

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3039

Appeal MA13-169

Toronto Police Services Board

April 17, 2014

Summary: The appellant sought access under the *Municipal Freedom of Information and Protection of Privacy Act* to an occurrence report for a specified incident. The police denied access, citing the discretionary personal privacy exemption in section 38(b). Though section 38(b) applies to the personal information at issue in the record, the absurd result principle applies to it. Accordingly, disclosure of this information is ordered.

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

Orders and Investigation Reports Considered: Order MO-1224.

OVERVIEW:

[1] The Toronto Police Service (the police) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*). The request was for:

Incident report for occurrence on [date] at the resident of [address].
Toronto Police Services were called to the address because homeowner

[the affected person] changed the locks and I could not access the residence.

[2] The police located the responsive records and issued a decision granting partial access to them, claiming the discretionary personal privacy exemption in section 38(b) to the portions of the records they decided to withhold.

[3] The requester, now the appellant, appealed this decision.

[4] During the mediation stage of the appeal, the appellant confirmed that she was only interested in the severances that were made with respect to the "History" and "Synopsis" and "Supp" sections of one record, a police occurrence report. The appellant also advised that she believes the information severed from these sections ("History", "Synopsis" and "Supp"), was based solely on information she had provided to the police, as she was the only person interviewed by the police and the only person at the scene. For this reason, she argues that she should be granted access.

[5] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[6] In this order, I order disclosure of the information at issue contained in the "History", "Synopsis" and "Supp" sections of the record.

RECORD:

[7] The information at issue is contained in the "History", "Synopsis" and "Supp" sections of an occurrence report.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] 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 if 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 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;

[9] 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

[10] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) 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.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[11] 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.²

[12] 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.³

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[14] By way of background, the police state that they:

...attended the involved address after a call was made by the appellant. What was initially believed to be a landlord/tenant incident was in actuality a domestic incident. The appellant was involved in a relationship previously with the owner of the property [the affected person]. Subsequently it became a landlord/tenant arrangement. While the institution redacted the information on the basis of the prior union, a decision has made to release additional information on page two which was dealing strictly with the business arrangement.

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[15] The police state that the information remaining at issue in the record is the personal information of the affected person and includes his name, home address, home phone number and references to his relationship with the appellant.

[16] The appellant states that the record contains her personal information, as well as that of the affected person. She states that:

...the police attended the involved address after [she] placed a call to them. Once the officers arrived at the scene and asked more detailed questions it was determined by the officers on scene that the incident would be a domestic incident. Based on only a few short questions during the initial phone call the police had initially determined that this was a landlord/tenant issue.

[She] was involved in a personal relationship with [the affected person] at the time of the incident and since [they] shared a one bedroom home as well as the kitchen and bathroom, the police indicated that this incident was not considered a landlord/tenant matter...

The [police] strongly urged [her] to contact [the affected person] by phone in their presence, if and only if [she was] to advise [him] that he was on speaker phone and there were two officers present. The call was made and although [the appellant] and [the affected person] disagreed about notification of changing the locks, [the affected person] agreed to come to the home and provide [her with] a key...

[17] In reply, the police reiterate that in the portions of the record at issue, the affected person is not considered to be acting in a business, professional or official capacity, but in a personal capacity.

Analysis/Findings

[18] The appellant is only interested in the information in the "History", "Synopsis" and "Supp" sections of the record, which is an occurrence report. These portions of the record do not contain the surname, the home address or home phone number of the affected person.

[19] I find that the portions of the record contain both the appellant's and the affected person's first names, which appear with other personal information related to them. This information consist of their marital status, as well as information relating to financial transactions in which they have been involved, in accordance with paragraphs (a), (b) and (h) of the definition of personal information in section 2(1). I further find that the information at issue about the affected person and the appellant is information about them in their personal rather than some professional or business capacity.

Accordingly, as the record contains the personal information of the appellant and another identifiable individual, I will consider whether the discretionary personal privacy exemption in section 38(b) applies to it.

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

[20] 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.

[21] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[22] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[23] If the information fits within any of paragraphs (a) to (e) of section 14(1) or within section 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The information does not fit within paragraphs (a) to (e) of section 14(1) or within section 14(4).

[24] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁵

[25] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[26] The police rely on the presumption in section 14(3)(b). This section 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

⁵ Order MO-2954.

disclosure is necessary to prosecute the violation or to continue the investigation;

[27] The police state that the information recorded in the record was supplied by the appellant to the investigating officer(s) as a result of a law enforcement activity. They state that after a review of the circumstances, the description of the matter was changed from a landlord/tenant dispute to a domestic incident. Following that incident, the police involvement was to stand by while the appellant retrieved her belongings in order to keep the peace. They state that the affected person was not advised of the allegations, nor were any charges laid.

[28] The police state that:

...disclosure of the affected individual's personal information would constitute an unjustified invasion of personal privacy. Since these records initially were created and compiled for the purpose of an investigation into a possible domestic incident, section 14(3)(b) of the *Act* applies to these pages of the record...

[29] The appellant's representations deal with the absurd result principle, which I will discuss below.

Analysis/Findings

[30] Based on my review of the record, I agree with the police that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. The police compiled this information while investigating a possible violation of law. Accordingly, the presumption in section 14(3)(b) applies to this personal information.

[31] 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.⁶ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁷

[32] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁸

⁶ Orders P-242 and MO-2235.

⁷ Orders MO-2213, PO-1849 and PO-2608.

⁸ Order P-239.

[33] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁹ Neither party provided representations on the factors in section 14(2).

[34] As the presumption in section 14(3)(b) applies and no factors favouring disclosure have been raised by the parties, I find that the personal information at issue in the record is, subject to my review of the absurd result principle, exempt by reason of the discretionary personal privacy exemption in section 38(b).

Absurd result

[35] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.¹⁰

[36] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement¹¹
- the requester was present when the information was provided to the institution¹²
- the information is clearly within the requester's knowledge¹³

[37] However, 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.¹⁴

[38] The police rely on Order MO-1224, where Adjudicator Laurel Cropley writes:

In my view, the appellant is confusing access under the *Act* to disclosure in the criminal context. I find that the rights the accused is entitled to under due process of law are not relevant to an access request for personal information under the *Act*.

...in weighing the appellant's rights to disclosure of the information and the factors weighing in favour of non-disclosure, I find that, in the

⁹ Order P-99.

¹⁰ Orders M-444 and MO-1323.

¹¹ Orders M-444 and M-451.

¹² Orders M-444 and P-1414.

¹³ Orders MO-1196, PO-1679 and MO-1755.

¹⁴ Orders M-757, MO-1323 and MO-1378.

circumstances of this appeal, the sensitivity and confidentiality of the law enforcement investigation outweigh the appellant's desire to know what the police did and how they did it.

[39] The police state that:

While it is clear that the appellant provided the information at issue, the institution whose mandate it is to investigate allegations of wrong-doing, must temper any disclosure with prudence. If the institution chose to release without discretion, records of allegations submitted by individuals, there would be no controls over the personal and professional damage that could be done to the reputations of "innocent" people.

[40] The appellant quotes from Order M-384, where Inquiry Officer Laurel Cropley held that disclosure of the personal information in a police officer's notebook, which related, to someone other than the requester, but which the requester provided to the officer, would not be an unjustified invasion of privacy under section 38(b).

[41] The appellant states that although the record in question is not the officer's notebook, it is the portion of an occurrence report ("History", "Synopsis" and "Supp") which was prepared using information from the officer's notebook and the same reasoning should apply.

[42] The appellant also refers to Order M-444, where Adjudicator John Higgins writes:

...it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place, is in my view, a manifestly absurd result. Moreover, one of the primary purposes of the Act is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, nondisclosure of this information would contradict this primary purpose.

[43] The appellant states that she believes that the police have not provided a compelling reason not to release the information at issue in the record.

Analysis/Findings

[44] In Order MO-1224, which is relied upon by the police, the adjudicator found that to apply the presumption in section 14(3)(b) to those portions of the records which

contained information which was provided by or is about the appellant would lead to an absurd result and ordered disclosure of that information.

[45] Based on my review of the parties' representations and the information at issue in the record, I agree with the appellant that the absurd result principle applies. The information at issue in the record was either provided to the police by the appellant when the police interviewed her or is information that is clearly within her knowledge as she was present when the information was provided to the police. I find in the circumstances of this appeal that to not disclose the information at issue in the record would be absurd and inconsistent with the purpose of the section 38(b) exemption.¹⁵

[46] Disclosure in this appeal of the information supplied by the appellant to the police is not inconsistent with the purpose of the section 38(b) exemption, which is to allow disclosure of personal information to the individual to whom it relates, unless disclosure would constitute an unjustified invasion of another individual's personal privacy.

[47] Accordingly, I find that the information remaining at issue in the record is not exempt under section 38(b) by reason of the absurd result principle and I will order it disclosed.

ORDER:

I order the police to disclose the information contained in the "History", "Synopsis" and "Supp" sections of the record by **May 9, 2014**.

Original Signed By: _____
Diane Smith
Adjudicator

_____ April 17, 2014

¹⁵ Orders M-444 and MO-1323.