

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3747

Appeal MA17-563

Toronto Police Services Board

March 26, 2019

Summary: The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of a report about the requester's property. In response, the police disclosed the responsive information, less a street number, which they withheld under the discretionary personal privacy exemption in section 38(b).

In this order, the adjudicator upholds the police's decision under section 38(b) and also finds that the police properly interpreted the scope of the appellant's request.

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"), 14(1), 14(2)(g), 38(b), and 17(1).

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following records:

Report of 2 Officers on [date] Damage of property paint thrown over fence & garbage

[Two police officers' names and badge numbers – (#) Division]

[2] The police issued a decision granting partial access to the records, which consist

of a report and police officer notes. Access to the withheld information was denied pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*. Some information was also withheld on the basis that it was non-responsive to the request.

[3] The requester, now the appellant, appealed the police's decision.

[4] During the course of mediation, the appellant expressed her belief that additional records exist. Specifically, the appellant indicated that she was seeking a recording of her conversation with an officer. The police advised the mediator that recordings were beyond the scope of the request. The appellant advised the mediator of her view that such recordings would fall within the scope of the request. As a result, scope of request was added as an issue in this appeal.

[5] During mediation, the mediator confirmed for the appellant that the only information severed from the officers' notes that she received was related to other incidents. The appellant advised that she was not seeking access to the non-responsive information. As a result, the officers' notes are no longer at issue in this appeal.

[6] Further mediation was not possible, and the appellant advised the mediator that she would like to have this appeal proceed to adjudication, where an adjudicator conducts an inquiry.

[7] I sought the representations of the police initially. They then issued a supplementary decision letter disclosing all of the information at issue except for a house number on pages 1 and 2 of the Event Details Report (the report). They also disclosed another copy of the responsive information from the police officer's handwritten notes.

[8] I then provided a copy of the police's representations to the appellant and sought her representations in response. The appellant did not provide representations in response to the issues in this appeal, other than providing documents that showed that she complained to the City of Toronto and the police about paint and garbage being thrown on her property.

[9] In this order, I find that the residential street number at issue in the report is exempt under section 38(b) and also find that the police properly interpreted the scope of the appellant's request.

RECORD:

[10] There is one record at issue in this appeal, a two page report entitled, "I/CAD¹ Event Details Report." This record is a log about the complaint made by the appellant to the police. At issue in this record is a number from an address.

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?
- C. What is the scope of the request? What records are responsive to the request?

DISCUSSION:

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

[11] 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,

¹ Intergraph (incident management software) Computer-Aided Dispatch.

(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;

[12] 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.²

[13] 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.³

[14] 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.⁴

[15] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[16] The police state that the information at issue, which is found on pages 1 and 2 of the report is the street number of an address not belonging to the appellant. They also state that this number does not appear to be used in any form of a professional capacity.

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)

Analysis/Findings

[17] Based on my review of the police's representations and the information provided by the appellant, I agree with the police that the street number at issue is personal information of an individual other than the appellant, as it is part of a residential address as set out in paragraph (d) of the definition of personal information in section 2(1).

[18] The record at issue also contains the personal information of the appellant, including her residential address and her personal opinions or views in accordance with paragraph (e) of the definition of personal information in section 2(1).

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

[19] 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.

[20] 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.

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

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

[23] 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.⁶

[24] 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). In this appeal, none of these paragraphs in section 14(3) apply.

⁶ Order MO-2954.

[25] 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.⁷

[26] 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).⁸

[27] The police rely on section 14(2)(g), 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 unlikely to be accurate or reliable.

[28] The police state that this section was relied upon in withholding access to an address of which the appellant does not reside. They state that they are uncertain as to whether the address number was entered incorrectly on the record through a simple typing error, so they made the decision to withhold it under section 14(2)(g).

Analysis/Findings

[29] The disclosed information in the record at issue indicates that the location of the incident complained about by the appellant was changed from a neighbouring address on the appellant's street to the appellant's address. I agree with the police that it is unclear whether this was a typing error on the part of the person entering the information in the record or whether the location of the incident was initially thought to be at the neighbouring address.

[30] I agree with the police that the address number at issue is subject to the factor that favours privacy protection in section 14(2)(g), as this information as entered in the record is unlikely to be accurate.

[31] As stated above, for records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.

[32] In this appeal, none of the presumptions in section 14(3) apply and there are no

⁷ Order P-239.

⁸ Order P-99.

factors under section 14(2) favouring disclosure of the address number at issue that apply. As well, a factor favouring privacy protection, section 14(2)(g), applies. Therefore, on balance, I find that the factors in this appeal favour privacy protection and that the information at issue in the record is subject to the discretionary personal privacy exemption in section 38(b).

[33] I also find, based upon my review of the record and the parties' representations, that the police exercised their discretion in withholding the address number in a proper manner. Therefore, I am upholding the police's exercise of discretion under section 38(b) and find the information at issue in the record exempt under this section.

Issue C: What is the scope of the request? What records are responsive to the request?

[34] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[35] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.⁹

[36] To be considered responsive to the request, records must "reasonably relate" to the request.¹⁰

[37] The police state that the appellant was unambiguous and forthright in her

⁹ Orders P-134 and P-880.

¹⁰ Orders P-880 and PO-2661.

request, thus negating the need to clarify the records to which she was seeking access. They state:

The appellant was clear in requesting the 'report' of two officers attending in response to her call for police assistance on [date].

In our original decision letter dated September 29, 2017, the requester was advised that a General Occurrence was not created for the incident dated August 28, 2017, surrounding her request; and that in order to satisfy her request, we would be providing her with partial access to copies of the Event Details 'Report' (print out of her 911-call) and the related memorandum book notes of the attending officers...

During the processing of her request, the appellant did not raise any concerns as to the existence of any additional responsive records. The issue of scope was only raised during mediation, specifically in regards to page 3 where it states, "see ICC camera". The mediator was advised that any audio and/or video records fall outside the scope of the appellant's request, and to advise the appellant as such, and the necessity for a separate request for the audio and/or video record.

(Note: A determination has not yet been made verifying the existence of any related audio and/or video records related to the incident surrounding the appellant's request. This is due to the fact that the scope of the request only encompassed the related 'report').

This institution is not disputing that additional record(s) may exist. What we are disputing, however, is that any additional record(s) that may exist, fall outside the scope of the appellant's original request. We contend that the best course of action is for the appellant to submit a new request, specifically requesting the record related to "ICC camera" - possibly audio only, or both audio and video.

It is the routine practise of this institution not to consider any other records to be within the scope of a request when a requester specifically states he/she is seeking access to a 'report' or 'reports'.

[38] As noted above, the appellant did not provide representations on this, or any of the other, issues in this appeal.

Analysis/Findings

[39] I agree with police that the appellant was clear and concise in her request, alleviating any need to further clarify her request. Her request was for a specific written report and she received this report.

[40] I find that the appellant's request provided sufficient detail to identify the records responsive to the request and that the police properly responded to the request. Therefore, I find that the police properly interpreted the scope of the appellant's request in this appeal.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original signed by _____
Diane Smith
Adjudicator

_____ March 26, 2019