occurrence Report relating to the particular dog attack. It consists of the address, telephone number, date of birth and gender of the affected person.

[9] The appellant is aware of the name of the affected person, and that information is not at issue in this appeal.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?

DISCUSSION:

Issue A. Do the records contain "personal information" as defined in section 2(1)?

[10] 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 where 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;

[11] 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.¹

Representations and findings

[12] The police state that the record contains the personal information of the appellant as well as that of another individual. They state:

The [police] received an access request from the appellant regarding an animal complaint investigated by police. The appellant is an individual who was the complainant noted in the record at issue which is a copy of the police report submitted by the investigating officer of the animal complaint. Information regarding another individual known as "the owner" was also contained within the record at issue. Access was denied to the portion of this police report that contained the sex, date of birth, address and telephone number of the "owner" or affected party. ...

[13] The police then refer to paragraphs 2(1)(a) and (d) of the definition of personal information, and take the position that the withheld information constitutes the personal information of the affected party under those paragraphs.

[14] The appellant does not address this issue directly.

[15] On my review of the record, I agree with the police, and find that it contains the personal information of the appellant, as it relates to an incident in which she was involved.

[16] I also find that the withheld portions of the record that remain at issue contain the personal information of the named affected party including his age (paragraph (a) of the definition) and his address and telephone number (paragraph (d) of the definition).

[17] Accordingly, I find that the information remaining at issue constitutes the personal information of the appellant and another identifiable individual for the purpose of the *Act*.

B. Does the discretionary exemption at section 38(b) apply to the information at issue?

[18] 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 exceptions

¹ Order 11.

to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the police must look at the information and weigh the appellant's right of access to her own personal information against the affected person's right to the protection of his privacy. If the police determine that release of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 38(b) gives the police the discretion to deny access to the appellant's personal information.

[19] In determining whether the exemption in section 38(b) applies, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the police 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. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b).

Section 14(1)(a)

[20] Section 14(1)(a) states:

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

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

[21] In this case the affected party was contacted during the mediation stage of the appeal process, and asked if he would consent to the disclosure of personal information. The affected party confirmed that he did not consent to the disclosure of the information relating to him. As a result, section 14(1)(a) does not apply to the information remaining at issue.

Section 38(b)

[22] Section 38(b) states:

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

if the disclosure would constitute an unjustified invasion of another individual's personal privacy

[23] The police state that section 38(b) applies to the information remaining at issue. They refer to the presumption in section 14(3)(b) in support of their decision. The appellant provides material in support of her position that the affected party's address and telephone number ought to be released to her.

The presumption in section 14(3)(b)

[24] Section 14(3)(b) reads:

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;

[25] 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.² Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.³

[26] The presumption can apply to a variety of investigations, including those relating to by-law enforcement.⁴

[27] The police state:

The record at issue is part of a police report that was filed by an officer of [the police] after he investigated an animal complaint where in the appellant's dog was attacked by two other dogs. During the investigation the officer located the two dogs and returned them to their owner, the affected party. An investigation was conducted to see if there was a possible violation of law and [the police] did contact animal control to advise them of the incident. Also during the investigation the police officer obtained the personal information of both the appellant and the affected party, which he noted in the police report. Releasing the personal information of the affected party to the appellant would be an

² Orders P-242 and MO-2235.

³ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

⁴ Order MO-2147.

unjustified invasion of personal privacy as the information was compiled as part of an investigation into a possible violation of law.

[28] The appellant does not address the possible application of the section 14(3)(b) presumption, but does refer to the possibility that the affected party was in violation of a municipal bylaw.

[29] As set out above, the presumption in section 14(3)(b) can apply to records even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into a possible violation of law.⁵

[30] With respect to the application of the presumption in section 14(3)(b) to the record in this appeal, on my review of the record and the representations, I am satisfied that the information in the record was compiled by the police in the course of their investigation of the incident involving the appellant and the affected party. The information at issue includes the date of birth, address and telephone number of the affected party, is contained in an occurrence report, and was compiled by the police in the process of conducting their investigation into the incident. In my view, the information at issue was compiled as part of an investigation conducted by the police into a possible violation of law, and fits within the presumption in section 14(3)(b). Accordingly, I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of identifiable individuals under section 14(3)(b) of the *Act*.⁶

The factors in section 14(2)

[31] The appellant provides representations in support of her position that she ought to have access to the information at issue. She refers to the incident which resulted in the injuries to her dog, and her belief that the affected party ought to be responsible for the costs of the veterinary bills which resulted from the injuries. She also refers to the possibility that she will commence a legal proceeding against the affected party as a consequence of the injuries to her dog. This raises the possible application of the factor in section 14(2)(d), which 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 is relevant to a fair determination of rights affecting the person who made the request;

⁵ Orders P-242 and MO-2235.

⁶ See also MO-1420.

[32] With respect to the factor in section 14(2)(d), the appellant states that, if the affected party does not reimburse her for the veterinary costs she incurred, she "will go to civil court."

[33] As set out in the Notice of Inquiry sent to the parties, for section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.⁷

[34] Based on the appellant's representations, I am not satisfied that the requirements set out above have been established. The appellant indicates her intention to commence a legal action in the future if certain conditions are not met. Even if I accept that her interest in being reimbursed for her veterinary bills was a legal right, related to a proceeding which is contemplated, the appellant has not provided any information regarding how the information at issue has a bearing on the determination of the right, nor that the information is *required* in order to prepare for the proceeding. In addition, previous orders have confirmed that section 14(2)(d) does not automatically apply to situations where a requester seeks an address in order to locate defendants or potential defendants and serve them with documents.⁸

[35] In the circumstances of this appeal, I am not satisfied that the personal information at issue is relevant to the fair determination of the appellant's rights, and find that the factor in section 14(2)(d) does not apply. I also find that there are no other factors favouring disclosure of the affected party's address to the appellant.

[36] Because the presumption in section 14(3)(b) applies to the withheld information, and because there are no factors favouring disclosure, I am satisfied that the disclosure

⁷ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

⁸ See, for example, Order M-1146.

of this information would constitute an unjustified invasion of the personal privacy of the affected party.

[37] Lastly, I find support for this decision in the statements made by Adjudicator Cropley in Order M-1146, where she made the following observations regarding the privacy interests at stake in disclosure of an individual's address in connection with their name:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. ...

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

[38] Accordingly, I find that the withheld portions of the record are exempt from disclosure under section 38(b) of the *Act*, subject to my review of the police's exercise of discretion, below.

Exercise of Discretion

[39] The section 38(b) exemption is discretionary and permits the police to disclose information, despite the fact that it could be withheld. On appeal, this office may review the police's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.⁹

[40] In their representations, the police acknowledge that the records contain both the personal information of the appellant and the affected party. They then review the factors they considered in deciding to exercise their discretion to deny access to the personal information of the affected party. They state:

⁹ Orders PO-2129-F and MO-1629.

... the police looked to the purpose of the *Act* which states that individuals should have a right of access to their own personal information and that the privacy of individuals should be protected. The police granted access to the appellant's own information as well as access to the entire narrative of the police report. The name of the affected party was released but not his personal identifiers and contact information. The appellant and the affected party do not know each other and never met during the investigation of this complaint. The appellant advised police that [her] dog suffered very minor injuries during the incident. The police noted that there were no reports of any human injuries or property damage from the incident. Animal Control was advised of the incident by police but chose not to attend the scene. Taking all these factors into consideration the police used its discretion not to release the affected party's personal information to the appellant as protecting the privacy of the affected party outweighed any factor that would convince the police to grant access to the appellant.

[41] In her representations the appellant provides information relating to the extent and nature of the injuries suffered by her dog as a result of the incident. The appellant also provides evidence of the nature of the veterinary services provided to the dog, and of the impact this incident had on her. In addition, she identifies her interest in having the affected party pay for the veterinary bills, and also notes that he may have been in violation of a municipal bylaw.

[42] I have reviewed the circumstances of this appeal and the information remaining at issue. I have found that disclosure of this information would constitute an unjustified invasion of the personal information of the affected party, and that it qualifies for exemption under section 38(b). I also note that the police provided access to all of the information in the records, except for the small portions of information remaining at issue, which relate directly to the affected party. Although I appreciate the appellant's interest in obtaining access to the information at issue, particularly the address of the affected party, I am not satisfied that the appellant has provided sufficient evidence to establish that the police have not properly exercised their discretion in the circumstances of this appeal.

[43] Accordingly, based on the nature of the information remaining at issue, and on the representations of the parties, I am satisfied that the police properly exercised their discretion to deny access to the information remaining at issue.

ORDER:

I uphold the decision of the police, and dismiss this appeal.

Original signed by: _____

Frank DeVries

Adjudicator

_____ January 31, 2013