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

ORDER MO-2155

Appeal MA-050393-1

Waterloo Regional Police Services Board

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Waterloo 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:

> All record on myself - All complaints by all neighbour All traffic violations Everything you have on file". [*sic*]

The Police sent a letter to the requester that stated that his request did not provide sufficient information to locate the records. It asked him to describe the type of records he was requesting. The requester responded by sending the Police a follow-up letter that stated:

> - I would like all complains neighbour's made regarding myself my family or my property.
> - Any complaints for any City of Waterloo employee's or anyone whatsoever.
> - All traffic violations.
> - a complete list of all documents any any police file.
>
> I will allow at this time for names to be omit and blacken on the documents. [*sic*]

The 76 pages of records that the Police identified as responsive to the request include information about individuals other than the requester. The Police contacted these individuals and asked them if they would consent to the disclosure of their personal information to the requester. None of these individuals consented to such disclosure.

The Police then issued a decision letter to the requester that granted him partial access to the records. It denied him access to portions of the records pursuant to sections 38(a) (refuse to disclose requester's own information) in conjunction with sections 8(1)(l) and 8(2)(a) (law enforcement); as well as section 38(b) (invasion of privacy) in conjunction with the factors listed in sections 14(2)(f), (g), and (h), and the presumption in section 14(3)(b) (personal privacy) of the *Act*. After the requester paid a required fee, the Police provided him with a severed version of the records, along with an index of records.

The requester (now the appellant) appealed the Police's decision to this office. On the appeal form submitted by the appellant, he indicated that he believed that the Police did not conduct a reasonable search for the records he is seeking, and that additional records exist.

This appeal was not settled in mediation and was moved to adjudication. Initially, I issued a Notice of Inquiry to the Police, who submitted representations in response. The Police asked that portions of their representations be withheld from the appellant, due to confidentiality concerns. I then issued a Notice of Inquiry to the appellant, along with the non-confidential representations of the Police. In response, the appellant submitted representations to this office. Finally, I sent the appellant's representations to the Police and invited them to provide reply representations. The Police submitted representations by way of reply.

RECORDS:

The information at issue consists of the undisclosed portions of 76 pages of provincial offence notices and police occurrence reports.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

The appellant claims that the Police did not conduct a reasonable search for the records he is seeking, and that additional records exist.

General principles

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

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

The parties' representations

The Police state that after receiving the appellant's request, they contacted him on several occasions to clarify the scope of his request, which is broad. Ultimately, they told him that they would conduct a search of their records management database for all reports relating to him for the past 20 years. The Police submit that the appellant accepted these search parameters.

Staff in the Police's Records Services Branch then searched the records management database for all occurrence reports and provincial offence notices that matched the requester's name and date of birth. The Police submit that the staff members who did the search are experienced and conducted an accurate and thorough search for the records sought by the appellant.

The appellant submitted brief representations in response to the Notice of Inquiry that was issued to him. On the issue of reasonable search, the appellant claims that the Police have admitted to "secretly" videotaping him when he was present at the police station to make a complaint against a neighbour. He submits that the Police should provide the tape to this office.

In response to the appellant's claim that a videotape exists, the Police submit that the appellant is "expanding the scope of his request in his representations." They cite section 37(1)(b) of the *Act*, which requires an individual seeking access to his personal information to identify the personal information bank or otherwise identify the location of the personal information. The Police submit that the appellant failed to comply with this requirement, even though they repeatedly asked him to check their Directory of Records in order to assist them in locating records relating to him that may be available at their various detachments.

The Police state that they will conduct a search for the videotape only if the appellant submits a new request for this record, along with the $5 application fee, and relevant information that would assist them in locating the videotape, including the details of the incident, the date he gave his statement to the Police, and any other information regarding his complaint.

Analysis and findings

I have considered the submissions of both the Police and the appellant. In my view, with the exception of their stance with respect to the videotape, the Police have conducted a reasonable search for the records sought by the appellant, for the following reasons.

The initial request submitted by the appellant was extremely broad. He asked the Police to provide him with "all records" that they have on file relating to him. In response, the Police contacted the appellant on several occasions to clarify the types of records he was seeking.

Ultimately, the Police told the appellant that they would conduct a search of their records management database for all reports relating to him for the past 20 years. They submit that the appellant accepted these search parameters. The appellant has not disputed this assertion in his representations.

Experienced staff in the Police's Records Services Branch then searched the records management database for all occurrence reports and provincial offence notices that matched the requester's name and date of birth. As a result of this search, they located 76 pages of occurrence reports and provincial offence notices.

As noted above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

In my view, with the exception of their refusal to search for the videotape sought by the appellant, the Police have provided sufficient evidence to show that they conducted a reasonable search for records relating to him. They contacted him on several occasions to clarify the scope of his request and then had experienced staff search their records management database.

As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In my view, the appellant has only provided a reasonable basis for concluding that one additional record (the videotape) may exist that might contain personal information relating to him. He claims that the Police have admitted to "secretly" taping him at the police station when he came to make a complaint against a neighbour.

In their representations, the Police do not dispute that the videotape may exist but argue that the appellant should not be permitted to expand the scope of his request at this stage of the appeal. In particular, they submit that the appellant did not identify the "personal information bank" that might contain the videotape or otherwise identify the location of the videotape, as required by section 37(1)(b) of the *Act*.

Consequently, it must be determined whether the videotape identified by the appellant falls within the scope of his request.

Both requesters and institutions have certain obligations with respect to access requests under the *Act*. The general obligations of both parties are set out in section 17 of the *Act*, which states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

For access requests pertaining to the personal information of the requester, these obligations are set out in section 37 of the *Act*, which states, in part:

> (1) An individual seeking access to personal information about the individual shall,
>
> (a) make a request in writing to the institution that the individual believes has custody or control of the personal information;
>
> (b) identify the personal information bank or otherwise identify the location of the personal information; and
>
> (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

Section 37(2) provides that the requirements of section 17(2) of the *Act* apply to requests for personal information. In other words, if a request for one's own personal information does not sufficiently describe the record sought, the institution must inform the requester of the defect and offer him or her assistance in reformulating the request.

I have some sympathy for the Police's position with respect to the videotape because they assisted the appellant in reformulating his request and then made substantial efforts to locate records relating to that request.

However, I do not accept the Police's submission that the videotape should be considered to be outside the scope of the appellant's request, and that they do not have a duty to search for this record until the appellant provides them with relevant information that would assist in locating the videotape.

I have reviewed the records at issue and found a reference to the incident in which the appellant was apparently videotaped. The second full paragraph on page 55 of the records clearly states that the appellant attended at Division #3 on August 16, 2004 and was interviewed by a detective. The paragraph further states that, "The interview was video taped."

In my view, this reference makes it clear that the videotape sought by the appellant exists and provides pertinent information that the Police could use to locate the videotape, including the date and location of the videotaped interview and the police officers who were present. Consequently, I find that page 55 of the records contains sufficient information to enable the Police to conduct a search for the videotape, even in the absence of any additional information from the appellant concerning where the videotape might be located.

In addition, I would note that this office has held that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

In my view, it would be unnecessarily bureaucratic and contrary to the spirit and purpose of the *Act* to require the appellant to submit a new request for the videotape along with an additional $5 application fee, particularly in light of the fact that his initial request was for "all records" relating to him.

Consequently, I find that the videotape is within the scope of the appellant's request, and I will order the Police to conduct a search for this record. If the Police locate the videotape, they must then issue a new access decision to the appellant in accordance with the requirements of the *Act*.

PERSONAL INFORMATION

General principles

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].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The parties' representations

The Police state that the records contain the names, addresses, telephone numbers, dates of birth and sexes of the appellant and several other individuals. They submit that this information qualifies as "personal information" as defined in paragraphs (a), (c) and (d) of section 2(1) of the *Act*.

Furthermore, they state that the records contain the views and opinions of other individuals about their contacts with the appellant, and that this information qualifies as their "personal information," as defined in paragraph (g) of section 2(1) of the *Act*. In addition, the Police state that any information relating to individuals solely in their professional capacity was disclosed to the appellant.

The appellant did not provide representations as to whether the records contain personal information.

Analysis and findings

The records at issue consist of 76 pages of provincial offence notices and occurrence reports. I have carefully reviewed these records, which contain information about a number of individuals,

including the appellant; his neighbours and other individuals who have had contact with him; and several police officers and other city employees.

I find that both the provincial offence notices and occurrence reports contain the personal information of the appellant, because they include his race, age (birth date) and sex, as specified in paragraph (a) of the definition of "personal information" in section 2(1) of the *Act*, and his address and telephone number, as specified in paragraph (d). Other portions of the records include the views and opinions of other individuals about the appellant, as specified in paragraph (g) of the definition, and the appellant's name along with other personal information relating to him, as specified in paragraph (h) of the definition.

I find that the occurrence reports also include the personal information of the appellant's neighbours and other individuals who have had contact with him, because they include the races, ages (birth dates) and sexes of these individuals, as specified in paragraph (a) of the definition of "personal information" in section 2(1). They also include these individuals' addresses and telephone numbers, as specified in paragraph (d), and their names along with other personal information relating to them, as specified in paragraph (h).

In addition, I find that the records contain both personal and professional information relating to several city employees. They contain their races, ages (birth date) and sexes, as specified in paragraph (a) of the definition of "personal information" in section 2(1) of the *Act*, and their addresses and home telephone numbers, as specified in paragraph (d). However, the records also contain professional information relating to these individuals, including their places of employment and telephone numbers at work.

Finally, the records contain information relating to several police officers, including their names and job positions. I find that the information in the records relating these individuals does not qualify as their personal information, because it relates to these individuals in their professional rather than their personal capacities.

The Police disclosed a severed version of the 76 pages of records to the appellant. The information in the records that was disclosed to the appellant includes a substantial amount of his own personal information and the professional information of several police officers and city employees. However, the Police withheld the following information from the appellant:

- The personal information of both the appellant and other individuals, which is generally mixed together in complaints that other individuals filed against the appellant and in complaints that the appellant filed against other individuals (occurrence reports)

- police "900 codes" and information relating to the Police's computer system (provincial offences notices and occurrence reports)

I will now consider whether the exemptions in the *Act* claimed by the Police apply to those portions of the records that they have withheld from the appellant.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

General principles

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met. Section 14(1) sets out certain exceptions to the general rule against the disclosure of personal information that relates to an individual other than the requester. The only exception which may have some application in the circumstances of this appeal is set out in section 14(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, if the disclosure does not constitute an unjustified invasion of personal privacy.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would constitute an unjustified invasion of personal privacy [Order P-239].

Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The parties' representations

The Police submit that none of the exceptions in paragraphs (a) to (e) of section 14(1) of the *Act* apply in the circumstances of this appeal. For example, they point out that the occurrence reports include information about individuals other than the appellant. The Police contacted these individuals and asked them if they would consent to the disclosure of their personal information to the appellant, but none of these individuals consented. Consequently, they submit that the consent exception to the prohibition on disclosure in section 14(1)(a) of the *Act* does not apply.

The Police further submit that the presumption in section 14(3)(b) of the *Act* applies because the personal information in the occurrence reports was compiled and is identifiable as part of different investigations into possible violations of the law:

> Any or all of these incidents could lead to charges under the *Criminal Code of Canada*. Other incidents deal with calls to assist city government officials who requested police assistance when dealing with the [appellant]. All of these reports were generated as a result of police fulfilling their mandate of law enforcement under the *Police Services Act* and the *Criminal Code of Canada*.

In addition, the Police submit that the factors in sections 14(2)(f) (highly sensitive), (g) (accuracy/reliability) and (h) (supplied in confidence) of the *Act* are relevant in the circumstances of this appeal. These sections state:

> 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,
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The appellant did not provide formal submissions on whether the discretionary exemption in section 38(b) of the *Act* applies to those portions of the occurrence reports withheld by the Police. However, he submits that all of the complaints filed against him should be disclosed because he has not done anything wrong and, therefore, no charges can be laid against him under the *Criminal Code*.

In addition, he submits that he requires access to any complaints that other individuals have filed against him for the purpose of proving them false and protecting his reputation. This argument gives rise to the possible application of section 14(2)(d) of the *Act*:

> 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;

Analysis and findings

I have carefully reviewed the records at issue and considered the representations of both the Police and the appellant. As noted above, the occurrence reports contain undisclosed personal information relating to both the appellant and other individuals.

In my view, the personal information withheld by the Police falls within the ambit of section 14(3)(b) of the *Act*, which states:

> 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 were called to investigate a number of incidents which gave rise to the creation of the records at issue. The undisclosed personal information of both the appellant and other individuals in the occurrence reports was compiled by the Police and is identifiable as part of several investigations into possible violations of the *Criminal Code*.

I do not accept the appellant's submission that all of the complaints filed against him should be disclosed because he has not done anything wrong and therefore no charges can be laid against him under the *Criminal Code*. It is well established in previous orders that even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Consequently, I find that the section 14(3)(b) presumption applies to the undisclosed personal information of both the appellant and other individuals.

The Divisional Court's decision in the *John Doe* case, cited above, precludes me from considering whether the section 14(3)(b) presumption can be rebutted by either one or a combination of the factors set out in section 14(2). However, a presumed unjustified invasion of personal privacy under section 14(3) can be overcome if section 14(4) or the "public interest override" at section 16 applies.

I have considered the application of the exceptions contained in section 14(4) of the *Act* and find that the personal information at issue does not fall within the ambit of this section. Moreover, the public interest override at section 16 does not apply, because the appellant has not referred to it.

In conclusion, subject to my discussion below as to whether the Police properly exercised their discretion, I find that the undisclosed personal information in the occurrence reports falls within the section 14(3)(b) presumption and is therefore exempt under section 38(b) of the *Act*, as its disclosure would result in an unjustified invasion of the personal privacy of individuals other than the appellant.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

In their decision letter to the appellant, the Police denied access to portions of the records pursuant to the discretionary exemption in section 38(a) in conjunction with sections 8(1)(l) and 8(2)(a) of the *Act*.

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.

Section 8(1)(l) states:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime;

Section 8(2)(a) states:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

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*].

In section 8(2)(a) of the *Act*, the word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I].

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

The parties' representations

The Police state that they have applied section 8(1)(l) of the *Act* to exempt those portions of the records that contain police "900 codes" and other references to coding procedures in police incidents, and references to the police computer system, including the "query" capabilities of this system.

The Police state that the "900 codes" are used to classify occurrences and incidents to assist officers when conducting their investigations. They submit that disclosure of these codes and other references to coding procedures would facilitate the commission of an unlawful act or hamper the control of crime:

> The police codes are internal systems of communication between dispatchers and the police. Release of such codes may hamper the investigations and could result in the risk of harm to either the public, namely individuals directly involved in these incidents and/or police, as those involved in the criminal activity can anticipate police response if the codes were released.

The Police further submit that disclosure of references in the records to their computer system and the "query capabilities" of this system would also result in the harms contemplated by section 8(1)(l) of the *Act*:

> These are internal procedures used to search for information on the computer system and release of search mechanisms to the general public would facilitate the commission of an unlawful act or hamper the control of crime.

Moreover, the Police state that they applied section 8(2)(a) of the *Act* to the following pages of the records at issue:

- Pages 13, 16 – Neighbour dispute
- Pages 20, 21, 23-26, 28 – Assist citizen call
- Pages 29-32 – Investigation of threatening
- Pages 33-41 – Investigation into property damage
- Pages 48, 50 – Investigation of extortion
- Pages 57, 58, 61, 65 – Report of break and enter
- Pages 66-76 – Assist citizen call

The Police state that they investigated each of these incidents, which resulted in a report containing the names of the involved parties, the statements of those parties, and how the Police resolved the complaint. Consequently, they submit that all of the withheld information on these pages qualifies as reports, prepared in the course of law enforcement by a police service which has been delegated the power to enforce the provisions of the Criminal Code.

In his representations, the appellant does not make any submissions as to whether the discretionary exemption in section 38(a) of the *Act*, in conjunction with sections 8(1)(l) and 8(2)(a), applies to the information at issue.

Analysis and findings

In my view, it is clear that the appellant is only seeking access to his own personal information and any complaints filed against him by other individuals. None of the documentation that the appellant has submitted, including his initial and reformulated requests to the Police and his representations to this office, makes any reference to the Police's "900 codes" or its computer system.

I find, therefore, that this information is not responsive to the appellant's request and may be severed from the records on that basis. Consequently, it is not necessary to consider whether this information is also exempt under section 38(a) in conjunction with section 8(1)(l) of the *Act*.

Moreover, I have already found that the other undisclosed portions of the records are exempt under section 38(b) of the *Act*. Consequently, it is not necessary to consider whether this information is also exempt under section 38(a) in conjunction with section 8(2)(a) of the *Act*.

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. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner 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
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- 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
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her 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
- the historic practice of the institution with respect to similar information

The Police submit that they exercised their discretion in a manner that balances the appellant's access rights with the privacy rights of other individuals. They further state that they considered whether the appellant has presented a sympathetic or compelling need to access the information and concluded that he did not.

The appellant's representations do not address whether the Police exercised their discretion pursuant to section 38(b) of the *Act*, and whether this office should uphold that exercise of discretion.

In my view, the Police considered the relevant factors in their exercise of discretion and did not consider irrelevant ones. I have reviewed the records at issue and find that the Police exercised their discretion in a manner that balanced the appellant's right to access his own personal information with the privacy rights of other individuals. Consequently, I find that the Police's exercise of discretion was proper.

OTHER MATTERS

Right of correction

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 36(2) gives individuals certain rights if they believe that there are errors or inaccuracies in the personal information they have accessed from an institution:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > (a) request correction of the personal information if the individual believes there is an error or omission;

> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
>
> (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

In his representations, the appellant complains that the records disclosed to him show that the Police wrongly designated him as a suspect in a break-and-enter incident:

> This is a personal attack on my character. Only after I entered an official complaint with the Waterloo Regional Police complaint #32-06, [a named sergeant] now states this was a clerical error on the [Police's] part and that it was caught shortly afterwards and deleted from their computers.

In addition, he alleges that this information may have been "planted" because of a heated argument he had with a police officer who stopped him because his children were allegedly not wearing seat belts. He further submits that the Police had a duty to notify this office of the wrongful information designating him as a suspect and asks for a "complete investigation" into this incident.

In their reply representations, the Police state that the appellant chose to file a complaint with their public complaints branch rather than file a correction request under the *Act*. They submit that the sergeant who investigated the appellant's complaint found that the error had already been corrected during their "normal quality control processes." The Police further submit that they had no obligation to report the error to this office, particularly since it was corrected.

I have considered the representations of both the appellant and the Police. In my view, it is clear that the Police properly handled the appellant's allegation that there was inaccurate information relating to him in their records. They ensured that this error was corrected, and I accept that they had no statutory duty to report the error to this office. Given that the Police have fulfilled the appellant's correction request, I find that any issue with respect to section 36(2) of the *Act* is moot for the purposes of this appeal.

I do not have the jurisdiction to consider the appellant's allegation that the Police may have "planted" this information in the records because of a heated argument he had with a police officer. If the appellant believes that the Police have not conducted themselves properly in their dealings with him, Part V of the *Police Services Act* sets out the process for complaining about the policies or services provided by a police force or the conduct of a police officer.

ORDER:

1. I uphold the decision of the Police to withhold the undisclosed portions of the records.

2. I order the Police to conduct a search for the videotape sought by the appellant. If the Police locate this videotape, they must issue a new access decision to the appellant in accordance with sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request.

Original signed by: January 31, 2007
Colin Bhattacharjee
Adjudicator