

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4503

Appeal MA23-00425

Toronto Police Services Board

March 22, 2024

Summary: The Toronto Police Services Board (the police) received a request for a police report related to a collision between a motor vehicle and a pedestrian. The police granted partial access to the report and an officer's notes and the appellant continued to seek the contact information of the driver, withheld under section 38(b) (personal privacy) of the *Act*.

In this order, the adjudicator finds that the name of the driver is not exempt from disclosure under section 38(b) and orders it disclosed.

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). *Highway Traffic Act*, R.S.O. 1990, c. H.8, section 200. *Compulsory Automobile Insurance Act*, R.S.O. 1990, C. C.25, section 4(1).

Orders Considered: Orders MO-4147 and MO-4213.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a police report regarding an incident between a vehicle and the requester (a pedestrian) that occurred on a specified date at a specified location. The police granted partial access to the responsive records, with portions withheld under section 38(b) (personal privacy) of the *Act*. In the decision, the police also indicated that some information was withheld

from disclosure as it was deemed to not be responsive to the request.

[2] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant confirmed that he was seeking access to the withheld information specifying the contact information of an affected party (the driver of the vehicle). He confirmed that he was not seeking access to non-responsive portions of the record, or to any other withheld information. The police confirmed that they would not change their decision.

[3] The file moved to the adjudication stage, and I conducted an inquiry, where I sought and received representations from the police, the driver, and the appellant. Representations were shared in accordance with the IPC's *Code of Procedure*. During the inquiry, the appellant also requested information in the notes related to what happened to him during the incident underlying the request, but I confirmed that the withheld portions only relate to the driver and do not contain this information.

[4] For the reasons that follow, I order the police to disclose the name of the driver.

RECORDS:

[5] The records at issue are the withheld portions of a report and accompanying police officer's notes (the report) specifying the contact information of the driver.

ISSUES:

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

DISCUSSION:

Issue A: Does the report contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[6] Before I consider the exemption claimed by the police, I must first determine whether the report contains "personal information" and if so, whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[7] Information is "about" the individual when it refers to them in their personal

capacity, which means that it reveals something of a personal nature about the individual. 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.¹ Section 2(1) of the *Act* gives a list of examples of personal information.

[8] The parties do not dispute that the report contains the personal information of the appellant and the driver.

[9] I have reviewed the report and I find that it contains the names and addresses of the appellant and other individuals, including the driver, which constitute personal information under the *Act*. Having found that the report contains the personal information of the appellant and other individuals, I will consider the application of the personal privacy exemption at section 38(b).

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

[10] 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 some exemptions from this right.

[11] Under section 38(b), where a record contains personal information of both the appellant 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 appellant. This involves a weighing of the appellant’s right of access to their own personal information against the other individual’s right to protection of their privacy.

[12] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual’s personal information to a requester even if doing so would result in an unjustified invasion of the other individual’s personal privacy.

[13] 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). Additionally, the requester’s own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual’s personal privacy.²

[14] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). If any of the five exceptions in sections 14(1)(a) to (e) apply, the section 38(b) exemption does not apply to the report. Section 14(4) sets out certain types of information whose disclosure is not

¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

² Order PO-2560.

an unjustified invasion of personal privacy. None of the parties provided representations on the section 14(1) exceptions or the section 14(4) situations, and based on my review of the information at issue they are not relevant to the appeal.

[15] Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. In their representations, the police have relied on or discussed the presumption in section 14(3)(b) and the factors in sections 14(2)(d) and (h):

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

(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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request

(h) the personal information has been supplied by the individual to whom the information relates in confidence

[16] In determining whether the disclosure of the driver's contact information would be an unjustified invasion of personal privacy under section 38(b), therefore, I will consider and weigh the relevant factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.³

Representations

Police and driver representations

[17] The police submit that the report was created in connection to a police investigation into a personal injury collision. They state that they collected and recorded the personal information the parties during the course of the investigation. They refer to section 200(1)(c) of the *Highway Traffic Act*,⁴ which states:

³ Order MO-2954.

⁴ R.S.O. 1990, c. H.8.

200 (1) Where an accident occurs on a highway, every person in charge of a vehicle or street car that is directly or indirectly involved in the accident shall,

(c) upon request, give in writing to anyone sustaining loss or injury **or to any police officer** or to any witness his or her name, address, driver's licence number and jurisdiction of issuance, motor vehicle liability insurance policy insurer and policy number, name and address of the registered owner of the vehicle and the vehicle permit number. (emphasis added by the police)

[18] Additionally, they refer to section 4(1) of the *Compulsory Automobile Insurance Act*,⁵ which states:

An operator of a motor vehicle on a highway who is directly or indirectly involved in an accident shall, on the request of any person directly or indirectly involved in the accident, disclose to the person the particulars of the contract of automobile insurance insuring the motor vehicle.

[19] The police submit that both parties provided the police with their personal information, and the police determined, through their investigation, that the incident did not qualify as a motor vehicle collision, as defined in the *Highway Traffic Act*, and therefore the requirements of the *Compulsory Automobile Insurance Act* did not apply. They state that all parties have a right to privacy when giving their personal information to police officers, and this information must be protected and kept confidential.

[20] The driver stated that he did not consent to the release of his personal information and reiterated the police's position that the information should not be disclosed as the incident was not a motor vehicle collision under the *Highway Traffic Act*. He did not provide further representations on the issues in the appeal.

[21] The police state that the release of the information would constitute an unjustified invasion of personal privacy. They submit that the nature of a law enforcement institution is to record information related to unlawful activities, crime prevention activities, or activities involving members of the public who require police assistance. They state that given the unique status of law enforcement institutions, they generally view the spirit and content of the *Act* as placing a greater responsibility to safeguarding the privacy interests of individuals where personal information is being collected.

[22] The police state that the information at issue here was collected as part of an investigation into a possible violation of law. They cite Order MO-3423, where the adjudicator found that the section 14(3)(b) presumption was found to apply to similar information, despite charges not being laid by the police. They also reference section 14(2)(h) as a factor favouring withholding the information, stating that any information

⁵ R.S.O. 1990, C. C.25.

related to the police is not done with the understanding that the other involved parties could foreseeably be given unfettered access to the records in the future, even if such assurances were not explicitly given at the time. They cite Order MO-3028 as an example of when the section 14(2)(h) factor was found to apply to information provided to the police.

[23] With respect to the section 14(2)(d) factor, the police state that they considered whether the information at issue was relevant to the fair determination of the appellant's rights. They submit that the appellant did not provide sufficient detail or guidance to assist the police in determining whether this would favour the release of the personal information of another party. They submit that institutions cannot be expected to assume that the purpose of an access request is to be used in a civil process. They cite Order MO-4147 as an example of when the existence of other methods to obtain personal information, such as court proceedings, resulted in similar information not being ordered disclosed.

Appellant representations

[24] The appellant was provided the police's representations for a response. The appellant, through his legal counsel, submits that he has commenced an accident benefits claim following the incident underlying the request, and also intends to pursue a tort action for damages against the owner and/or driver of the vehicle that he says struck him. He states that he was able to record the license plate of the vehicle on the date of the incident and was able to determine who the vehicle was registered to, but he requires the information in the police report to ensure that he has the correct defendant when issuing the tort claim. He states that this will ensure that he does not have to later bring a motion in the litigation process to add or subtract parties.

Analysis and finding

[25] As stated above, the issue in this appeal is whether disclosure of the contact information of the driver would be an unjustified invasion of their personal privacy under section 38(b).

Presumptions and factors

14(3)(b): Investigation into a possible violation of law

[26] Under section 14(3)(b), the disclosure of an individual's personal information to another individual is presumed to be 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 of law or to continue the investigation.

[27] Even if no criminal proceedings were commenced against an individual, as is the case in this appeal, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.⁶ Based on my review of the report, the information in the report was compiled as part of a police investigation into an incident between a vehicle and a pedestrian, engaging the presumption against disclosure in section 14(3)(b).

[28] In the circumstances of this appeal, where the record at issue contains the personal information of the driver and the appellant, this presumption is not determinative, but instead a rebuttable presumption that can be weighed against the other relevant factors in section 14(2) below.⁷

14(2)(h): Information supplied in confidence

[29] The police point to section 14(2)(h) as a factor weighing against disclosure. This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.⁸

[30] The police submit that previous decisions have found that personal information provided to the police is done so in confidence, even without an explicit guarantee being given. I agree that previous decisions have made this determination, and I adopt this reasoning in the present appeal.⁹

[31] However, I note that the police also submitted that, were the *Highway Traffic Act* and *Compulsory Automobile Insurance Act* to apply, there would have been a mandatory exchange of information between the parties. While I understand that it is the police's position that these two statutes do not apply to the incident underlying the request, I do not find that this situation is fundamentally different from situations where the statutes do apply and mandate the exchange of information.

[32] Even if this incident, in the police's view, did not meet the threshold of a motor vehicle collision under the *Highway Traffic Act*, I do not agree that it is distinct enough to give rise to an expectation of confidentiality when similar situations result in an obligation that such information be exchanged between parties, the exact opposite of an expectation of confidentiality. Considering this, I only give any expectation of confidentiality between the driver and the police minimal weight in determining if disclosing the information would be an unjust invasion of personal privacy.

⁶ Orders P-242 and MO-2235.

⁷ Order MO-2954.

⁸ Order PO-1670.

⁹ See, for example, Order MO-3028.

14(2)(d): Fair determination of rights

[33] Both the police and appellant addressed this factor. The IPC uses a four-part test to decide whether this factor applies. For it to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?¹⁰

[34] The police state that the *Highway Traffic Act* and *Compulsory Automobile Insurance Act* do not apply to the incident underlying the request, and that the appellant did not provide evidence that the information at issue would be used for a civil claim. The appellant did not state that either of these statutes applied, but submits that he is seeking medical rehabilitation benefits and required the information at issue to properly pursue a tort claim against the driver. In this case, I find that whether the two statutes mandate the exchange of personal information between parties is not determinative in deciding if the section 14(2)(d) factor applies. The statutes outline specific situations where information must be exchanged, while the issue before me is whether the information at issue would assist in the fair determination of rights, as outlined by the four-part test.

[35] While the appellant generally stated that he would be pursuing a tort action, he did not specify what particular injuries occurred in the incident or what damages he was seeking. However, despite the lack of detailed evidence, I am still satisfied that the first two parts of the test are met by the appellant stating that he would be pursuing a court action related to the incident. Whether his claim will be successful is outside the scope of this appeal, but based on the information before me, I accept that the appellant is pursuing a legal right through a future legal proceeding.

[36] Additionally, although the appellant has indicated that he obtained a name and address outside of the *Act*, I am satisfied that the personal information at issue is significant for the determination of the right in question, and would be required for a potential hearing. Based on the representations of the appellant, he is not certain if he has the correct information, and adding or subtracting parties would present additional

¹⁰ See 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.).

difficulties in pursuing an action.

[37] The police cited Order MO-4147, where the existence of other legal remedies to obtain similar information resulted in the personal information at issue being withheld. Here, it is clear that the appellant has another legal remedy to obtain the information. However, I adopt the adjudicator's analysis in Order MO-4213, where it was found that a requester should be entitled to seek the information in the most cost-efficient manner possible.¹¹ Additionally, as was stated in Order MO-4213, the existence of an alternative route for accessing the information does not preclude a requester from exercising their rights under the *Act*. Based on this, I find that the section 14(2)(d) factor applies, favouring disclosure.

Balancing the factors

[38] I have considered and weighed the submissions of the parties, the presumption in section 14(3)(b) and the factors discussed above. I find that, despite the driver not consenting to disclosure of the information, and the presumption (investigation into a possible violation of law) and factor (information supplied in confidence), all of which weigh against disclosure, the importance of the driver's contact information to the fair determination of the appellant's rights means that disclosure of the name would not be an unjustified invasion of the driver's personal privacy under section 38(b). Considering that the appellant submitted that he only requires the driver's contact information to determine if the information that he already has is correct, I find that disclosure of the driver's name alone is sufficient. Accordingly, I will order this information disclosed.

ORDER:

1. I order the police to disclose portions of the report providing the name of the driver. I order the police to disclose this information by **April 29, 2024**, but not before **April 24, 2024**.
2. In order to verify compliance with Order provision 1, I reserve the right to require the police to provide me with a copy of the report disclosed to the appellant.

Original signed by: _____
Chris Anzenberger
Adjudicator

March 22, 2024

¹¹ See also, for example, Order PO-4459.