

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4249

Appeal MA21-00524

Halton Regional Police Services Board

August 31, 2022

Summary: The appellant made a request to the Halton Regional Police Services Board for access to all of his recorded personal information, including his "Niche Report," and set out specific search terms for the police to use. The police located two responsive records, to which they granted partial access. The police denied access to portions of a chart containing information about the appellant and unrelated individuals relating to arrests. The police disclosed only the portion related to the appellant. The appellant appealed the police's decision to deny access to the entire chart, and challenged the reasonableness of the police's search for responsive records. In this order, the adjudicator finds that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of affected individuals other than the appellant and upholds the police's decision. She finds that the police exercised their discretion properly in withholding this information. She also upholds the police's search for responsive records as reasonable and dismisses the appeal.

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(3)(b), 17, and 38(b).

Orders Considered: Order M-1146.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Halton Regional Police Services Board (the police) for access to all of his personal information, the search history of his

personal information, and his "Niche Report."¹ The appellant provided details in his request on how to locate the records, setting out specific search terms to be used (the appellant's first name, his middle name, his surname, his email address, and his pronouns (he/him)), and asked that the Chief of Police be contacted for records or recordings that may contain the appellant's personal information. The appellant also included an occurrence number with his request.

[2] The police located responsive records and issued a decision granting the appellant partial access. The police withheld portions of the records pursuant to the personal privacy exemption in section 38(b) of the *Act*, with reference to the presumption against disclosure in section 14(3)(b) (investigation into possible violation of law).²

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution.

[4] During mediation, the appellant stated that he believes additional responsive records exist that the police have not disclosed. The police took the position that their search was thorough and that no additional responsive records exist. The reasonableness of the police's search for responsive records was added as an issue to the appeal.

[5] With no further mediation possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. An adjudicator began an inquiry by inviting the police, and later, the appellant, to submit representations in response to the issues on appeal. After the parties' representations were received, the appeal was transferred to me.³

[6] In this order, I find that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. I find that the police exercised their discretion properly in withholding this information. I uphold the police's search for responsive records as reasonable and dismiss the appeal.

RECORDS:

[7] The record is a six-page attachment to an email. It consists of a chart listing arrests for individuals and the type and conditions of their interim release. The police have disclosed the column headings and row in the chart that refers to the appellant

¹ According to the police, their local records management system.

² The police also cited section 38(a) (discretion to refuse requester's own information) in their decision letter.

³ I reviewed the complete file, including the parties' representations and the records, and concluded that I did not need further information from the parties before rendering a decision.

and have withheld the rest.

ISSUES:

- A. Does the chart contain “personal information” as defined in section 2(1) of the *Act*, and if so, whose personal information is it?
- B. Would disclosure of the personal information constitute an unjustified invasion of personal privacy under section 38(b)?
- C. Should the police’s exercise of discretion under section 38(b) be upheld?
- D. Should the police’s search for responsive records be upheld as reasonable?

DISCUSSION:

Does the chart contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[8] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom this personal information relates.

[9] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Recorded information is information recorded in any format, including paper and electronic records.⁴

[10] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them.⁵

[11] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁶

[12] Section 2(1) of the *Act* gives a list of examples of personal information. The

⁴ The definition of “records” in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The records before me include paper records located by searching a police database, and an audio recording.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

examples relevant to this appeal are the following:

“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,

...

(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.

[13] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”⁷

[14] It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.⁸ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁹

Representations

[15] The police submit that the chart contains the appellant’s personal information as well as the personal information of other identifiable individuals. They submit that the chart contains the appellant’s and other identifiable individuals’ names, age, sex, home addresses and criminal histories, and that it is reasonable to expect that disclosure of any of this information would identify these individuals.

⁷ Order 11.

⁸ Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁹ See sections 14(1) and 38(b).

[16] The appellant did not make representations about whether the chart contains personal information, or whose personal information it contains.¹⁰

Analysis and findings

[17] I have reviewed the chart and find that it contains the appellant's personal information as well as the personal information of other identifiable individuals.

[18] The chart contains the given names, surnames, dates of birth, sex and addresses of the appellant and other identifiable individuals who were arrested by police. The chart also includes information regarding the terms or conditions of these accused individuals' interim release and the type of release.

[19] I find that the chart contains the appellant's personal information and the personal information of other identifiable individuals that meets the definition of "personal information" in paragraphs (a), (b), (c), (d), and (h) of section 2(1) of the *Act*.

[20] The police disclosed the appellant's personal information contained in the chart to him. They have withheld all information relating to the other accused individuals. The appellant seeks access to the entire chart. Because I have found that the chart contains the personal information of the appellant mixed with the personal information of other individuals, I will next consider whether the personal privacy exemption at section 38(b) applies to the disclosure of the personal information of individuals other than the appellant.

Issue B: Would disclosure of the personal information constitute an unjustified invasion of personal privacy under section 38(b)?

[21] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution.

[22] Under the section 38(b) exemption, however, if a record contains the personal information of both the appellant and other individuals, the institution may refuse to disclose the other individuals' personal information to the appellant if disclosing that information would be an unjustified invasion of the other individuals' personal privacy. Section 38(b) states:

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

¹⁰ The appellant representations discuss alleged police mismanagement and political interference. While I have reviewed the appellant's entire representations, I have only summarized those portions of his representations that address or are relevant to the issues in this appeal.

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

[23] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[24] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of other individuals' personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). In the circumstances, none of the section 14(1) exceptions apply, and are not addressed further in this order.

[25] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply. The parties do not rely on section 14(4), and I find that it does not apply in this appeal.

[26] In deciding whether the disclosure of personal information in the record would be an unjustified invasion of personal privacy under section 38(b), the IPC will consider and weigh the factors and presumptions in section 14(2) and (3) and balance the interests of the parties.¹¹

Representations

The police's representations

[27] The police submit that disclosure of the personal information in the record is presumed to constitute an unjustified invasion of the personal privacy of the affected individuals under section 14(3)(b) because it was compiled and identifiable as part of investigations into possible violations of the *Criminal Code of Canada*.

[28] The police say that the record is a list of all active Toronto Police Service arrests for individuals residing in parts of Halton, and that these individuals were arrested because police investigations determined that they had violated the law and were being charged under the *Criminal Code*.

[29] The police also submit that certain factors in section 14(2) apply and weigh against disclosure. They argue the following:

- that disclosure could expose individuals named in the record to harm in the form of unwanted contact from the appellant (the factor at section 14(2)(e));

¹¹ Order MO-2954.

- the personal information of affected parties in the record is highly sensitive (section 14(2)(f)); and,
- disclosure of their personal information in the record could unfairly damage the affected parties' reputations (section 14(2)(i)).

The appellant's representations

[30] The appellant claims that the police's representations contain "wrong information." He submits that the police "wrongfully claim" that the appellant violated the *Criminal Code*. His representations do not address the section 38(b) exemption.

Analysis and findings

[31] As I have noted above, the police disclosed the portion of the chart that contains only the appellant's own personal information to him contained in the chart. At issue is access to the remaining names and personal information of other identifiable accused or arrested individuals.

Section 14(3)(b): investigation into possible violation of law

[32] Under section 14(3)(b), 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.

[33] I have reviewed the chart and find that the personal information in it was not compiled, nor is it identifiable, as part of investigations into possible violations of law. As I have already noted, the chart is simply a list that contains information about identifiable individuals who have been arrested, and the outcome of their early court appearances, namely, the type and conditions of their interim release. The information in the chart relates to matters before a court: it is apparent from the chart that the individuals listed in it have already appeared before a court and were released on conditions that were either ordered by the court or were the result of a consent presented to a court. In my view, this is information that is not investigative information, but rather relates to matters that are in the process of adjudication before a court. As a result, I find that the presumption against disclosure in section 14(3)(b) does not apply to the record.

[34] Under section 38(b), I must also consider whether there are factors in section 14(2) that apply, either in favour or against disclosure.

Do any other factors in section 14(2) apply?

[35] 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.¹² The listed factors relevant to this appeal are the following:

(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,

...

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

...

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

[36] If they apply, these three factors raised by the police generally weigh against disclosure.

Section 14(2)(e): pecuniary or other harm

[37] Section 14(2)(e) weighs against disclosure if it will expose an affected party to pecuniary or other harm. The police submit that providing the appellant with the personal information of affected parties could expose them to unwanted contact from the appellant. They say that the appellant is under a condition to not contact a certain individual, and that it is not implausible that he would contact the individuals identified in the record, which includes their names and addresses.

[38] In Order M-1146, Adjudicator Laurel Cropley discussed concerns surrounding the release of addresses. She found as follows:

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

¹² Order P-239.

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 potential result of disclosure, in my view, weights heavily in favour of privacy protection under the *Act*.

[39] I find that the concerns articulated in Order M-1146 apply to this appeal and I adopt this reasoning. In addition to names and addresses, the chart contains dates of birth, sex, conditions of release and other personal information. Disclosure of this information would enable the appellant to identify and locate the affected individuals. Because of the nature of the information in the record about the appellant, I find that this factor applies and weighs against disclosure of the other individuals' personal information.

Section 14(2)(f): highly sensitive

[40] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether the personal information is highly sensitive.

[41] In relying on the factor in section 14(2)(f), the police submit that the information in the record is highly sensitive because it was compiled in the context of police investigations.

[42] Although I have found above that the chart was not compiled as part of police investigations, based on the information contained in the chart, and especially the information regarding the various conditions of release of individuals other than the appellant contained therein, I am satisfied that disclosure could reasonably be expected to cause the accused individuals identified in the chart significant personal distress. The chart contains information about their involvement with the criminal justice system, including details about the conditions of their release pending trial. I find it reasonable to expect that disclosure of this information could cause these individuals significant personal distress because they are accused of crimes (of which they remain presumed innocent until a finding of guilt), and related details are contained in the record. I therefore find that this factor applies and that it weighs against disclosure.

Section 14(2)(i): unfair damage to reputation

[43] The police submit that section 11(d) of the *Charter of Rights and Freedoms* provides any person that is charged with an offence the right to be presumed innocent until proven guilty. They say that releasing personal information regarding outstanding criminal charges before the accused have had an opportunity to defend themselves would be unfair. I agree.

[44] Previous IPC decisions have found that section 14(2)(i) is not established simply on the basis that the damage or harm envisioned by this section is present or

foreseeable: it must also be demonstrated that this damage or harm would be unfair to the individuals involved.¹³

[45] The record contains information about accused individuals who have been arrested and who are subject to conditions of pre-trial release, but have not yet been found guilty. If any of the accused are found to be not guilty, I find that disclosing their personal information in the context of criminal charges against them before a possible finding of guilt could reasonably be expected to unfairly damage their reputations. Accordingly, I find that this factor also applies and weighs against disclosure of the remaining personal information in the chart.

[46] The parties did not submit that any unlisted factors favouring disclosure or non-disclosure apply, and I find that none do.

[47] In summary, I find that the factors in sections 14(2)(e), (f) and (i) are applicable and weigh heavily against disclosure of the other individuals' personal information.

[48] Taking these factors into account and balancing the interests of the parties, including the appellant's right to his own personal information and the nature of the information at issue, I find that disclosure of the personal information of the other identifiable parties would constitute an unjustified invasion of their personal privacy in this case.

Issue C: Should the police's exercise of discretion under section 38(b) be upheld?

[49] The section 38(b) exemption is discretionary, meaning that the institution can decide to disclose information even if it qualifies for exemption. An institution must exercise its discretion. On appeal, I may determine whether the institution failed to do so.

[50] In addition, I may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[51] In either case, I may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁴ I cannot, however, substitute my own

¹³ Orders M-347 and P-256.

¹⁴ Order MO-1573.

discretion for that of the institution.¹⁵

[52] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:¹⁶

- the purposes of the *Act*, including the principles that:
 - information should be available to the public,
 - individuals should have a right of access to their own personal information,
 - exemptions from the right of access should be limited and specific, and
 - the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,
- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

Representations

[53] The police submit that they exercised their discretion under section 38(b) and gave consideration to the appellant's right to access his own personal information. The police submit that they also considered that disclosing the personal information to the appellant of the other identifiable individuals would be inappropriate because it would unjustifiably invade their personal privacy.

¹⁵ Section 43(2).

¹⁶ Orders P-344 and MO-1573.

[54] The appellant did not make representations on the police's exercise of discretion. Rather, the appellant made an allegation about political interference and claimed that he was not permitted to raise this during mediation. When given the opportunity by the adjudicator to do so, the appellant did not provide any information to support this claim.

Analysis and findings

[55] I find that the police properly exercised their discretion under section 38(b) to withhold personal information of identifiable individuals other than the appellant. In withholding this information, I find that the police took into account that the records contain the appellant's own personal information and weighed it against the fact that the information at issue is the personal information of identifiable individuals which, if disclosed, would identify them, reveal other personal information about them, and describe their involvement in the criminal justice system, including that they were arrested and charged with criminal offences, and the type or the conditions of their interim release. I also find that the police considered that exemptions from the right of access should be limited and specific, and that, in granting partial access, the police withheld only the personal information belonging to other identifiable individuals.

[56] I am satisfied that the police did not take into account irrelevant factors in exercising their discretion, and there is no evidence before me that the police acted in bad faith. Therefore, I uphold the police's exercise of discretion to withhold the affected parties' personal information under section 38(b) of the *Act*.

[57] For the reasons above, I find that the withheld information is exempt from disclosure under section 38(b) and I dismiss this appeal.

Issue E: Did the police conduct a reasonable search for records?

[58] The appellant believes that additional records are responsive to his request but that the police have not disclosed.

[59] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.¹⁷ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[60] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.¹⁸

¹⁷ Orders P-85, P-221 and PO-19544-I.

¹⁸ Order MO-2246.

[61] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;¹⁹ that is, records that are “reasonably related” to the request.²⁰

[62] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.²¹

Representations

[63] The police submit that they made every attempt to identify records that would be responsive to the appellant’s request. They provided an affidavit with their representations setting out the steps they took to search for responsive records.

[64] The police submit that they conducted a preliminary search of the appellant’s name and date of birth in their local computer database (Niche) and of their computer-aided dispatch software system (CAD), and that neither yielded any results. The police submit that, because the appellant is not listed in their database or CAD, there are no Niche or CAD records to be disclosed.

[65] The police submit that they also searched the occurrence report number listed on the appellant’s access request. The police say that, because the requested occurrence number was for a 2019 occurrence, they searched their computer systems from January 1, 2019 to the date in June 2021 when the appellant submitted his appeal, but that they could not identify a link between the appellant and a Halton Police occurrence bearing that number.

[66] The police submit that they contacted the appellant for clarification regarding the particular occurrence and the appellant’s, and to confirm that the occurrence number the appellant provided was correct.

[67] The police say that, although the appellant responded, he did not answer their questions. The police say that, “Due to the lack of clarification from the appellant...[they] decided to respond to the request for the specific police literally.” Their search revealed that the occurrence number the appellant cited in his request was for a different police service (Toronto Police Service) with which the appellant had been involved.²²

[68] According to the police’s affidavit, their freedom of information analyst conducted a second search of Niche using the appellant’s name and home address, also

¹⁹ Orders P-624 and PO-2559.

²⁰ Order PO-2554.

²¹ Orders M-909, PO-2469 and PO-2592.

²² The police provided the appellant with the contact information for Toronto Police Service.

with negative results.

[69] The police submit that they conducted an email search for the search terms provided by the appellant, but that the pronouns "he" and "him" alone were not searched because they are too vague. The police submit that their search located 145 records, all of which were reviewed by the freedom of information analyst to determine whether they were responsive. Of these, two were responsive and were partially disclosed to the appellant.²³

[70] The police say that, due to the low number of responsive records, and the fact that the appellant is not listed in their local database, they could not identify additional resources to contact to determine whether or not they had records that may be responsive. The police say that they did, however, contact the Chief of Police's staff (as the appellant requested), to determine whether the Chief's personal devices and/or accounts had been used in regard to the appellant, with the result that the Chief had not used his personal device and or any personal social media accounts in regard to the appellant.

[71] In his representations, the appellant submits that the police's search was not reasonable because the Chief's personal, but not professional, social media accounts were searched for information regarding the appellant. He also asks that the police disclose all 145 records they located during their search.

Analysis and findings

[72] I am satisfied that the police's search for responsive records was reasonable.

[73] As mentioned above, the police are not required to prove with certainty that further records do not exist in order to satisfy the requirements of the *Act*. They must only show that they made a reasonable effort to locate responsive records. Based on the evidence before me, I find that they have. The police's representations demonstrate that experienced employees, knowledgeable in the records related to the subject matter of the appellant's request, made reasonable efforts to locate responsive records. The police searched relevant databases for responsive records. In addition to searching police databases, they asked the Chief of Police's staff to conduct a search of the Chief's personal records in response to the request. The police also attempted to search for a specific occurrence report, with the result that the report number cited by the appellant was for the appellant's involvement with a different police service.

[74] The appellant was asked to provide support in his representations for his belief that additional responsive records exist. The appellant did not provide any reasonable basis on which I could conclude that additional records responsive to this access request exist. The appellant did not identify what other types of records he believes might exist that are responsive to his request, submitting only that he should be given

²³ The record at issue is an attachment to one of the two records partially disclosed.

access to these emails that the police submit did not relate to the appellant.

[75] The appellant has also not provided me with a reasonable basis to conclude that searching the police computer database would not have included the Chief's emails (as opposed to his personal social media accounts, which were included in the police's search), and in the circumstances, I am satisfied that another search would not yield more responsive records. I therefore uphold the police's search for responsive records as reasonable.

[76] I have considered but rejected the appellant's submission that the police should disclose to him all of the records that the search of the email yielded. On the basis of the comprehensive evidence provided by the police, including that the analyst responsible for the searches was qualified and knowledgeable about the search, I have no reasonable basis to conclude that any of the records that were not identified as responsive contain responsive information.

[77] I find that the police's search for records was reasonable and I uphold it.

ORDER:

This appeal is dismissed.

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ August 31, 2022