Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2059

Appeal MA-050389-1

Peel Regional Police Services Board

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NATURE OF THE APPEAL:

The Peel Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information relating to a motor vehicle accident:

1. Motor Vehicle Accident Report;
2. Witness statements;
3. Police officers' notes;
4. Photographs taken at the scene; and
5. Any reconstruction reports arising out of the incident.

The requester, a lawyer, identified that he was representing the mother of an individual who died in the accident both in her personal capacity, as well as in her capacity as an estate trustee without a will for the estate of the deceased. The lawyer also identified that he was representing four other named individuals. All of the individuals represented by the requester are relatives of the deceased.

The Police responded to the request by issuing an access decision identifying a number of issues. The Police began by stating that "Access cannot be granted to the reconstruction report [item 5] because it does not exist." The Police also identified that the request for the Motor Vehicle Accident Report had been dealt with in response to an earlier request.

The decision then stated that access to the other requested information was denied. It identified that only one of the requester's clients was directly involved in the motor vehicle accident as a witness, and that access to the responsive information, including the personal information of the deceased, was denied on the basis of section 38(a) (discretion to refuse requester's own information), in conjunction with sections 8(1)(a) and (b) (law enforcement) and 8(1)(f) (right to a fair trial), and on the basis of sections 38(b) and 14(1) (invasion of privacy) with reference to the presumption in section 14(3)(b) of the *Act*.

Finally, with respect to the claim that the requester was representing an estate trustee without a will, the Police referred to section 54(a) of the *Act*, and stated:

> A person may only qualify for access to the personal information of the deceased if they satisfy the requirements of section 54(a) of the [*Act*]. It would be necessary for you to show that you can comply with the requirements of both parts of this section relating to the "personal representative" of the deceased together with an explanation of how your rights relate to the administration of the deceased's estate, which is the second requirement of this section.

The requester, now the appellant, appealed the Police's decision.

During mediation, the Police identified that they no longer relied on the exemption in section 8(1)(b), and the application of that section is not an issue in this appeal. Also during mediation, the appellant raised an issue regarding the adequacy of the Police's decision letter, and this was added as an issue in this appeal.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, inviting them to address the issues relating to the identified exemptions. The Police provided representations in response, and I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the representations of the Police, to the appellant. In addition, I invited the appellant to address the issue he had raised regarding the adequacy of the decision, as well as the issue of whether section 54(a) applied. The appellant provided brief representations in response.

The appellant's representations do not address the issue of the adequacy of the decision letter and, in the circumstances, I will not review that issue in this order.

RECORDS:

The records at issue include occurrence reports, witness statements (written and on videotapes), police officers' notes, a Vehicle Mechanical Inspection Report, a Motor Vehicle Accident Report and photographs.

DISCUSSION:

PRELIMINARY ISSUE - RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE

Introduction

A preliminary issue raised in this appeal is whether, under section 54(a) of the *Act*, the deceased's mother (represented by the appellant) is entitled to exercise the rights of the deceased person under the *Act*.

Section 54(a) states:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > ...if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate...

Under this section, an individual can exercise the rights of the deceased under the *Act* if she can demonstrate that (a) she is the personal representative of the deceased, and (b) the rights she wishes to exercise relate to the administration of the deceased's estate. If the requirements of this section are met, then an individual is entitled to have the same access to the personal information of the deceased as the deceased would have had; the request for access to the personal information of the deceased will be treated as though the request came from the deceased himself under section 36(1) of the *Act* (Orders M-927, MO-1315 and MO-1538).

Personal Representative

In Order M-919, former Inquiry Officer Anita Fineberg reviewed the law with respect to section 54(a) and came to the following conclusions:

> The meaning of the term "personal representative" as it appears in section 66(a) of the *Freedom of Information and Protection of Privacy Act*, the equivalent of section 54(a) of the *Act*, was considered by the Divisional Court in a judicial review of Order P-1027 of this office. In *Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-19, the court stated:
>
> > Although there is no definition of "personal representative" in the Act, when that phrase is used in connection with a deceased and the administration of a deceased's estate, it can have only one meaning, which is the meaning set out in the definition contained in the *Estates Administration Act*, R.S.O. 1990, c. E.22, s.1, the *Trustee Act*, R.S.O. 1990, c. T.23, s.1; and in the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s.1:
> >
> > 1(1) "personal representative" means an executor, an administrator, or an administrator with the will annexed.
>
> Based on the court's analysis set out above, I am of the view that a person, in this case the appellant, would qualify as a "personal representative" under section 54(a) of the *Act* if he or she is "an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate".

Past practice of this office had been to require the appellant to provide a Certificate of Appointment of Estate Trustee in order to establish that he or she was the deceased's personal representative. However, recent orders have reviewed the nature of the documentation required to establish whether an individual is a personal representative of a deceased. In Order MO-2025, Adjudicator John Swaigen considered whether a Certificate of Appointment was required, or whether a will could provide sufficient evidence of being a personal representative. He found that:

> … a will naming an appellant as executor is sufficient evidence that he or she is a personal representative for the purpose of section 54(a) in the absence of evidence that the will is not the most recent one or some other evidence that the individual named as executor does not have the power or authority to administer the estate.

In this appeal, the representative of the mother of the deceased provided a copy of the Certificate of Appointment of Estate Trustee without a Will, appointing the mother of the deceased as the

Estate trustee. Accordingly, I am satisfied that the mother is the personal representative of her deceased son, and that she meets the first requirement for the application of section 54(a).

Relates to the Administration of the Individual's Estate

In Order M-1075, former Assistant Commissioner Tom Mitchinson reviewed the scope of the access rights of a personal representative under section 54(a):

> The rights of a personal representative under section 54(a) are narrower than the rights of the deceased person. That is, the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned. The personal privacy rights of deceased individuals are expressly recognized in section 2(2) of the *Act*, where "personal information" is defined to specifically include that of individuals who have been dead for less than thirty years.
>
> In order to give effect to these rights, I believe that the phrase "relates to the administration of the individual's estate" in section 54(a) should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate.

In that order, the former Assistant Commissioner accepted the argument of a personal representative that access to certain police records was required in order to determine whether, by contributing to the death of the testator, the major beneficiary of the estate was disentitled from benefiting under the will. It was found that access to the records was required in order for the personal representative to make an informed decision about matters relating to the beneficiary's entitlement to assets of the estate, and met the second requirement under section 54(a).

Other orders have applied section 54(a) in circumstances where access to the records was required in order to defend a claim being made against an estate (Order M-919), to exert a right to financial entitlements being denied to the estate or said to be due to the estate (Orders M-934 and MO-1315) or to investigate allegations of fraud which might affect the size of the estate (MO-1301).

In the present appeal, the Notice of Inquiry sent to the appellant asked him to identify whether the request relates to the administration of the deceased's estate. The appellant provided brief representations in response.

Although the appellant had indicated in previous correspondence that the request was made with respect to obtaining damages on behalf of the estate of the deceased, the appellant's brief representations identify that he now represents a number of individuals (including the mother of the deceased) in their personal capacity. He states that the requested information is required to

allow the appellant, representing a number of potential claimants, to fully investigate the accident and to ensure that all potential defendants are named in the Statement of Claim.

In Order MO-1762, Adjudicator Donald Hale addressed a situation where a personal representative of a deceased took the position that access to a deceased individual's information was required to pursue a number of claims. He stated:

> The claims being advanced or contemplated on behalf of the appellant and her children before the WSIB, WSIAT, the [Criminal Injuries Compensation Board] or the courts for survivor benefits, compensation for the infliction of nervous shock or damages for wrongful death are not proceedings on behalf of the estate. I find that any award which may be derived through these actions would benefit only the surviving spouse and children, as opposed to the estate. As a result, I find that the appellant is not entitled to rely on section 54(a) on the basis that the information sought relates to the administration of the estate.

I adopt the approach taken by Adjudicator Hale in MO-1762. Although I am satisfied that the mother of the deceased is the personal representative of the deceased, I am not satisfied that she is entitled to rely on section 54(a), because the information sought does not relate to the administration of the estate, as required under that section.

Accordingly, I find that section 54(a) does not apply in the circumstances of this appeal.

PERSONAL INFORMATION

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,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where 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;

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 [Order 11].

Representations and findings

The Police provide detailed representations on the nature of the information contained in the records, and take the position that all of the records contain the personal information of a number of identifiable individuals.

The Police state that the police occurrence reports contain the personal information of parties involved in the accident either as victims, an accused person, or witnesses. They state that this information contains the names, ages or dates of birth, addresses, telephone numbers, nature of involvement and other information that qualifies as the personal information of these persons.

The Police also state that the civilian witness statements, both hand-written and in transcribed form, contain the personal information of the witnesses. This includes their names, dates of birth, addresses, telephone numbers and their statements given to the police which contain their views and opinions of what transpired and qualify as "personal information" under section 2(1)(g) of the *Act*.

In addition, the Police state that the police officer's notes on pages 56 to 155 contain the personal information of the involved parties, including the deceased, the witnesses, the victims and the accused. The Police also identify that some portions of the information, such as the length of

service, qualifications and education of identifiable officers, contain personal information of the police officers.

The Police also state that the Vehicle Mechanical Inspection Report on pages 156 to 158, and the information contained on pages 159-162, relate to the actions of the accused as well as the charges against him, and thereby constitute his personal information. The Police also identify that portions of these records also contain the personal information of other identifiable individuals.

With respect to the two videotaped interviews, the Police take the position that both contain the personal information of the involved parties including their image, name, dates of birth or ages and their views and opinions relating to the accident, and that these videotapes qualify as the personal information of these involved persons.

Finally, the Police state that the disc containing 46 photographic images taken by the police Forensic Identification Bureau contain images relating to the involved parties, their vehicles, their final positions after the collision, the damage, licence plate numbers and information related to the direction of travel and points of impact. The Police state that the photos are directly related to this incident and demonstrate details that explain driver action and circumstances of identifiable individuals, and that they qualify as the personal information of the involved parties.

The appellant does not address the issue of whether the records contain the personal information of identifiable individuals.

I have carefully reviewed the records at issue, and find that many of them contain personal information relating to the deceased and the accused. They contain information relating to their age, marital or family status (paragraph (a)), their address and telephone number (paragraph (d)), the personal opinions or views of the accused (paragraph (e)), and their name where it appears with other personal information relating to them (paragraph (h)).

In addition, many of the records contain information which qualifies as the personal information of other identifiable individuals, including other witnesses, as they contain information relating to their age (paragraph (a)), address and telephone number (paragraph (d)), and their names where they appear with other personal information relating to them (paragraph (h)).

A few of the records contain the personal information of the mother of the deceased, as they contain her name and date of birth (paragraph (a)), address and telephone number (paragraph (d)) and her name where it appears with other personal information relating to her (paragraph (h)).

Finally, several records contain the personal information of one of the witnesses, who is represented by the appellant, as they contain his name and date of birth (paragraph (a)), address and telephone number (paragraph (d)) and his name where it appears with other personal information relating to him (paragraph (h)). In addition, six pages contain the notes of the interview the Police conducted with this individual (Pages 1 – 6 of the Witness Statements).

In summary, I find that all of the records contain the personal information of the deceased, the accused, and/or other identifiable individuals. In addition, the following records contain the personal information of the individuals represented by the appellant:

> Page 2 of the Occurrence Report and pages 83, 86, 109 and 154 of the remaining records contain the personal information of the deceased's mother.
>
> Pages 1-6, 77, 78, 82, 84, 85 and 109 of the records contain the personal information of one of the witnesses, who is represented by the appellant.

None of the records contain only the personal information of these two individuals.

I will now review whether the disclosure of the records to the appellant would constitute an unjustified invasion of privacy under either section 38(b) (for records containing the personal information the two individuals represented by the appellant) or section 14 (for the other records).

DISCRETION TO REFUSE ACCESS TO APPELLANT'S OWN PERSONAL INFORMATION/INVASION OF PRIVACY

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 exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the Police must look at the information and weigh the appellant's right of access to their own personal information against the other persons' right to the protection of their privacy. If the Police determine that release of the information would constitute an unjustified invasion of the personal privacy of other individuals, then section 38(b) gives the Police the discretion to deny access to the appellant's personal information.

Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of privacy".

In determining whether the exemptions in sections 14(1) or 38(b) apply, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the Police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or

a combination of the factors set out in section 14(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Police take the position that disclosure of the information in the records is presumed to constitute an unjustified invasion of the privacy of the deceased, the accused, and other individuals under the presumption in section 14(3)(b) of the *Act* which reads:

> 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;

The Police state:

> The personal information was collected by the police during their investigation of this occurrence. The information provided by the victims and other third parties as well as the physical evidence obtained at the scene and photographed as evidence was used by the police to investigate a possible violation of the law, specifically offences under the *Criminal Code of Canada* and the *Compulsory Automobile Insurance Act*. As such … section 14(3)(b) applies.

The appellant does not address the possible application of the presumption in section 14(3)(b). In his representations, the appellant identifies that he requires the information contained in the records in order to pursue legal actions. In doing so, the appellant appears to be referring to the factor in section 14(2)(d) in support of the position that this information should be disclosed.

Section 14(2)(d) 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 relevant to a fair determination of rights affecting the person who made the request;

Finding

In my view, all of the records which the Police claim qualify for exemption were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the disclosure of the records is presumed to constitute an unjustified invasion of privacy under section 14(3)(b).

As set out above, once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). Furthermore, as identified by the Police, the presumption in section 14(3)(b) is not rebutted by section 14(4), nor do I find that the "compelling public interest" override at section 16 applies. I therefore find that disclosing the information contained in the records would constitute an unjustified invasion of personal privacy under section 14(1) (for records which do not contain the personal information of the individuals represented by the appellant) and 38(b) (for those that do). These records are therefore exempt from disclosure under section 14(1) and 38(b), respectively.

Exercise of Discretion

The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. When an institution decides that this exemption is available to deny access, it must exercise its discretion. The exercise of discretion under this section involves a balancing principle. The institution must weigh the requester's right of access to his or her own personal information against the other individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

On appeal, this office may review an institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

The Police have provided detailed representations with respect to the reasons for their decision to exercise discretion in the manner in which they did. The representations of the Police on their exercise of discretion were shared with the appellant, and the appellant did not provide representations relating to this aspect of the Police's decision.

Upon review of all of the circumstances surrounding this appeal, and the representations of the Police on the manner in which they exercised their discretion, I am satisfied that the Police have not erred in the exercise of their discretion not to disclose the portions of the records withheld under section 38(b).

Although I have found that the records qualify for exemption under sections 38(b) and 14(1), in light of the discussion under the "absurd result" section, below, I have decided to review the possible application of sections 38(a) and 8(1)(a) and (f) to pages 1 – 6 of the witness statements.

DOES THE DISCRETIONARY EXEMPTION AT SECTION 38(a), IN CONJUNCTION WITH SECTIONS 8(1)(a) AND/OR (f), APPLY?

General principles

Section 36(1) 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.

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information. Because section 38(a) is a discretionary exemption, even if the information falls within the scope of section 8, the institution must nevertheless consider whether to disclose the information to the requester.

Here, the Police rely on section 38(a) in conjunction with sections 8(1)(a) and (f), which read:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (f) deprive a person of the right to a fair trial or impartial adjudication;

The term "law enforcement," which appears in sections 8(1)(a) and (b), is defined in section 2(1) of the *Act* as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b).

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a per se fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

I will begin by reviewing the possible application of section 8(1)(a).

Section 8(1)(a) – law enforcement matter

Representations

The Police submit that the disclosure of the record could reasonably be expected to interfere with a law enforcement matter. In addition to information provided in the confidential portions of their representations, the Police state:

> The records related to this matter were compiled during an investigation into a fatal motor vehicle collision from which criminal and provincial charges have been laid. Further, the matter has not yet been in court. The position of the police is that while the investigation is complete, the law enforcement matter is not. This matter is not one that has been concluded and will not be concluded until a determination has been reached in the court case. This requires attendance and evidence provided by witnesses under oath as well as the presentation of the evidence, including the records at issue in this appeal.

Later in their representations the Police state:

> Even the inadvertent and unintentional release of the information contained in the records outside of the court disclosure process could have an injurious affect on the prosecution [of the accused]. This also applies to contact with witnesses other than for law enforcement purposes.

The Police also identify that once the matter has been concluded in court, the section 38 and 8 exemptions would no longer be at issue.

The appellant does not address this issue in his representations.

Finding

I have carefully reviewed pages 1 - 6 of the record, as well as the representations of the Police, to determine whether the disclosure of these pages of the record could reasonably be expected to interfere with a law enforcement matter, and therefore whether the exemption in section 8(1)(a) applies.

The use of the word "interfere" contemplates that the particular law enforcement matter is still ongoing (see Orders M-258, M-302, M-420 and M-433). The purpose of the exemption contained in section 8(1)(a) is to provide an institution with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter. The institution bears the onus of providing evidence to substantiate that, first, a law enforcement matter is ongoing, and second that disclosure of the records could reasonably be expected to interfere with the matter [Order M-1067].

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the *Act*. I am satisfied that in these circumstances the criminal case and the preceding investigations constitute a "law enforcement matter" for the purpose of section 8(1)(a). Furthermore, the appellant himself refers to the ongoing nature of this matter. Accordingly, I am satisfied that the criminal proceeding currently underway is an ongoing "law enforcement" matter within the meaning of the legislation.

With respect to whether the disclosure of pages 1 – 6 of the record could reasonably be expected to interfere with the law enforcement matter, as contemplated by section 8(1)(a), I am satisfied that the Police have provided sufficient evidence to establish that the disclosure of these pages could reasonably be expected to interfere with the identified law enforcement matter. In this appeal, pages 1 – 6 consist of the witness statement of an individual represented by the appellant, and contain the observations and statements of the individual regarding the events that took place on the night of the accident. The Police specifically state that the records at issue in this appeal constitute evidence which will be relied upon in criminal proceedings.

The Police also identify concerns that the inadvertent and unintentional release of the information outside of the court disclosure process could have an injurious affect on the prosecution. In my view, having regard to the nature of the record and the fact that the record relates directly to an ongoing law enforcement matter, I am satisfied that the disclosure of the record could reasonably be expected to interfere with that matter. Accordingly, I am satisfied that the exemption in section 38(a), in conjunction with section 8(1)(a), applies to the record.

Furthermore, for the same reasons as set out under section 38(b), above, I am satisfied that the Police have not erred in the exercise of their discretion not to disclose the record withheld under section 38(a).

Absurd Result

Prior orders have found that, in certain circumstances, non-disclosure of personal information which was originally provided to the institution by a requester, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. In these orders, it has been found that a denial of access in these circumstances would constitute, according to the rules of statutory interpretation, an "absurd" result. Accordingly, disclosure has been ordered where an absurd result is found.

This principle is often applied in circumstances where the only exemption claim is that the disclosure of the information would constitute an unjustified invasion of the personal privacy of another individual under section 38(b). On occasion, this principle has also been applied to support access to a requester's own information which might otherwise be exempt from disclosure under section 38(a) of the *Act*: see, for example, Order MO-1314.

In this appeal, I invited the parties to provide representations on the possible application of the absurd result principle. The Police provided representations in support of their position that the absurd result principle did not apply. The appellant did not address this issue.

With respect to the small portions of the pages of information which qualify for exemption under section 38(b), the Police identify that the disclosure of these small portions of information would amount to nothing more than the release of "disconnected snippets" or "meaningless" or "misleading" information, and questions the value of the disclosure of these small portions of the record. The appellant was provided with the position of the Police on this issue, and identifies that his interest in the records relates to the pursuit of specific information in furtherance of certain identified claims, not the "snippets" of information referred to by the Police.

With respect to the witness statement comprising pages 1 – 6, in the circumstances of this appeal, I find that the principle of "absurd result" is not applicable because, in my view, there is a compelling reason for non-disclosure of the record at this time. Although the information contained on pages 1 - 6 was provided by one of the individuals represented by the appellant, I have found that disclosure of the record could reasonably be expected to interfere with a law enforcement matter, and with the prosecution of the accused. In the circumstances, I find that the "absurd result" principle does not support the appellant's request for access to the record at this time, as disclosure of the record would be inconsistent with the purpose of the section 38(a) and 8(1)(a) exemptions (see Orders M-757, MO-1323 and MO-1945).

ORDER:

I uphold the decision of the Police.

Original signed by: June 22, 2006
Frank DeVries
Adjudicator