

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2943

Appeal MA12-408

Windsor Police Services Board

September 11, 2013

**Summary:** The appellant sought access to records held by the police relating to an incident which involved the appellant and others. The police granted access to some records or portions of records, and denied access to portions of the records based on section 38(b) (personal privacy) of the *Act*. This order finds that the records at issue contain the personal information of the appellant and others. It upholds the application of the personal privacy exemptions in sections 14(1) and 38(b) to the withheld portions of the records.

**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"), 14(1), 14(2)(d), 14(3)(b), 38(b).

**Orders and Investigation Reports Considered:** M-352, MO-1420.

### OVERVIEW:

[1] The Windsor Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an identified incident.

[2] After receiving the request, the police notified several individuals whose interests may be affected by disclosure of the information (the affected parties). One affected party consented to the disclosure of his personal information. The other affected

parties either did not respond to the notice, or stated that they did not consent to disclosure of their information.

[3] The police then issued a decision letter to the requester, granting access to certain records or portions of records, and denying access to the remaining records on the basis of the exemption in section 38(b) (personal privacy), with reference to the presumption in section 14(3)(b) of the *Act*.

[4] The requester (now the appellant) appealed the police's decision.

[5] During mediation, the appellant confirmed that he wished to pursue access to the withheld portions of the records relating to the complainant and any witness statements. Also during mediation, additional attempts were made to notify certain affected parties of the request in order to obtain their consent to disclose their personal information, but these attempts were unsuccessful.

[6] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the police, initially, and received representations in response. I then sent the Notice of Inquiry, along with a complete copy of the representations of the police, to the appellant, who also provided representations in response.

[7] This order upholds the decision of the police to deny access to the withheld portions of the records.

## **RECORDS:**

[8] The records remaining at issue consist of the withheld portions of a general occurrence report, including witness statements. The withheld portions are contained on pages 2-12, 14, 15, 17-32, 34, 40-44, 47-51 and 53.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the mandatory exemption in section 14(1) or the discretionary exemption in section 38(b) apply to the records?

## **DISCUSSION:**

### **Issue A. Do the records contain "personal information" as defined in section 2(1)?**

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[11] 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.<sup>1</sup>

[12] 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.<sup>2</sup>

[13] 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.<sup>3</sup>

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

### ***Representations***

[15] By relying on the exemption in section 38(b), the police acknowledge that certain records contain the personal information of the appellant for the purposes of the *Act*.

[16] The police also provide detailed representations in support of their position that the portions of records remaining at issue contain the personal information of other identifiable individuals as described in paragraphs 2(1)(a), (b), (c), (d), (g) and (h) of the definition set out above. Their representations review the various categories of the records remaining at issue as follows:

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

*Pages 2 to 12*

The general occurrence report contains a listing of all individuals involved in, or spoken to, during our investigation into this matter. The information recorded on pages two to twelve contain the personal information of these individuals including their name, date of birth, sex, address, telephone number and in certain cases ethnicity, driver's licence number, employment information, marital status and information indicating [whether] the individual was previously fingerprinted by this institution.

*Pages 14, 15, 17 to 32, and 53*

The personal information severed on pages 14, 15, 17 to 31, 32 (one sentence), and page 53 (two lines) contain the mixed personal information of, or provided by, the victim, individuals questioned during our investigation and an individual identified as a suspect in the early stages of the investigation [suspect #1]. The information contained in these pages includes details relating to suspect #1 who was released with no charges. The name of suspect #1 is included in these records along with other personal information such as date of birth, address and criminal history. Pages 14, 15, and 17 to 32 provide a detailed accounting of the investigation, however, the appellant was not mentioned in these pages as he was not identified as a suspect at that time.

*Page 34*

The personal information severed on page 34 is the date of birth of the individual questioned. All other information about this individual and his involvement was disclosed to the appellant.

*Pages 40 to 44 and 47 to 51*

The severed portions on pages 40 to 44 contain personal information provided by members of the public. This information was supplied, to our investigator, as a result of an appeal made to the public ....

Pages 47 to 51 contain witness statements. These statements were provided at the investigating officer's request. ... [T]he individuals who supplied [this information] did so for the purpose of aiding [the] investigation and with the expectation that the information would be held in confidence. The information was collected by [the police] for the purpose of conducting an investigation into a violation of the law.

[17] The appellant provides representations in support of his position that certain information is not personal information as defined in section 2(1) of the *Act*.

[18] The appellant begins by acknowledging that the contact information of "all or most of the parties," including specific information such as driver's licence numbers and social insurance numbers, constitutes "personal information" and can be redacted from the records.

[19] The appellant then refers to specific types of information. He submits that some of the information remaining at issue relates to individuals in their professional capacity, and that, because of section 2(2.1) of the definition, this information is not the personal information of these individuals because they were involved with the matter or gave witness statements in a business or professional capacity. He states that this information would include, but not be limited to "nurses, an employee of a named company, a security guard, and others."

[20] The appellant also submits that if the surnames of individuals were to be redacted, the actual statements made by the individuals could be disclosed.

[21] In addition, the appellant also provides representations which appear to relate more to the application of the factor in section 14(2)(h), which I address below.

### ***Findings***

[22] To begin, I find that many of the records at issue contain the personal information of the appellant. The request was for records relating to a particular incident in which he was involved, and many of the responsive records clearly contain his personal information, as they include his name along with other personal information relating to him. Furthermore, although some of the records do not include the appellant's name, I find that they relate to him as an "identifiable individual" given the nature of the information contained in those records, including general references to the incident.

[23] Some of the records, however, only relate to other identifiable individuals, and do not contain the personal information of the appellant. This includes statements made by individuals which relate exclusively to other matters or background information about other identifiable individuals, and which do not contain information about the specific incident. Applying a record-by-record analysis,<sup>5</sup> I find that pages 47, 48 and 49 contain only the personal information of identifiable individuals other than the appellant, and do not contain the appellant's personal information.

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<sup>5</sup> See Order M-352.

[24] With respect to the records that contain the personal information of the appellant, based on my review of them, I find that the withheld portions of records 2-12, 14, 15, 17-32, 34, 40-44, 50, 51 and 53 also contain the personal information of identifiable individuals other than the appellant. As indicated by the police, this information includes the names and personal identifiers of other individuals, as well as information concerning activities these other individuals are or were engaged in. Furthermore, although some of the information does not identify these other individuals by name, I am satisfied that, given the nature of the information, it is reasonable to expect that they may be identified if the information is disclosed. Accordingly, I find that the withheld information constitutes the personal information of identifiable individuals other than the appellant under paragraphs (a), (b), (c), (d) (g) and (h) of the definition in section 2(1).

[25] I have considered the appellant's position that some of the information remaining at issue relates to individuals in their professional capacity, because they were involved in this matter in a business or professional capacity. I note that, with respect to the individuals involved in this matter as security or medical staff (ie: doctors, nurses, etc.), the police have provided the appellant with the names, designations and contact information of these individuals, but have withheld other personal information relating to them. Regarding an individual who was employed by a named company, I find that this individual was not involved in this matter in a professional or business capacity, but rather in a personal capacity. As a result, I find that the disclosure of information relating to this individual would reveal something of a personal nature about him, and constitutes his personal information.

[26] Lastly, with respect to the appellant's position that the surnames of individuals could be "blacked out" and the remaining information disclosed, on my review of the portions of records remaining at issue, I find that the release of information relating to these individuals could identify them to the appellant and others familiar with this incident, even if identifying information such as their names is withheld. I also note that the police have largely disclosed to the appellant the information that relates exclusively to him, and have severed out information that belongs primarily to other identifiable individuals. I review these severances, and the possible application of section 38(b) to them, below.

[27] Because records 47-49 contain only the personal information of identifiable individuals other than the appellant, I will review the application of the mandatory exemption in section 14(1) to these records.

[28] With respect to the records that contain the personal information of the appellant and other identifiable individuals, I will consider whether the discretionary exemption in section 38(b) applies.

**B. Does the mandatory exemption in section 14(1) or the discretionary exemption in section 38(b) apply to the records?**

[29] 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.

[30] 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. Section 38(b) reads:

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

[31] 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.

[32] Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of personal privacy”. Section 14(1)(f) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[33] In both section 38(b) and 14 situations, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual’s personal privacy. Section 14(2) provides some criteria for the ministry 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.



***The presumptions in section 14(3)***

[34] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under either sections 38(b) or 14. Once a presumed unjustified invasion of personal privacy under section 14(3) is established for records which are claimed to be exempt under section 14(1), it can only be overcome if section 14(4) or the "public interest override" at section 16 applies.<sup>6</sup>

[35] With respect to records claimed to be exempt under section 38(b), in *Grant v. Cropley* [2001] O.J. 749, the Divisional Court said that the Commissioner could:

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

[36] The police take the position that the presumptions in section 14(3)(a), (b) and (h) apply in the circumstances. However, the police do not provide representations relating those presumptions to the records. The appellant does not address the application of the presumptions.

[37] The presumptions in section 14(3)(a), (b) and (h) read:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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;
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

***Section 14(3)(a)***

[38] On my review of the portions of the records remaining at issue, I find that some excerpts contain personal information which relates to an identifiable individual's

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<sup>6</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. This information relates to an identifiable individual other than the appellant. Accordingly, I find that the presumption in section 14(3)(a) applies to some small portions of the records.

[39] However, because of my finding below, it is not necessary for me to identify precisely which information fits within this presumption.

*Section 14(3)(b)*

[40] Previous orders of this office have established that even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>7</sup> In addition, the presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>8</sup>

[41] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.<sup>9</sup>

[42] Based on my review of the records at issue in this appeal, I am satisfied that all of the personal information in the records was compiled by the police in the course of their investigation of the incident involving the appellant and others. The information at issue includes the names and identifiers of individuals, observations, and statements made to the police in the process of conducting their investigation into the incident. In my view, the information in these records was compiled as part of an investigation conducted by the police into a possible violation of law, and fits within the presumption in section 14(3)(b). Accordingly, I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of identifiable individuals under section 14(3)(b) of the *Act*.

*Section 14(3)(h)*

[43] On my review of the records, and in the absence of specific representations on the application of this presumption to the records, I find that this presumption does not apply to the information in the records.

***The factors in sections 14(2)(a), (d) and (h)***

[44] The appellant provides representations regarding the application of the factors in sections 14(2)(a), (d) and (h). He also argues that he ought to have access to the

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<sup>7</sup> Orders P-242 and MO-2235

<sup>8</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>9</sup> Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

information in the interests of fairness, which I address in my discussion of the police's exercise of discretion, below.

[45] The factors in sections 14(2)(a), (d) and (h) read:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

*Section 14(2)(a)*

[46] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.<sup>10</sup>

[47] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.<sup>11</sup>

[48] In support of his position that the factor in section 14(2)(a) applies, the appellant states:

The name of [suspect #1] referred to by the institution is of significant importance because it confirms my arguments that the institution's investigation tactics and methods used, which led to the innocent man being falsely targeted and arrested without charges being laid, are faulty and need to be highly scrutinized by the public at large.

[49] The appellant also refers to his concerns about the actions of the police in conducting their investigation, and identifies that he has filed a lawsuit against the police and one of the individuals identified in the records for negligence and defamation, among other things. He also identifies that the police, in their statement of defence in the lawsuit, suggest that certain statements made by an individual were

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<sup>10</sup> Order P-1134.

<sup>11</sup> Order PO-2905.

false. It is the appellant's position that the veracity of the statements made by the individual could have been "easily adduced" by the police. He then states: "I suggest that the institution wishes to hide [its actions] from the public, far away from any scrutiny."

[50] On my review of the records and the representations of the appellant, I am not satisfied that the factor in section 14(2)(a) applies in favour of disclosing the personal information of the other identifiable individuals remaining at issue.

[51] To begin, although the appellant argues that information about suspect #1 ought to be disclosed to him so the public can "scrutinize" the actions of the police, I note that the appellant has not provided any additional evidence in support of his position that disclosure of these records is desirable for the purpose of subjecting the actions of the police to "public scrutiny." I also note that the police have identified that suspect #1 was released with no charges. I am not satisfied that the factor in section 14(2)(a) applies in favour of disclosing this individual's personal information.

[52] I have also considered the appellant's position that this factor applies to the personal information of another individual identified in the record who may have made false statements. Again, other than referring to the appellant's own lawsuit against the police, the appellant has not provided any additional evidence that the factor in section 14(2)(a) applies to this individual's personal information. I also note that general information about this other individual's actions and allegations have been disclosed. Accordingly, I find that the factor in section 14(2)(a) does not apply to the information in the records.

*Section 14(2)(d)*

[53] With respect to the factor in section 14(2)(d), the appellant refers to his lawsuit against the police. He states that through the disclosure processes under the *Rules of Civil Procedure*, the police provided him with the same redacted records that are at issue in this appeal. The appellant therefore appears to suggest that he requires further disclosure of the records for the purpose of pursuing his lawsuit, indirectly raising the issue of the application of section 14(2)(d). The appellant also questions the tactics used by the police in his lawsuit against them, and argues that these actions may affect his claim in the lawsuit. As a result, he suggests that he ought to have access to the information in the interest of fairness.

[54] For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

(2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

(3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>12</sup>

[55] Based on the appellant's representations, I am satisfied that the requirements set out above have been established for some of the records. The right in question is a legal right, and is related to the existing proceeding referred to by the appellant. I also find that some of the personal information the appellant is seeking has some bearing on the determination of the right (particularly, the specific information about the allegations made by the complainant).

[56] With respect to the fourth requirement, although the appellant indicates his belief that the information would be "illuminating" to a judge dealing with the pending litigation, I must determine whether the personal information is "required in order to prepare for the proceeding or to ensure an impartial hearing." The appellant has provided little evidence in support of his position. He has provided me with the Statement of Defence filed in the lawsuit, but not the Statement of Claim nor any other formal documentation relating to this matter. In addition, although the appellant states that he has only been provided with a redacted copy of the records in the proceedings, he has not provided any evidence of whether he sought access to the other information through the disclosure provisions in the *Code of Civil Procedure*.

[57] Based on the information contained in the Statement of Defence provided to me, I accept that some of the personal information (particularly that relating to the allegations made by the complainant) is required in order to prepare for the proceeding or to ensure an impartial hearing. However, in my view, the existence of disclosure processes available to parties in the court context reduces the weight accorded the section 14(2)(d) factor in these circumstances.<sup>13</sup>

#### *Section 14(2)(h)*

[58] With respect to the appellant's representations on the factor in section 14(2)(h), this is a factor favouring non-disclosure. Based on my decision below, it is not necessary for me to review the possible application of this factor in the circumstances.

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<sup>12</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

<sup>13</sup> See Order PO-1715.

## ***Findings***

[59] I have found that the presumption in section 14(3)(b) applies to all of the information contained in the records, and that the presumption in section 14(3)(a) applies to certain portions of information. I have also found that the factor in section 14(2)(d) applies in favour of disclosure of some of the personal information contained in the records, but that it has reduced weight. I have not found that any other factors favouring disclosure apply.

[60] In light of these determinations, I make the following findings regarding the records or portions of records remaining at issue:

***Pages 2 to 12:*** As identified by the police, these pages of the general occurrence report contain a listing of all individuals involved in, or spoken to, during the investigation into this matter. The appellant was provided with the general information relating to the offence, his own personal information and the personal information of an individual who consented to disclosure, the name, designation and contact information of individuals involved in this matter in a business or professional capacity, very general information about the other individuals involved, and general information about related businesses. The withheld information is the personal information of other identifiable individuals, and I am satisfied that the presumption in section 14(3)(b) applies to it, and that there are no factors under section 14(2) favouring disclosure. As a result, I find that these records qualify for exemption under section 38(b) of the *Act*.

***Page 34:*** The personal information severed from this page is the date of birth of an individual, and I find that it qualifies for exemption under section 38(b).

***Pages 40-44:*** Portions of some of these pages of records were disclosed; however, the identifiers and statements made by members of the public were not disclosed. The severed portions of the records on pages 40 to 44 contain information provided by members of the public to the police as a result of an appeal made to the public for specific information regarding themselves and the appellant. The withheld portions of the records contain the specific statements made by the individuals who contacted the police. I am satisfied that the presumption in section 14(3)(b) applies to the withheld information on these pages, and that there are no factors favouring disclosure. As a result, I find that these records qualify for exemption under section 38(b) of the *Act*.

***Pages 47-49:*** These pages contain only the personal information of identifiable individuals other than the appellant. Because the presumption

in section 14(3)(b) applies to this information, these pages qualify for exemption under section 14(1).<sup>14</sup>

**Pages 22-27 and portions of pages 17, 20-21, 29-32 and 55 (one sentence):** These pages or portions of pages relate predominantly to a named individual other than the appellant (suspect #1). As indicated by the police, this individual was identified as a suspect in the early stages of the investigation; however, he was subsequently released with no charges. I have found that some small portions of these pages relate to the appellant, as they generally refer to some of the allegations made about the incident (which are also found in other parts of the records).

I am satisfied that the presumption in section 14(3)(b) applies to the withheld information on these pages. I have found that the factor in section 14(2)(a) does not apply to this information. With respect to the factor in section 14(2)(d), I find that this factor has little weight for the information severed from these records. As a result, I find that these records qualify for exemption under section 38(b) of the *Act*.

**Pages 18 and 19 and portions of pages 14-15, 17-20, 28, 29, 30, 40 and 41:** These pages or portions of pages contain statements made by the complainant to the police, observations made by the police about the complainant, or other information about the complainant. The complainant's name has been disclosed to the appellant.

I am satisfied that the presumption in section 14(3)(b) applies to the withheld information on these pages, as the information was compiled as part of an investigation into a possible violation of law. I am also satisfied that the factor in section 14(2)(d) applies to this information; however, as I stated above, the existence of disclosure processes available to parties in the context of the appellant's legal action reduces the weight accorded this factor in these circumstances. As a result, on balance, I find that these records qualify for exemption under section 38(b) of the *Act*.

**Pages 50 and 51:** These pages contain statements about the incident made by identifiable individuals other than the complainant.

I am satisfied that the presumption in section 14(3)(b) applies to these pages, as the information was compiled as part of an investigation into a possible violation of law. I am also satisfied that the factor in section 14(2)(d) applies to them; however, as I stated above, the existence of disclosure processes available to parties in the court context reduces the

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<sup>14</sup> See *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

weight accorded this factor in these circumstances. As a result, I find that these two pages qualify for exemption under section 38(b) of the *Act*.

[61] In summary, I find that records 47, 48 and 49 qualify for exemption under section 14(1), and that the other withheld records or portions of records qualify for exemption under section 38(b), subject to my review of the absurd result principle and the police' exercise of discretion, below.

### **Absurd result**

[62] This office has applied the "absurd result" principle in situations where the basis for a finding that information qualifies for exemption would be absurd and inconsistent with the purpose of the exemption.

[63] Senior Adjudicator John Higgins first applied the absurd result principle in Order M-444 where, after finding that the disclosure of identified information would, according to the legislation, be a presumed unjustified invasion of privacy, he went on to state:

However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

[64] Numerous subsequent orders have supported this position and include similar findings. The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement;<sup>15</sup>
- the requester was present when the information was provided to the institution;<sup>16</sup> and
- the information is clearly within the requester's knowledge.<sup>17</sup>

[65] However, previous orders have also established that 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.<sup>18</sup>

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<sup>15</sup> Orders M-444, M-451, M-613.

<sup>16</sup> Order P-1414.

<sup>17</sup> Orders MO-1196, PO-1679, MO- 1755.



[66] The appellant argues that the information in the records ought to be disclosed to him because "Any and all 'sensitive information' has already been divulged through the public documents (Statement of Claim and Defence) as well as the complainant's name and address."

[67] The appellant has only provided me with a copy of the Statement of Defence. In addition, I note that the complainant's name has been disclosed to the appellant by the police.

[68] The information at issue in this appeal contains the personal information of the appellant and the affected parties. I have found that it qualifies for exemption under section 38(b) *Act*. Although I accept that some sensitive information about the complainant has been made public through the filing of court documents, in the absence of additional evidence about what information was contained in the other pleadings in the action, and in light of the nature of the withheld information, I find that the absurd result does not apply to this information.

[69] With respect to the other information contained in the records, in the circumstances of this appeal, I find that the principle of "absurd result" is also not applicable, as I am not satisfied that these portions of records contain information of which the appellant is clearly aware.

[70] Consequently, I find that the absurd result principle does not apply in the circumstances of this appeal.

### ***Exercise of Discretion***

[71] 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.<sup>19</sup>

[72] In their representations, the police acknowledge that the records contain both the personal information of the appellant and the affected parties. The police state that they disclosed certain information to the appellant, and withheld the personal information of identifiable individuals. They also take the position that a "fair balance" was established by them in their decision to disclose certain portions of the records and withhold other portions. They state:

[The police] contacted eleven individuals in an attempt to obtain consent for the release of their personal information contained in these records.

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<sup>18</sup> Orders M-757, MO-1323, MO-1378.

<sup>19</sup> Orders PO-2129-F and MO-1629.

Seven individuals did not respond to my request and four responded. Of the four responses received, three did not consent to the release of their personal information,

[The police] carefully balanced the appellant's need for access to his own personal information with the privacy rights of other individuals mentioned in the records. Disclosure of the records was complicated by the fact that suspect #1 was the focus of this investigation until [an identified date], when the appellant was identified as a suspect. At that point the investigation had been ongoing for two days and 18 pages of the record were dedicated to the investigation surrounding suspect #1.

[73] The appellant does not directly address this issue, but does identify that, given the circumstances surrounding this request, he ought to have access to the records in the interest of fairness.

[74] I have reviewed the circumstances of this appeal and the records at issue. I note that the police reviewed each page of the records at issue, and provided the appellant with those portions of the records relating exclusively to him, in some instances severing some portions of the records line-by-line. With respect to the remaining information, I have found that disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties, and that it qualifies for exemption under section 38(b). Based on the nature of the information remaining at issue, and on the police's representations, I am satisfied that the police have not erred in the exercise of their discretion not to disclose to the appellant the remaining information contained in the records.

**ORDER:**

I uphold the decision of the police to deny access to the information remaining at issue, and dismiss this appeal.

Original Signed By: \_\_\_\_\_  
Frank DeVries  
Adjudicator

September 11, 2013 \_\_\_\_\_