

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2897

Appeal MA11-506

York Regional Police Services Board

June 13, 2013

Summary: The appellant submitted an access request to the York Regional Police Services Board for specific records that show which police officers accessed information about him and for any information about him held in police records. The police located records responsive to his request and disclosed many of them. However, they claimed that some records are excluded from the *Act* under section 52(2.1) (records relating to a prosecution) and denied access to parts of other records under the discretionary personal privacy exemption in section 38(b). In this order, the adjudicator finds that the police properly applied the section 52(2.1) exclusion to specific records at the time they issued their decision letter to the appellant. However, this exclusion no longer applies, and he orders the police to issue an access decision with respect to those records. In addition, he orders the police to disclose the appellant's own personal information in three pages of records but finds that the remaining personal information withheld by the police qualifies for exemption under section 38(b), because disclosing it would be an unjustified invasion of other individuals' personal privacy. Finally, he finds that the police conducted a reasonable search for responsive records and upholds that part of the police's decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 2(2.1), 4(2), 14(2)(f), 14(2)(h), 14(3)(b), 17, 38(b) and 52(2.1).

OVERVIEW:

[1] The appellant submitted a four-part request to the York Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records:

Logs of who accessed information about [the appellant] held in York Regional Police records in which include: CPIC, Professional Standards Database, etc. Include Name, badge number, date, time. I would like the information to span from 2009/04/01 to 2011/09/10.

Please provide to me the number of times [four named police officers] accessed information about [the appellant] in York Regional Police records (electronic and other) [and] about any individual, including [the appellant], residing at [specified address] from 2009/04/01 to 2011/09/10.

Please provide to me any information and name, badge number, date and time of any York Regional Police officer who accessed any Health Records belonging to [the appellant] from 2009/04/01 to 2011/09/10.

Any and all information available to York Regional Police officers held in official York Regional Police files including CPIC etc. from 2009/04/01 to 2011/09/10 pertaining to [the appellant].

[2] In response, the police located 200 pages of responsive records:

- "Person" report (pp. 1-6);
- Ticket offence reports (pp. 7-26);
- Street check/field interview reports (pp. 27-50);
- General occurrence reports (pp. 51-152); and
- "Query" logs (pp. 153-200).

[3] The police then issued a decision letter to the appellant that provided him with partial access to these records. They provided him with access to some records in full ("person" report and ticket offence reports). In addition, they disclosed most of the information in the street check/field interview reports and general occurrence reports to him but withheld some information under the discretionary exemption in section 38(b) (personal privacy), read in conjunction with the presumption in section 14(3)(b) (investigation into violation of law) of the *Act*.

[4] The police claimed that some records are excluded from the scope of the *Act* under section 52(2.1). This exclusionary provision states that the *Act* does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have

not been completed. In particular, the police claimed that this exclusionary provision applies to reports relating to specific incidents in which the appellant was criminally charged that are still before the courts, and they provided the specific incident numbers.¹ They also claimed that the logs that identify the badge numbers of police officers who “queried” their database about the appellant are excluded from the *Act* under section 52(2.1) because they relate to these incidents.

[5] The police stated that they do not have custody or control of CPIC records and advised the appellant that he should contact the RCMP, which manages the CPIC database, to request access to such records. They further advised him that they do not have custody or control over his health records and stated that “[t]here is no record of any warrants for your health information being obtained in the attached police records.”

[6] The appellant appealed the police’s decision to the Information and Privacy Commissioner of Ontario (IPC). After the appeal was filed, the police provided the IPC with a copy of the 200 pages of records that it located in response to the appellant’s access request, except for the reports relating to specific incidents that they claim are excluded from the scope of the *Act* under section 52(2.1).²

[7] During mediation, the police stated that the records for which it has claimed section 52(2.1) continue to be excluded from the scope of the *Act* because these records relate to a prosecution and all proceedings in respect of the prosecution have not been completed.

[8] In response, the appellant stated that he is not aware of any ongoing prosecution for the specific incident numbers cited by the police in their decision letter and argued that the police should not be able to rely on section 52(2.1). He provided the mediator with a copy of a Court of Justice decision, dated November 24, 2010, in which a judge stayed various criminal proceedings against him that had been brought by the Crown.

[9] Moreover, the appellant acknowledged that his CPIC and health records are not in the police’s custody or control, but claimed that there should be other records held by the police that show if any officers accessed his CPIC and health records. As a result, whether the police conducted a reasonable search for such records is at issue in this appeal.

[10] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. An adjudicator sought and received representations from both the police and the appellant and shared the parties’ representations in accordance with section

¹ Incidents #10-263820, #10-263862 and #10-263326 (September 22, 2010); #11-56885 (February 24, 2011), #11-64136 (March 3, 2011); #11-64048 (March 4, 2011); #11-63219 and #11-63223 (March 2, 2011); #11-68423 (March 8, 2011); #11-70267 (March 9, 2011); and #11-170630 (June 8, 2011).

² *Ibid.*

7.07 of the IPC's *Code of Procedure and Practice Direction Number 7*. This appeal was then transferred to me for a decision.

RECORDS:

[11] The records remaining at issue in this appeal are summarized in the following chart:

Page numbers	Description of record	Police's decision	Exclusion/exemptions claimed
pp. 27-50	Street check/field interview reports	Withheld in part	s. 38(b)
pp. 51-152	General occurrence reports	Withheld in part	s. 38(b)
pp. 153-200	"Query" logs	Withheld in full	s. 52(2.1)
N/A	Reports relating to incidents #10-263820, #10-263862 and #10-263326 (September 22, 2010); #11-56885 (February 24, 2011), #11-64136 (March 3, 2011); #11-64048 (March 4, 2011); #11-63219 and #11-63223 (March 2, 2011); #11-68423 (March 8, 2011); #11-70267 (March 9, 2011); and #11-170630 (June 8, 2011)	Withheld in full	s. 52(2.1)

ISSUES:

- A. Does section 52(2.1) exclude any of the records from the *Act*?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

- C. Does the discretionary exemption at section 38(b) apply to the information at issue?
- D. Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold this exercise of discretion?
- E. Did the police conduct a reasonable search for records?

DISCUSSION:

RECORDS RELATING TO A PROSECUTION

A. Does section 52(2.1) exclude any of the records from the *Act*?

[12] Section 52(2.1) states:

This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[13] The purposes of section 52(2.1) include maintaining the integrity of the criminal justice system, ensuring that the accused and the Crown's right to a fair trial is not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the dissemination and publication of records relating to an ongoing prosecution.³

[14] The term "prosecution" in section 52(2.1) means proceedings in respect of a criminal or quasi-criminal charge laid under an enactment of Ontario or Canada and may include regulatory offences that carry "true penal consequences" such as imprisonment or a significant fine.⁴

[15] The words "relating to" require some connection between "a record" and "a prosecution." The words "in respect of" require some connection between "a proceeding" and "a prosecution."⁵

[16] Only after the expiration of any appeal period can it be said that all proceedings in respect of the prosecution have been completed. This question will have to be decided based on the facts of each case.⁶

³ *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991, March 26, 2010, Tor. Doc. 34/91 (Div. Ct.).

⁴ Order PO-2703.

⁵ *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above. See also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25.

⁶ Order PO-2703.

[17] The police claim that two groups of responsive records are excluded from the scope of the *Act* under section 52(2.1):

- reports relating to incidents #10-263820, #10-263862 and #10-263326 (September 22, 2010); #11-56885 (February 24, 2011), #11-64136 (March 3, 2011); #11-64048 (March 4, 2011); #11-63219 and #11-63223 (March 2, 2011); #11-68423 (March 8, 2011); #11-70267 (March 9, 2011); and #11-170630 (June 8, 2011); and
- logs identifying the badge numbers of police officers who “queried” the police database about the appellant relating to these incidents.

[18] In their representations, the police state that the above incidents resulted in criminal charges being laid against the appellant, and the Crown is prosecuting him for committing the offences set out in these charges. They attached a printout that shows which charges are pending before the courts to support their position that both the reports and “query” logs relate to a prosecution and all proceedings in respect of that prosecution have not been completed, as required by the section 52(2.1) exclusion.

[19] In response, the appellant states that the printout of pending charges that the police attached to their representations is no longer accurate. He provided a copy of another Court of Justice decision, dated July 13, 2012, in which the judge stayed various criminal proceedings against him because police records were not disclosed to him in a timely fashion. He submits that all criminal proceedings with respect to the prosecution have been completed and section 52(2.1) cannot, therefore, apply to the above records.

[20] In their reply representations, the police acknowledge that a judge ordered a stay of proceedings with respect to the prosecution of the appellant for various criminal offences. However, they submit that section 52(2.1) applied to the records at issue as of the date of their decision letter and the date of their original representations to the IPC. They further submit that my order should reflect the fact that they properly applied the section 52(2.1) exclusion when they issued their decision letter to the appellant, and the fact that the criminal proceedings were later stayed by a judge should have “no bearing” on the outcome of this appeal.

[21] In this order, I am reviewing the police’s decision to deny the appellant access to a number of records, including those records which the police claim are excluded from the *Act* under section 52(2.1). Therefore, I agree with the police that the issue to be resolved in this appeal is whether they properly applied the section 52(2.1) exclusion when they issued their decision letter to the appellant.

[22] At that time, the appellant was facing criminal charges relating to specific incidents, and the Crown was prosecuting him. Consequently, I am satisfied that the

incident reports and "query" logs withheld by the police in their decision letter related to the prosecution of the appellant and all proceedings in respect of that prosecution had not been completed at that time. In short, I find that the police properly applied the section 52(2.1) exclusion to the above records at the time they issued their decision letter to the appellant.

[23] As noted above, however, the appellant has provided persuasive evidence during this inquiry to show that section 52(2.1) no longer applies to these records. In their reply representations, the police do not dispute that a judge stayed the criminal proceedings against the appellant, nor do they suggest that the Crown is continuing to prosecute the appellant for any of the alleged offences identified in the withheld incident reports. In addition, there is no evidence before me to show that the court's stay decision is under appeal.

[24] Although the police properly applied the section 52(2.1) exclusion to the incident reports and "query" logs at the time they issued their decision letter to the appellant, I find that this exclusion no longer applies. Consequently, I will order the police to issue a new access decision to the appellant with respect to those records.

PERSONAL PRIVACY

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

[25] The police withheld some information in the street check/field interview reports and general occurrence reports under the discretionary personal privacy exemption in section 38(b) of the *Act*. This exemption only applies to "personal information." Consequently, it is necessary to determine whether these 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 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;

[26] 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.⁷

[27] Section 2(2.1) excludes certain information from the definition of personal information. It states:

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.

[28] The police state that the records contain the personal information of individuals other than the appellant, including their dates of birth, addresses, telephone numbers, race, sex, and in some cases, the views or opinions of other individuals about them. They submit that this information identifies these individuals in a personal capacity, not in a business, professional or official capacity.

⁷ Order 11.

[29] The appellant does not directly address whether the records contain “personal information” but his representations as a whole appear to acknowledge that the records contain both his own personal information and that of other individuals.

[30] The street check/field interview reports and general occurrence reports contain information relating to various individuals, including the appellant, the complainants/alleged victims and witnesses to various incidents. The information relating to these individuals includes their names, dates of birth, addresses, home telephone numbers and other information. I find that this information qualifies as their personal information, because it falls within paragraphs (a), (d), and (h) of the definition of this term in section 2(1).

[31] These records also include statements that the appellant and other individuals gave to the police about the incidents that took place. In accordance with paragraph (g) of the definition, the opinions or views of another individual about the individual constitute the latter individual’s personal information. I find that the portions of a complainant’s statement to the police that contains that individual’s views or opinions about the appellant constitutes the appellant’s personal information.

[32] The information about the appellant and other individuals in the records identifies them in a personal capacity rather than a business, professional or official capacity. Therefore, section 2(2.1) is not applicable and does not remove this information from the scope of personal information.

[33] In short, I find that the street check/field interview reports and general occurrence reports contain the personal information of the appellant, complainants/alleged victims and witnesses to various incidents. I will now determine whether the withheld personal information in these records qualifies for exemption under section 38(b) of the *Act*.

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

[34] 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, including the discretionary personal privacy exemption in section 38(b).

[35] The police disclosed most of the information in the street check/field interview reports and general occurrence reports to the appellant. In general, the appellant was provided with access to his own personal information and the names of other individuals where it was clear that he knew their identities. However, the police withheld limited and specific parts of these records containing the personal information

of both the appellant and other individuals. They submit that this personal information has been properly withheld under section 38(b).

[36] 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.

[37] 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 records which also contain the requester's personal information.⁸

[38] 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 under section 38(b).

[39] In the circumstances of this appeal, it must be determined whether disclosing the personal information of the appellant and other individuals to the appellant would constitute an unjustified invasion of these other individuals' personal privacy under section 38(b).

[40] 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 under section 38(b);
- section 14(2) lists "relevant circumstances" or factors that must be considered;
- section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

⁸ Order M-352.

Section 14(1)

[41] The police submit that none of the circumstances in paragraphs (a) to (e) of section 14(1) apply to the withheld personal information of the appellant and other individuals. I agree with the police's assessment and find that these provisions are not applicable to the withheld personal information in the street check/field interview reports and general occurrence reports.

Section 14(2)

[42] The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.⁹

[43] The police submit that the factors in sections 14(2)(f) and (h) are relevant in determining whether disclosing the withheld personal information in the street check/field interview reports and general occurrence reports to the appellant would constitute an unjustified invasion of other individuals' personal privacy. These provisions state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[44] The police submit that the withheld personal information of third parties in the records is "highly sensitive" and that these individuals supplied their own personal information "in confidence" to the police in the course of various investigations.

[45] The appellant does not directly address whether section 14(2) lists any "relevant circumstances" or factors that must be considered in the circumstances of this appeal.

[46] To be considered "highly sensitive" for the purposes of section 14(2)(f), there must be a reasonable expectation of significant personal distress if an individual's personal information is disclosed.¹⁰ Given the adversarial relationship that appears to exist between the appellant and some individuals mentioned in the records, I find that

⁹ Order PO-2265.

¹⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

disclosing the personal information of these individuals to him could reasonably be expected to cause them significant personal distress. Consequently, I find that in the particular circumstances of this case, the personal information of these individuals is "highly sensitive," as required by the factor in section 14(2)(f).

[47] The section 14(2)(h) factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹¹

[48] In my view, whether an individual supplied his or her personal information to the police in confidence during an investigation is contingent on the particular facts, and such a determination must be made on a case-by-case basis.

[49] In the particular circumstances of this appeal, the withheld personal information of the complainants/alleged victims and witnesses to various incidents includes their names, dates of birth, addresses and telephone numbers. I am satisfied that these individuals expected and the police intended that this personal information would be treated confidentially. Given the adversarial relationship that appears to exist between the appellant and some of these individuals, I also find that this expectation of confidentiality was reasonable in the circumstances.

[50] In short, I find that in the particular circumstances of this appeal, the sections 14(2)(f) and (h) factors weigh in favour of withholding the personal information of the complainants/alleged victims and witnesses in the street check/field interview reports and general occurrence reports.

Section 14(3)

[51] With respect to records claimed to be exempt under section 38(b), in *Grant v. Copley*,¹² the Divisional Court said the IPC could:

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

[52] The police claim that the section 14(3)(b) presumption applies to the withheld personal information in the street check/field interview reports and general occurrence reports. This provision states:

¹¹ Order PO-1670.

¹² [2001] O.J. 749.

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;

[53] 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.¹³ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁴

[54] The police state that the personal information of various individuals was compiled by its officers as part of their investigations into violations of law, including threats, domestic issues, criminal harassment, thefts and mischief to property.

[55] The appellant does not directly address whether the section 14(3)(b) presumption applies in the circumstances of this appeal.

[56] Based on my review of the records, I am satisfied that the withheld personal information in the street check/field interview reports and general occurrence reports was compiled and is identifiable as part of various investigations into possible violations of the *Criminal Code* by the appellant. Consequently, I find that the withheld personal information clearly falls within the section 14(3)(b) presumption and its disclosure to the appellant is presumed to be an unjustified invasion of other individuals' personal privacy.

Section 14(4)

[57] If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy, despite section 14(3), and the personal information is not exempt under section 38(b). In my view, none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to the withheld personal information in the street check/field interview reports and general occurrence reports.

Absurd Result

[58] 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),

¹³ Orders P-242 and MO-2235.

¹⁴ Orders MO-2213, PO-1849 and PO-2608.

because to find otherwise would be absurd and inconsistent with the purpose of the exemption.¹⁵

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

- the requester sought access to his or her own witness statement;¹⁶
- the requester was present when the information was provided to the institution;¹⁷ and
- the information is clearly within the requester's knowledge.¹⁸

[60] 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.¹⁹

[61] The police point out that they disclosed the names of individuals other than the appellant to him where it was clear that he knew their identities. The appellant submits that "there are no secrets in this case," which amounts to an argument that the absurd result principle might apply to some of the information withheld by the police.

[62] Based on my review of the records, it does not appear that the police have withheld any personal information that was originally supplied by the appellant or is clearly within his knowledge. I find, therefore, that the absurd result principle does not apply to the withheld personal information in the street check/field interview reports and general occurrence reports.

Severances

[63] Section 4(2) of the *Act* obliges the police to disclose as much of the records as can reasonably be severed without disclosing the information that is exempt.

[64] It is not reasonable to sever a record containing the personal information of both the appellant and other individuals if this information is too closely intertwined. In addition, it is not reasonable to sever a record if doing so would result in the disclosure of only disconnected snippets of information or worthless, meaningless or misleading information.²⁰

¹⁵ Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622.

¹⁶ Orders M-444 and M-451.

¹⁷ Orders M-444, P-1414 and MO-2266.

¹⁸ Orders MO-1196, PO-1676, PO-1679, MO-1755 and MO-2257-I.

¹⁹ Orders M-757, MO-1323, MO-1378, PO-2622, PO-2627 and PO-2642.

²⁰ Orders PO-2033-I, PO-1663 and PO- 1735 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

[65] For the most part, the police have only withheld the personal information of individuals other than the appellant from the street check/field interview reports and general occurrence reports and have disclosed his own personal information to him. However, the police have withheld the appellant's personal information in a few parts of the records. I find that these parts of the records cannot reasonably be severed because the personal information of the appellant and other individuals is too closely intertwined.

[66] The appellant expresses concern that the police have not severed the records consistently. He points out that the police withheld two general occurrence reports (#09-93856 and #09-95801) in their entirety and questions why they did not simply "redact" the personal information of other individuals and disclose the remaining information, as they did with the other occurrence reports.

[67] I have carefully reviewed these two occurrence reports, which span pages 136-143 (#09-93856) and 144-152 (#09-95801) of the records. Almost all of the information in these occurrence reports is the personal information of individuals other than the appellant and I find that the police have properly withheld this information under section 38(b).

[68] However, the appellant's name, sex, birth date and contact information appears on pages 137 (#09-93856) and 145-146 (#09-95801). This information is his personal information and it is not closely intertwined with the personal information of other individuals. The appellant has a right to access those parts of the records, even if they are sparse, because they contain his own personal information and reveal that he was identified as a potential suspect in two criminal investigations.

[69] In some cases, the identification of a requester as a potential suspect in a criminal investigation may be withheld under other exemptions in the *Act*, such as section 38(a), in conjunction with the law enforcement exemptions in section 8, but the police have not claimed those exemptions, nor would they appear to apply here. In my view, disclosing the appellant's own personal information from these particular records to him cannot be an unjustified invasion of other individuals' personal privacy under section 38(b) if the records are properly severed.

[70] I agree with the appellant that these records can reasonably be severed in a manner that provides him with his own personal information without disclosing the personal information of other individuals that is exempt under section 38(b). Consequently, I will order the police to disclose the appellant's personal information (but not that of other individuals) on pages 137 and 145-146 of the records.

Conclusion

[71] In assessing whether the personal information in the occurrence reports qualifies for exemption under section 38(b), I have found that:

- none of the circumstances in paragraphs (a) to (e) of section 14(1) applies to the withheld personal information;
- the section 14(2)(f) and (h) factors weigh in favour of withholding the personal information of individuals other than the appellant;
- disclosing the personal information in the street check/field interview reports and general occurrence reports, which was compiled and is identifiable as part of an investigation into a possible violations of the *Criminal Code*, is presumed to constitute an unjustified invasion of the personal privacy of individuals other than the appellant under section 14(3)(b);
- none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to the withheld personal information;
- the absurd result principle does not apply to the withheld personal information; and
- pages 137 and 145-146 of the records can reasonably be severed in a manner that provides the appellant with his own personal information without disclosing the personal information of other individuals that is exempt under section 38(b).

[72] Consequently, subject to my assessment under Issue D below as to whether the police exercised their discretion appropriately, I find that with the exception of the appellant's personal information on pages 137 and 145-146, the personal information withheld by the police in the street check/field interview reports and general occurrence reports qualifies for exemption under section 38(b), because its disclosure to him would be an unjustified invasion of other individuals' personal privacy.

EXERCISE OF DISCRETION

D. Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold their exercise of discretion?

[73] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. This involves a weighing

of the appellant's right of access to his own personal information against the other individuals' right to protection of their privacy.

[74] An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[75] In addition, the IPC 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; or
- it fails to take into account relevant considerations.

[76] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²¹ The IPC may not, however, substitute its own discretion for that of the institution.²²

[77] The police submit that they exercised their discretion properly under section 38(b). They state that they reviewed the records and weighed the appellant's right of access to his own personal information against the right of other individuals to protection of their privacy. They submit that they took all relevant factors into account and given the nature of the charges that were laid against the appellant, concluded that disclosing the personal information of other individuals to him would constitute an unjustified invasion of their personal privacy under section 38(b).

[78] The appellant suggests that the police have not exercised their discretion appropriately under section 38(b). He believes that the information that the police have withheld from the records is not necessarily the personal information of other individuals but is instead information that is "embarrassing" to the police.

[79] I am satisfied that the police weighed the interests of disclosure and non-disclosure and exercised their discretion to withhold the personal information of individuals other than the appellant under section 38(b). The police clearly decided that these individuals' right to privacy trumps the appellant's interest in disclosure. I have carefully scrutinized the records and can assure the appellant that the information withheld by the police in these particular records is generally the personal information of other individuals and not information that the police have deliberately withheld because its disclosure would be embarrassing to them.

²¹ Order MO-1573.

²² Section 43(2).

[80] I am not persuaded that the police failed to take relevant factors into account or that they considered irrelevant factors in withholding those parts of the street check/field interview reports and general occurrence reports that contain the personal information of individuals other than the appellant. I find, therefore, that they exercised their discretion under section 38(b) and did so in a proper manner.

SEARCH FOR RESPONSIVE RECORDS

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

[81] The appellant acknowledges that his CPIC and health records are not in the police's custody or control, but claims that there should be other records held by the police that show if any officers accessed his CPIC and health records.

[82] 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 17.²³ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the police's decision. If I am not satisfied, I may order further searches.

[83] 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.²⁴

[84] The police submit that they conducted a reasonable search for responsive records and provided a sworn affidavit from their freedom-of-information analyst to support their position. They submit that although officers can "query" the CPIC database, the police do not have access to records showing who accessed this database. They state that the RCMP manages the CPIC database and the appellant would have to submit a request to the RCMP for logs of which police officers accessed his CPIC records.

[85] With respect to whether there are any records showing the officers who accessed the appellant's health records, the police state that they do not have custody or control of such records. They submit that they can only obtain an individual's health records from a health official or institution with that individual's consent or through a warrant. They point out that none of the 200 pages of responsive records indicate that any officers obtained the appellant's health records through either of these routes.

[86] The appellant submits that the police should have records showing which officers accessed his personal information in the CPIC database and believes that the disclosure

²³ Orders P-85, P-221 and PO-1954-I.

²⁴ Orders M-909, PO-2469, PO-2592.

of such records will show that officers conducted "illegal searches" of CPIC to assist his adversaries in family court. He states:

The [police] have stated numerous times that every officer making a CPIC query has to record the reason, time, date, etc. of each query due to the sensitivity and previous abuse of the CPIC system. This is either logged in a District log or in an officer's personal notes. A search of officer's personal notes would have detailed each and every CPIC query. However, they have admitted to having logs and/or recorded search histories in their personal computers. There is no mention that notes and/or logs were ever searched for that information.

[87] The appellant further submits that police officers have accessed his health records. He states:

The police unscrupulously and in a "negligent" manner forced me to sign a health records waiver allowing them to check into my health records due to false allegations made by the "victims." They have admitted that they have searched these records and presented numerous personal records as "disclosure." This information should be readily available . . .

[88] In my view, the appellant's skepticism with respect to whether the police have conducted a reasonable search for responsive records is understandable, particularly given the well-documented difficulties he has encountered in obtaining full and proper disclosure of records in various criminal proceedings.²⁵

[89] In responding to access requests, the *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records.²⁶

[90] In my view, a reasonable search for responsive records in these particular circumstances does not necessarily require the police to review officers' notebooks or "search histories" in their computers, based on the speculative possibility raised by the appellant that an officer may have inappropriately accessed his personal information in the CPIC database. I note as well that the police have clearly advised the appellant that the RCMP manages the CPIC database and he would have to submit an access request to the RCMP for logs of which police officers accessed his CPIC records.

[91] In addition, I find that the police have provided sufficient evidence to show that they made a reasonable effort to identify and locate records that would show if any officers accessed the appellant's health records. As noted above, the police are not

²⁵ See paras. 8 and 19 of this order.

²⁶ Orders P-624 and PO-2559.

required to prove with absolute certainty that such records do not exist. Although the appellant claims that the police forced him to sign a "health records waiver," the police point out that none of the 200 pages of responsive records that they located show that any officers accessed his health records.

[92] In short, I am satisfied that experienced police employees, knowledgeable in the subject matter of the appellant's request, expended reasonable efforts to locate records which are reasonably related to that request. Consequently, I uphold the police's search for responsive records.

ORDER:

1. I find that the police properly applied the section 52(2.1) exclusion to specific records at the time they issued their decision letter to the appellant. However, this exclusion no longer applies to those records. Consequently, I order the police to issue an access decision to the appellant for the following records, treating the date of this order as the date of the request:
 - a) reports relating to incidents #10-263820, #10-263862 and #10-263326 (September 22, 2010); #11-56885 (February 24, 2011), #11-64136 (March 3, 2011); #11-64048 (March 4, 2011); #11-63219 and #11-63223 (March 2, 2011); #11-68423 (March 8, 2011); #11-70267 (March 9, 2011); and #11-170630 (June 8, 2011); and
 - b) logs identifying the badge numbers of police officers who "queried" the police database about the appellant (pp. 153-200).
2. I order the police to disclose the appellant's own personal information to him in pages 137 and 145-146 of the general occurrence reports by **July 15, 2013**. I have enclosed a copy of these records with this order and have highlighted in green the portions that must be withheld from him. To be clear, the non-highlighted parts of these records, which contain the appellant's own personal information, must be disclosed to him.
3. I uphold the police's decision to withhold other personal information in the street check/field interview reports and general occurrence reports under section 38(b).
4. I uphold the police's search for responsive records.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ June 13, 2013