

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3312

Appeal MA14-552

Halton Regional Police Services Board

May 19, 2016

Summary: The appellant made a request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* for information about her reporting of certain incidents to the police in 1988 or 1989. The police located occurrence reports and provided the appellant with partial access to them, withholding portions in reliance on the discretionary personal privacy exemption at section 38(b) of the *Act*. The appellant appealed the police's decision and clarified that she seeks only information reflecting her own statements to the police. The affected parties did not object to the release of this information to the appellant. In this order, the adjudicator finds that disclosure would not constitute an unjustified invasion of the affected parties' personal privacy, and orders the police to disclose the information at issue to the appellant.

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) and 38(b).

BACKGROUND:

[1] The appellant submitted a request to the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for any records relating to her reporting to police in 1988 or 1989 of certain incidents involving herself. Specifically, the appellant sought access to a copy of police occurrence reports, statements, and a video of her police interview.

[2] The police located occurrence reports and follow-up reports, but advised that no

video interview or other statements could be found.

[3] The police then issued a decision in which they granted partial access to the records, and provided redacted copies of the records to the appellant. The police withheld some information in reliance on the discretionary personal privacy exemption at section 38(b) of the *Act*. The police also relied on the discretionary exemption for law enforcement records at section 38(a) in conjunction with section 8(1) to withhold police codes, patrol codes and statistical codes.

[4] The appellant appealed the police's decision to this office, seeking access to the withheld portions of the records.

[5] During mediation, the police issued a revised decision replacing their earlier decision. In the revised decision, the police found that some of the withheld information is outside the scope of the *Act*. The police reiterated their reliance on the above-noted exemptions with respect to the remaining withheld information.

[6] Also during mediation, the appellant clarified that she is only seeking access to information setting out what she herself said to the police, and not to any information that describes what others said to the police.

[7] In addition, the appellant advised the mediator that she is not pursuing access to police codes, patrol zones or statistical codes. As a result, the law enforcement exemption at section 38(a) in conjunction with section 8(1) is no longer at issue. The only exemption remaining at issue is the possible application of the personal privacy exemption at section 38(b) to the information remaining at issue.

[8] No further mediation was possible, and the appellant confirmed that she wished the remaining issues to proceed to adjudication. Accordingly, the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry.

[9] In a preliminary ruling, I found that some portions of the records at issue are outside the scope of the *Act*, but that the remaining information in the records is subject to the *Act*. With respect to the latter information, I sought and received representations on the personal privacy exemption at section 38(b) from the appellant, the police and the affected parties whose information appears in the records.

[10] In this order, I find that the information at issue is not exempt from disclosure under section 38(b), and I order the police to disclose it to the appellant.

RECORD:

[11] The record at issue is a 7-page occurrence report dated December 14, 1988. Only certain portions of pages 1-3 contain information about what the appellant said to

the police and are, therefore, at issue in this appeal. Pages 4-7 do not contain any information about what the appellant said to the police and are, therefore, not at issue.

[12] The Notice of Inquiry also listed as a record at issue certain portions of a follow-up report dated December 14, 1988. However, on review of this information, I find that it contains information about what another individual said to the police. Since the appellant is not seeking this type of information, I find that it is not at issue and I will not address it further in this order.

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 personal privacy exemption at section 38(b) apply to the information at issue?

DISCUSSION:

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

[13] The police withheld information pursuant to the discretionary personal privacy exemption at section 38(b), which may apply where a record contains personal information of the requester and another individual. The first question I must address, therefore, is whether the record contains personal information and if so, to whom it relates.

[14] "Personal information" 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 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;

[15] 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

[16] The police submit that the information at issue contains the appellant's allegations, which constitutes the personal information of both the appellant and the affected party/parties.

[17] The appellant points out that what she seeks is access to her own statements. She also names others whose personal information she believes would appear in the record.

[18] The affected parties did not make specific representations on the issue of whose personal information appears in the record.

Findings

[19] From my review of the occurrence report, including the information remaining at issue (which, as noted above, is information about what the appellant said to police), I find that it contains the personal information of both the appellant and the affected parties, as it contains recorded information about these identifiable individuals in their personal capacities.

[20] I conclude that the record contains the appellant's personal information along

¹ Order 11.

with the personal information of the affected parties.

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

[21] I have found above that the record contains the appellant's own personal information. Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. However, section 38 provides a number of exemptions from this right.

[22] 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.

[23] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b).

Sections 14(2) and (3)

[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 considers, and weighs, the factors and presumptions in sections 14(2) and (3) and balances the interests of the parties.²

Factors and presumptions weighing against disclosure

[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 submit, and I find, that section 14(3)(b) applies. That section states:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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;

[27] Even if no criminal proceedings were commenced against any individuals, section

² Order MO-2954.

14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.³ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁴

[28] In this case, the records were created as part of the police's investigation into a possible violation of the *Criminal Code*. I find, therefore, that the presumption at section 14(3)(b) applies and weighs against disclosure of the information.

[29] Section 14(2) lists additional factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁵ 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).⁶

[30] The police raise section 14(2)(i), which states:

(2) 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,

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[31] The applicability of this section is dependent on whether any damage or harm would be "unfair" to the individual involved.⁷ The police argue that disclosure of the record would be unfair to anyone mentioned in the report as having possibly been involved in criminal activity.

[32] Although the affected parties did not raise this factor specifically, their initial representations suggest that it is of concern to them. The appellant, however, states that she is not trying to taint anyone's reputation or name; rather, she wants the records to be able to heal. Further, in their reply representations, all affected parties advised that they now have no objection to the release of the information to the appellant.

[33] Regardless of whether or not the information may damage the reputation of the affected parties, I find that any such damage would not be unfair, given that the affected parties have not objected to the release of the information.

[34] I find, therefore, that this factor does not apply in the circumstances of this

³ Orders P-242 and MO-2235.

⁴ Orders MO-2213, PO-1849 and PO-2608.

⁵ Order P-239.

⁶ Order P-99.

⁷ Order P-256.

appeal.

[35] Both the police and the appellant also raised additional factors not listed under section 14(2) but which may be relevant. I will begin by addressing the unlisted factor raised by the police, which the police submit weighs against disclosure. The unlisted factor raised by the appellant, which weighs in favour of disclosure, will be addressed in the next section.

[36] The unlisted factor raised by the police is one to which I cannot refer expressly, because to do so would reveal the personal information of an affected party. The concern relates to a particular personal characteristic of one of the affected parties, and is set out on page 3 of the police's representations. The police submit that this factor weighs against disclosure of the record in this case. Having considered all of the circumstances in the adjudication of this appeal, however, including the representations of all affected parties, I am not satisfied that the personal characteristic of one of the affected parties is a factor that weighs against disclosure of the information at issue.

Factors weighing in favour of disclosure

[37] The appellant submits that disclosure of the information to her will assist with her mental health and healing. She submits that others have told her that she lied about the incidents that were the subject of her statements to police. She states that for many years, she tried to convince herself that she was "crazy". She submits that knowing what she herself said to the police will be helpful in achieving her goal of health.

[38] I accept that the concerns raised by the appellant represent a relevant unlisted factor weighing in favour of disclosure. In my view, it is understandable that the appellant would wish to see what she is recorded to have said to police in 1988 to compare it against her own memory of the incidents in question.

[39] Another unlisted factor weighing in favour of disclosure, in my view, is the fact that the affected parties have all stated in their reply representations that they have no objection to disclosure of the information at issue to the appellant.

[40] I provided notice of this appeal to the affected parties whose information appears in the record. The affected parties initially objected to the disclosure of the information at issue, but each affected party later provided representations in reply to the appellant's representations, advising that they no longer had any objection to the release of the information to the appellant. Two of the affected parties refer to the information at issue as the appellant's "statement".

[41] The police, however, submit that the information is not a statement, but rather information in an occurrence report written by the investigating officers. The police submit that in some areas, it is unclear whether the information was provided by the appellant or whether the police received it from another source.

[42] Having reviewed the information at issue, I find that it is clear which portions consist of information relayed by the appellant to the police, and which portions contain information from other sources. Therefore, I am able to determine which portions of the information at issue reflect what the appellant told the police, as opposed to information from other sources.

[43] I also do not find it significant that the information at issue is not a "statement" *per se*, as in a signed statement of the appellant. In the Notice of Inquiry that I sent to the affected parties, the nature of the information at issue was made clear, including the fact that the police were unable to locate any "statements" in response to the appellant's request. In my view, the affected parties' use of the term "statement", in this context, simply refers to the information at issue; that is, information in the occurrence report that describes what the appellant told the police.

[44] I find that the affected parties' express lack of objection to the disclosure of the information at issue is a factor weighing strongly in favour of disclosure.

Weighing the presumption and the factors weighing for and against disclosure

[45] I have found above that the presumption at section 14(3)(b) weighs against disclosure in this case because the information was compiled and is identifiable as part of an investigation into a possible violation of law.

[46] On the other hand, the following factors weigh in favour of disclosure:

- Disclosure of the information will assist the appellant in comparing what she is recorded as having said to police against her own memory of the incidents in question;
- The affected parties have all stated that they have no objection to the disclosure of the information to the appellant.

[47] Weighing the factors and presumption, and balancing the interests of the parties, I find that the balance tips in favour of disclosure of the information to the appellant. In particular, I place considerable weight on the fact that the affected parties no longer object to the release of the information to the appellant. I find, therefore, that the presumption at section 14(3)(b) has been rebutted and disclosure of the information at issue would not be an unjustified invasion of the personal privacy of the affected parties. Therefore, the discretionary exemption at section 38(b) does not apply.

[48] Given my conclusion, I do not need to consider whether the affected parties' lack of objection to disclosure constitutes consent for the purposes of section 14(1)(a).

ORDER:

1. I order the police to disclose the information at issue to the appellant. The information that is at issue and is to be disclosed to the appellant is highlighted in yellow on the copy of the record being provided to the police with this order. This disclosure is to take place by **June 24, 2016** but not before **June 17, 2016**.
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the police to provide me with a copy of the information disclosed to the appellant.

Original Signed by: _____

Gillian Shaw
Adjudicator

_____ May 19, 2016