

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4557

Appeal MA21-00615

Peel Regional Police Services Board

August 27, 2024

Summary: A person asked the police for records related to a specific file number. The police provided some information from two records but denied access to the other information in those two records and to one record in its entirety. The police said that it denied access to some information and to one record because they contain another person's personal information [section 38(b)].

The adjudicator agrees with the police's decision that the disclosure of the information at issue would constitute an unjustified invasion of another person's privacy. She dismisses the appeal.

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

OVERVIEW:

[1] This order considers whether the disclosure to the appellant of the withheld information that contains his personal information would constitute an unjustified invasion of other individuals' (affected parties) personal privacy under section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The Peel Regional Police Services Board (the police) received a request under the *Act* for access to all records related to a specific file number, including a police occurrence report, police officers' notes and any audio/video statement.

[3] After notifying the affected parties about the request pursuant to section 21 of the *Act*, the police issued an access decision. The police granted partial access to a police occurrence report and handwritten police officers' notes and withheld in full a video statement. The police relied on the discretionary exemption in section 38(b) (personal privacy) to deny the appellant access to the withheld information.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC) seeking access to the withheld information.

[5] The IPC attempted to mediate the appeal. A mediated resolution was not possible, and the appeal was moved to the adjudication stage of the appeal process.

[6] An IPC adjudicator conducted an inquiry and received representations from the police. She shared the police's representations with the appellant, who provided very brief representations. The appeal was then transferred to me to continue the inquiry. I reviewed the records at issue and the materials submitted by the parties and decided that I did not require further representations before making my decision.

[7] For the reasons that follow, I uphold the police's decision to withhold pursuant to section 38(b) of the *Act* the complete video statement and portions of the police occurrence report and police officers' notes.

RECORDS:

[8] The withheld information includes a video statement and portions of the police occurrence report and handwritten police officers' notes.

ISSUES:

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

DISCUSSION:

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

[9] In order to decide which sections of the *Act* apply, I must first decide whether the records contain "personal information," and if so, to whom the personal information relates. It is important to know whose personal information is withheld. If the records

contain the appellant's own personal information, his access rights are greater than if they do not.¹ If the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.²

[10] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.³ Information is "about" an 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.⁴

[11] Section 2(1) of the *Act* gives a list of examples of personal information:

"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

¹ 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.

² See sections 14(1) and 38(b).

³ See the definition of "record" in section 2(1).

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

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 a complete list. This means that other kinds of information could also be "personal information."⁵

Parties' representations

[13] The police submit that the records contain personal information of the appellant and affected parties. The police say that the appellant's information that relates to the police investigation constitutes his personal information under the *Act*.

[14] The police rely on paragraphs (a), (d), (e) and (g) of the definition of "personal information" in section 2(1) of the *Act* in submitting that affected parties' names, home addresses, dates of birth, and comments about them constitute their personal information. In addition, the police say that given the nature of the occurrence, it is reasonable to expect that the affected parties would be identifiable to the appellant from the withheld information.

[15] The appellant does not provide specific representations on this issue; however, he indicates that he does not seek certain types of information about the affected parties.

Analysis and findings

[16] I find that all of the records contain personal information of the appellant and various affected parties. This personal information includes names, addresses, phone numbers, dates of birth, sex, family status, views, opinions, image and voice in accordance with sections 2(1)(a), (d), (e) and (g) of the *Act* and the introductory wording of the definition of "personal information."

[17] Even if the personal information that the appellant is not seeking, such as names, addresses, phone numbers and dates of birth of affected parties, is removed from the scope of the appeal, the remaining withheld information contains affected parties' other personal information. Given the nature of the occurrence and the withheld information, I agree with the police that the records contain affected parties' personal information because knowing the withheld information, the appellant would be able to identify the affected parties.

⁵ Order 11.

[18] I have considered whether the appellant's personal information that remains at issue can be severed and disclosed to him. I find that it cannot because it originated from one of the affected parties and therefore is inextricably intermingled with the personal information of that affected party. Given the nature of the occurrence, the appellant's personal information is also intermingled with personal information of other affected parties.

[19] Since the records contain personal information of the appellant and affected parties, section 38(b) is the relevant exemption under which to consider the police's claim.

Issue B: Does the discretionary personal privacy exemption at section 38(b) of the *Act* apply to the withheld personal information?

[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 some exemptions from this right.

[21] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[22] Sections 14(1) to (4) provide guidance in deciding whether the disclosure would be an unjustified invasion of the other individual's personal privacy.

[23] 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). 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.

[24] Otherwise, in deciding whether disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the factors and presumptions in sections 14(2) and (3) must be considered, weighed and balanced with the interests of the parties.⁶

[25] Sections 14(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists several factors that may be relevant to determining whether the disclosure of personal information would be an unjustified invasion of personal privacy.⁷ Each of the first four factors found in sections 14(2)(a) to (d), if established, would tend to support the disclosure of the personal information in question; while the remaining five factors found in sections 14(2)(e) to (i), if established, would tend to support the non-

⁶ Order MO-2954.

⁷ Order P-239.

disclosure of that information. The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).⁸

Parties' representations

[26] The police submit that the disclosure of the withheld information would constitute an unjustified invasion of affected parties' personal privacy and that none of the exceptions at section 14(1)(a) to (e) that allow the disclosure of personal information apply. (The police's representations refer to types of information that are not at issue in the appeal and I have not considered the police's arguments in relation to that information.)

[27] The police submit that none of the factors at section 14(2) weigh in favour of the disclosure of the affected parties' personal information. The police argue that two factors weigh against the disclosure. Given whose personal information is withheld, the police say, the disclosure of the withheld information would cause significant personal distress [factor at section 14(2)(f)]. The police further say that because the affected parties' personal information was supplied by an affected party to police officers, it was reasonable for the affected party and the police officers to expect that the personal information would be treated confidentially [factor at section 14(2)(h)].

[28] The police further submit that the disclosure of the withheld information is presumed to be an unjustified invasion of personal privacy because the records that contain the withheld information pertain to an investigation into a possible violation of law, referring to the presumption at section 14(3)(b).

[29] Finally, the police say that none of the section 14(4) situations apply to rebut this presumption.

[30] The appellant's representations explain that he seeks access to information about himself and that he does not seek access to personal information of any affected party.

Analysis and findings

[31] I agree with the police and find that neither the exceptions at sections 14(1)(a) to (e) nor situations listed in section 14(4) apply to the affected parties' personal information. Therefore, I will focus my analysis on the weighing of the factors and presumptions in sections 14(2) and (3) and balancing the interests of the parties.

⁸ Order P-99.

Presumptions and factors

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

[32] I find that the presumption in section 14(3)(b) applies and weighs against disclosure. The affected parties' personal information is contained in a police occurrence report, police officers' notes and a video statement. I accept the police's uncontradicted statement that these records pertain to an investigation into a possible violation of law. Although the investigation did not result in criminal proceedings, the presumption in section 14(3)(b) against the disclosure still applies because section 14(3)(b) requires only that there be an investigation into a *possible* violation of law.⁹

14(2)(f): highly sensitive personal information

[33] I agree with the police and find that the affected parties' personal information is highly sensitive as defined in section 14(2)(f). To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁰ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.¹¹

[34] The information at issue consists of affected parties' personal information gathered during a police investigation. Given the subject matter of the investigation, which is known to the appellant from the information that had already been disclosed to him, I find that it is reasonable to expect that the disclosure of the affected parties' personal information could result in significant personal distress to them.

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

[35] I also find that the personal information of the affected party who provided the video statement to the police was provided in confidence and therefore the factor in section 14(2)(h) applies to this information. Section 14(2)(h) requires an objective assessment of whether an expectation of confidentiality between the individual supplying the information and the recipient is "reasonable."¹²

[36] The video statement confirms that the police officer interviewing the affected party and the affected party understood that the statement was being provided in confidence. Given the subject matter of the investigation, the nature of the personal information at issue, and the role of the police officer in the investigation, I find that it was reasonable for the affected party and the police officer to have such an expectation of confidentiality.

⁹ Orders P-242 and MO-2235. The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹¹ Order MO-2980.

¹² Order PO-1670.

Balancing the factors

[37] I find that the affected parties' personal information qualifies for an exemption under section 38(b) because its disclosure would constitute an unjustified invasion of the affected parties' personal privacy. I have considered that the records contain the appellant's personal information and understand his desire to obtain access to it. However, the affected parties have an interest in their personal information being protected. Having found that two factors and one presumption weigh against disclosure and that no factors weigh in favour of disclosure, and after balancing the interests of the parties, I conclude that disclosure of the information at issue would constitute an unjustified invasion of personal privacy of the affected parties.

[38] In light of my finding that the disclosure of the affected parties' personal information would constitute an unjustified invasion of their personal privacy, I will now turn to the issue of police's exercise of discretion.

Exercise of discretion

[39] 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. The institution must exercise its discretion.

[40] On appeal, the IPC will assess whether the institution failed to exercise its discretion. The IPC may find that the institution erred in exercising its discretion where it does so in bad faith or for an improper purpose; takes into account irrelevant considerations; or fails to take into account relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁴

Parties' representations

[41] The police submit that they appropriately exercised their discretion when they decided not to disclose the withheld information. The police say that they balanced the rights of all involved parties and considered the need to protect sensitive information. In particular, the police considered the interests of the affected parties that their personal information be protected, and the interests protected by the presumption at section 14(3)(b). The police also considered that the information at issue was sensitive. The police weighed those interests and factors against the interests of the appellant and released to him as much of the responsive records as reasonably could be severed without disclosing the exempt information.

¹³ Order MO-1573.

¹⁴ Section 43(2).

[42] The appellant did not provide representations on the issue of the police's exercise of discretion.

Analysis and findings

[43] I am satisfied that the police properly exercised their discretion in deciding to withhold portions of the police occurrence report and police officers' notes and a complete video statement. The considerations that the police took into account, such as the interests that section 38(b) of the *Act* seeks to protect, the interests of the relevant parties, and the nature of the information at issue, are all relevant. As a result of the balancing of these considerations, the police disclosed to the appellant the information that could be severed from the affected parties' personal information. None of the factors that the police considered were irrelevant. There is no evidence that the police acted in bad faith or made their decision for improper purpose.

ORDER:

The appeal is dismissed.

Original signed by: _____
Anna Kalinichenko
Adjudicator

_____ August 27, 2024