Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2854

Appeal MA11-318

Halton Regional Police Services Board

March 12, 2013

Summary: The appellant submitted a request to the Halton Regional Police Services Board for an investigation report in relation to a specific occurrence number. The police granted partial access to responsive records, withholding some portions pursuant to section 38(a) (discretion to withhold requester's own personal information), in conjunction with section 8(2)(a) (law enforcement report) and section 38(b) (personal privacy), with reference to the presumption in section 14(3)(b). A number of other issues were raised in the police decision and appeal, but were resolved as the appeal proceeded though the mediation and adjudication process. In this order, the adjudicator finds that the records at issue contain the personal information of the appellant and other identifiable individuals, but that a portion of the withheld information relates to the appellant only. He also finds that section 38(a) in conjunction with 8(2)(a) does not apply, but that certain portions of the records are exempt under section 38(b). He orders that the appellant's personal information be disclosed and that it would be absurd to withhold certain other information from the appellant. Finally, he finds that the public interest override at section 16 of the *Act* does not apply in the circumstances of this appeal.

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

Orders Considered: MO-1238, P-984, PO-1959.

BACKGROUND:

[1] The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) which sought access to an "investigation report" in reference to a specified occurrence number.

[2] After notifying an affected party, and receiving their position on disclosure of any of their information, the police issued an access decision. The police granted partial access to an Occurrence Report, General Occurrence Report and Supplementary Occurrence Reports, relying on section 38(a) (discretion to withhold requesters own personal information), in conjunction with sections 8(1)(e), 8(1)(l) and 8(2)(a) (law enforcement report), as well as section 38(b) (personal privacy) with reference to the presumption in section 14(3)(b) of the *Act*, to deny access to the portion they withheld.

[3] During mediation, the police decided to disclose additional information to the appellant and issued a supplementary decision letter. Also during mediation, the appellant indicated that he is no longer seeking access to any police codes contained in the responsive records. As a result, although representations were sought on the issue, that information and the sections that the police claimed were applicable to the police codes,[1] namely section 38(a) in conjunction with sections 8(1)(e) and 8(1)(l), are no longer at issue in the appeal.

[4] Mediation did not resolve the remaining issues in the appeal and it was moved to the adjudication stage of the inquiry process where an adjudicator conducts an inquiry under the *Act*. I commenced my inquiry by seeking representations from the police and an affected party on the facts and issues set out in the Notice of Inquiry. In the Notice of Inquiry, I requested that the police address a further issue set out as follows:

> Should the police maintain their position that information pertaining to civilian employees of the police should be withheld from disclosure, the police are asked to provide this office with the names and contact information of those civilian employees.

[5] Only the police provided responding representations. In a cover letter accompanying their representations the police advised that with respect to the police's civilian employees the police now had "no issue releasing their names". Accordingly, I will order that this withheld information, which I have highlighted on a copy of the records provided to the police with this order, be disclosed to the appellant.

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[1] In their representations the police claimed that section 38(a) in conjunction with sections 8(1)(e) and 8(1)(l) only applied to the police codes in the records. The police maintained their claim that the records, in their entirety, were exempt under section 38(a) in conjunction with section 8(2)(a).

[6] I then sent a Notice of Inquiry to the appellant along with the non-confidential representations of the police. The appellant provided responding representations. I determined that the appellant's representations raised issues to which the police should be provided an opportunity to reply. Accordingly, I sent a letter to the police along with the first of two volumes of the appellant's representations inviting their reply representations. The police advised that they had no further representations to make in the appeal.

[7] In this decision, I order the police to disclose certain withheld portions of the records at issue.

RECORDS:

[8] At issue in this appeal are the withheld portions of an Occurrence Report, General Occurrence Report and Supplementary Occurrence Reports.

ISSUES:

A. Do the records contain personal information?

B. Does the discretionary exemption at section 38(a), in conjunction with section 8(2)(a) of the *Act*, apply to the records?

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

D. Would it be absurd to withhold certain information from the appellant?

E. Is there a public interest in the disclosure of information found to be exempt under the *Act*?

F. Did the police appropriately exercise their discretion?

DISCUSSION:

A. Do the records contain personal information?

[9] The discretionary personal privacy exemptions in sections 38(a) and 38(b) of *MFIPPA* apply to "personal information". Consequently, it is necessary to determine whether the records contain "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;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore information that does not fall under paragraph (a) to (h) may still qualify as personal information.[2]

[11] Sections (2.1) and (2.2) of the *Act* also relate to the definition of personal information. These sections state:

[2] Order 11.

> (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.

[12] In addition, previous IPC orders have found that 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.[3]

[13] However, previous orders have also found that 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.[4]

[14] Having carefully reviewed the records at issue and the representations, I conclude that they contain the appellant's personal information within the meaning of the definition of personal information at section 2(1) of the *Act*, including his name, and the views of other individuals about him. Some of the records also contain the personal information of other identifiable individuals which was collected in the course of a criminal investigation. Further, I find that disclosing a name and contact information which appears on the first page of the Occurrence Report would, in the circumstances of this appeal, reveal something of a personal nature about the affected party and thereby qualifies as the affected party's personal information.

[15] As set out in his representations the appellant does not seek access to the address, date of birth or telephone numbers of other identifiable individuals that may appear in the records. Accordingly, that information will not be included in my discussion and will not be included in any information that I may determine should be disclosed.

[16] That said, I find that some information in the first Supplementary Occurrence Report pertains only to the appellant and qualifies as his personal information only. I have highlighted this information on a copy of the first Supplementary Occurrence Report that I have provided to the police along with a copy of this order.

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[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.

B. Does the discretionary exemption at section 38(a), in conjunction with section 8(2)(a) of the *Act*, apply to the records?

[17] Section 36(1) of *MFIPPA* gives individuals a general right of access to their own personal information held by an institution. Sections 38(a) and (b) of *MFIPPA* provide a number of exemptions to this general right of access. Section 38(a) states:

> 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 [emphasis added];

[18] Section 8(2)(a) states:

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

[19] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[5]

[20] It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption.[6]

Section 8(2)(a): law enforcement report

[21] In order for a record to fall within section 8(2)(a) of the *Act*, the police must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

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[5] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[6] Order PO-2040; *Ontario (Attorney General) v. Fineberg*, above.

[22] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.[7]

[23] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.[8]

[24] Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.[9]

[25] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous.[10]

[26] The police submit that the records qualify for exemption under section 8(2)(a) because they are "reports" that were prepared in the course of law enforcement and investigation by an agency which has the function of enforcing the law. The appellant takes issue with the application of the exemption and relying on a number of orders of this office, submits that the records do not qualify as law enforcement reports under section 8(2)(a) of the *Act*.

[27] In Order MO-1238, former Senior Adjudicator David Goodis made it clear that the title of a document will not necessarily determine whether or not it is a "report". For example, he found that section 8(2) did not apply to a Field Inspection Report or an Inspection Record of a municipal building department, both of which contained entries made over a period of time, on the basis that documents of this kind did not satisfy the first requirement of the section 8(2)(a) exemption test.

[28] Generally, occurrence reports and supplementary reports and similar records of various police agencies have been found not to meet the definition of "report" under the *Act*, because they have been found to be more in the nature of recordings of fact than formal, evaluative accounts of investigations.[11]

[29] In Order PO-1959, Senior Adjudicator Sherry Liang considered the Ministry of the Attorney General's position in that appeal that the entire file of the Special Investigation

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[7] Orders P-200, MO-1238, MO-1337-I.
[8] Orders MO-1238, MO-1337-I.
[9] Order PO-2751.
[10] Order MO-1238.
[11] See Orders M-1109, MO-2065 and PO-1845.

Unit (SIU) should be considered to qualify as a "report" for the purposes of section 14(2)(a), of the *Freedom of Information and Protection of Privacy Act* (*FIPPA*), the provincial equivalent of section 8(2)(a). In the course of addressing that issue, Senior Adjudicator Liang wrote:

> I accept, and it is not seriously disputed by the appellant, that Record 2 qualifies as a "report" for the purposes of section 14(2)(a), in that it consists of a formal statement of the results of the collation and consideration of information. I also find that Record 4, the cover letter to Record 2, qualifies for exemption, as the two records together can reasonably be viewed as forming the report to the Attorney General from the SIU Director.
>
> …
>
> I find that none of the remaining records at issue meet the definition of a "report". To elaborate further on some of these, Records 15, 19, 23 to 27 and 29 to 37 consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers' notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of "report" under [*FIPPA*], in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1341, M-1141 and M-1120. In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:
>
> > An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a "report".

[30] I agree with this approach and adopt it here. On my review of the records at issue, I am satisfied that they do not meet the definition of a "report" under section 8(2)(a) of the *Act,* in that they primarily consist of observations, recordings of fact and collection of information rather than formal, evaluative accounts, evaluative accounts of investigations.[12] Accordingly, I find that section 8(2)(a) of the *Act* does not apply, and the records do not qualify for exemption under section 38(a).

[12] See Orders M-1109, MO-2065 and PO-1845.

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

[31] Section 38(b) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[32] Because of the wording of section 38(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in the records which also contain the requester's personal information.[13]

[33] In other words, 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.

[34] As certain information contained in the first Supplementary Occurrence Report pertains only to the appellant and qualifies as his personal information only, disclosing this information to him would not constitute an "unjustified invasion" of another individual's personal privacy. Accordingly, I will order that this information, which I have highlighted in green on a copy of the first Supplementary Occurrence Report provided to the police along with this order, be disclosed to the appellant. I will now address the balance of the withheld information sought by the appellant.

[35] 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.

[36] In determining whether the exemption in section 38(b) applies,[14] sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of

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[13] Order M-352.

[14] In determining whether information was exempt under the provincial equivalent of section 38(b), *in Grant v. Cropley* [2001] O.J. No. 749, the Divisional Court said the IPC could:

> . . . consider the criteria mentioned in s.21(3)(b) [the provincial equivalent of section 14(3)(b) in determining, under s.49(b) [the provincial equivalent of section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

personal information would result in an unjustified invasion of another individual's personal privacy. Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b).

[37] The police submit that section 38(b) applies to the withheld responsive information remaining at issue. They provide representations on the presumption in section 14(3)(b) in support of their decision.

[38] Section 14(3)(b) reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

[39] The police submit that they considered the factors in section 14(2) and the presumptions in section 14(3)(b) but only made specific representations[15] on the application of the presumption at section 14(3)(b). With respect to the application of section 14(3)(b), the police submit in their non-confidential representations that:

> The undisclosed information was compiled as part of a law enforcement investigation and disclosure would constitute an unjustified invasion of the privacy of the affected party, except to the extent that it is necessary to prosecute a violation of the law.
>
> ..
>
> Since the personal information relates to records compiled as part of the investigation into the incident, disclosure of this material would constitute an unjustified invasion of personal privacy …

[40] The appellant does not take issue with the application of the section 14(3)(b) presumption and his representations address his view that there exists a public interest in disclosing the requested information, rather than pointing to any specific factors in

[15] A portion of those representations were withheld from the appellant due to confidentiality concerns.

section 14(2) that might favour disclosure. The appellant's submissions with respect to any public interest in disclosure will be addressed in my discussion on the potential application of the public interest override at section 16 of the *Act*, below.

[41] 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.[16] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[17]

[42] I have reviewed the records and it is clear from the circumstances that the personal information in them was compiled and is identifiable as part of the police's investigation into a possible violation of law, namely the *Criminal Code* of Canada.

[43] Accordingly, I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, and falls within the presumption in section 14(3)(b).

[44] Given the application of the presumption in section 14(3)(b) and that fact that no factors that favour disclosure were claimed or otherwise established, I am satisfied that the disclosure of the remaining personal information in the records would constitute an unjustified invasion of another individual's personal privacy. Accordingly, I find that this information is exempt from disclosure under section 38(b) of the *Act*.

D. Would it be absurd to withhold certain information from the appellant?

[45] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[18]

[46] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own written witness statement[19]
- the requester was present when the information was provided to the institution[20]
- the information is clearly within the requester's knowledge[21]

[16] Orders P-242 and MO-2235.
[17] Orders MO-2213 and PO-1849.
[18] Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622.
[19] Order M-444.
[20] Orders M-444, P-1414 and MO-2266.
[21] Orders MO-1196, PO-1679, MO-1755 and MO-2257-I.

[47] If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[22]

[48] I have carefully reviewed the withheld information and find that it would be absurd to withhold certain information contained in the records which I have found to be exempt under section 38(b) because it was provided by the appellant, or which is clearly within his knowledge. This information appears on the last page of the records at issue. I have highlighted it on a copy of this page of the records that I have provided to the police along with a copy of this order and will order that it be disclosed.

E. Is there a public interest in the disclosure of information found to be exempt under the *Act*?

[49] In their representations preceding their discussion of the application of the section 14(3)(b) presumption, the police submitted that:

> In this instance there is definitely no compelling public interest to override any of the presumptions in section 14(3). This institution could find no circumstance so compelling that would make us believe that [disclosure] would not be an unjustified invasion of … personal privacy.

[50] The appellant takes the position that the "public interest override" provision in section 16 of the *Act* applies to the remaining information that I have found to be exempt. The appellant submits that he was subject to serious allegations which resulted in his detention while he awaited a bail hearing. He submits that one of the allegations involved whether a proposed surety had engaged in criminal conduct and was thereby not suitable to act as his surety. The appellant submits that this allegation resulted in him being required to spend an additional day in detention "while the police investigated this allegation, which was notably never even remarked upon at [the appellant's] actual bail hearing."

[51] The appellant submits that:

> … there is a compelling public interest in disclosing information relied upon by police and Crown prosecutors for the purpose of holding an individual in detention. The specific information regarding the alleged [criminal conduct] is of particular concern, especially given that this information was never subsequently relied upon by the crown.

[52] The appellant submits that there "is certainly a public interest in the disclosure of such information to ensure that individuals are not wrongfully detained". In support of

[22] Orders MO-1323, PO-2622 and PO-2642.

this submission the appellant refers to the right not to be arbitrarily detained as set out in section 9 of the *Canadian Charter of Rights and Freedoms*.[23] The appellant further submits that the *Police Services Act* requires that police services in Ontario be provided in accordance with "[t]he importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms*"[24].

[53] The appellant submits:

> Under these circumstances, and given that the information at issue in this case resulted in [the appellant's] continued detention, which was later demonstrated to be unwarranted, it cannot seriously be argued that there is no compelling public interest …
>
> The fact that [the police have] provided absolutely no reasons and no particulars to support its statement that the particular circumstances of this case "definitely" do not present a compelling public interest strongly suggests that the matter of [the appellant's] unwarranted detention on the basis of information provided to [the police] was never considered.

[54] The appellant further submits that the affected party's failure to provide representations in the appeal in support of their refusal to consent to disclosure is also a relevant consideration in determining whether the public interest which arises in this case outweighs the application of the exemption.

Analysis and Finding

[55] Section 16 states:

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

[56] Even though section 38(b) is not listed, because section 16 may override the application of section 14, it may also override the application of section 38(b) with reference to section 14.[25] If section 16 were to apply in this case, it would have the effect of overriding the application of section 38(b), and the appellant would have a right of access to the information at issue.

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[23] *The Constitution Act, 1982*, as amended. Section 9 states: Everyone has the right not to be arbitrarily detained or imprisoned.

[24] The *Police Services Act*, R.S.O., c. P.15, as amended. Section 1(2) states: Police services shall be provided throughout Ontario in accordance with the following principles:

> The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.

[25] See for example Order PO-2246, which deals with the equivalent sections of the *Freedom of Information and Protection of Privacy Act*.

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

[58] In considering whether there is a "public interest" in disclosure of a 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.[26] 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.[27]

[59] A public interest does not exist where the interests being advanced are essentially private in nature.[28] However, where a private interest in disclosure raises issues of a more general application, a public interest may be found to exist.[29]

[60] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[30] Any public interest in *non*-disclosure that may exist also must be considered.[31]

[61] In my view, disclosure of the remaining withheld portions of personal information in the records would not "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", as required in Order P-984. There is no allegation that the experience of the appellant has occurred with any frequency at other bail hearings, or that the conduct of the police is somehow in question. Rather, in my view, the appellant seeks access to the severed portions of the records in order to pursue his own interests. While these are of importance to him, in my view, they are in the nature of a private, rather than a public interest.

[62] Furthermore, there is no "compelling" public interest in the disclosure of the personal information in this case, because in my view, the appellant is requesting the information for a predominantly personal reason.[32]

[63] Accordingly, I find that there does not exist any public interest, compelling or otherwise, in the disclosure of the withheld information that I have found to qualify for

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[26] Orders P-984 and PO-2607.
[27] Orders P-984 and PO-2556.
[28] Orders P-12, P-347, and P-1439.
[29] Order MO-1564.
[30] Order P-984.
[31] *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.).
[32] Order M-319.

exemption under section 38(b) of the *Act*. As a result, I find that section 16 has no application in the present appeal.

F. Did the police appropriately exercise their discretion?

[64] The section 38(b) exemption is discretionary and permits the police to disclose information, despite the fact that it could be withheld. On appeal, this office may review the police's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.[33]

[65] In addition, the Commissioner may find that the police erred in exercising their discretion where, for example,

- they do so in bad faith or for an improper purpose
- they take into account irrelevant considerations
- they fail to take into account relevant considerations.

[66] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[34] This office may not, however, substitute its own discretion for that of the institution.[35]

[67] The police submit that in deciding to withhold the information they took into account the appellant's right of access and balanced that against the privacy interests of the affected party. They state that they took into consideration all the facts of the case and took into account that:

- information should be available to the public;
- individuals should have access to their own personal information; and
- exemptions to this right of access should be limited and specific.

[68] The appellant refers to his arguments with respect to section 16 of the *Act* set out above, and submits that in the absence of any consideration of what the appellant alleged to be a compelling public interest in disclosure, the police's "exercise of its discretion under section 38(b) is unreasonable".

Analysis and Finding

[69] I have reviewed the circumstances surrounding this appeal and the police's representations on the manner in which they exercised their discretion. In my analysis

[33] Orders PO-2129-F and MO-1629.
[34] Order MO-1573.
[35] Section 43(2).

above, I found that there is no compelling public interest in the disclosure of the remaining withheld personal information that I have found to be exempt under section 38(b) of the *Act*. The police disclosed some information to the appellant initially and at the mediation stage. Additional information will be disclosed to the appellant as a result of this order. The remaining information relates directly to other identified or identifiable individuals or is inextricably intertwined with the appellant's information. I am satisfied that the police have not erred in the exercise of their discretion not to disclose to the appellant the remaining withheld information contained in the records that I have found to qualify for exemption under section 38(b) of the *Act*.

ORDER:

1. I order the police to disclose to the appellant the portions of the records that I have highlighted on a copy of the pages of the records that I have enclosed with this order by sending it to him by **April 19, 2013** but not before **April 15, 2013**.

2. In all other respects I uphold the decision of the police.

3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the pages of the records as disclosed to the appellant.

Original signed by: March 12, 2013
Steven Faughnan
Adjudicator