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

ORDER MO-2395

Appeal MA06-383

Niagara Regional Police Services Board

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NATURE OF THE APPEAL:

The Niagara Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "a copy of report 06-55532." The access request was filed jointly by two individuals (the requesters).

By way of background, the requesters are the husband and daughter of a woman who suffered serious injuries as a result of an incident at a St. Catharines nursing home. The corporation that owns the nursing home, the Police and the Ministry of Health and Long-Term Care (the Ministry) all conducted separate investigations into the cause of the woman's injuries. The incident also received coverage in the local media. An article that appeared in the *St. Catharines Standard* stated the following:

> [The woman's daughter] believes that her mother's legs were broken three days before she was taken to hospital while two employees were lifting her mother – who had a stroke five years ago and can't walk, talk or move most of her body – into bed with a special machine. [June 21, 2006, p. A4]

Another article in the same newspaper stated the following with respect to the outcome of the investigations conducted by the Ministry and the corporation that owns the nursing home:

> [The Ministry] … examined the incident but found that staff did not stray from any guidelines.
>
> [The corporation that owns the nursing home] concluded its investigation several weeks ago, followed by the firing of three employees. The company admitted to not knowing how [the woman] was injured other than through a "traumatic event." [August 9, 2006, p. A4]

The requesters have a continuing power of attorney to act on the injured woman's behalf in legal matters. Section 54(b) of the *Act* states that any right or power conferred on an individual by this *Act* may be exercised by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property. Consequently, the access request submitted by the husband and daughter of the injured woman must be treated as if it was submitted by the injured woman herself.

The Police located a 15-page record that is responsive to the request. In their decision letter to the requesters, the Police refer to the record as "Criminal Negligence Report #2006-55532." In this order, I will refer to this record as the Police's "investigation report."

The Police provided the requesters with partial access to the investigation report, but denied access to the remaining portions pursuant to the discretionary exemption in section 38(b) (personal privacy) in conjunction with the presumption in section 14(3)(b) (investigation into violation of law) of the *Act*. One portion of this report, which was disclosed to the appellants, summarizes the outcome of the Police's investigation: "There is no evidence to support that the victim's injuries were caused by an act criminal in nature."

The requesters (now the appellants) appealed the Police's decision to deny them access to the remaining portions of the report. During the mediation stage of the appeal process, the appellants narrowed the information at issue by specifically identifying the withheld portions of the record to which they continue to seek access.

With respect to the withheld portions on pages 2 to 4 of the record, the appellants specified that they are only seeking the names of the nursing home workers involved in the injured woman's care, their role in the investigation (i.e., suspect, witness, etc.) and any business information (i.e., telephone number, occupation and employer) relating to these individuals. Consequently, the remaining information withheld by the Police on these pages (e.g., home addresses, home telephone numbers, birth dates, etc.) is not responsive to the appellants' request and is therefore not at issue in this appeal.

The appellants further stated that they are continuing to seek access to all of the withheld information on pages 5 to 15 of the record at issue, except for the birth dates of any individuals.

The Police issued a revised decision letter to the appellants and provided them with some additional information, including pages 14 and 15 in their entirety.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process for an inquiry. I started my inquiry by issuing a Notice of Inquiry to the Police, which submitted representations in response.

I then issued the same Notice of Inquiry to the appellants, along with a copy of the Police's representations. I withheld the portions of the Police's representations that fall within this office's confidentiality criteria on the sharing of representations. The appellants submitted representations in response.

In their representations, the appellants state that they are not seeking access to any Canadian Police Information Centre (CPIC) records, which constitute pages 10 to 13 of the investigation report. Consequently, those pages are no longer at issue in this appeal.

Next, I sent the appellants' representations to the Police and invited them to reply to these representations. The Police submitted representations by way of reply.

I then decided to seek supplementary representations from both the Police and the appellants as to whether the public interest override in section 16 of the *Act* might apply in the circumstances of this appeal. Under section 16, an exemption from disclosure of a record under specific sections of the *Act* does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The appellants submitted representations as to whether the public interest override in section 16 of the *Act* applies in the circumstances of this appeal. I did not receive any representations from the Police on this issue.

I also identified seven affected parties whose interests might be affected by disclosure of the withheld information in the record at issue. Six of these affected parties were employed at the nursing home at the time the woman was injured, and include the nursing home's executive director and director of programs; a nursing home worker designated as a witness; two nursing home workers designated as suspects; and another nursing home worker who was not designated as a suspect but whose conduct was scrutinized. An additional affected party is a local businessperson who had contact with the two suspects when they were outside of work.

I issued a Notice of Inquiry to these seven affected parties, along with copies of the non-confidential representations of both the Police and the appellants. I invited the affected parties to submit representations on all issues in this appeal, including the public interest override in section 16.

I received a response from the chief privacy officer of the company that owns the nursing home, who submitted a one-page letter in response to the Notice of Inquiry that was issued to the nursing home's director of programs. This letter states, in part:

> At this point, we are not in a position to hold a contrary opinion to that submitted by the Niagara Police Service in their representations. Our primary focus is on ensuring that appropriate protections are in place on the disclosure of personal health information of the long term care home Resident in question, as well on the public disclosure of personal information of current or former employees of [the nursing home], its operating company … and the parent company …

I did not receive any representations from the other six affected parties. The letters sent to two of the nursing home workers were returned to this office because they had apparently moved.

In the interests of procedural fairness, I then decided to provide the union which represents nursing home workers at that particular home with the opportunity to submit representations on behalf of any of the four nursing home workers whose interests might be affected by disclosure of the withheld information in the record at issue. I sent a Notice of Inquiry to the union, along with the non-confidential representations of both the Police and the appellants. I did not receive any representations from the union.

RECORD:

The information remaining at issue in this appeal appears on the following pages of the Police's investigation report:

- Pages 2 to 4 – the withheld information on these pages relates to three nursing home workers. The only information remaining at issue is each individual's name and role in the investigation (i.e., suspect or witness), and business information (i.e., telephone number, occupation and employer) relating to one worker.

- Pages 5 to 9 – the withheld information on these pages sets out the evidence gathered by the Police during their investigation, including a summary of the information collected by the nursing home's executive director and director of programs during an internal investigation of the incident that led to the woman's injuries (pages 5 to 7); and summaries of interviews conducted with a local businessperson (page 7); a nursing home worker designated as a witness (page 7); a nursing home worker who was not designated as a suspect but whose conduct was scrutinized (page 7); and two nursing home workers designated as suspects (pages 8-9). There are also references to a union representative and a lawyer (page 8).

PERSONAL INFORMATION

General principles

As noted above, the Police claim that the personal privacy exemption in section 38(b) of the *Act* applies to the information in the record at issue that they have withheld from the appellants. However, the section 38(b) exemption only applies to information that qualifies as "personal information," as that term is defined in section 2(1) of the *Act*. Consequently, the first issue that must be considered in this appeal is whether the record at issue 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].

In addition, the Ontario legislature recently amended the *Act* to exclude certain information from the definition of personal information. In particular, sections 2(2.1) and 2(2.2) state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

These amendments came into effect on April 1, 2007 and apply only to access requests made on or after that date. The Police received the appellants' access request on August 25, 2006. Consequently, I find that sections 2(2.1) and 2(2.2) do not apply in the circumstances of this appeal and I will not address these provisions any further in this order.

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.)].

Summary of the parties' representations

The Police's representations

The Police submit that the record at issue contains the personal information of several individuals:

> The personal information relates to the appellants, to the victim (who is the wife and mother of the appellants and for whom the appellants have power of attorney), and to third party individuals. The personal information consists of the names of individuals, their roles in the investigation, statements made by named individuals about other named individuals, and statements made by named individuals about themselves. As the names and place of employment of third party individuals have been disclosed, the parties are identifiable.
>
> A portion of the information is about individuals in relation to their employment which information, however, reveals something of a personal nature about the individuals.
>
> … [some] individuals have been accused of wrongdoing in the course of their employment duties and are the subjects of an investigation into this alleged wrongdoing both by the employer and by the police. As such, the information provided by and about these named individuals is not in a professional context, rather it is personal information. [Emphasis in original.]

The appellants' representations

The appellants provided lengthy and complex representations as to whether the record at issue contains "personal information."

They submit that the investigation report contains the personal information of the injured woman. They further submit that the information in this record relating to the affected parties, particularly the nursing home workers designated as "suspects" by the Police, is the professional information of these individuals, not their personal information:

> The police state (page 2) that "[t]he individuals have been accused of wrongdoing in the course of their employment duties and are the subjects of an investigation into this alleged wrongdoing both by the employer and by the police." Therefore, according to the submissions of the police, the information in the records does not "reveal something of a personal nature about the individual"; rather, the information relates to these individuals in their professional, official or business capacity.

In addition, the appellants cite paragraphs (e) and (g) of the definition of "personal information" in section 2(1) of the *Act*. In particular, paragraph (g) states that personal information includes "the views or opinions of another individual about the individual." They assert that if the affected parties expressed views or opinions about the injured woman, this is her personal information, not the personal information of the affected parties.

The appellants also point to Order MO-2025, which was decided by Adjudicator John Swaigen. They state that this order dealt with a situation "which was almost identical to this case." In the appeal that led to that order, the family of a deceased nursing home resident had requested "information regarding an investigation by the Police into the physical condition of the deceased individual at the time of her transfer from a long-term care facility (the nursing home) to a named health care facility (the hospital)." The Police interviewed a number of health care professionals, both at the hospital and the nursing home.

The appellants cite several passages from Adjudicator Swaigen's order, in which he assessed whether the opinion of another person about an individual's work performance constitutes the latter individual's personal information. In particular, his conclusion is summarized in the following paragraph from that order:

> The views of the investigator or examiner about the quality or propriety of an individual's professional conduct are the personal information of that individual. However, if that individual or another individual provides factual information describing how he or she carried out professional or employment duties, this is professional or employment information, and does not become personal information merely because it was provided in the context of an investigation or examination of his or her conduct. It is only evaluative comments that are personal information.

The appellants assert that Adjudicator Swaigen's line of reasoning should be followed with respect to the information of the affected parties in the present appeal:

> The [Police] have withheld all information which falls within the category of personal opinion. However, [Adjudicator] Swaigen's decision demonstrates the necessity of examining each instance of personal opinion, to determine whether it ought to be disclosed. Where personal opinion:
>
> a) is about the appellant(s)
> b) is not evaluative
> c) is factual information describing how he or she carried out professional or employment duties and/or
> d) does not identify any one particular person
>
> then this is information to which the appellants are entitled.

The appellants also submit that it is important to differentiate between a "fact" supplied by an affected person, versus an "opinion" supplied by an affected person:

> Care must … be exercised not to simply lump all statements made by health care professionals into the category of "opinions" simply because they express an observation which is relevant regarding the investigation conducted into what happened to [the injured woman].

Next, the appellants submit that even if it is determined that any statements found in the record at issue are determined to be the "personal opinions or views" of an affected party, it must then be determined whether these opinions or views are truly "personal" or made in the affected party's professional capacity.

The appellants also refer to Interim Order MO-1524-I, in which Adjudicator Laurel Cropley examined whether information provided to the Police by a medical professional constituted that individual's personal information. In particular, they cite the following paragraph from her order:

> It is possible, based on the individual circumstances of a particular case, that information provided by a professional to the police during an investigation might cross the threshold and be more properly characterized as "personal" as opposed to "professional". In this case, however, the medical staff referred to in the records were clearly doing nothing more than providing their usual professional services, both in dealing with the appellant and in responding to questions by the Police investigators. In the circumstances of this appeal, there is nothing on the face of the records or in the representations themselves that would suggest taking a different approach to the information about or provided by these individuals in their professional capacity. Accordingly, I find that none of the records contain the personal information of the doctors or other medical staff associated with the hospital.

The appellants assert that Adjudicator Cropley's line of reasoning should be followed with respect to the information of the affected parties in the present appeal:

> … All the information collected in the file was collected from health care professionals whose job it was to care for and evaluate the medical condition of [the injured woman] and to determine what had gone wrong in order to attempt to address her medical problems. In calling the police to do an investigation, the health care professionals at the nursing home were similarly not using their personal judgment or discretion, but were invariably following professional training and/or protocols.

The Police's reply representations

In their reply representations, the Police rebut some of the appellants' submissions as to whether the record at issue contains "personal information." In particular, they challenge the appellants' assertion that only "evaluative comments" about the affected parties (i.e., the nursing home workers) constitute the "personal information" of those individuals:

> Information provided by health care practitioners has been withheld … not on the grounds that there was wrong doing, but on the grounds that I believe that the information provided by them crosses over from being information about them in their professional capacities to being personal information about them. I disagree with the appellants that only "evaluative comments are personal information" …

Analysis and findings

I will now determine whether the record at issue contains "personal information," as that term is defined in section 2(1) of the *Act* and, if so, to whom it relates.

As a whole, the 15-page investigation report sets out the information gathered by the Police for the purpose of determining whether the woman's injuries were caused by a criminal act. This record contains information relating to numerous individuals, including the injured woman; her husband and daughter (who are the appellants); the nursing home's executive director and director of programs; several nursing home workers; a businessperson; several health professionals; a union representative; and a lawyer.

The Police disclosed some portions of the investigation report to the appellants, including the steps taken by the nursing home's executive director and director of programs after being notified of the woman's injuries; information relating to the injured woman's husband and daughter; the names of the health care professionals who diagnosed her injuries; the names of the nursing home workers who were caring for the woman at the time she suffered the injuries; the nature of her injuries; and the outcome of the Police's investigation.

However, the Police have withheld other portions of the investigation report that set out some of the circumstances that may have led to the woman's injuries. In particular, they have withheld information relating to three nursing home workers on pages 2 to 4 of the record at issue. As noted above, this information includes the names of these workers, their roles in the investigation (two suspects, one witness), and business information (telephone number, occupation and employer) relating to one worker.

The Police have also withheld information relating to several individuals on pages 5 to 9 of the record at issue. As noted above, this information includes a summary of the information collected by the nursing home's executive director and director of programs during an internal investigation of the incident that led to the woman's injuries (pages 5 to 7). It also includes summaries of interviews conducted with a local businessperson (page 7); a nursing home worker

designated as a witness (page 7); a nursing home worker who was not designated as a suspect but whose conduct was scrutinized (page 7); and two nursing home workers designated as suspects (pages 8-9). There are also references to a union representative and a lawyer (page 8).

The summary of the internal investigation conducted by the nursing home's executive director and director of programs contains their names, but also includes information about the nursing home worker designated as a witness; the nursing home worker who was not designated as a suspect but whose conduct was scrutinized; and two nursing home workers designated as suspects (pages 5 to 7).

The summary of the interviews with the businessperson and the nursing home worker designated as a witness contains their names, but also contains information relating to the two suspects (page 7). Moreover, the summaries of the interviews with the two suspects contain their names and other information relating to them, but also contain information about the injured woman (pages 8-9).

I have carefully considered the parties' representations and reviewed the record at issue. For the reasons set out below, I find that the withheld information relating to the following individuals constitutes their "personal information": the injured woman; the nursing home worker designated as a witness; the two nursing home workers designated as suspects; and the nursing home worker who was not designated as a suspect but whose conduct was also scrutinized. In addition, I find that the withheld information relating to the following individuals constitutes their "professional information": the nursing home's executive director and director of programs; the businessperson; the union representative; and the lawyer.

To begin with, it is clear that several withheld portions of the record at issue contain the personal information of the injured woman. The summaries of the Police's interviews with all four nursing home workers contain references to her. This information falls within paragraph (g) of the definition of "personal information" in section 2(1) of the *Act*, because it includes the views or opinions of other individuals about her. In addition, it falls within paragraph (h) of the definition, because her name appears with other personal information relating to her.

However, a more complex issue is whether the withheld information relating to other individuals, constitutes their "personal information" or "professional information." This includes the names and other information relating to the nursing home's executive director and director of programs; the businessperson; the nursing home worker designated as a witness; the nursing home worker who was not designated as a suspect but whose conduct was scrutinized; the two nursing home workers designated as suspects; the union representative; and the lawyer.

Order PO-2225 sets out this office's current approach to the distinction between personal information and business/professional information. In that order, former Assistant Commissioner Tom Mitchinson addressed the issue of whether the name of an individual who operates a business, but is not incorporated, is personal information or business information. The

information at issue in that order was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

In his analysis, former Assistant Commissioner Mitchinson posed two questions that help to illuminate the distinction between information about an individual acting in a business capacity as opposed to a personal capacity:

> … the first question to ask in a case such as this is: *"in what context do the names of the individuals appear"*? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
>
> ....
>
> The analysis does not end here. I must go on to ask: *"is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

I agree with this reasoning and adopt it for the purposes of the appeal before me. The record at issue in this appeal documents a criminal investigation of an incident that took place at a nursing home, which was the workplace of the home's executive director and director of programs; the nursing home worker designated as a witness; the nursing home worker who was not designated as a suspect but whose conduct was scrutinized; and the two nursing home workers designated as suspects.

In short, with respect to the first question posed in Order PO-2225 ("in what context do the names of the individuals appear"?), I find that the information relating to all of the above individuals employed by the nursing home appears in a professional context, not a personal context.

The record also contains a summary of an interview with a local business person who had contact with the two suspects. This businessperson provided information to the Police in her business capacity, not her personal capacity. Consequently, I find that the information relating to her appears in a business/professional context. Similarly, the information relating to the union representative and lawyer appears in a professional context.

However, that is not the end of the analysis. With respect to the information relating to all of these individuals, I must go on to ask the second question posed in Order PO-2225: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"?

I find that if the withheld information relating to the following individuals was disclosed, it would *not* reveal something of a personal nature about them: the nursing home's executive director and director of programs; the businessperson; the union representative; and the lawyer. There is nothing present in the record at issue that causes the information relating to these individuals to cross over into the "personal information" realm. However, this finding only applies to the names and other professional information relating specifically to these individuals in the withheld portions of the record at issue. It does not apply to any comments that they have made about other individuals that are summarized in the record.

Given that the withheld information relating to these individuals constitutes their "professional information" and does not qualify as "personal information," it cannot be exempt from disclosure under section 38(b) of the *Act* and must be disclosed to the appellants.

However, the information relating to the four nursing home workers is qualitatively different. The Police have withheld information relating to a nursing home worker who was designated as a witness. Although she provided information to the Police in a professional capacity, the summary of her interview contains details about her personal activities outside the workplace. Consequently, I find that if the withheld information relating to this individual was disclosed, it would reveal something of a personal nature about her.

The Police have also withheld information relating to the two nursing home workers designated as suspects that raises questions about their conduct. In addition, the Police have withheld information relating to the nursing home worker who was not designated as a suspect but whose conduct was also scrutinized.

This office has issued a long line of orders that have found that information about persons in their professional or employment capacity may qualify as their personal information if it involves an evaluation of that individual's performance as an employee or an investigation into his or her conduct as an employee [e.g., Orders P-939, P-1318, PO-1772, PO-1912, PO-2414, PO-2516, PO-2524].

For example, in Order PO-2414, the records at issue concerned an investigation by the province's Special Investigations Unit into the conduct of certain officers in the London Police Service with respect to their handling of an individual who died in custody. Adjudicator Donald Hale concluded that the information relating to these officers constituted their "personal information:"

> In my view, because the information in many of the records was used as part of an examination into the conduct of the subject officers, it has taken on a different, more personal quality. As such, I find that its disclosure would reveal something personal about the individual officers, specifically whether their conduct in apprehending the deceased person was appropriate. As such, I find that those records which include an examination of the manner in which the subject officers

> conducted themselves also contain the personal information of those officers under section 2(1)(h).

As noted above, the Police submit that " … [some] individuals have been accused of wrongdoing in the course of their employment duties and are the subjects of an investigation into this alleged wrongdoing both by the employer and by the police. As such, the information provided by and about these named individuals is not in a professional context, rather it is personal information."

In contrast, the appellants submit that the withheld information in the record at issue does not reveal something of a personal nature about the two nursing home workers designated as suspects. In addition, they cite Orders MO-2025 and MO-1524-I and suggest that similar reasoning should be applied here.

I have carefully reviewed the withheld information in the record at issue. I agree with the Police that it reveals something of a personal nature about the two nursing home workers designated as suspects and the nursing home worker who was not designated as a suspect but whose conduct was also scrutinized.

In my view, because the withheld information examines the conduct of the two suspects, it takes on a different, more personal quality. In addition, this withheld information contains details about their personal activities outside the workplace and examines whether there is a link between these personal activities and the incident that led to the woman's injuries. Consequently, the nature of the information at issue in this appeal is distinguishable from that in Orders MO-2025 and MO-1524-I, which are cited by the appellants.

The withheld information relating to the other nursing home worker who was not designated as a suspect does not contain details about her personal activities outside of work, but it does constitute an evaluation or investigation into her conduct as an employee. In my view, this is sufficient, in the particular circumstances of this appeal, to cause this information to take on a different, more personal quality.

Consequently, I find that the information relating to the three nursing home workers whose conduct was scrutinized reveals something of a personal nature about them. Even though such information appears in a professional context, its disclosure would reveal something inherently personal in nature about these individuals.

In short, I find that the withheld information in the record at issue relating to all four nursing home workers (the witness and the three workers whose conduct was scrutinized) constitutes their "personal information." In my view, some of this withheld information falls within paragraph (g) of the definition of personal information in section 2(1) of the *Act*, because it constitutes the views or opinions of another individual about them. In addition, the information falls within paragraph (h) of the definition of "personal information," because their names appear with other personal information relating to them.

I will now determine whether the withheld personal information of the injured woman and the four nursing home workers qualifies for exemption under 38(b) of the *Act*.

PERSONAL PRIVACY

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 the 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.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met.

If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. If paragraph (a), (b) or (c) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

Section 14(3) lists the types of information whose disclosure is presumed to 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).

The Divisional Court has stated that once a presumed unjustified invasion of personal privacy is established under section 14(3), it can only be overcome if section 14(4) or the "public interest override" at section 16 applies. It cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b) [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

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.

Summary of the parties' representations

The Police's representations

The Police submit that the personal information of the injured woman and the other individuals in the withheld portions of the record at issue is exempt from disclosure under section 38(b) of the *Act*:

> None of the exceptions in paragraphs (a) to (e) of section 14(1) applies to the information at issue nor do the paragraphs (a) or (b) of section 14(4) apply to the information at issue.
>
> … the presumption of paragraph (b) of [section] 14(3) applies to the information at issue as the information in this record was compiled for the purpose of an investigation into the possible violation of the [*Criminal Code*] offence of Criminal Negligence Cause Bodily Harm. The fact that the investigation was cleared as, "Unfounded" has no bearing on this issue. As this presumption has been established, it cannot be rebutted by any of the factors or circumstances under section 14(2). I do not believe that the Absurd Result principle applies in this case.

The appellants' representations

The appellants submit that the record at issue constitutes the injured woman's "medical records" and assert that the Police's refusal to disclose them is inconsistent with relevant case law, particularly the Supreme Court of Canada's decision in *McInerney v. MacDonald* [1992] 2 S.C.R. 138. They submit that the Court determined that the information contained in a medical record is the property of the patient, not the health care practitioner.

In addition, they assert that a patient is particularly entitled to information that sets out wrongdoing by health practitioners:

> … even if the records reveal that someone did something wrong, or did not treat [the injured woman] appropriately, the Supreme Court specifically states that a patient is *particularly* entitled to this information and that the wrong-doing of a health professional cannot be the basis on which to deny access to the records of a patient. In fact, the Supreme Court says that should such evidence of wrong-doing exist in the medical information, then that strengthens the need to provide access to the records. [Emphasis in original.]

The appellants further submit that under section 14 of the *Act*, where a record contains personal information 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."

They submit that section 14 does not apply because "there are no records in the police file where only the personal information of an individual other than the requester are included." In particular, they assert the following:

> The main content and thrust of the police investigation was the medical condition and the care received by [the injured woman]. Thus, since none of the records only contain the personal information of an affected party other than the requesters, the exemptions under section 14 do not apply.

They further identify the following factors in section 14(2) that may be relevant in determining whether disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy under section 38(b) or 14: sections 14(2)(a) (public scrutiny), 14(2)(b) (public health and safety), 14(2)(c) (purchase of goods and services), 14(2)(d) (fair determination of rights), 14(2)(e) (pecuniary or other harm), 14(2)(f) (highly sensitive), 14(2)(g) (inaccurate and unreliable), 14(2)(i) (unfair damage to reputation), and 14(2)(h) (supplied in confidence).

The Police's reply representations

In their reply representations, the Police rebut the appellants' submission that the Supreme Court of Canada's decision in *McInerney* is applicable in the circumstances of this appeal:

> … I agree with the Supreme Court's ruling that a patient ought to be entitled [to] full access to his or her medical records.
>
> I would argue, however, that a police report, although it may contain medical information of an individual, is not essentially a "medical record". The police when conducting an investigation such as this, are not investigating the quality or nature of the medical care provided to a patient but are investigating the injuries sustained by a "victim", to determine if there was criminal intent or negligence of anyone's part which caused those injuries …

Analysis and findings

I have found that the record at issue contains the personal information of the woman who suffered injuries at the nursing home. I have also found that the record at issue contains the personal information of four nursing home workers. The Police have withheld this information from the appellants under the discretionary exemption in section 38(b) of the *Act*.

At the outset, I would point out that I agree with the Police that the record at issue in this appeal is a police record, not the injured woman's "medical records," as asserted by the appellants.

Although the Police's investigation report contains general references to the injuries suffered by the woman, this does not automatically transform this record into a "medical record," as contemplated by the Supreme Court of Canada's decision in *McInerney*.

In addition, I am not persuaded by the appellants' submission that section 14 does not apply because "there are no records in the police file where only the personal information of an individual other than the requester are included."

The mandatory exemption in section 14(1), which is found in Part I of the *Act*, applies where there is no personal information relating to the requester in a record but a requester is seeking the personal information of another individual or individuals that appears in that record. The discretionary exemption in section 38(b), which is found in Part II of the *Act*, applies where a record contains the personal information of both the requester and another individual.

The Police have withheld information from the investigation report relating to *both* the injured woman and other individuals. Consequently, the appropriate exemption that might apply in such circumstances is section 38(b) of the *Act*, not section 14(1) alone.

However, as noted above, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met.

If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). I have carefully reviewed sections 14(1)(a) to (e) and find that none of these paragraphs apply in the circumstances of this appeal.

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). In my view, the withheld personal information of the injured woman and the four nursing home workers 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;

I find that the Police were called to investigate an incident at the nursing home which gave rise to the creation of the investigation report. The withheld personal information of the injured woman and the four nursing home workers was compiled by the Police and is identifiable as part of an investigation into a possible violation of the *Criminal Code*. Consequently, I find that the presumption in section 14(3)(b) of the *Act* applies to the personal information withheld by the Police.

Although the appellants cite various factors in section 14(2) that they submit may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b), 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 these factors.

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 of the *Act* applies [*John Doe*, cited above]. I have considered the application of the exceptions contained in section 14(4) and find that the withheld personal information does not fall within the ambit of this section.

In short, subject to my analysis below as to whether the public interest override applies in the circumstances of this appeal, I find that the section 14(3)(b) presumption applies to the withheld personal information of the injured woman and the four nursing home workers. Consequently, disclosure of this information is presumed to be an unjustified invasion of personal privacy under section 38(b) of the *Act*.

EXERCISE OF DISCRETION

General principles

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)].

Summary of the parties' representations

The Police's representations

The Police submit that they exercised their discretion under section 38(b) of the *Act*, and that this office should uphold their exercise of discretion. In particular, they submit the following:

> In withholding certain information, the institution considered that the appellants should have the right to their own information and that of their wife/mother for whom they have power of attorney. The institution attempted to release as much information as permitted under the *Act* without breaching the privacy of other individuals. The institution attempted to balance the appellants' rights to access against the third parties' rights to the protection of their privacy.

The appellants' representations

The appellants submit that although the Police exercised their discretion under section 38(b) of the *Act*, this office should not uphold this exercise of discretion because it was based on the following seven "incorrect premises":

> **First**, the police failed to appreciate that none of the medical information could have been collected from anyone without the consent of [the injured woman] or her representatives, in the absence of subpoena, and accordingly, all the health care professionals were well aware that they were providing information to which the appellants retained a proprietary and personal interest and control, and it continued to belong to the appellants.
>
> **Second**, the police failed to accord the high degree of importance identified by the Supreme Court, to the right of a patient to access medical information about herself.
>
> **Third**, the police misconstrued the role of the health care providers, and suggested that the information supplied was *their* personal information, when in fact, the health care providers are expected to care for [the injured woman] and provide their professional opinions on her care and her medical condition.
>
> **Fourth**, sadly, the police also failed to comprehend that other patients may be at risk, particularly where they are also frail elderly and particularly if they also suffer from a cognitive impairment as did [the injured woman].
>
> **Fifth**, the police were apparently unaware of the significant level of public and government interest and concern with respect to the circumstances of the injury to [the injured woman].

> **Sixth**, the police in no way attempted to minimize the portions of the records to which they withheld from the appellants. Rather, they simply withheld significant portions of the records. They provided more, only when the appellants appealed their decision. This flies in the face of yet another principle of the *Act*, that exemptions [from] the right of access should be limited and specific. On the contrary, in this case they were broad and sweeping, and failed to take into consideration previous decisions of the Office of the Information and Privacy Commissioner.
>
> **Seventh**, the police failed to recognize that, given the extreme vulnerability and reliance that [the injured woman] had on health professionals who cared for her, that there was a very sympathetic and compelling reason to receive this information. [Emphasis in original.]

The Police's reply representations

In their reply representations, the Police state that although their sympathies "lie wholly" with the appellants, they tried to exercise their discretion under section 38(b) of the *Act* in a manner that provided the appellants with access to as much of the injured woman's personal information as possible without breaching the privacy rights of other individuals.

Analysis and findings

I have carefully considered the parties' representations as to whether the Police properly exercised their discretion under section 38(b) of the *Act*. As noted above, the section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it.

In the circumstances of this appeal, the Police exercised their discretion under section 38(b) by providing the appellants with partial access to the investigation report, including some portions that contain the injured woman's personal information. However, they denied them access to other portions of the report that include additional personal information of the injured woman and the personal information of four nursing home workers.

In my view, the Police exercised their discretion under section 38(b) of the *Act* based on proper considerations. I am particularly swayed by the fact that the Police did not deny access to the entire report but attempted to balance the right of the appellants to access the personal information of the injured woman with the privacy rights of the four nursing home workers.

In addition, although the appellants submit that the Police failed to take into account relevant factors such as "the significant level of public and government interest and concern with respect to the circumstances of the injury to [the woman]," it is evident from the Police's representations as a whole that they took such factors into account in exercising their discretion under section 38(b).

In short, I am not persuaded that the Police failed to take relevant factors into account or that they considered irrelevant factors in exercising their discretion under section 38(b) of the *Act*. Moreover, they did not exercise their discretion in bad faith or for an improper purpose. I find, therefore, that their exercise of discretion was proper.

PUBLIC INTEREST OVERRIDE

The appellants submit that there is a compelling public interest in the disclosure of the withheld portions of the record at issue that clearly outweighs the purpose of the section 38(b) exemption. Consequently, I will determine whether the public interest override in section 16 of the *Act* applies in the circumstances of this appeal.

General principles

Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The discretionary exemption in section 38(b) of the *Act* is not listed as one of the exemptions that can be overridden by section 16. This matter has been previously considered in Order P-541, where Inquiry Officer Anita Fineberg made the following finding with respect to whether the public interest override in section 23 of the *Freedom of Information and Protection and Protection of Privacy Act* (the equivalent provision to section 16 of the *Act*) applied to section 49(b) of that *Act* (the equivalent provision to section 38(b) of the *Act*):

> In my view, where an institution has properly exercised its discretion under section 49(b) of the *Act*, relying on the application of sections 21(2) and/or (3), an appellant should be able to raise the application of section 23 in the same manner as an individual who is applying for access to the personal information of another individual in which the personal information is considered under section 21. Were this not to be the case, an individual could theoretically have a lesser right of access to his or her own personal information than would the "stranger". This would result if section 23 could be used to override the exemption in section 21 of the *Act*, but not if the institution denied access to the information pursuant to section 49(b) as it contained the appellant's personal information, as well as that of other individuals.

I agree with this finding and will, therefore, consider the possible application of section 16 to those portions of the record at issue that the Police have withheld under section 38(b) of the *Act*.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the withheld portions of the record. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

Summary of the parties' representations

The appellants are the only party that provided representations as to whether there is a compelling public interest in disclosure of the withheld portions of the record at issue that clearly outweighs the purpose of the section 38(b) exemption. Neither the Police nor any of the affected parties provided representations on this issue.

The appellants' representations

The appellants submit that there is a compelling public interest in the disclosure of those portions of the record at issue withheld by the Police. At the outset, they state that the quality of care provided at nursing homes requires "close scrutiny" for the following reasons:

a) Nursing homes, even though they are often private entities, are funded in part by taxpayers' dollars and the public has a compelling interest to know that such funding is being used appropriately;

b) Nursing homes are licensed by the Ministry of Health and are required to conform to the standards set out by the Ministry, on behalf of the public. In addition, nursing homes are also required to comply with specific legislation – the *Nursing Homes Act* – which reflects government's interest in having standards met regarding the care provided to the elderly;

c) Residents of nursing homes are invariably frail, vulnerable individuals who require complex care and are utterly reliant on care provided by the staff at the nursing home;

d) Family members of residents are also reliant on care providers in nursing homes, as often the complex requirements of their relative means they are unable to provide the same care at home; and,

e) The circumstances of this case show that [the injured woman] was herself a frail senior, who had no ability to speak for herself since she was unable to communicate due to the effects of multiple strokes. She was utterly reliant on the publicly funded nursing home in which she resided, and the employees of that nursing home, to ensure that she received safe compassionate care.

The appellants further submit that disclosing the withheld information in the record at issue would shed light on two areas of government operation: provincial government regulation of the nursing home at which the woman suffered her injuries and the Police. With respect to the Police, the appellants submit the following:

> … The public has an interest in knowing how the [Police] dealt with a case of a fragile, dependent senior in a nursing home, who suffered *two broken legs* through the actions of several of the nursing home staff. The nursing home fired these employees, thus clearly establishing that the employees acted improperly, and yet the [Police] failed to substantiate any charges against the employees. This is not to suggest that the Police were wrong to have made that decision, but it does strongly argue in favour of ensuring that the public is aware of the steps taken by the [Police], and the basis for its decision to take no further steps in this case … [Emphasis in original.]

The appellants assert that disclosing the withheld information in the record will "enable the public to take steps to ensure the provincial government properly licenses and inspects nursing homes, and the police obtain proper resources and expertise to investigate crimes against seniors."

On the issue of whether the public interest in disclosure is "compelling," the appellants provided media articles that they submit demonstrates that the issue of safety in nursing homes is "rousing strong interest and attention" [Order P-984].

Moreover, the appellants deny that the interests being advanced in this appeal are essentially private in nature [Orders P-12, P-347, P-1439], and submit that "there is broad public concern and interest in this case …"

The appellants also submit that it cannot be argued that "a significant amount of information has already been disclosed and this is adequate to address any public interest consideration" [Orders P-532, P-568, P-613]. In particular, they reference a *Toronto Star* article, dated May 13, 2008 that deals with faulty lift equipment and assert that the woman's injuries "were inflicted, at least in part, as a result of the faulty use of [similar] lift equipment."

Finally, they assert that the media articles relating to the woman's case make it "overwhelmingly obvious" that there is no valid public interest in non-disclosure.

Analysis and findings

I have carefully reviewed the withheld portions of the record at issue and considered the appellants' representations. For the reasons that follow, I find that there is a compelling public interest in disclosure of the withheld portions of the record at issue that clearly outweighs the purpose of the section 38(b) exemption.

As noted above, two requirements must be met to establish that the public interest override in section 16 of the *Act* applies to those portions of the record at issue withheld by the Police:

- there must be a compelling public interest in disclosure of the record; and
- this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

The record at issue in this appeal is an investigation report that sets out the information gathered by the Police for the purpose of determining whether the woman's injuries were caused by a criminal act. The Police disclosed some portions of the investigation report to the appellants, including information concerning the steps taken by the nursing home's executive director and director of programs after being notified of the woman's injuries; the names of the nursing home workers who were caring for the woman at the time she suffered the injuries; the nature of her injuries; and the outcome of the Police's investigation.

However, the Police have withheld other portions of the investigation report that set out some of the circumstances that may have led to the woman's injuries. These withheld portions contain the personal information of the injured woman; the nursing home worker designated as a

witness, the two nursing home workers designated as suspects; and the nursing home worker who was not designated as a suspect but whose conduct was also scrutinized.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984].

An investigation conducted by *The Canadian Press* last year found that the neglect and abuse of seniors in provincially regulated nursing homes is a serious problem. A *Toronto Star* article summarized the findings of the investigation:

> The majority of Ontario's nursing homes have failed to meet basic standards set out by the province to preserve the rights of elderly residents, with some failing to bathe residents even twice a week, others leaving seniors sitting for hours in soiled diapers and still others unnecessarily restraining those in their care, an investigation by *The Canadian Press* reveals.
>
> Just over 60 per cent of homes across Ontario … have been cited for violating some of the specific set of standards that ensure residents are well-fed, clean and free of pain, as well as dictating how homes care for incontinent residents and when they use restraints. [July 2, 2008, p. A1]

Shortly after the release of *The Canadian Press*'s investigation into nursing homes, Ontario Ombudsman André Marin announced that his office would be conducting a full systemic investigation into the province's monitoring of long-term care facilities, and its effectiveness in ensuring that nursing homes meet government standards. [Press release, July 16, 2008]

In the circumstances of the appeal before me, the appellants are the husband and daughter of a woman who suffered two broken legs as a result of an unexplained incident in a nursing home. Although the woman was obviously present when she suffered these injuries, she is unable to communicate because of the effects of multiple strokes. Some of the circumstances that may have led to her injuries are set out in the withheld portions of the Police's investigation report.

I find that there is a clear relationship between the record at issue and the *Act*'s central purpose of shedding light on the operations of government. Although nursing homes are not subject to the *Act*, the well-being of the seniors who reside at these homes is overseen by both the provincial government, which regulates nursing homes, and the Police, who are called in to investigate if there are grounds for believing that a criminal act may have taken place.

In my view, disclosing the withheld portions of the record at issue would shed light on the Police's investigation into the circumstances that may have led to the woman's injuries. In addition, it would have the ancillary effect of allowing the public to scrutinize whether the provincial government is fulfilling its regulatory responsibility towards this particular nursing home.

As noted above, a public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. However, in Order MO-1564, former Assistant Commissioner Tom Mitchinson found that where a private interest in disclosure raises issues of more general application, a public interest may be found to exist. In that order, the appellant was seeking information from the Municipal Property Assessment Corporation that would explain how it assessed the value of his property. In finding that there was a public interest in disclosure of some of the requested information, former Assistant Commissioner Mitchinson stated:

> If I were satisfied that the appellant's request was directed at information that could only be used on an assessment appeal of his particular property, and had nothing to do with the process of valuation and how it works generally, I would find that the interest in disclosure was of a private, rather than public nature. A request of this nature would be similar to one dealt with by Adjudicator Donald Hale in Order M-536, where he concluded that a requester's interest in an agreement of purchase and sale relating to an individual's purchase of public land was of a private character where it was to be used in a law suit and in litigation before the Ontario Municipal Board.
>
> However, in my view, the interest in this case is different. Although the appellant has requested access to records specific to his own property, he has raised issues that have general application to property owners throughout the province …

In my view, similar circumstances exist in the appeal before me. The injured woman's daughter and husband have provided me with newspaper clippings that show that her unexplained injuries received prominent and extensive coverage in the local media, particularly the *St. Catharines Standard*, the city's largest newspaper. [e.g., "Family pulling mother from nursing home," June 9, 2006, p. A3; "Health Ministry, NRP investigating senior's injuries," June 21, 2006, p. A4; "Nursing home workers fired," August 4, 2006, p. A1]

Although the appellants may have a private interest in determining how the injured woman suffered two broken legs, these newspaper articles demonstrate that there is also a broader public interest in disclosing the withheld information in the record at issue. In my view, the appellants have raised issues that have general application to other families in St. Catharines and across Ontario who have elderly relatives in nursing homes. In short, I find that there is a public interest in disclosure of the withheld information in the record at issue.

The wording of section 16 makes it clear that any public interest in disclosure must be "compelling." As noted above, the word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984]. Moreover, any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. In my view, the newspaper articles provided by the appellants show that the woman's injuries at the nursing home "roused strong interest and attention," which means that the public interest in disclosure is "compelling." In addition, I have considered whether there is

any public interest in the non-disclosure of the withheld portions of the record at issue and have concluded that none exists.

In short, I find that there is a compelling public interest in disclosure of the withheld portions of the Police's investigation report.

Purpose of the exemption

For section 16 to apply, it is not sufficient to show that there is a compelling public interest in disclosure of the record at issue. It must also be demonstrated that this compelling public interest clearly outweighs the purpose of the exemption that has been claimed.

I have found that the withheld personal information of the following individuals in the record at issue qualifies for exemption under section 38(b) of the *Act*: the injured woman; the nursing home worker designated as a witness; the two nursing home workers designated as suspects by the Police; and the nursing home worker who was not designated as a suspect but whose conduct was also scrutinized.

The purpose of the section 38(b) exemption is to protect the personal privacy of individuals other than the requester [Orders MO-1704 and MO-1739]. It provides an institution with the discretion to refuse to provide a requester with her own personal information if doing so would constitute an unjustified invasion of another individual's personal privacy.

In my view, the compelling public interest in disclosure of the withheld portions of the record at issue clearly outweighs the purpose of the section 38(b) exemption. The public, including the injured woman's family, still do not know the full circumstances that led to the fractures to both of her legs. The need for complete transparency in this case outweighs the privacy interests of the four nursing home workers.

In short, I find that the public interest override in section 16 of the *Act* applies to the withheld portions of the record at issue. Consequently, with the exceptions of those portions that are not responsive to the appellants' request, the remaining information that has been withheld by the Police must be disclosed to the appellants.

ORDER:

1. I order the Police to disclose the withheld portions of the record at issue to the appellants, except for those portions that are not responsive to the appellants' request.

2. I have provided the Police with a copy of the record at issue and have highlighted in green those portions that must not be disclosed to the appellants. To be clear, the non-highlighted portions of the record must be disclosed to the appellants.

3. I order the Police to disclose the record to the appellants by **March 27, 2009** but not before **March 20, 2009**.

4. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record that they disclose to the appellants.

Original signed by: February 20, 2009
Colin Bhattacharjee
Adjudicator