

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2980

Appeal MA12-128

Toronto Police Services Board

November 15, 2013

Summary: The appellant submitted an access request to the Toronto Police Services Board under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to an incident in which she was attacked by a pit bull dog. She wishes to bring a civil action against the dog owner but does not know his name. The police granted her partial access to the records but denied access to the personal information of the dog owner, another possible dog owner and a witness to the attack under the discretionary exemption in section 38(b) (personal privacy) of the *Act*.

In this order, the adjudicator finds that some information in the records, such as information about the dog, Toronto Animal Services' file number, and a shelter location, cannot qualify for exemption under section 38(b) because it is not "personal information." In addition, he finds that disclosing the dog owner's name to the appellant would not constitute an unjustified invasion of the dog owner's personal privacy under section 38(b). However, he finds that the dog owner's remaining personal information and the personal information of the other possible dog owner and the witness qualify for exemption under section 38(b). Finally, he finds that the public interest override in section 16 does not apply to the records.

He orders the police to disclose the dog owner's name, information about the dog, Toronto Animal Services' file number, and a shelter location to the appellant. However, he upholds the police's decision to withhold the remaining personal information of the dog owner and the personal information of the other possible dog owner and the witness.

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(2)(b), 14(2)(d), 14(2)(f), 14(2)(h), 14(3)(b), 16, and 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16, as amended.

Orders Considered: Order MO-2954.

OVERVIEW:

[1] On the morning of December 18, 2011, the appellant was walking to work when a pit bull dog suddenly knocked her down from behind and bit her. Two police officers in their patrol car came across the appellant, who was lying injured on the ground, and called an ambulance, which transported her to hospital for treatment.

[2] The police officers spoke to a witness who saw the attack and found the dog, which was in an individual's van in a parking lot. They called Toronto Animal Services which came to the parking lot, seized the dog and brought it to a shelter, where it was quarantined and later euthanized. The police did not lay criminal charges against the dog owner.

[3] The appellant wishes to bring a civil action against the dog owner but does not know his name. Consequently, she submitted an access request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the records relating to the dog attack. In response, the police located an occurrence report and the notebook entries of the two officers who investigated the incident. They sent the appellant a decision letter and provided her with partial access to these records.

[4] The records contain information relating to the appellant and three other individuals: the dog owner, a witness to the attack, and another individual (who may also be an owner of the dog). The police denied access to the information of these three other individuals under the discretionary exemption in section 38(b) (personal privacy) and also cited section 14(1)(f) and the presumption in 14(3)(b) of the *Act*. In addition, they refused access to a police code in one officer's notes under the discretionary exemption in section 38(a), read in conjunction with section 8(1)(l) (law enforcement). Some information was also withheld because the police identified it as not responsive to the appellant's request.

[5] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). During the mediation stage of the appeal process, the appellant stated that she was not interested in pursuing access to any police codes. Accordingly, the discretionary exemption in section 38(a), read in conjunction with section 8(1)(l), is no longer at issue. The appellant further stated that she was not interested in the information that the police identified as not responsive to her request, and this information is, therefore, also not at issue. However, she is continuing to

pursue access to the remaining information in the records that has been withheld by the police, particularly the dog owner's name.

[6] The mediator contacted both the dog owner and the witness but neither party consented to the disclosure of the information about them to the appellant. She was not able to locate any contact information for the other possible dog owner named in the records.

[7] This appeal was not resolved during mediation and has been moved to adjudication for an inquiry. The adjudicator initially assigned to this appeal invited the police, the appellant and two affected persons (the dog owner and the witness) to submit representations on the issues in this appeal. She received representations from the police and the appellant but not the affected persons.

[8] In her representations, the appellant argued that the public interest override in section 16 of the *Act* applies to the records. Consequently, if the records are otherwise exempt, it must be determined whether there is a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption.

[9] This appeal was then transferred to me to complete the adjudication process. I sent a supplementary notice of inquiry to the police and the dog owner and invited them to comment on the impact of a recent order that revisits the IPC's approach to the discretionary personal privacy exemption in section 38(b) of the *Act*.¹ In particular, I indicated that if I was to adopt the same approach in this appeal, it is possible that I could find that disclosing other individuals' personal information to the appellant does not constitute an unjustified invasion of their personal privacy under section 38(b). Consequently, their personal information might be ordered disclosed to the appellant. I received supplementary representations from the police but not the dog owner.

[10] I note that the police do not characterize the individual who had the dog with him when it attacked the appellant as the "dog owner." Instead, their representations refer to another individual as the "dog owner." However, they have withheld the parts of the records that explain the relationship between the individual who had the dog with him and the other individual.

[11] The *Dog Owners' Liability Act (DOLA)*² is not specifically cited by any of the parties, but this strict liability statute makes a dog owner liable for damages resulting from a bite or attack by his or her dog on another person or domestic animal³, and gives the victim the right to bring civil proceedings against the owner in the Ontario

¹ Order MO-2954.

² R.S.O. 1990, c. D.16, as amended.

³ S. 2(1).

Court of Justice.⁴ The *DOLA* defines the term, "owner", when used in relation to a dog, as including a person who possesses or harbours the dog.⁵ In addition, where there is more than one owner of a dog, they are jointly and severally liable for damages resulting from a bite or attack by the dog.⁶

[12] It is not my role to determine which individual or individuals qualify as an "owner" of the dog under the *DOLA*. This is an issue that will be resolved in any civil proceedings brought by the appellant. However, for the purposes of this order, I will refer to the individual who had the dog with him when it attacked the appellant as the "dog owner" and to the other individual as the "other possible dog owner."

RECORDS:

[13] The information at issue in this appeal is found in those parts of the occurrence report and officers' notes that were withheld by the police.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold their exercise of discretion?
- D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

DISCUSSION:

PERSONAL PRIVACY

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

[14] The discretionary personal privacy exemption in section 38(b) of the *Act* only applies to "personal information." Consequently, it must first be determined whether

⁴ S. 4(1)

⁵ S. 1(1).

⁶ S. 2(2).

the occurrence report and the officers' notes contain "personal information." 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;

[15] 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

⁷ Order 11.

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

[17] The police cite paragraph (d) of the definition of "personal information" in section 2(1) and submit that the records include the names, addresses and phone numbers of the dog owner and another individual. The appellant states that the records contain the personal information of various individuals, including "the owner of the dog which committed the violent assault on [the appellant] and caused her injuries."

[18] The occurrence report and the officers' notes contain information relating to four individuals: the appellant, the dog owner, the other possible dog owner, and the witness. The information about the appellant, the dog owner and the witness includes their names, birth dates/ages, sexes, home addresses, home telephone numbers and other information. I find that all of 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).

[19] The information relating to the other possible dog owner includes his name, birth date and other information about him (but not his address or phone number). I find that this information qualifies as his personal information under paragraphs (a), (b) and (h) of the definition of this term in section 2(1).

[20] The occurrence report and the officers' notes also include information about the dog, Toronto Animal Services' file number, and a shelter location. The term "personal information" in section 2(1) of the *Act* only applies to a natural person. A dog is not a person and any information about it in the records cannot, therefore, qualify as its personal information.

[21] In addition, Toronto Animal Services' file number and the shelter location is not personal information. With respect to the file number, there may be information within the file that qualifies as personal information, such as the dog owner's name and address, but the file number itself does not qualify as "personal information," as that term is defined in section 2(1).

[22] Given that the information about the dog, Toronto Animal Services' file number, and the shelter location are not "personal information," it cannot be withheld under the discretionary personal privacy exemption in section 38(b). The police have not claimed any other exemptions for this information, and I find that it must therefore be disclosed to the appellant.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[23] With respect to the personal information in the records, the police have withheld the parts of the records that contain the personal information of the dog owner, the other possible dog owner, and the witness. Consequently, I will now determine whether this withheld personal information qualifies for exemption under section 38(b) of the *Act*.

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

[24] 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.

[25] 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.⁹

[26] In other words, under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[27] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (f) applies.

[28] In the circumstances of this appeal, both the occurrence report and the officers' notes contain the personal information of both the requester (the appellant) and other individuals. Consequently, the discretionary exemption at section 38(b), not the mandatory exemption at section 14(1), is at issue. In particular, it must be determined whether disclosing the personal information of the dog owner, the other possible dog owner and the witness to the appellant would constitute an unjustified invasion of their personal privacy under section 38(b).

⁹ Order M-352.

[29] 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).

[30] Neither the police nor the appellant submit that paragraphs (a) to (e) of section 14(1) or the circumstances in section 14(4) apply to the withheld personal information in the records at issue. I find that none of those provisions are applicable in the circumstances of this appeal.

[31] In previous orders, the IPC determined, based on the decision in *John Doe v. Ontario (Information and Privacy Commissioner)*¹⁰, that once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. Although *John Doe* concerned the application of the mandatory exemption at section 14(1) of the *Act*, the IPC has applied the reasoning to both section 14(1) and section 38(b) claims. Thus, where a presumption was established, the information was found to be exempt from disclosure, whether under section 14(1) or section 38(b), without regard to whether there may have been factors in section 14(2) favouring disclosure.

[32] For the reasons set out in Order MO-2954, Adjudicator Laurel Cropley revisited this approach. She found that in determining whether the disclosure of the personal information in the record at issue in that appeal would constitute an unjustified invasion of personal privacy under section 38(b) of the *Act*, she was not bound by the decision in *John Doe*, which addressed only the application of section 14. As a result, she considered and weighed the factors and presumptions in sections 14(2) and (3), and balanced the interests of the parties in determining whether the disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy under section 38(b).

¹⁰ (1993), 13 O.R. (3d) 767 (Div. Ct.).

[33] I agree with Adjudicator Cropley's approach and adopt it for the purposes of this appeal. In determining whether the disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy pursuant to section 38(b), I will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.

[34] I note that the appellant focuses her submissions on whether the dog owner's name should be disclosed. However, she indicated at the conclusion of mediation that she was pursuing all of the withheld information in the records. Consequently, all of the withheld personal information of the dog owner, the other possible dog owner and the witness is at issue.

Section 14(3)

[35] The police claim that the section 14(3)(b) presumption applies to the withheld personal information in the occurrence report and officers' notes. This provision states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[36] 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.¹¹

[37] The police claim that the section 14(3)(b) presumption applies to the withheld personal information in the records and submit that the fact charges were not laid against the dog owner "does not negate the applicability of this section as it only requires that there be an investigation into a possible violation of law."

[38] The appellant does not address whether the section 14(3)(b) presumption applies to the withheld personal information.

[39] I am satisfied that the withheld personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*. Although no criminal charges were filed against the dog owner, I agree with the police that this does not negate the application of the presumption.

¹¹ Orders P-242 and MO-2235.

[40] Consequently, I find that the withheld personal information in the occurrence report and the officers' notes falls within the section 14(3)(b) presumption and its disclosure to the appellant is presumed to constitute an unjustified invasion of the personal privacy of the dog owner, the other possible dog owner and the witness. In my view, this presumption should be given considerable weight in determining whether disclosing these individuals' personal information to the appellant would constitute an unjustified invasion of their personal privacy under section 38(b).

Section 14(2)

[41] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.¹² This provision states:

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;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;

¹² Order P-239.

- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[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.¹³

[43] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹⁴

14(2)(d): fair determination of rights

[44] I will start my analysis of the section 14(2) factors by examining section 14(2)(d), which has particular relevance in the circumstances of this appeal.

[45] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(d) requires the police to consider whether the personal information is relevant to a fair determination of rights affecting the person who made the request. If this factor is found to apply, it would weigh in favour of disclosing the personal information.

[46] The appellant submits that the dog owner's name is relevant to a fair determination of her rights:

[D]isclosing the name of the owner or controller of the dog responsible for the attack would assist the victim of the attack to seek appropriate civil remedies to compensate for her severe injuries sustained in the attack. Without the disclosure of this information, it would be impossible . . . to discover the identity of the specific individuals from whom redress should be sought, and ultimately, to obtain fair and just compensation for her injuries from the person(s) responsible.

[47] The police suggest that even if section 14(2)(d) applies, it must be balanced against other individuals' privacy rights:

It might be argued from the appellant's perspective that disclosure of the third party information might be "relevant to a fair determination of . . . rights. The Commissioner's orders 12 and P-224 state that, "Although

¹³ Order PO-2265.

¹⁴ Order P-99.

release of a person's name and address may be relevant to a fair determination of another's rights, disclosure must be balanced against the protection of the privacy rights of individuals."

[48] The IPC has found that 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.¹⁵

[49] The appellant submits that this four-part test established for section 14(2)(d) has been met:

[I]t is clear that the appellant is seeking the information in order to pursue a legal right drawn from the common and statute concepts, in a contemplated proceeding, and that the information has direct bearing and significance to the determination of that right and is in fact required in order to prepare for the proceeding.

[50] The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part for section 14(2)(d) is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);

¹⁵ 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.).

- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;
- (3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and
- (4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

[51] I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

[52] The IPC has found in previous orders that the existence of disclosure processes available to parties under the *Rules of Civil Procedure*¹⁶ reduces the weight that should be given to the section 14(2)(d) factor.¹⁷ In particular, the appellant could commence a civil action against the dog owner as an unnamed defendant, by use of a pseudonym, and then use the *Rules of Civil Procedure* to obtain the dog owner's name and address from the police or another body that holds that information.¹⁸

[53] In addition, the police submit that there are other possible methods of accessing the information the appellant is seeking:

In an effort to assist the appellant, the [police have] sought out other means that may assist [her] in obtaining the information she seeks. Pursuant to consultation with the Legal Services Unit . . . we were advised that in cases where no charges have been laid but a victim has been identified, information could possibly be released, via their unit using a section under the *Police Services Act*, on a case-by-case scenario. We would encourage the appellant to follow up with this Unit to obtain the requested information. Failing this method, the appellant may wish to contact the local health department or by-law enforcement agency.

[54] In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

¹⁶ R.R.O. 1990, Reg. 194.

¹⁷ Orders MO-2943 and PO-1715.

¹⁸ Orders PO-1728 and M-1146.

[55] However, I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

[56] In my view, however, there is insufficient evidence before me to find that disclosing the dog owner's remaining personal information or the personal information of the other possible dog owner and the witness is relevant to a fair determination of the appellant's rights. Consequently, I find that section 14(2)(d) does not weigh in favour of disclosing this personal information to her.

14(2)(b): public health and safety

[57] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(b) requires the police to consider whether access to the personal information may promote public health and safety. If this factor is found to apply, it would weigh in favour of disclosing the personal information.

[58] The police's representations do not address whether section 14(2)(b) is relevant in the circumstances of this appeal.

[59] The appellant submits that providing access to the dog owner's name may promote public health and safety:

[D]isclosing the name or controller of the dog responsible for the vicious attack would assist the appellant (and others who may follow in similar circumstances) to seek the appropriate remedies to compensate for her severe injuries sustained in the attack, and to help her return to physical and psychological health. Further, such disclosure is necessary in the broader interests of making the public at large aware of the responsibilities and obligations in maintaining safe and proper control of their animals, so that such attacks are prevented in the future.

[60] One of the underlying purposes of the civil liability provisions in the *DOLA* is to promote public safety by ensuring that dog owners are held accountable if their dog bites or attacks another person. Moreover, the *DOLA* gives the court the discretion to order “that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety.”¹⁹

[61] I find, therefore, that disclosing the dog owner’s name to the appellant in this particular case may promote public safety under section 14(2)(b), because it may lead to civil proceedings and a possible court order with public safety ramifications. Consequently, this factor weighs in favour of disclosing the dog owner’s name to her and I would give moderate weight to it.

[62] In my view, there is insufficient evidence before me to find that disclosing the dog owner’s remaining personal information or the personal information of the other possible dog owner and the witness may promote public safety. Consequently, I find that section 14(2)(b) does not weigh in favour of disclosing this personal information to the appellant.

14(2)(f): highly sensitive

[63] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether the personal information is highly sensitive. If this factor is found to apply, it would weigh in favour of withholding the personal information.

[64] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁰

[65] In their representations, the police do not specifically cite section 14(2)(f) but make submissions that amount to an argument that an individual’s name and address are highly sensitive. In particular, they cite Order MO-2954, in which Adjudicator Cropley quoted the following passages from one of her earlier orders that addressed the privacy concerns relating to address information:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

¹⁹ S. 4(3)(b).

²⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the *Act*.

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.²¹

[66] In my view, whether an individual's name and address is highly sensitive depends on the context and should be assessed on a case-by-case basis. An individual's name and address is not always sensitive information. For example, the names and addresses of most individuals appear in publically accessible telephone or online 411 directories and are clearly not highly sensitive in that context.

[67] However, the names and addresses of individuals have greater sensitivity when this information is collected by the state or agencies of the state such as the police. For example, if the police interview a witness who saw a murder and can identify the suspect, the witness's name and address would clearly be highly sensitive. In other cases, however, a witness' name and address may be sensitive, but not necessarily highly sensitive.

[68] In the particular circumstances of this appeal, the police concluded that the dog attack was a matter that should be addressed in a civil law context, not a criminal context. In my view, this reduces the sensitivity of the personal information in these particular police records.

[69] I find that the personal information of the dog owner, the other possible dog owner and the witness is sensitive but not highly sensitive. I note that both the dog owner and the witness were given an opportunity to submit representations but neither chose to do so and express whether disclosure would cause them significant personal distress. In my view, although disclosing these individuals' personal information might cause them personal distress, I am not persuaded that doing so would cause them significant personal distress.

²¹ Order M-1146.

[70] In short, I find that section 14(2)(f) does not apply to the personal information of the dog owner, the other possible dog owner and the witness, and this factor is therefore not relevant in determining whether disclosing their personal information would constitute an unjustified invasion of their personal privacy.

Unlisted factor favouring disclosure

[71] In Order MO-2954, Adjudicator Cropley stated that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. She found that this is an unlisted factor favouring disclosure and gave significant weight to this unlisted factor.

[72] The facts in the appeal before me are different than those before Adjudicator Cropley in Order MO-2954, but the same general principle applies. The appellant was knocked down and bitten by a pit bull dog on a public street. In my view, the police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries.

[73] In the particular circumstances of this appeal, I give significant weight to this unlisted factor but only with respect to the dog owner's name. In my view, there is insufficient evidence before me to find that this unlisted factor would apply to the dog owner's other personal information or the personal information of the other possible dog owner and the witness.

Conclusion

[74] As noted above, in determining whether disclosing the personal information of the dog owner, the other possible dog owner and the witness to the appellant would constitute an unjustified invasion of their personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.

[75] In my analysis, I have found the following:

- The withheld personal information of these individuals falls within the section 14(3)(b) presumption and its disclosure to the appellant is presumed to constitute an unjustified invasion of their personal privacy. This presumption should be given considerable weight.
- Disclosing the dog owner's name in this particular case is relevant to a fair determination of the appellant's rights under section 14(2)(d). This factor weighs in favour of disclosure and should be given considerable weight.

- Disclosing the dog owner's name in this particular case may promote public safety under section 14(2)(b). This factor weighs in favour of disclosure and should be given moderate weight.
- There is insufficient evidence to find that disclosing the dog owner's remaining personal information or the personal information of the other possible dog owner and the witness is relevant to a fair determination of the appellant's rights under section 14(2)(d) or may promote public safety under section 14(2)(b).
- The personal information of the dog owner, the other possible dog owner and the witness is sensitive but not highly sensitive, as required by the factor weighing against disclosure in section 14(2)(h). Consequently, this factor is not applicable.
- An unlisted factor in section 14(2) is that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. The police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries. This unlisted factor, which weighs in favour of disclosure, should be given considerable weight but only with respect to the dog owner's name.

[76] I have considered and weighed the factors and presumptions in sections 14(2) and (3). Although the section 14(3) presumption applies to the dog owner's name, I find that it is outweighed by the public safety factor in section 14(2)(b), the fair determination of rights factor in section 14(2)(d), and the unlisted factor established in Order MO-2954 that the *Act* should not be used in a way that prevents individuals from exercising their legal rights.

[77] In balancing the interests of the appellant and the affected persons, the police submit that the balance is "tipped heavily" toward protecting the privacy of the affected persons, including the owner of the dog that attacked the appellant. They state:

The mandate, and indeed, spirit of the *Act* is the balance of privacy protection with the public's right to know. This institution scrupulously weighs these factors in each and every access request file. As the majority of our records contain sensitive information, we must balance the access interests of the requester with the privacy rights of other individuals. . . . Despite a lack of response from the third parties, this does not lead to the abdication of their personal privacy rights. Without a valid, substantiated reason to violate personal privacy, the institution has erred on the side of protecting the rights of the third parties. [emphasis in original]

[78] Given the statutory importance provided to the protection of personal information gathered in the course of law enforcement, I appreciate the police's concern about the release of such information. On the other hand, the police have also indicated that the appellant may be able to obtain the information she seeks through other means, suggesting that the protection of the identity of the dog owner in these circumstances is not given absolute importance.

[79] In this case, in balancing the access rights of the appellant and the privacy rights of the dog owner, I find that considerably more weight should be given to the appellant's access rights in aid of pursuing accountability and responsibility for the dog attack, over the dog owner's privacy rights, as least with respect to his name. Consequently, after considering and weighing the factors and presumptions in sections 14(2) and (3), and balancing the interests of the parties, I have concluded that disclosing the dog owner's name to the appellant would not constitute an unjustified invasion of his personal privacy under section 38(b). Although I accept that the dog owner has privacy rights, and that disclosing his name will in some measure be an invasion of his personal privacy, I am satisfied that it is not an unjustified invasion of his personal privacy. I will, therefore, order the police to disclose the dog owner's name to the appellant.

[80] However, this does not mean that the appellant is entitled to access the dog owner's remaining personal information or the personal information of the other two affected persons. I have found that the section 14(3)(b) presumption applies to the dog owner's remaining personal information (address, phone number, birth date, etc.) and the personal information of the other possible dog owner and the witness. There are no factors in section 14(2) that weigh in favour of disclosing this personal information to the appellant in this particular appeal. Moreover, in balancing the interests of the parties, I am not convinced that the appellant's access rights outweigh the privacy rights of these individuals with respect this remaining personal information in the records.

[81] Consequently, subject to my assessment below as to whether the police exercised their discretion properly, I find that the remaining personal information in the records qualifies for exemption under section 38(b), because its disclosure to the appellant would constitute an unjustified invasion of the personal privacy of the dog owner, the other possible dog owner and the witness.

EXERCISE OF DISCRETION

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

[82] I have found that the dog owner's name does not qualify for exemption under section 38(b) and must be disclosed to the appellant. However, I have also found that the dog owner's remaining personal information and the personal information of the other possible dog owner and the witness is exempt under section 38(b).

[83] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. However, the section 38(b) exemption is discretionary, and permits police to disclose this remaining personal information, despite the fact that it could withhold it.

[84] 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.

[85] In either case the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²² The IPC may not, however, substitute its own discretion for that of the institution.²³

[86] Consequently, I must determine whether the police exercised their discretion in applying section 38(b) to the dog owner's remaining personal information and the personal information of the other possible dog owner and the witness, and, if so, whether they did so in a proper manner.

[87] The police submit that in withholding this personal information under section 38(b), they did not exercise their discretion in bad faith or for an improper purpose, took into account all relevant factors, and did not consider any irrelevant factors. They submit that they erred on the side of protecting the privacy rights of these three affected persons.

²² Order MO-1573.

²³ Section 43(2).

[88] The appellant does not directly address whether the police exercised their discretion properly in applying section 38(b) to the withheld personal information of the affected persons but submit that a relevant factor is that she has a sympathetic and compelling need for the information.

[89] I am satisfied that the police weighed the interests in disclosure and non-disclosure and exercised their discretion to withhold the dog owner's remaining personal information and the personal information of the other possible dog owner and the witness. I am not persuaded that they failed to take relevant factors into account or that they considered irrelevant factors in withholding those parts of the occurrence report and officers' notes. I find, therefore, that they exercised their discretion under section 38(b) and did so in a proper manner.

PUBLIC INTEREST OVERRIDE

D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

[90] The appellant submits that the public interest override in section 16 of the *Act* applies to the records. 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.

[91] 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.

[92] The discretionary exemption in section 38(b) of the *Act* is not listed as one of the exemptions that can be overridden by section 16. However, the IPC has found that if an institution has properly exercised its discretion under section 38(b) of the *Act*, relying on the application of sections 14(2) and/or (3), an appellant should be able to raise the application of section 16.²⁴

[93] The appellant submits that disclosure of the records would assist her in seeking the appropriate and proper civil remedies for the injuries she suffered in the dog attack and claims that this is a matter "which is clearly and obviously in the public interest."

[94] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.²⁵ The word

²⁴ Order P-541.

²⁵ Orders P-984, PO-2607.

"compelling" has been defined in previous orders as "rousing strong interest or attention".²⁶

[95] A public interest does not exist where the interests being advanced are essentially private in nature.²⁷ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²⁸

[96] In my view, the appellant has not established that there is a compelling public interest in disclosure of the particular records at issue in this appeal. I am not convinced that there is a strong relationship between these records and the *Act's* central purpose of shedding light on the operations of government. In addition, I find that the appellant has a private, not a public interest in obtaining the records at issue, and disclosing these particular records would not raise issues of more general application.

[97] In short, I find that although the appellant may have a compelling private interest in seeking access to some of the information in the records at issue, there is no compelling public interest in the disclosure of these records, as required by section 16. Consequently, I find that the public interest override in section 16 does not apply to these records.

ORDER:

1. I order the police to disclose the following information in the records to the appellant:
 - (a) the name of the dog owner (i.e., the name of the individual who had the dog with him when it attacked the appellant);
 - (b) information about the dog; and
 - (c) Toronto Animal Services' file number and the shelter location.
2. I uphold the police's decision to withhold the other personal information in the records under section 38(b), including:
 - (a) the remaining personal information of the dog owner;
 - (b) the personal information of the other possible dog owner; and

²⁶ Order P-984.

²⁷ Orders P-12, P-347 and P-1439.

²⁸ Order MO-1564.

- (c) the personal information of the witness.
3. I order the police to disclose a new severed version of the records to the appellant on **December 13, 2013** but not before that date. I have enclosed a copy of the records with this order and have highlighted in green the parts that must be withheld from the appellant. To be clear, the non-highlighted parts of these records must be disclosed to her.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ November 15, 2013