Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3052

Appeals MA12-20 and MA12-407

Windsor Police Services Board

May 23, 2014

Summary: This order relates to access requests submitted by an individual under the *Act*, seeking police records related to the theft of his laptop computer in 2008. The records identified by the police as responsive were withheld, in part, under sections 38(a) (discretion to refuse requester's personal information), along with section 9(1)(d) (relations with other governments), as well as section 38(b) (unjustified invasion of personal privacy), together with the presumption in section 14(3)(b) (investigation into possible violation of law). The appellant appealed the access decision, raising many issues and concerns, including with the adequacy of the searches conducted. In this order, the preliminary matters raised by the appellant are dismissed. The adjudicator partly upholds the access decision of the police, and orders the appellant's personal information disclosed to him. The adjudicator also finds that the public interest override does not apply and that the police conducted a reasonable search.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) definition of personal information, 4(2), 8(1)(i), 9(1)(d), 14(1), 14(3)(b), 16, 17, 23(1), 23(2), 30(2), 30(3), 36(2), 38(a) and 38(b).

OVERVIEW:

[1] This order addresses the issues raised in two appeals, initiated by the same appellant, respecting decisions of the Windsor Police Services Board (the police). I conducted a joint inquiry into the two appeals under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] In the first part of this order, I provide my reasons for dismissing the preliminary issues raised by the appellant, or explaining why they will not be reviewed further. Next, I find that most of the withheld information is exempt, pursuant to section 38(b), with the exception of the appellant's personal information on one page. I also find that section 38(a), together with section 9(1)(d), does not apply to the appellant's personal information, and I order it disclosed, with minor severances to the page under section 8(1)(i), as described in that section. I find that the public interest override in section 16 does not apply to override the exemptions in this appeal. Finally, I uphold the police's search for responsive records.

Appeal MA12-20

[3] The first request submitted to the police was for records related to the suspected theft of the appellant's laptop computer from his home in March 2008. The appellant indicated in the request that he had "called 911 twice and then called Windsor Police." He was specifically interested in "copies of … both 911 calls saved on disc(s)" because they were required for "court proceedings." To assist in the identification of records, the appellant provided the occurrence number for the reported theft. The appellant sought a waiver of the applicable fee on the basis of financial hardship.

[4] The police located two records and issued a decision granting access to the records, in their entirety. To accommodate the appellant's receipt of the records, the police sent "unedited" copies of the records to Ottawa Police Service headquarters because the appellant had moved to that city by the time of the request. The police granted a fee waiver for access to the records.

[5] The appellant then asked to be able to examine the records onsite at the Ottawa Police Services headquarters, as well as transcripts of the audio recordings, in order to allay his concerns about possible corruption of the audio files. The police declined, providing written reasons to the appellant for doing so, including the fact that the Ottawa Police Service was merely acting as an intermediary for the delivery of the records to the appellant.

[6] The appellant appealed the police's decision to this office. Appeal MA12-20 was opened and a mediator was appointed to explore the possibility of resolving the appeal.

[7] During the mediation stage, the appellant advised the mediator of his belief that additional responsive calls should exist, apart from the two calls identified by the police to that point. Initial subsequent searches of calls made to the 911 call centre did not locate additional records. However, after the appellant provided a call recording he had made, the police conducted another search and located one additional recording, although the time and date for the call in police records did not match the details provided by the appellant. The police did not locate any other additional records. The police issued a supplemental decision to the appellant granting full access to the three

call recordings, along with transcripts of the three calls. The police waived the fee for access to the records and advised the appellant that he could pick up the records at the Ottawa Police headquarters.

[8] The appellant remained of the belief that an additional call record of the 911 call he claims to have made at 6:35 p.m. on March 7, 2008 ought to exist. Due to his ongoing concerns with possible corruption of the audio files, he continued to request to be allowed to review the disclosed records onsite at the Ottawa Police headquarters before signing a receipt confirming that he has picked up the records. The police maintained their position that onsite examination of the disclosed records in the manner requested by the appellant is not possible and that no other records that are responsive to this request exist. No further mediation was possible.

Appeal MA12-407

[9] The second request submitted to the police related to the same March 2008 incident identified in Appeal MA12-20. The request sought access to the following information:

1) Disclose all regular or non-urgent phone calls and any emergency 911 calls other than the two emergency 911 calls mentioned during the mediation process in the Appeal MA12-20.

2) Disclose Windsor Police Report(s) under the [specified] occurrence No. … and any other relevant reports, communications with the requester, communications with the roommate [identified individual], communications with investigators who have spoken to the requester after the incident, communications with any other personnel, people suspected in the theft incident. Any investigation & results, conclusions, or findings.

3) Any discoveries found in the house of the requester during the investigation and the search at the night of the incident.

4) Disclose any information if the laptop was found in match with the descriptions given by the requester in March 2008.

5) Disclose any RADIO recordings made by the police during the night of the incident on March 7th and/or 8th 2008 with the requester and with the roommate.

6) Disclose any RADIO recordings made by the police or investigators after March 7th 2008 with the requester, the roommate, and any other

people or personnel concerning the investigations about the theft of the laptop.

7) Disclose any investigation results with the Laptop's production company [identified company].

8) Disclose any investigation results with [an identified company] in South Keys in Ottawa or through the [identified company].

9) Disclose Officially Certified Copy of snap shot picture(s) and video recording of the calls appeared in the screen of the data base saved in the police computer(s) and hard drives relevant to the police calls made by the requester with the emergency and non-emergency lines on March 7th and/or 8th 2008.

   The video recording should show motion of the screen pages while accessing my database. The video and the pictures will count as an alternative of the examination process of the original records and will save time and monies of the travel to Windsor. The data base should show:

   (a) The incoming call of the phone numbers made by the requester
   (b) The number of the recipient phone that has received the requester's call at police station or the police emergency call center
   (c) The length of each call in (hr:min:sec)
   (d) The date of each call and the time of each call
   (e) The location where the call was made

10) Disclose any contacts, investigations, or discoveries made or found with [an identified individual, the landlord at the premises where reported incident occurred].

11) Disclose any other communications made with any other police or intelligence agencies concerning any involvement of Iraqi Extremists or Muslim Extremists personnel in the law enforcement in the theft of the laptop, especially personnel from, the Canada National Security.

12) Obtain consents of all third parties individuals for full or partial disclosures.

[10] The appellant requested a fee waiver for processing this second request. He also sought to: "correct the personal information in my request dated Oct 1st 2011 under

Windsor Police [specified] file … to allow the examinations of true copies of the original audio records and other documents upon receipt at Ottawa Police Station."

[11] After notifying individuals whose information was also in the records (pursuant to section 21(1)(b) of the *Act*),[1] the police issued a decision that provided the following responses to each part of the request:

1. All 911 recordings were previously provided with your [*MFIPPA*] access request, received October 25, 2011, (currently under appeal [MA12-20]). As indicated in my correspondence, dated June 21, 2012, all recordings related to the theft of your laptop computer were provided, without redactions, and are available for pickup at the Ottawa Police Service.

2. All records related to the theft of your computer, including follow-up and supplementary reports, have been provided. Redactions have been made as third party consent was not granted.

3. Not applicable.

4. Laptop was not located.

5. Radio communications, referred to in your correspondence, are the 911 recordings already provided with your previous request, received October 25, 2011, and await pickup at the Ottawa Police Service. There are no other recordings in existence.

6. Radio communications, referred to in your correspondence, are the 911 recordings already provided with your previous request, received October 25, 2011, and await pickup at the Ottawa Police Service. There are no other recordings in existence.

7. Records do not exist.

8. Records do not exist.

9. Electronic recordings and hardcopy printouts were already provided for each call with your previous request, received October 25, 2011, and

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[1] Section 21(1)(b) states: "A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record … that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14(1)(f)." This section provides an opportunity to "affected parties" to make their views known about the possible disclosure of their personal information by submitting comments to the institution (here, the police).

await pickup at the Ottawa Police Service. These records contain the information you are seeking.

10. [An identified individual] did not consent to the release of his personal information.

11. Refuse to confirm or deny the existence of Intelligence information.

12. Third party notifications were sent to the involved parties. I was unable to obtain consent for the release of their personal information.

[12] The police claimed section 38(b), together with section 14(3)(b) (personal privacy), and section 38(a), in conjunction with section 9(1)(d) (relations with other governments), to deny access to the withheld information. In this decision letter, the police also claimed that section 8(3) (refuse to confirm or deny) applied in relation to item 11 of the request.

[13] The appellant appealed the decision and Appeal MA12-407 was opened to address the issues. During mediation, the police issued a supplemental decision letter to clarify that they were denying the appellant's request to correct information in his request form and advised him that he could submit a statement of disagreement. The police also specified the exemption claims for the records related to parts 2, 10 and 11 of the request. The appellant raised the possible application of the public interest override in section 16 of the *Act.*

[14] As it was not possible to resolve the appeals through further mediation, the mediator prepared reports to summarize the progress of the appeals up to the end of mediation. The appellant sought certain specific "corrections" to the report, but the mediator declined to make these changes. The appellant also sought to add section 30(2) of the *Act* as an issue, arguing that it applies; section 30(2) describes the standard of accuracy respecting the use of personal information in an institution's records. This request is addressed as a preliminary issue, below, along with other matters.

[15] Appeals MA12-20 and Appeal MA12-407 were transferred to adjudication and assigned to me to conduct an inquiry. As noted above, I decided to conduct a joint inquiry into these two appeals. Accordingly, I sent a Joint Notice of Inquiry to the police, initially, to seek representations. I received representations from the police that included two affidavits, a policy and copies of email correspondence between the police and the appellant. In these representations, the police revised their access decision respecting part 11 of the appellant's request in Appeal MA12-407. Specifically, the police withdrew their claim of section 8(3) (refuse to confirm or deny existence of law enforcement information), clarifying that, in fact, no information or "intelligence" about the appellant exists. Section 8(3) was removed from the scope of the appeal. I shared

the representations of the police with the appellant, in their entirety, along with a Notice of Inquiry, seeking his representations. The appellant provided lengthy representations for my consideration.

RECORDS:

[16] In Appeal MA12-407, the police have withheld portions of pages 3 and 6 of an occurrence report and pages 3 to 11 of a related report, in their entirety. These reports are identified as Records 7 and 10 in this order. There are no records at issue in Appeal MA12-20 because the police granted full access to the records identified as responsive to the request.[2]

ISSUES:

Preliminary Issues: limits of jurisdiction; section 30(2) of the *Act*; "correction" request; and entitlement to receive "certified copies" of the records or examine records prior to pick-up

A. Do the records contain "personal information" according to the definition in section 2(1) of the *Act*?

B. Does the personal privacy exemption in section 38(b) apply to the withheld information?

C. Would disclosure of the appellant's personal information reveal information received in confidence from a government agency?

D. Did the police properly exercise their discretion?

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemption?

F. Did the police conduct a "reasonable" search for records?

DISCUSSION:

PRELIMINIARY ISSUE: limits of jurisdiction

[17] The appellant provided lengthy representations in response to the Notice of Inquiry sent to him. In these representations, totaling well over 100 pages, the appellant raises many issues that he believes arise from his appeals under the *Municipal*

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[2] The three records consist of the audio recordings and transcripts that were sent to the Ottawa Police Service headquarters for the appellant to pick up in that city.

Freedom of Information and Protection of Privacy Act. He asks questions and conveys a number of concerns, many of which are conspiratorial in nature, involving organizations and individuals with no established connection to this appeal process. The appellant makes assertions about what he believes the police are required to do to address his concerns. The appellant also alleges certain "offences" on the part of the police that, in his view, amount to "breach" of the *Act* and require redress by this office.

[18] It would be virtually impossible to address each and every one of the appellant's concerns. Moreover, many of the remedies sought by the appellant, submitted under the heading "Sought Orders," are clearly in excess of my jurisdiction. Even the requested remedies that make reference to provisions of the *Municipal Freedom of Information and Protection of Privacy Act* are not orders I can make. For example, I cannot "lay fraud or perjury charges against the [police] for violations committed against the [C]ommissioner," as requested. Additionally, I cannot grant the appellant a fee waiver in perpetuity, since such decisions are made by the head of an institution on a case-by-case basis, based on the specific facts of each appeal.

[19] In this order, therefore, I refer mainly to the portions of the appellant's submissions that are relevant to my determination of the issues that are within the scope of my authority as a delegate of the Commissioner under the *Municipal Freedom of Information and Protection of Privacy Act*.

PRELIMINIARY ISSUE: section 30(2) of the *Act*

[20] As stated, the appellant sought to add the application of section 30(2) of the *Act* as an issue in these appeals after reviewing the Mediator's Report. Section 30(2) states:

> The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

[21] However, as I previously advised the appellant in the Notice of Inquiry, section 30(2) of the *Act* is not applicable in these appeals. As a delegated decision-maker for the Commissioner, my authority in conducting inquiries under Part III of the *Act* relates to appeals of the *decisions* of the head of an institution. Section 30(2) is found in Part II of the *Act* and does not relate to a decision made by a head of an institution. Part II establishes rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. This Part of the *Act* does not create the right of access that the appellant is exercising in these appeals; nor does it provide the basis for him to challenge the accuracy of the records at issue.[3] The appellant's request to add section 30(2) as an issue in this appeal can be dismissed on this basis alone.

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[3] See, for example, Orders M-96, PO-2219, PO-2723, PO-2860 and PO-3290.

[22] Even if it were necessary to review the obligations of the police respecting the accuracy (and currency) of the appellant's personal information under section 30(2) of the *Act,* section 30(3) provides a complete answer to such an appeal. This exception in section 30(3) states that section 30(2) "does not apply to personal information collected for law enforcement purposes."[4] As the personal information gathered in this appeal is clearly situated in a law enforcement context, I conclude that the exception to section 30(2) provided by section 30(3) applies.

[23] Although the appellant expresses disagreement with the conclusion in his representations, he provides no reasonable basis upon which I could proceed with a review of section 30(2). Therefore, I confirm that section 30(2) will not be addressed any further in this order.

PRELIMINIARY ISSUE: "correction" under section 36(2) of the *Act*

[24] In this section, I will address the "correction" request submitted by the appellant regarding his June 26, 2012 request for records related to the theft of his laptop computer.[5] When the appellant informed the police that he wanted to correct certain information on his request form, the police apparently interpreted this to mean that he sought correction under section 36(2) of the *Act.*

[25] Under section 36(1) of the *Act*, an individual is given a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information to which he or she has been granted access. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information.[6]

[26] The police indicate that they understood the appellant to be seeking a correction of his request form to reflect that "he is requesting to be allowed to examine true copies of the original audio records and other documents upon receipt at Ottawa Police Station." The police state that they declined to correct the request form because it was three pages and "very detailed." The police explain that they offered to attach a statement of disagreement, instead, rather than try to correct the lengthy form.

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[4] According to section 2(1) of the *Act*, "law enforcement" means, (a) policing, (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or (c) the conduct of proceedings referred to in clause (b).

[5] Initially, confusion existed regarding which request form the appellant sought to correct; i.e. October 1, 2011 or June 26, 2012.

[6] Sections 36(2)(a) and (b) state: Every individual who is given access under subsection (1) to personal information is entitled to, (a) request correction of the personal information where the individual believes there is an error or omission therein; (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;…

[27] As part of his submissions, the appellant provided a copy of the "Request Form" he submitted seeking correction of his June 26, 2012 request.[7] The appellant characterizes the refusal by the police to grant his correction request as being based:

> … on the grounds that no examinations are allowed at the Ottawa Police before the final pick up of the records, and later suggested to the appellant to file a form of disagreement with her decision, which was not required for such little error in the request… the information that was requested to be corrected was that the examination should be made "before the receipt or the pick-up of the records", but not "upon the receipt or the pick-up of the records" so the information was personal and private, the information was inexact or not specific in the meaning, and the correction was not to replace or substitute an opinion….

[28] The appellant's "correction request" is unusual. I question whether it even fits within the scope of section 36(2) of the *Act*, since it relates to the proposed correction of a document *the appellant submitted* to the police, not a record of personal information *he received* from the police.

[29] Acknowledging this, I asked the police to provide representations on this issue, based on their understanding of what information the appellant wanted to correct. It is clear from the police's representations that they did, in fact, construe the appellant's bid to amend the wording of his request – from "upon" to "before" – as a correction request that triggered the requirement in section 36(2)(b) to attach a statement of disagreement, if such a request is declined. It is equally clear, in my view, that the police responded to the appellant in good faith, even if under a mistaken impression as to their obligations. Whether or not a formal "statement of disagreement" was required, the resulting clarification of the appellant's intentions with respect to reviewing the records disclosed to him *prior* to picking them up at the Ottawa Police headquarters was communicated to, and understood by, the police. The obligations of the police respecting this additional demand are reviewed in the next section, below. With respect to "correction" under section 36(2), I conclude that no further action is required and I dismiss this aspect of the appeal.

PRELIMINIARY ISSUE: entitlement to receive "certified copies" of the records and/or inspect them prior to accepting copies of them

[30] Seeking to address his concerns with possible tampering with, or "corruption" of, the records that were disclosed to him in Appeal MA12-20, the appellant asked to receive the "3 audio calls saved on disc(s) with officially stamped and signed transcripts of the records." Alternately, and as reviewed above, the appellant sought to review the records disclosed by the Windsor Police, which were being held for him at the Ottawa

[7] "Fig (2)," at page 49 (of 102 pages.)

Police headquarters, *before* he signed for them to ensure that they are not "corrupted." The police declined both requests.

[31] In particular, regarding part nine of the request in Appeal MA12-407, the appellant asked the police to:

> Disclose Officially Certified Copy of snap shot picture(s) and video recording of the calls appeared in the screen of the data base saved in the police computer(s) and hard drives relevant to the police calls made by the requester with the emergency and non-emergency lines on March 7th and/or 8th 2008. …[8]

[32] The response provided by the police was that "Electronic recordings and hardcopy printouts were already provided for each call with your previous request, received October 25, 2011, and await pickup at the Ottawa Police Service. These records contain the information you are seeking." In one of the letters sent to the appellant, the police explained their response to his requests, as follows:

> Please be advised you cannot examine the records at the Ottawa Police Service. The records were prepared by the Windsor Police Service and forwarded to the Ottawa Police Service, at your request, for the sole purpose of picking the records up in the area you reside. The Ottawa Police Service is not responsible for decisions regarding the records.
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> [The *Act*] speaks to requests for examination of a record, however, it refers to the original record. An examination of an original record is permitted when it is reasonably practicable to do so. This means that the records must contain only the personal information of the requestor.
>
> In order to fulfill your access request, a search was conducted of the 911 calls made March 7, 2008 and March 8, 2008. These calls were located on the hard drive of a computer in Emergency 911 Section. This hard drive also contains the personal information of numerous other individuals who called for service on the above mentioned dates. Since the records you wish to examine are located with records containing the personal information of individuals other than yourself, I must deny your request to examine the records.

[33] The police indicate that the Ottawa Police were unwilling to permit the appellant to listen to the recordings at their headquarters. The police submit that since they cannot dictate the policies of another police service, their representations are based on what they would do if the request had been made to the Windsor Police. According to

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[8] The remainder of the text of part nine of the appellant's second request appears on page 4, above.

the police, the records were easily copied from the relevant call recordings and were re-recorded in their entirety. The police submit that it "would not be reasonably practicable for the appellant to examine the original record" due to the secured nature of the police premises, which they describe in greater detail than is set out here. According to the police,

> The original 911 recording is held by our Emergency 911 Unit. Emergency and non-emergency calls are captured at this location. An individual attending this unit can overhear personal information related to individuals calling the police to report a crime. … In addition, the original 911 call made by the appellant is located on a voice recording system within this unit. This recording includes hours of incoming calls received on the dates [of] the 911 calls made by the appellant.

[34] In his representations on this issue, the appellant offers his views on the meaning of section 23 of the *Act*, which addresses the receipt of copies of disclosed records or on-site examination of them. The appellant acknowledges that the police have declined to let him review the original records due to concerns about "other individuals' privacy in the records and the security of the Windsor Police premise." The appellant outlines the possible options that he believes would address his concerns about the authenticity of the copies of the records being disclosed to him. These possible solutions include the police sending copies by email concurrently to him and to me, which he submits would provide him with the opportunity to "give his feedback of the findings … and report them to the adjudicator." The appellant also indicates that he would be willing to receive copies of the records from the Ottawa Police "in a sealed envelope" with the same copies provided to me, as long as he is allowed to give his feedback to me in that instance, as well. Other options suggested by the appellant appear in other sections of his submissions and I have considered them.

[35] During the preparation of this order, I was advised that because the appellant had not yet picked up the copies of the records disclosed to him in Appeal MA12-20 at the Ottawa Police Service, the records had been returned to the Windsor Police. However, the police advised me that they would be willing to "return these records back to the Ottawa Police Service so that the appellant can pick the records up at that location."

[36] Sections 23(1) and (2) of the *Act* address copies of records and access to original records. These sections state:

> (1) Subject to subsection (2), a person who is given access to a record or a part of a record under this *Act* shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

> (2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

[37] Section 23(2) does not specifically require an institution to provide a requester with an opportunity to view the record at the location of his choice in the province.[9] Section 23 also does not, more generally, permit or oblige an institution to provide an opportunity to review the copies of records produced by an institution in response to a request in whatever manner or form requested. As long as the record itself is in a "comprehensible form,"[10] and a copy of it has been produced, the institution's obligations have been met. In Order MO-2910, Senior Adjudicator Sherry Liang summarized an institution's responsibilities under section 23 as follows:

> The *Act* requires that if a decision is to grant access, the institution must "give" the requester access to the record. It does not specify the manner in which access is to be "given", except to the extent that, in section 23, it allows for either a copy to be provided or the opportunity to examine a record. Where a copy is to be provided, the *Act* does not specify that the copy must be sent through hand-delivery, by mail to the requester's address, made available for personal pick-up, or any other method.

[38] I agree with this summary. I note that, pursuant to section 23(2), an institution may decline to accept a request to examine the original record if it would not be reasonably practicable to comply with it. In the particular circumstances of the records disclosed to the appellant in Appeal MA12-20, I conclude that it is not reasonably practicable for the police to permit the appellant to review the Emergency 911 computer database for the dates in question because "the drive contains the personal information of numerous other individuals who called for service" on those dates. Only part of that database is subject to disclosure in this appeal. Although section 4(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt, the key question raised by section 4(2) is reasonableness.[11] I agree with the police that it would not be feasible to allow the appellant to inspect the database on-site without disclosing the protected parts of the record as well. I find that it is not reasonably practicable or possible to sever the personal information of these other individuals.

[39] I have also considered the appellant's request that he be provided with the "3 audio calls saved on disc(s) with officially stamped and signed transcripts of the records." I note that the *Act* does not, as a rule, oblige an institution to create a record where one does not currently exist.[12] Simply put, there is no provision or requirement in

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[9] Order 6.
[10] Section 37(3) of the *Act.*
[11] Order PO-1663.
[12] Orders PO-3195 and PO-3172 (aff'd, 2014 ONSC 741; requester's leave to appeal application pending).

the *Act* that entitles the appellant to receive certified copies of the records upon demand.[13] Past orders have acknowledged that in some situations, institutions may be obliged to create a record from information that exists in some other form.[14] In the present appeal, however, I conclude that neither the *Act* nor the circumstances are such that the police should be obliged to create a certified copy of the records produced as responsive to the request in Appeal MA12-20 in order to satisfy the appellant's concerns about authenticity.

[40] Furthermore, I also find that in sending the records in a sealed envelope to the Ottawa Police for the appellant to pick up, the police met their obligations under the *Act* to provide access to the requested records to the appellant. More recent correspondence from the appellant appears to suggest that he may now be willing to pick up the records package from the Ottawa Police.[15] The police indicate that they are willing to send the records to the Ottawa Police Service once again.[16] Accordingly, I will order the police to re-send the disclosed records to the Ottawa Police Service so that the appellant may retrieve them, in accordance with this order and without conditions.

A. Do the records contain "personal information" according to the definition in section 2(1) of the *Act*?

[41] In order to determine if sections 38(a) or 38(b) apply, together with the exemptions claimed by the police, I must first decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

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[13] See Orders MO-1422 and PO-3195.
[14] See, for example, Order 99 where former Commissioner Sidney Linden held that to do so would be "consistent with the spirit of the *Act*" and would enhance the right of access under the *Act.*
[15] Email to IPC from appellant, dated May 9, 2014.
[16] Email to IPC from Windsor Police Service FOIC, dated May 9, 2014.

(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 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;

[42] 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.

[43] Sections 2(2.1) and (2.2) of the *Act* provide exceptions to the definition of personal information for information related to one's business or profession. As the undisclosed information in the records does not fit within these exceptions, it is not necessary to outline them in this order. However, 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.[17] 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.[18]

Representations

[44] The police submit that the record 7 contains the personal information of other individuals that fits within paragraphs (b) and (d) of the definition in section 2(1), including dates of birth, addresses, telephone numbers and ethnicity. The police note that although some of the information withheld from page 6 is about the appellant's

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

(former) landlord, it is not about him in his professional capacity and therefore qualifies as personal information.

[45] The appellant submits that the 911 call recordings contain not only his own personal information as submitted by the police, but also the personal information of the police call intake personnel. The appellant submits that records 7 and 10 would disclose the names, origins, family status, addresses, phone numbers, identifying numbers, education or employment information, correspondence and opinions under paragraphs (a), (b), (c), (d), (e), (g) and/or (h) of section 2(1).

Analysis and findings

[46] As outlined above, the appellant offered submissions regarding whether the records in Appeal MA12-20 contain personal information. However, it is unnecessary for me to determine whether the relevant call recordings contain "personal information" because the police claim no exemptions to deny access to those records and have disclosed them, in their entirety, to the appellant.

[47] The police do not address whether records 7 or 10 contain the appellant's personal information, possibly due to their belief that they have disclosed such information to him already. The police also do not address whether record 10 contains personal information about other identifiable individuals. However, I have reviewed the records to determine whether they contain "personal information" and, if so, to whom it relates. Based on this review, I find that both records contain information pertaining to the appellant that qualifies as his personal information within the meaning of paragraphs (a) (age, sex), (b) (education or other history), (d) (address or phone number), (e) (his opinions or views), and (h) (name, with other personal information) of the definition in section 2(1) of the *Act*.

[48] Additionally, I find that there is personal information about other identifiable individuals in the records that falls under the following paragraphs of the definition: (a) (age, sex, marital or family status), (b) (employment or other history), (c) (identifying number or other assigned particular), (d) (address or phone number), (e) (their opinions or views), (g) (views or opinions about them), and (h) (names, with other personal information relating to these individuals).

[49] In summary, I find that the records contain the mixed personal information of the appellant and other identifiable individuals. I will begin by reviewing the possible application of section 38(b).

B. Does the personal privacy exemption in section 38(b) apply to the withheld information?

[50] The police rely on section 38(b), in conjunction with section 14(3)(b), to deny access to portions of pages 3 and 6 of record 7 and pages 4 to 11 of record 10, in their entirety.

[51] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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. This approach 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.

[52] Whether the relevant exemption is section 14(1) or section 38(b), sections 14(1) to (4) are considered in determining whether the unjustified invasion of personal privacy threshold is met. The exceptions in sections 14(1)(a) to (e) are relatively straightforward. None of them apply in this appeal. The exception in section 14(1)(f) (where "disclosure does not constitute an unjustified invasion of personal privacy"), is more complex and requires a consideration of additional parts of section 14.

[53] 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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. For records claimed to be exempt under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[19] This represents a shift away from the previous approach under both sections 38(b) and 14, whereby a finding that a section 14(3) presumption applied could not be rebutted by any combination of factors under section 14(2).

Representations

[54] The police submit that the mandatory exemption in section 14(1) applies to the personal information in pages 4 to 11 of record 10 because these pages contain CPIC[20]

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[19] Order MO-2954.

[20] CPIC is a system operated by the Canadian Police Information (CPI) Centre under the stewardship of National Police Services, on behalf of the Canadian law enforcement community. CPIC provides public safety information on charges, warrants, persons of interest, stolen property and vehicles. It is Canada's

responses related to an individual whose name was queried in the system. According to the police, since the query was not conducted on the appellant, the information of the queried individual and others whose names were incidentally generated by the query is exempt under section 14(1), not section 38(b). Later in the representations, however, the police submit that the same withheld information is exempt under section 38(b), in conjunction with the presumption in section 14(3)(b).

[55] Next, the police assert that section 38(b), taken together with section 14(3)(b), applies to the withheld information on pages 3 and 6 of record 7. The personal information on these pages belongs to individuals who spoke to the police during the investigation into the theft of the appellant's laptop computer. The police note that these individuals were contacted, but did not consent to the disclosure of their personal information to the appellant.

[56] The appellant reviews each part of section 14(1), seeking to relate the sought-after disclosure in this appeal with each of the exceptions listed, except section 14(1)(e). Respecting section 14(1)(d), which permits disclosure of personal information by a head if the disclosure is expressly authorized by a statute of Canada or Ontario, the appellant submits that disclosure is justified by section 41(1.2) of the *Police Services Act*[21] and by section 7 of the *Canadian Charter of Rights and Freedoms*.[22]

[57] The appellant submits that access to the withheld information is both justified and required "for legal proceedings against the thief [of his laptop]…" The appellant alludes to a certain court proceeding[23] that could be continued with access to the information. He also submits that he will "soon file a Civil Proceeding in the Superior Court of Justice against Windsor Police for damages in negligence to prosecute with urgency the criminal act of the suspect thief… which is a common legal right drawn from tort law and other statutes and acts." This is an apparent reference to the factor weighing in favour of disclosure in section 14(2)(d) of the *Act.* The appellant also argues that access to the undisclosed information will promote public health and safety, and his own, by providing evidence to "prosecute the institution" and maintain its accountability to the public under section 14(2)(b). The appellant states that the police and the thief "might suffer pecuniary or charges by the court," under section 14(2)(e) if the information is disclosed, but he appears to suggest that this harm would be justified in the circumstances.

"primary public and officer safety tool, used by law enforcement agencies, to share law enforcement and criminal justice information." The CPIC website is managed by the RCMP on behalf of the Canadian law enforcement community. Source: http://www.cpic-cipc.ca/about-ausujet/index-eng.htm.

[21] R.S.O. 1990, CHAPTER P.15. Section 41(1.2) of the *Police Services Act* deals with a police chief's power to disclose personal information for eight identified purposes.

[22] Section 7 of the *Charter* states: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[23] The appellant provides a specific CanLII case citation.

[58] The appellant offers his view of the relevance (or lack thereof) of sections 14(4)(a) to (c), which outline the limitations on disclosure constituting an unjustified invasion of personal privacy. As none of these limitations apply in the circumstances of this appeal, these submissions are not set out further.

[59] Regarding the application of section 14(3)(b), the appellant acknowledges that the personal information was compiled by the police and is identifiable as part of an investigation into a possible violation of law, even though they did not lay charges. However, he submits that because he has instituted civil proceedings that are not yet completed, he needs the information for the related appeal proceedings. The appellant lists a number of other statutes under which he alleges the police could be "prosecuted," including the *Ontario Human Rights Code* and the *Negligence Act*.[24]

[60] The appellant claims that the absurd result principle should apply. Referring to the records sent to the Ottawa Police for him to pick up, he contends that he "was allowed to invade the privacy of the other parties in some of the records."

Analysis and findings

[61] In the previous section of this order, I concluded that records 7 and 10 contain the personal information of the appellant and other identifiable individuals. Regarding the personal privacy exemption, the police argue that since pages 4 to 11 of record 10 do not contain the appellant's personal information, it is the mandatory exemption in section 14(1) that applies to the withheld personal information. However, the established approach of this office is to conduct an analysis on a record-by-record basis.[25] In this appeal, therefore, pages 4-11 represent only one part of the same record. The appellant's personal information appears in this *record*, even if not on every page. On this basis, I confirm that the relevant personal privacy exemption is the discretionary one in section 38(b).

[62] 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. As stated above, this approach involves a weighing of the requester's right of access to his or her own personal information against the other individuals' right to protection of their privacy. Respecting page 3 of record 10, I note that this page contains only the appellant's personal information, and I find that its disclosure could not result in an unjustified invasion of *another* individual's personal privacy. However, this page – as part of record 10 – is also subject to a claim by the police that section 9(1)(d) applies and I will review this exemption below.

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[24] Respectively, R.S.O. 1990, CHAPTER H.19 and R.S.O. 1990, CHAPTER N.1.

[25] See Orders MO-1891, MO-2477 and PO-3259.

[63] In the remainder of this analysis under section 38(b), I am concerned with whether disclosure of the personal information of other identifiable individuals would result in an unjustified invasion of their personal privacy.

[64] The appellant has carefully reviewed and commented on all of the parts of section 14 of the *Act* in his representations. With respect to section 14(1), I note that these exceptions describe situations in which the institution is not *required* to refuse to disclose the personal information of one individual to another individual. The exceptions in section 14(1) do not serve to allow me, as an adjudicator, to order disclosure on my own initiative.

[65] Additionally, the appellant argues that section 14(1)(d) operates along with his "security rights" in section 7 of the *Charter* in such a way that he, as "a Canadian Citizen should not be deprived from such rights of access" to this information. I conclude that this position has no merit. In any event, to pursue such an argument, a Notice of Constitutional Question pursuant to section 12 of this office's *Code of Procedure* and section 109 of the *Courts of Justice Act* would be required, and no such notice has been served.[26]

[66] In this appeal, therefore, the only relevant exception is section 14(1)(f), which permits disclosure of another individual's personal information if, as stated above, "the disclosure does not constitute an unjustified invasion of personal privacy." The police submit, and the appellant acknowledges, that the presumption in section 14(3)(b) applies in this appeal. I agree. Section 14(3)(b) 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;

[67] The presumption at section 14(3)(b) can apply to a variety of investigations.[27] 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.[28]

[68] To begin, I find that the personal information at issue in these records was compiled by the police and is identifiable as part of an investigation to determine if an offence under the *Criminal Code* had been committed. On this basis, I find that the

[26] *Court of Justice Act,* R.S.O. 1990, c. C.43.
[27] Order MO-2147.
[28] Orders P-242 and MO-2235.

presumption at section 14(3)(b), which favours privacy protection, applies to the withheld portions of the records. The next determination under section 38(b), therefore, is what weight to afford this presumption, recognizing that the types of information set out in section 14(3) are generally regarded as particularly sensitive.[29] The appellant's stated reasons for obtaining access include seeking to "prosecute the police" and continue the investigation into the theft of his laptop computer personally. Without commenting on whether such avenues are genuinely open to the appellant, I conclude that the personal information about other identifiable individuals in these records is not reasonably connected to those interests. Accordingly, I find that the presumption in section 14(3)(b) weighs heavily in favour of privacy protection for this information.

[69] The police did not argue that any of the factors favouring privacy protection in sections 14(2)(e)-(i) apply. Although the appellant's representations mention section 14(2)(e), this factor is taken into account only to favour privacy protection, not to favour disclosure of personal information, as the appellant suggests.[30] Additionally, I find that the appellant's representations do not support the possible application of any of the factors in sections 14(2)(a)-(d) that might weigh in favour of his access to the personal information of other individuals appearing in these records. In particular, I am not satisfied that disclosure of the withheld personal information will promote public health and safety for the purpose of section 14(2)(b) or that it is required for a fair determination of the appellant's rights in any identified proceeding, as contemplated by section 14(2)(d).

[70] With regard to section 14(2)(d) specifically, the evidence provided by the appellant does not satisfy the four-part test to establish the relevance of the factor. First, I am not satisfied that an imperiled legal right exists. Second, I conclude that the right in question is not related to an existing proceeding, as opposed to a completed one.[31] Third, I am not persuaded that the personal information being sought is significant to a determination of the appellant's rights in other proceedings. Finally, I do not accept that access to the other individuals' personal information is necessary for him to prepare for any such proceeding or to ensure an impartial hearing.[32] Accordingly, I find that section 14(2)(d) does not apply. Therefore, I find that there are no factors weighing in favour of the disclosure of the personal information of other individuals that is contained in these records.

[71] Having balanced the competing interests of the appellant's right to disclosure of information against the privacy rights of other individuals, I find that the disclosure of the withheld portions of pages 3 and 6 of record 7 and pages 4-11 of record 10, which

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[29] Order MO-2954.

[30] Order P-559.

[31] I have read the Divisional Court decisions related to the proceeding referenced in paragraph 87 of the appellant's representations. These decisions are available on CanLII. The specific case citations are not set out here because doing so would identify the appellant.

[32] Orders P-312, PO-1931, MO-1664 and MO-2415.

contain personal information that is subject to the presumption in section 14(3)(b), would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, this information qualifies for exemption under section 38(b).

[72] Furthermore, I conclude that the absurd result principle is not relevant in the circumstances of this appeal. According to the absurd result principle, whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[33] One of the grounds upon which the absurd result principle has been applied in previous orders is where the information is clearly within the requester's knowledge.[34] Although the appellant suggests that the absurd result principle applies in this appeal because he "was allowed to invade the privacy of the other parties in some of the records" sent to the Ottawa Police for him to pick up, there is no evidence to support this claim. The appellant has not even reviewed the records disclosed to him in Appeal MA12-20 because he has, to date, refused to pick them up. In the circumstances of this appeal, therefore, I find that refusing to disclose the personal information of other individuals contained in the records at issue in Appeal MA12-407 to the appellant would not lead to an absurd result.

[73] In conclusion, subject to my review of the police's exercise of discretion, I find that the discretionary exemption in section 38(b) applies to the remaining personal information of other individuals in the records.

C: Would disclosure of the appellant's personal information reveal information received in confidence from a government agency?

[74] In this section, I will review whether the appellant's personal information on page 3 of record 10 is exempt under section 38(a), together with section 9(1)(d), given my finding, above, that the pages 4-11 of that record are exempt under section 38(b).

[75] As stated previously, section 36(1) establishes a general right of access to one's own personal information held by an institution. However, section 38 provides for a number of exemptions to this right. Section 38(a) states:

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

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[33] Orders M-444 and MO-1323.

[34] Orders MO-1196, PO-1679, MO-1755 and PO-2679.

[76] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information. Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[77] Section 9(1) states:

> A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) <u>an agency of a government referred to in clause (a), (b) or (c);</u> or
>
> (e) an international organization of states or a body of such an organization.

[78] The purpose of this exemption is "to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure."[35] For this exemption to apply, the police were required to demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result by providing "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[36]

[79] For a record to qualify for this exemption, the police were required to establish that:

> 1. disclosure of the record could reasonably be expected to reveal information which it received from one of the governments, agencies or organizations listed in the section; and

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[35] Order M-912.

[36] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

2. the information was received by the institution in confidence.[37]

Representations

[80] The police provided written submissions on section 9(1)(d), as well as a copy of a policy related to CPIC information. According to the police, the withheld parts of record 10 contain information obtained from the CPIC database, which is regulated and maintained by the Royal Canadian Mounted Police. The police submit that:

> Information contributed to, or stored in and retrieved from CPIC is supplied in confidence by the originating agency for the purpose of assisting in the detection, prevention or suppression of crime and the enforcement of law. Information obtained from CPIC is to be used only for activities authorized by a … police service…
>
> Section 8 of the CPIC Policy Manual discusses the confidentiality and dissemination of information. Point 2.2 of the manual states:
>
> > The releasing agency must have a written policy [as Windsor Police does] on the dissemination of information obtained from CPIC as this information must be protected against disclosure to unauthorized agencies or individuals. Before any information obtained from CPIC is released, the agency head or delegate must be satisfied that … the request is a legitimate request and not just one of personal use; …

[81] The police view the request by the appellant in this appeal as a request for CPIC information for personal use, not for law enforcement purposes.

[82] The appellant does not directly address the part of the CPIC policy relied on by the police, but refers to other provisions it contains, seeking to show that disclosure of the information would not be inappropriate. For example, the appellant observes that the police may only access the CPIC database for valid law enforcement purposes and he argues that the police cannot, therefore, rely on section 14(3)(b), which requires a law enforcement investigation, while arguing under section 9(1)(d) that there was not a law enforcement purpose. The appellant seeks to justify disclosure in this case because it would be "for the court's purpose to prosecute Muslims and Extremist Iraqis in Canada National Security" and, therefore, will enhance law enforcement.

[83] In his representations on section 9(1)(d), the appellant expresses concern about the initial claim by the police that section 8(3) of the *Act* also applies to these records.

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[37] Orders MO-1581, MO-1896 and MO-2314.

However, since the police withdrew their claim of section 8(3), the parts of the appellant's submissions that deal with it are not set out in this order.[38]

Analysis and findings

[84] This office has consistently found in previous orders that CPIC records containing a requester's personal information do not qualify for exemption under section 9(1)(d) of the *Municipal Freedom of Information and Protection of Privacy Act.*[39] In Order MO-1288, former Adjudicator Holly Big Canoe rejected the argument of the Toronto Police Service that they had received CPIC information "in confidence" for the purposes of the section 9(1)(d) exemption:

> The CPIC computer system provides a central repository into which the various police jurisdictions within Canada enter electronic representations of information they collect and maintain. Not all information in the CPIC data banks is personal information. That which is, however, deserves to be protected from abuse. Hence, a reasonable expectation of confidentiality exists between authorized users of CPIC that the personal information therein will be collected, maintained and distributed in compliance with the spirit of fair information handling practices. However, the expectation that this information will be treated confidentially on this basis by a recipient is not reasonably held where a requester is seeking access to his own personal information.
>
> There may be specific instances where the agency which made the entry on the CPIC system may seek to protect information found on CPIC from the data subject. Reasons for this might include protecting law enforcement activities from being jeopardized. These concerns will not be present in every case, and will largely depend on the type of information being requested. The Police have not identified any particular concerns in this area in the circumstances of this appeal, and it is hard to conceive of a situation where an agency inputting suspended driver or criminal record information would require the Police to maintain its confidentiality from the data subject. In fact, although members of the public are not authorized to access the CPIC system itself, the CPIC Reference Manual[40] contemplates disclosure of criminal record information held therein to the

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[38] This includes the submissions respecting section 8(3) that are found in the appellant's representations on section 9(1)(d), as well as those appearing further on in the appellant's representations in a separate section dealing with section 8(3).

[39] Orders MO-1288, MO-2508, PO-2647 and PO-3075. In the provincial *Act*, the relevant provision is section 15(b).

[40] Only Part 8 of the (current) CPIC Policy Manual was excerpted by the police and provided with their representations in this appeal.

> data subject, persons acting on behalf of the data subject, and disclosure at the request or with the consent of the data subject.
>
> Accordingly, I find that there is no reasonable expectation of confidentiality in the circumstances of this appeal, where the appellant is the requester and the information at issue relates to the suspension of the appellant's drivers licence and a history of his previous charges and convictions, the fact of which he must be aware. In my view, section 9(1)(d) does not apply to the [withheld records].

[85] I agree with former Adjudicator Big Canoe's reasoning and adopt it with respect to the appellant's personal information in the CPIC record at issue, which the police claim is exempt under section 9(1)(d). There are certainly circumstances in which the police receive records in confidence from the RCMP. Indeed, in the appeal before me, the pages of record 10 that I found, above, to be exempt under section 38(b), together with section 14(3)(b), would have fallen into that category. However, with respect to the appellant's personal information, I conclude that there is no reasonable expectation of confidentiality. As in Order MO-1288, the appellant is the requester and in this case the information relates only to whether or not there are entries on CPIC related to him. Given my conclusion that there is no reasonable expectation of confidentiality in the appellant's personal information on page 3 of record 10 for the purpose of the exemption in section 9(1)(d), I find that it does not apply. Therefore, I find that section 38(a), in conjunction with section 9(1)(d), does not apply to the appellant's personal information on page 3 of record 10.

[86] However, I note that there is some limited non-personal information in the CPIC entry relating to the appellant, namely access and query information in alphanumeric form. Many past orders of this office have found that this type of information qualifies for exemption under section 8(1)(i) of the *Act*, because its disclosure could reasonably be expected to endanger the security of the system established for the protection of information in the CPIC database.[41] To be consistent with these decisions, therefore, I will order the disclosure of the appellant's personal information on page 3 of record 10 to him, with the exception of the CPIC access and transmission codes, which will be severed, pursuant to section 38(a) and with reference to section 8(1)(i).

D. Did the police properly exercise their discretion?

[87] Since I have upheld the decision of the police to deny access under section 38(b) with regard to most of the information withheld under that exemption, I must now consider whether they properly exercised their discretion in doing so. Since section 38(b) is a discretionary exemption, the police had the discretion to disclose the withheld

[41] For decisions upholding the exception of CPIC access and transmission codes, as well as certain "query information formats," under section 8(1)(i) (or section 14(1)(i) *FIPPA*), see Orders PO-1921, PO-2582, PO-3163, MO-2534 and MO-3025-I.

records, even if they qualified for exemption. This is the essence of a discretionary exemption.

[88] On appeal, an adjudicator may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so. In doing so in this appeal, I may find that the police erred in exercising their discretion where, for example, I find that they did so in bad faith or for an improper purpose, took into account irrelevant considerations, or failed to take into account relevant considerations. In such a case, I may send the matter back to the police for an exercise of discretion based on proper considerations. However, section 43(2) of the *Act* states that I may not substitute my own discretion for that of the police.[42]

Representations

[89] The police submit that the appellant's need for access to information was carefully balanced with protecting the privacy rights of the other individuals identified in the records. According to the police, a fair balance was struck by providing the appellant with access to large portions of the records, with only minimal severances for the personal information of other individuals mentioned in the investigation, including the information in the CPIC queries.

[90] The appellant argues that the police erred in exercising their discretion, and he suggests that there was "an improper purpose and illegal objective" behind the exercise. The appellant's concerns about the exercise of discretion by the police arise due to suspicions he harbours about falsification, or self-interested severing, of records, allegedly motivated by the police's intention to conceal "illegal persecution" and other conspiratorial acts related to the theft of his laptop computer. The appellant requests that I order the police to re-exercise their discretion.

Findings

[91] In my review of the exercise of discretion by the police in denying access to the undisclosed information, I acknowledge the appellant's apparent concern that there was malevolent intent behind the decision to withhold certain information. However, there is no evidence to support these assertions. Rather, based on my review of the representations of the police, I conclude that they were mindful of the competing interests at stake. In particular, I am satisfied that police understood their obligation to balance the appellant's interests in seeking access to his own personal information against protecting the privacy interests of other individuals in a law enforcement context. The reasons given demonstrate that the police considered relevant factors in exercising their discretion to withhold the portions of the records that I have found

[42] Order MO-1573.

exempt. I find that the police exercised their discretion in good faith and that they took relevant factors into account.

[92] In the circumstances, therefore, I find that the police have properly exercised their discretion, and I will not interfere with that exercise of discretion on appeal.

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemption?

[93] Early on in the appeal process, the appellant raised the possible application of the public interest override in section 16 of the *Act*. Although the circumstances of these appeals did not readily suggest the relevance of the public interest override, I provided the appellant with an opportunity to tender evidence in support of his assertion that section 16 applies.

[94] 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.

[95] For section 16 to apply, there must be a compelling public interest in disclosure of the records, and this interest must clearly outweigh the purpose of the exemption.

[96] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of its contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, this office will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[43]

[97] 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.[44] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[45]

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[43] Order P-244.
[44] Orders P-984 and PO-2607.
[45] Orders P-984 and PO-2556.

[98] A public interest does not exist where the interests being advanced are essentially private in nature.[46] However, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[47]

Representations

[99] In his representations, the appellant submits that the public interest override in section 16 applies to permit disclosure of the information at issue that is exempt under the personal privacy exemption. The appellant provides a number of reasons why, in his view, it is in the public interest that the information be disclosed. I have reviewed the reasons provided, in their entirety, but provide only a summary. The appellant's position appears to be that disclosure will promote the proper functioning, and integrity, of the criminal justice system and policing because it will reveal (previously concealed) information demonstrating that the police/"Federal Agency"/RCMP are violating the law by forging documents, committing fraud, and recruiting people to commit criminal acts against him. The appellant questions whether the information severed by the police under section 14(3)(b) was genuinely required to protect personal privacy, or whether it was done to conceal violations of law.

[100] The police did not provide representations on this issue.

Analysis and findings

[101] In order for me to find that section 16 of the *Act* applies, I must be satisfied that there is a compelling public interest in the disclosure of the information that clearly outweighs the purpose of the personal privacy exemption.

[102] Without doubt, the public should be invested in ensuring the accountability of police and justice officials. However, I do not accept the appellant's position that a public interest that is compelling in nature exists here, and certainly not one that is sufficient to transcend the realm of private interest. The appellant has provided no evidence to support his position, beyond assertions that cannot be substantiated. In particular, the appellant has not provided sufficient evidence to demonstrate a connection between the exempt information and the accountability of the criminal justice system, and I cannot discern any such connection from my review of the records. The fundamental purpose of the exemption in sections 14(1) and 38(b) is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.[48]

[103] In the circumstances, I find that there is no compelling public interest in the disclosure of the exempt portions of the occurrence report or the CPIC queries that

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[46] Orders P-12, P-347 and P-1439.
[47] Order MO-1564.
[48] Order MO-2923.

outweighs the purpose of the personal privacy exemption. Accordingly, I find that the "public interest override" provision in section 16 does not apply in the circumstances of this appeal.

F. Did the police conduct a "reasonable" search for records?

[104] As outlined in many past orders of this office, where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a *reasonable* search for records as required by section 17 of the *Act.*[49] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[105] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[50] To be responsive, a record must be "reasonably related" to the request.[51] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.[52] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[53]

[106] Additionally, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[54]

[107] In this appeal, the appellant expresses a strongly-held belief that the police should have, but did not, locate a call he claims to have made to the Windsor Police 911 number at approximately 6:35 p.m. on March 7, 2008. This is one of several calls he made to the police in relation to the theft of his laptop computer. Previously in this order, I reviewed the appellant's suggested means of addressing his concerns about the police's alleged failure to identify and disclose all relevant calls: namely, the preparation of an "Officially Certified Copy of snap shot picture(s) and video recording of the calls appeared in the screen of the data base saved in the police computer(s) and hard drives relevant to the police calls made by the requester with the emergency and non-emergency lines on March 7th and/or 8th 2008." I concluded that the police are not required to create such a record.

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[49] Orders P-85, P-221 and PO-1954-I.
[50] Orders M-909, PO-2469 and PO-2592.
[51] Order PO-2554.
[52] Orders P-624 and PO-2559.
[53] Order MO-2185.
[54] Order MO-2246.

[108] In this section, therefore, I will only address the appellant's submissions offered in support of the reasonableness of his belief that record(s) of a 911 call he made at approximately 6:35 p.m. on March 7, 2008 should exist. The circumstances surrounding the call are outlined in sufficient detail in the background section of this order.

Representations

[109] The representations of the police on the search issue were provided in two affidavits, sworn by the Information and Privacy Coordinator (the Coordinator) and the E911 Supervisor. The Coordinator has been employed by the Windsor Police for 22 years; she states that she has held various positions with the police and "the duties of each position entailed detailed searches for records." The E911 Supervisor has been employed by the police for 33 years, and she has 23 years of "investigative record search" experience. Both individuals were personally involved in the searches conducted to identify records responsive to the appellant's requests.

[110] According to the E911 Supervisor, all 2008 recordings were available to her at the time she conducted the searches. Her evidence lists the phone lines that were searched, including 911, main office HQ, and Staff Sergeant HQ. She describes equipment, computer software and systems that are used by the Windsor Police to track, record, capture and store calls, as well as dispatch calls. She also provides a chart outlining the contacts made to the Coordinator for the purpose of informing her searches and the results of those searches. Although these details are not set out here, I have taken them into consideration.

[111] The Coordinator explains that their "in house database," Versaterm, captures all calls for service, including 911 and non-emergency calls, follow-up calls, occurrence and supplementary reports. Upon receipt of the appellant's request for copies of the calls regarding the theft of his laptop, she identified the first one based on the occurrence number he provided. She then located a second call, which was linked in their system to the first. According to their systems, the calls were received at 8:03 p.m. on March 7, 2008 and 4:18 a.m. on March 8, 2008. These records were disclosed to the appellant in their entirety.[55] The Coordinator states that both 911 and non-emergency calls are received by Windsor Police; she states that she advised the appellant of this when he expressed concern about unidentified calls and because of his claim that one of the calls had been answered by the RCMP. In response to the appellant's ongoing concerns about the call he said he made at 6:35 p.m. on March 7, 2008, further searches were done, based on the time frame given by the appellant of 6:15 to 7:15 p.m. on March 7. This time frame was later expanded to 5:00 to 8:00 p.m. on the same date. When that search failed to locate further call records, it was expanded using the appellant's name, residence and payphone telephone number he was calling from. This search was also unsuccessful in locating additional call records. However, the additional call was

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[55] The copies of these recordings were the records sent to the Ottawa Police for pick-up by the appellant.

identified after the appellant submitted an email with an attached recording of a call "captured by the appellant during a call to the Windsor Police Service." The Coordinator notes that the appellant referred to this call as "the second call" that he claims he made at 8:00 p.m. on March 7. The Coordinator submits that she was assisted by the E911 Supervisor in matching up the voice of the call taker in that recording with a staff member who worked "the midnight shift the week of March 5 to 11 [2008]." The recording was matched with police records of a call taken from the appellant at 4:05 a.m. on March 8. The police state that:

> As it was now determined that the requester incorrectly identified the date and time of the second call, I requested … that the appellant retrieve the recordings waiting at the Ottawa Police. I asked if he would be willing to listen to these calls to determine if an additional call still existed, and if so, where the call fell in relation to the timing of the three calls already located. The appellant was not willing to comply with this request… [and] was unwilling to receive the recordings as an email attachment.

[112] The Coordinator states that she listened to the recordings of all three calls and she recounts their general content in her representations. According to the Coordinator, it is clear from the content that the first two calls by the appellant – 8:03 p.m. on March 7 and 4:05 a.m. on March 8 - were made to the 911 number, while the third call – 4:18 a.m. on March 8 - was received by their non-emergency number. She explains that their CAD (computer-aided dispatch) system did not capture the appellant's second call at 4:05 a.m. because he was told that he should not be calling 911 regarding an existing call and was instructed to call the non-emergency number. The Coordinator adds that although this call was not captured on their system, additional steps were taken to provide access by the E911 Supervisor, who created an audio recording on a CD-ROM and then completed a written transcript of the call.

[113] The Coordinator believes that there is some confusion on the appellant's part regarding the time and date the calls were placed, which may be due to the passage of time. She believes that the exhaustive searches of their 16 phone lines, including all emergency and non-emergency telephone lines and three different database systems with a voice recording system, would otherwise have resulted in them finding the call the appellant claims to have made at 6:35 p.m. on March 7, 2008.

[114] The appellant expresses his dissatisfaction with the affidavit evidence of the police regarding the searches conducted to identify the records that are responsive to his request, including "radio recordings and transmissions." His concerns appear to have resulted, in part, from the police not initially locating the recording of the "second" call he claims to have made at approximately 6:35 p.m. on March 7, 2008. The appellant does not accept the explanation provided by the police for the delay in identifying this call, which is that the call was not placed within the timeframe given by him for it, but rather was received at 4:05 a.m. on March 8, 2008. The appellant suggests that the

police and other "cooperating agencies" "faked the time" for the call. Referring to a "confidential DVD-R" submitted to this office during the mediation stage, he claims that he has "proven to the commissioner … that the first 911 call … around 6:35 p.m. should have existed…."

[115] The appellant also claims that he had other proof of the timing of that call, but that it was stolen from him in October of 2008 in another (specified) city. Further, the appellant disputes the police's response that no further "radio recordings" exist that are related to the investigation into the theft of his laptop. The appellant expresses other concerns about falsification and/or concealment of records, as well as the possibility that "electronic interceptions and tamper" may have resulted in deletion or destruction of the 911 call in question. The appellant submits that he has provided reasonable grounds for me to conclude that the records he seeks exist, and he submits that I should order further searches. In support of his position, he provides summaries of the conclusions in Orders MO-1406 and MO-2084-I.

Analysis and findings

[116] As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

[117] I am persuaded by the available evidence and the overall circumstances of these appeals that the police made a reasonable effort to identify and locate any existing records that are responsive to the appellant's request. I accept that relevant and appropriate police staff conducted searches and that they were armed with knowledge of the nature of the records said to exist, at least partly because the appellant's interests were well conveyed: through his request, through discussions during the mediation stage of these appeals, and in his subsequent representations.

[118] Although the appellant raises various questions about the searches, I am satisfied that the appropriate databases were searched for responsive records. Based on the evidence before me, it appears that several separate searches for responsive records were conducted and I am satisfied that the concerns raised by the appellant about his calls to Windsor Police regarding the theft of his laptop, including the timing of those calls, were adequately addressed in the police's representations.

[119] In particular, I accept the evidence of the police that a responsive record of the kind described carefully by the appellant, namely a call received by the police from him at around 6:35 p.m. on March 7, 2008, does not exist for the reasons suggested. I am also satisfied that the police conducted a reasonable search for any other records

related to the appellant. Conversely, I find that the reasons provided by the appellant for explaining his belief that records related to a telephone call he claims to have made to the Windsor Police 911 number at approximately 6:35 p.m. on March 7, 2008 do not provide a reasonable basis for me to conclude that additional responsive records exist. The orders relied on by the appellant provide examples of situations where an adjudicator from this office found that a reasonable basis had been provided by the party challenging the adequacy of an institution's search to justify ordering further searches. These orders do not assist the appellant in establishing the reasonableness of his belief that the additional call recording specified by him exists in this situation.

[120] Accordingly, based on the information provided by the police and the circumstances of these appeals, I find that the search for records responsive to the appellant's requests was reasonable for the purposes of section 17 of the *Act*, and I dismiss this part of the appeal.

ORDER:

1. I order the police to disclose page 3 of record 10 from Appeal MA12-407 as provided to the police with this order by **June 26, 2014** but not before **June 23, 2014**. The information to be withheld is highlighted in orange. By agreement between the police and the appellant, the disclosure I have ordered may be made available to the appellant by sending it to the Ottawa Police Service in a sealed envelope for pick-up, without any conditions attached to that retrieval.

   In addition, and also by agreement between the police and the appellant, the police should re-send the previously disclosed call recordings and transcripts of Appeal MA12-20 to the Ottawa Police Service for the appellant to retrieve, without conditions.

2. I uphold the decision of the police to deny access to the remaining withheld responsive portions of the records.

3. In order to verify compliance with Order Provision 1, I reserve the right to require the police to provide me with a copy of the records that are disclosed to the appellant.

4. I uphold the police's search for records.

Original Signed By: May 23, 2014

Daphne Loukidelis
Adjudicator