Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2766

Appeals MA11-315 and MA11-394

Ottawa Police Services Board

July 13, 2012

Summary: The police received requests for access to occurrence reports involving the requester, as well as requests for correction to certain occurrence reports. The police disclosed parts of the records, but withheld access to other parts, relying on the personal privacy exemption in section 38(b) and the law enforcement exemption in section 8(1)(l), combined with section 38(a). They refused the correction requests. In this decision, the decisions of the police are upheld, including the decision to refuse the correction requests, with the exception of certain information on one page of the records, which is ordered to be disclosed. The adjudicator also finds that the search for responsive records was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) definition of "personal information", 8(1)(l), 14(1), 14(3)(b) and 38(b).

Orders and Investigation Reports Considered: Orders MO-2049-F, P-1295, 11, P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225, P-1409, R-980015, PO-2225, MO-2344, PO-1880, P-245, MO-2235, MO-2213, PO-1849, PO-2608, M-734, M-841, M-1086, PO-1819, PO-2019, PO-2037, MO-1573, 186, P-382, PO-2258, M-777, MO-1438, PO-2549, MO-2741.

OVERVIEW:

[1] Appeals MA11-315 and MA11-394 are being considered jointly in this order as they raise overlapping issues and concern the same requester and institution and some of the same records.

MA11-315

[2] The Ottawa Police Services Board (the police) received an access request pursuant to the *Act* for the following records:

> I am writing to you to obtain copies of the Ottawa Police officer's note and witness notes of these am occurrences as stated in these report GO #2005-196950 and GO #2002-258315.

[3] The request was accompanied by two pages from the above-noted occurrence reports. The police identified records they believed to be responsive to this request, consisting of occurrence/incident reports GO#2005-196950 and GO#2002-258315 and handwritten police notes and issued an access decision disclosing them, in part. Portions of the records were withheld pursuant to section 38(a), together with section 8(1)(l) (law enforcement) and section 38(b), in conjunction with the exemption in section 14(1) and the presumption at section 14(3)(b). The police also withheld other portions of the records that were not responsive to the request.

[4] The requester (now the appellant) appealed the police's decision to this office, which appointed a mediator to explore the possibility of resolving the issues.

[5] Upon review of the records disclosed to her, the appellant conveyed her disagreement with some of the information in the records and indicated that that she wished to have parts of the records corrected. The appellant filed a request for correction with the police, who issued a decision denying her request. The appellant appealed this decision as well. The issue of correction of these two occurrence reports and one other occurrence report is the subject of the related Appeal MA11-394, described below.

[6] During mediation, the appellant expressed the opinion that there should be other responsive records in addition to the two reports she received, including an identified police officer's duty book notes. The police indicated that there are no further notes from that police officer related to the identified incidents.

[7] The appellant advised the mediator that she is seeking access to records relating to the 'a/m incident' mentioned on pages 4 and 23 of the records at issue (which are the pages she attached to her request). The police explained that "a/m" refers to the term "above mentioned." The appellant was not satisfied with this explanation and maintains that it refers to another incident. The appellant also seeks records related to two calls mentioned on page 23 of the records.

[8] In response to the appellant's position that further records exist, the police conducted an additional search and issued a supplementary decision on October 20, 2011, stating in part:

> In attempting to satisfy your understanding of the notations, I spoke to the officers that made the reports. [An identified police officer] refers to the a/m case in his first paragraph. It is referring to the file noted on the top left hand corner of the page that is [a specified report number]. Many officers use the a/m instead of typing out the report number each time it is referred to.
>
> On page 23, [an identified police officer]'s report also indicates two other calls. He cannot recall the reports he was referring to. He assumes two calls were referred to him by his Sergeant who had asked him to deal with the [a specified report], but cannot confirm which reports. There is a chance that there could have been a report on our records management system he referred to, but may no longer exist because of our retention policy. Not every report held by Ottawa police is retained for extended periods of time.
>
> …

[9] In this same letter, the police also disclosed two additional incident reports (not covered by the request) which pertained to the appellant, and which they had found in the course of their additional search.

[10] The appellant advised the mediator that she was not satisfied with this supplementary decision and still believes that additional records should exist. The adequacy of the searches conducted for records responsive to the appellant's request was, therefore, added as an issue in this appeal.

[11] The appellant also confirmed she is seeking access to the records that were withheld in part under section 38(b), together with section 14(1) of the *Act*. During mediation, the mediator notified several individuals (affected parties) whose information is contained in the records in order to seek their consent to the disclosure of their information. Only one affected party (the appellant's spouse) provided consent; the information relating to him on pages 9, 29 and 37 was disclosed in a further supplemental decision letter, dated December 6, 2011, once his consent form was forwarded to the police.

[12] The appellant then wrote to the police requesting access to a handwritten statement provided by her spouse to the police in 1998. She attached the typewritten version of this statement disclosed previously by the police, in occurrence report GO#1998-119810734, which she believes differs from the handwritten statement. The appellant requested corrections to parts of the records at issue and other incident reports, and asked that a copy of her letter be placed on file.

[13] The police issued another supplemental decision to the appellant on January 4,

2012, stating in part:

> [P]lease be advised that report 1998-119810734 has been purged in accordance with our Retention and Destruction of Records Policy. The statement that would have been supplied by [the affected party] has also been purged as it related to this report. Therefore access cannot be granted to this document as no record exists. Please be advised that report number 2005-196950 has also been purged in accordance with our Policy.
>
> Please be advised that although you may not be satisfied with the information contained in other reports you referred to in your correspondence, only factual information can be corrected. The information contained that you are not satisfied with is observations or opinions of officers or other individuals and is not considered factual and will not be changed or deleted from the reports. A copy of the correspondence you forwarded will be attached to the relevant reports.

[14] The appellant confirmed that she would not continue to seek access to police codes [severed under section 8(1)(l)] or records identified as not responsive to the request. However, as the appellant was not otherwise satisfied with the decisions made by the police with respect to access, correction and adequacy of the search for responsive records, a mediated resolution of the appeal was not possible.

[15] Accordingly, the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

MA11-394

[16] In addition to the above, the appellant made two requests for correction, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[17] As background, over a number of years starting in about 2002, the appellant has complained to the police about suspected unlawful activity, including suspicions that her phone was being tapped, that that she was being followed, and that unauthorized use was being made of her phone line. She was not satisfied with the police investigations, and repeatedly requested further investigations of her concerns. In the records, certain police officers expressed the view that mental health issues may be influencing the appellant's behavior. In 2009, after an investigation in response to a further complaint, the police documented that they considered laying a charge of public mischief against the appellant and might take that step if her complaints continued.

[18] The appellant believes that the information about her, in particular the reference to public mischief and mental health issues, will affect her ability to obtain any employment that requires police reference checks.

[19] The first request, dated August 9, 2011, stated:

> Ottawa Police report # GO#2009-328455 (public mischief). I was never making any public mischief complaining about reality telephone criminal suspicious behaviours and man caught tapping into our private residential telephone line. Ottawa Police report GO#2002-258315 and GO#2005-19650.
>
> I have no mental health issues now or then. I need these files corrected and completely destroyed from your internal/external records.

[20] The appellant's second request, dated August 22, 2011, stated:

> I have attached ( ) [sic] pages for background information. Please I'm requesting the correction and removal of all these incorrect police reports labelling me as mental and suspicious public mischief individuals. I made reality complaints including proof to the Ottawa Police Services reports #2002-258315, GO#2005-196950, 2009-328455 and more.
>
> I have no mental health issues, now or then. These police reports are very destructive to my career and work. Please remove all negative reports.

[21] The appellant attached letters to both of the requests.

[22] The police issued a decision stating as follows:

> Your request for a correction of personal information was received on August 22, 2011. File number 11-422 was assigned to this correction request. Please be advised that although you may not be satisfied with the information contained in the reports only factual information can be corrected. Observations or opinion of officers or other individuals interviewed in relation to incidents is not factual and cannot be changed or deleted from our report(s).
>
> A copy of your request has been attached to the records to indicate your disagreement. You are entitled to require that a further statement of disagreement be attached to the record and that the statement be sent to any person to whom the record was disclosed over the past 12 months.

[23] The appellant appealed the police's decision to this office, and a mediator was appointed to explore resolution. During mediation, the mediator spoke with the police and they clarified that their August 30, 2011 decision was intended to be a response to both of the appellant's correction requests. The police confirmed this in their October 20, 2011 letter to the appellant. As it was not possible to resolve this appeal through mediation, it was also transferred to the adjudication stage of the appeals process for an inquiry.

[24] A Notice of Inquiry was initially sent to the police for Appeal MA11-315. However, as no response was sent to this office, a second request for submissions was sent with the Notice of Inquiry for Appeal MA11-394. Both parties submitted representations in response to the joint Notices of Inquiry and representations were shared in accordance with Practice Direction 7.

[25] In this decision, I uphold the police's decision, with the exception of one page of the records.

RECORDS:

[26] The records at issue in the access appeal are pages 1, 2, 4, 5, 6, 18, 19, 32, 34 and 35 from occurrence reports GO#2005-196950 and GO#2002-258315, and associated handwritten police notes. However, for the reasons below, under "Preliminary Issue", I find it unnecessary to address the application of any exemptions to pages 4 and 5, and I remove them from the scope of the appeal.

[27] The records at issue in the correction appeal are the two occurrence reports noted above as well as GO#2009-328455.

ISSUES:

A. Did the police conduct a reasonable search for records?
B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
C. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue on page 34?
E. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?
F. Should the police correct personal information under section 36(2)?

DISCUSSION:

Preliminary issue – Pages 4 and 5

[28] With her request for access, the appellant provided a copy of the information on page 4 of the records. Based on a comparison of the appellant's copy of page 4 and the copy provided by the police for the purpose of this appeal, it is apparent that the appellant is already in possession of the information the police severed from page 4. With one of her requests for correction, the appellant provided a copy of the information on page 5 of the records, and it is therefore apparent that she is already in possession of the information the police withheld from this page. In the circumstances, there is no live controversy in relation to these pages, and I find that no useful purpose would be served by proceeding with my inquiry in relation to them (see Order MO-2049-F, relying on *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 and Order P-1295). Accordingly, I have removed pages 4 and 5 from the scope of the appeal and it is unnecessary for me to address the possible application of any exemptions to them.

A. Did the police conduct a reasonable search for records?

[29] 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. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.

[30] 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. To be responsive, a record must be "reasonably related" to the request.

[31] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.

[32] 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.

[33] In their representations, the police state that, when the requester submitted her initial request for officers' notes and statements for two particular incidents, the police's Freedom of Information Analyst conducted a search through the police's Records

Management System (RMS). In addition, the File Storage Unit conducted a search to determine if there was any information contained in a file jacket that would relate to the request.

[34] The police state that two generated reports were located on RMS that related to the two reports the appellant sought access to and the File Storage Unit located a one page handwritten statement and a two page typed statement. The police determined that there were fourteen officers who may have notes relevant to the request. One officer had retired and his duty books were not turned in when he left his employment. Two other officers had sent their duty books to the File Storage Unit.

[35] Two of the duty books were located and reviewed by the Freedom of Information Analyst, but no notes were found to be relevant to the request. The remaining officers were asked to search their duty books for any notes and to submit a legible copy to the Freedom of Information office. All but three officers indicated that they did not have any notes in relation to the incidents at issue. The three officers who did have notes submitted a complete copy to the Freedom of Information Analyst.

[36] The police sent a decision letter to the appellant granting partial access to the records.

[37] During mediation, the police located three additional reports on their RMS system that were not requested by the appellant initially. Two of the reports related solely to the appellant and the police released the information to her without severance. The third report contained personal information about the appellant, but was supplied by the appellant's spouse. After the mediator provided the police with a consent form from the spouse authorizing the release of the third report, the police issued a further supplemental decision.

[38] The appellant then requested access to a handwritten statement made by her spouse in 1998. The police issued another supplemental decision, indicating that the statement had been purged in accordance with its Retention and Destruction Policy of Records (Retention Policy). The police provided this office with a copy of its Retention Policy with its submissions.

[39] The appellant's submissions appear to be based on her impression that all records about her are to be kept indefinitely, and that there are a large number of occurrences about her that fall into the "indefinite retention" category of the Retention Policy. She therefore questions why there are not more officers' notes or handwritten statements in relation to such occurrence reports. She questions why the retired officer would not have turned in his duty book upon retirement if the occurrence report were to be kept indefinitely. In addressing the issue of the reasonableness of the search, the appellant focuses on her view that the computer generated occurrence reports are

unreliable and that there should be additional original documentation to support the information in those reports.

[40] After reviewing the representations of the police and the appellant, I find that the police conducted a reasonable search for records. I am satisfied that the search for responsive records was conducted by individuals knowledgeable in the subject matter of the request and with the access process. I am also satisfied that the original search for responsive records and the follow-up searches during mediation demonstrates that the police expended a reasonable effort to locate the records originally requested, as well as additional records, most of which they have disclosed. I accept the police's explanation for the references to "a/m" in the records, and find there is no basis to believe that "a/m" refers to additional occurrences.

[41] With regard to the destruction of the handwritten statement provided by the appellant's spouse who provided consent, after reviewing the police's Retention Policy, I am satisfied that the record was destroyed in accordance with the policy and that the record no longer exists.

[42] While the appellant maintains that the police did not conduct a reasonable search for records, she has failed to provide me with a reasonable basis for concluding that additional records exist. The police located officers' notes and original handwritten statements in relation to some of the occurrence reports. I find no basis for concluding that more should exist. As indicated above, the appellant's submissions are premised on the assumption that all the occurrence reports about her are to be kept indefinitely and more handwritten statements in relation to those reports should exist. Her submissions also indicate that she mistakenly believes, from her review of the Retention Policy, that there are a large number of occurrences about her which fall into the "indefinite retention" category. There is nothing in the material before me, or in the representations of the police, that suggest that that any of the occurrences relating to the appellant fall into the "indefinite retention" category.

[43] Based on the information provided by the police and the absence of a reasonable basis for the appellant's belief that additional records exist, I am satisfied that the police conducted a reasonable search.

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[44] In order to determine which sections of the *Act* may apply and whether the records at issue should be disclosed or corrected, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. The term "personal information" 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 if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to 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 where 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.

[45] 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.[1]

[46] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

[1] Order 11.

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (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 (3) 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.

[47] 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.[2]

[48] 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.[3]

[49] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[50] In their representations, the police submit that the information contained in the records is the personal information of the appellant and other individuals as defined in the *Act*. Although the appellant did not make specific submissions on this issue, it is apparent that she believes that all the information in the records is her personal information.

[51] It should be noted that the police disclosed most pages of the occurrence reports and notes, in their entirety. Of 47 pages of records, they have withheld portions of 10 of them (including pages 4 and 5 which are no longer at issue). Based on my review of the pages at issue, I find that the occurrence reports at issue contain personal information about the appellant and about other identifiable individuals. In particular, the records contain the following types of personal information about other identifiable individuals:

- Information relating to race, age and sex
- Information relating to education or employment history

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[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- Driver's license numbers
- Addresses and telephone numbers
- The views or opinions of police officers' about an individual
- The views or opinions of these individuals

[52] Based on the above findings, I will determine whether the information in pages 1, 2, 6, 18, 19, 32 and 35 is exempt under section 38(b). As the information on page 34 relates only to the appellant, section 38(b) cannot apply. For this page, the police have relied on the exemption in section 38(a), in conjunction with section 8(1)(l). Page 34 will therefore be discussed further below, and is not encompassed in the following discussion of the personal privacy exemption in section 38(b).

C. Does the discretionary exemption at section 38(b) apply to the information at issue?

[53] 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.

[54] 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.

[55] 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 individuals' right to protection of their privacy.

[56] Sections 14(1) to (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of another individual's personal privacy.

[57] Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(1)(a) to (e) and 14(4) are not relevant to this appeal.

[58] In this appeal, the police rely on the presumption in 14(3)(b) to withhold access to the information at issue. That section 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.

[59] 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.[5] The presumption can also apply to records created as a part of a law enforcement investigation where charges are subsequently withdrawn.[6]

[60] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[7]

[61] The police state that the personal information in the records was collected for the sole purpose of interviewing all parties and was compiled by members of the police during its investigation into complaints made by the appellant. The police submit that the information contained in these records was used to investigate incidents reported by the appellant and to prosecute any offender(s) should charges be laid.

[62] While the police acknowledge that the appellant may have the right to information supplied by another individual which is about her, they submit that the individual who supplied the information has the right to personal privacy. The police submit that if the information collected by the police is released without the consent of the individuals who supplied it, then these individuals may hesitate to assist police in the future, as there would be no guarantee that their information would not be released.

[63] The police submit that the records are therefore covered by the presumption in section 14(3)(b). Further, they submit that there are no factors in section 14(2) that support disclosure.

[64] The appellant does not directly address the application of the exemptions to the undisclosed portions of the records. Her submissions focus primarily on her contention that the information in the records is incorrect and defamatory, and on her contention that the police ought to have retained more handwritten notes and statements.

[65] On my review of the information at issue, I agree that it all pertains to investigations conducted by the police into complaints made by the appellant of

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[5] Orders P-245 and MO-2235.
[6] Orders MO-2213, PO-1849 and PO-2608.
[7] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

unlawful activity. I find therefore that the personal information was compiled by the police and is identifiable as part of investigations into possible violations of the law and fall within the ambit of the presumption in section 14(3)(b).

[66] I have considered the application of the factors in section 14(2) and I agree with the police that there are no factors that support disclosure in these circumstances.

[67] Accordingly, I conclude that the presumption in section 14(3)(b) applies to the withheld information on pages 1, 2, 6, 18, 19, 32 and 35. As such, it qualifies for exemption under the discretionary exemption at section 38(b), subject to my findings on the exercise of discretion.

D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption, apply to the information withheld on page 34?

[68] Like section 38(b), section 38(a) provides a number of exceptions to the general right of access to an individual's own personal information in section 36(1).

[69] Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[70] In this appeal, the police rely on section 38(a), in conjunction with section 8(1)(l) of the *Act*, in withholding access to information on page 34. 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.

[71] 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.[8]

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[8] 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.).

[72] In their representations, the police submit that the information on page 34 is a record that was entered onto the Canadian Police Information Centre (CPIC) system.

[73] CPIC is a computer database that is managed by the RCMP. The CPIC website contains the following definition:

> CPIC is a computerized information system providing all Canadian law enforcement agencies with information on crimes and criminals. [It is] electronically accessed by authorized agencies based on name and date of birth queries.[9]

[74] The police state that the CPIC Manual relating to this type of information states that "information that is contributed to, stored in, and retrieved from CPIC is supplied in confidence by the originating agency for the purpose of assisting in detection, prevention or suppression of crime and the enforcement of law." Further, the police submit that the CPIC Manual states that "all information contributed to or retrieved from CPIC is supplied in confidence and must be protected against disclosure to unauthorized agencies or individuals". The police provided a page from the CPIC Manual in support of their arguments.

[75] The police submitted that the information on the CPIC system must not be disclosed in order to protect the integrity of the system and that page 34 contains ORI numbers that are unique to the police and if released, could jeopardize the security of the system.

[76] The appellant's representations do not address whether the section 8(1)(l) exemption applies to any of the information in the records at issue. I note that the appellant confirmed during mediation that she was not seeking access to any police codes severed under section 8(1)(l) of the *Act*.

[77] After reviewing the information withheld under section 38(a), in conjunction with section 8(1)(l), I find that, with the exception of a numeric code, the record contains only the appellant's personal information as well as the name and badge number of the officer who created the record. The representations of the police do not address how disclosure of this information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Further, although their representations stress the confidentiality of information contributed to the CPIC system by an originating agency, the withheld portion does not appear to reveal any information contributed by another agency. I find that this information does not qualify for exemption under section 38(a), in conjunction with section 8(1)(l).

[9] http://www.cpic-cipc.ca/English/crimrec.cfm.

[78] Therefore, I order the police to disclose the entire page 34 to the appellant, with the exception of the lengthy numeric code at the end of the entry, to which the appellant confirmed she does not seek access.

E. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[79] I will now consider the exercise of discretion under section 38(b) in relation to the withheld portions of pages 1, 2, 6, 18, 19, 32 and 35.

[80] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. There is also, as stated below, an exercise of discretion by the police in choosing to correct, or not correct, a record, upon request under section 36(2).

[81] On appeal, this office may determine whether the institution failed to exercise its discretion. This office 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.

[82] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[10] This office may not, however, substitute its own discretion for that of the institution.[11]

[83] In their representations, the police submit that the following factors were considered when they exercised their discretion:

- the privacy rights of the other individual(s) referred to in the records
- the exemption in section 14 that serves to protect the other individual(s)
- the right of access of the appellant to this information
- the fact that the information was collected for a law enforcement purpose in order for the police to conduct investigations under the *Criminal Code of Canada* and the *Highway Traffic Act*

[10] MO-1573.
[11] Section 43(2).

- the information is considered to be not only the personal information of the appellant, but other individuals and should be protected

- police investigations into the conduct of citizen are treated as confidential and privileged by the investigative body in order to maintain fairness and a presumption of innocence.

[84] After reviewing these factors and considerations, I find that the police properly exercised their discretion to withhold the information on pages 1, 2, 6, 18, 19, 32 and 35 under section 38(b). I find that in their application of section 38(b) to the pages listed above, the police took into account relevant considerations and did not consider irrelevant considerations. Accordingly, I uphold the police's decision to withhold the information severed on pages 1, 2, 6, 18, 19, 32 and 35.

F. Should the police correct personal information under section 36(2)?

[85] Sections 36(2)(a) and (b) of the *Act* state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > (a) request correction of the personal information where the individual believes there is an error or omission therein;
> >
> > (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

[86] Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information.

[87] Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

[88] The right to correction in section 36(2) is not absolute. Section 36(2)(a) entitles individuals to *request* that their own personal information be corrected; institutions have the discretion to accept or reject a correction request. On the other hand, where

a request for correction is denied, section 36(2)(b) entitles the individual to *require* an institution to attach a statement of disagreement to the information at issue.

[89] In order for an institution to grant a request for correction, all three of the following requirements must be met:

1. the information at issue must be personal and private information;

2. the information must be inexact, incomplete or ambiguous; and

3. the correction cannot be a substitution of opinion.[12]

[90] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". Section 36(2)(a) gives the institution discretion to accept or reject a correction request. Thus, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances.[13]

[91] Records of an investigatory nature cannot be said to be "incorrect", "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.[14]

[92] In her representations, the appellant takes issue with the contents of occurrence reports generated during the police investigations of complaints made by her. The appellant feels that the information in the records is not factual and should be completely removed from the police's files. She submits that the observations of the police should not be kept on the police's records as they amount to a defamation of her character.

[93] In their representations, the police submit that the information the appellant feels should be corrected consists of observations or opinions of police officers and other individuals that was collected and used during the course of law enforcement investigations. Further, the police submit that the information accurately reflects the author's observations and impressions at the time the records were created. As such, the police refused to correct the information, but attached the appellant's correspondence to the file as a statement of disagreement.

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[12] Orders 186 and P-382.
[13] Order PO-2258.
[14] Orders M-777, MO-1438 and PO-2549.

[94] Previous orders of this office have considered the issue of correction requests for records similar in nature to those at issue in this appeal, that is, records in which the police have recorded information reported to them about specific events by individuals, including allegations about the actions of other individuals. In Order M-777, for example, former Senior Adjudicator John Higgins dealt with a correction request involving a "security file" which contained incident reports and other allegations concerning the appellant in that case. Former Senior Adjudicator Higgins stated:

> …the records have common features with witness statements in other situations, such as workplace harassment investigations and criminal investigations. If I were to adopt the appellant's view of section 36(2) [the municipal equivalent of section 47(2)], the ability of government institutions to maintain whole classes of records of this kind, in which individuals record their impressions of events, would be compromised in a way which the legislature cannot possibly have intended.
>
> In my view, records of this kind cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out, whether or not these views are true. Therefore, in my view, the truth or falsity of these views is not an issue in this inquiry.
>
> …
>
> … these same considerations apply to whether the records can be said to be "inexact" or "ambiguous". There has been no suggestion that the records do not reflect the views of the individuals whose impressions are set out in them.

[95] In Order PO-2549, in which similar issues were raised, Adjudicator Daphne Loukidelis considered a correction request involving an occurrence report. In concluding that there were no grounds for correction, she emphasized that:

> … it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.

[96] To the extent that such an occurrence report reflects the investigating officer's views and the information gathered at the time of the investigation, Adjudicator Loukidelis found that such information cannot be characterized as "incorrect", "in error" or "incomplete", as contemplated by the second part of the test for granting a correction request.

[97] In this appeal, I find it useful to refer to The Williams Commission Report [*Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3 (Toronto: Queen's Printer, 1980)] in understanding the purpose and operation of the *Act*'s correction provisions. That Report states, at pages 709-710:

> …although we recommend rights of appeal with respect to correction requests, agencies should not be under an absolute duty to undertake investigations with a view to correcting records in response to each and every correction request. The privacy protection schemes which we have examined adopt what we feel to be appropriate mechanisms for permitting the individual to file a statement of disagreement in situations where the governmental institution does not wish to alter its record. In particular cases, an elaborate inquiry to determine the truth of the point in dispute may incur an expense which the institution quite reasonably does not wish to bear. **Moreover, the precise criteria for determining whether a particular item of information is accurate or complete or relevant to the purpose for which it is kept may be a matter on which the institution and the individual data subject have reasonable differences of opinion**. [emphasis added]

[98] I have reviewed the appellant's requests for correction, and the responses by the police. I find that the police reasonably concluded, with respect to certain matters, that the reports were not "inexact, incomplete or ambiguous", as they simply reflected the views of the officers. As such, the requests for correction amount to a substitution of opinion. Examples of this are the appellant's objection to officers' observations about her mental state and her objection to their views about the merits of her complaints.

[99] Further, to the extent that the records set out the views or opinions of other individuals, I see no basis to doubt that the records accurately set out those views or opinions as expressed, at the time they were collected. Some of the information in the records also reflects the police officers' interpretation of the appellant's and witnesses' statements and, as a mixture of opinion and fact as understood by the officers, is not "inexact, incomplete or ambiguous".

[100] In Order MO-2741, I considered a correction request in which the appellant requested that certain reports be deleted in their entirety and replaced with her own statements. I refer to the finding I made in that case, as it can be applied to the circumstances in this case, where the appellant requests that the "negative reports" about her be purged:

> … the appellant requested that the entirety of certain reports be deleted and replaced by her own statements. This remedy clearly extends beyond the intent and scope of the correction provision. It is not the purpose of

> section 36(2) of the *Act* to allow an individual to replace police reports with his or her own report, thus usurping the function of police officers in responding to complaints, and recording their observations, impressions and actions in the form of occurrence reports.

[101] Although in this case, the appellant does not wish to replace the reports with her own statements, she does request that the occurrence reports be purged because she feels that they are negative and defamatory. I find that the request to purge reports that the appellant feels contain biased and negative assessments about her to be analogous to a substitution of opinion. I will observe, in any event, that pursuant to the Retention Policy, some of the reports that the appellant finds objectionable have already been purged and others will be purged in due course. As I have indicated, there appears to be no basis under the Retention Policy, and based on the submissions and material before me, for the appellant's concern that the records with which she is concerned will be held indefinitely.

[102] In the circumstances of the appeal, I uphold the decision by the police to deny the correction requests.

ORDER:

Appeal MA11-315

I order the police to disclose the information withheld on page 34 of the records, with the exception of the numeric code at the bottom of the entry **by August 14, 2012.**

Appeal MA11-394

I uphold the decision by the police to deny the correction requests.

Original Signed by: July 13, 2012
Sherry Liang
Senior Adjudicator