

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3001

Appeal MA13-494

Ottawa Police Services Board

January 27, 2014

Summary: The appellant sought access to police reports about himself. The police denied access, citing the discretionary personal privacy exemption in section 38(b) and the law enforcement exemption in section 8 read in conjunction with section 38(a). This order upholds the personal privacy exemption and partially upholds the law enforcement exemption.

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, 38(b), 14(3)(b), 38(a), 8(1)(d), 8(1)(g), 8(1)(i) and 8(2)(a).

Orders Considered: PO-1959 and M-1109.

OVERVIEW:

[1] The Ottawa Police Service (the police) received a request for all records under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) which relate to the requester.

[2] The police issued a decision granting access to the records, but with some information severed under the personal privacy exemption in sections 38(b) or 14(1) and the discretionary law enforcement exemption in section 38(a), in conjunction with section 8(1).

[3] The requester, now the appellant, appealed this decision.

[4] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. Representations were sought from both parties and exchanged in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. The appellant confirmed that he was not interested in the names and contact information of the individuals appearing in their personal capacity in the records, accordingly, the following information is no longer at issue:

- Record 2¹
- Page 31 of Record 3
- Pages 61, 62, 64, 65, and 71 of Record 4
- Pages 84, 85, 89, 90, and 96 of Record 5
- Record 6²
- Record 8³
- Pages 123 and 124 of Record 9
- Page 150 of Record 10
- Page 154 (blank page)

[5] In this order, I uphold the application of the personal privacy exemption and partially uphold the application of the law enforcement exemption.

RECORDS:

[6] The records are set out in the following chart and consist of occurrence reports, except for Record 7, which contains statements.

| Record # | Pages | Pages at Issue | Exemptions claimed by Police |
|-----------------|--------------|--------------------------|-------------------------------------|
| 1 | 1-2 | 1 | 8(1)(g) |
| 3 | 30-60 | 40 | 14(1), 14(3)(b) |
| | | 32-33, 37, 39, 42-44, 48 | 38(b), 14(1), 14(3)(b) |
| | | 47 | 38(a), 8(1)(i), 8(2)(a) |
| 4 | 61-82 | 66-70, 76 | 14(1), 14(3)(b) |
| | | 72, 74, | 38(b), 14(1), 14(3)(b) |
| | | 77 | 38(a), 8(1)(d), 8(2)(a) |
| 5 | 83-98 | 91 | 14(1), 14(3)(b) |
| | | 86, 87, 92 | 38(b), 14(1), 14(3)(b) |

¹ Record 2 is found at pages 21 to 29 of the records.

² Record 6 is found at page 102 of the records.

³ Record 8 is found at pages 112 to 116 of the records.

| | | | |
|----|---------|---------------------------|-------------------------|
| | | 94 | 38(a), 8(1)(i), 8(2)(a) |
| 7 | 107-111 | 107-111 | 38(b), 14(1), 14(3)(b), |
| 9 | 123-144 | 127, 135, 141-143 | 14(1), 14(3)(b) |
| | | 125-126, 132-134, 136-139 | 38(b), 14(1), 14(3)(b) |
| 10 | 145-164 | 147-148, 151 | 38(b), 14(1), 14(3)(b), |
| | | 152-153 | 38(a), 8(1)(g), 8(2)(a) |

ISSUES:

- A. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary personal privacy exemption in section 38(b) apply to the information at issue?
- C. Does the discretionary exemption at section 38(a) in conjunction with the discretionary law enforcement section 8 exemption apply to the information at issue?
- D. Did the institution exercise its discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

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

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to

- financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, telephone number, fingerprints or blood type of the individual,
 - (e) the personal opinions or views of the individual except 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;

[8] 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.⁴

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

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

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

⁴ Order 11.

[10] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.⁵

[11] 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.⁶

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁷

[13] The police state that the record contains the personal information of the appellant and that of other individuals involved in each incident. They state that the personal information falls within paragraphs (a) (b) (d), (f) (g) and (h) of the definition of personal information in section 2(1) of the *Act* as it includes individuals’ names, dates of birth, addresses, telephone numbers and, in certain cases, ethnicities, driver’s licence numbers and information that the individuals provided to the police in order to assist in an investigation.

[14] The appellant did not provide direct representations on this issue.

Analysis/Findings

[15] The records contain the personal information of the appellant and other identifiable individuals in their personal capacity. The appellant is not interested in receiving the names and personal contact information of these individuals. The police have not applied the personal privacy exemptions in sections 14(1) or 38(b) to the names of police officers in the records.

[16] Remaining at issue in the records is information relating to the medical, psychiatric, psychological, and criminal history of the individuals in the records in accordance with paragraph (b) of the definition of personal information.

[17] The records also contain the views or opinions about individuals in accordance with paragraph (g) of the definition of personal information in section 2(1) of the *Act*.

[18] As the records all contain the personal information of the appellant and other identifiable individuals, I will consider the application of the discretionary personal privacy exemption in section 38(b) to the personal information in the records. I will also

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

consider the application of section 38(a), in conjunction with section 8, to the information that the police have claimed is subject to the discretionary law enforcement exemption.

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

[19] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[20] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[21] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 38(b).

[22] If the information fits within any of paragraphs (a) to (e) of section 14(1) or if any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal, neither paragraphs (a) to (e) of section 14(1) or section 14(4) applies.

[23] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy 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.⁸

[24] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[25] The police state that all personal information in the records was compiled and is identifiable as part of an investigation into possible violations of the law under the *Criminal Code of Canada* and/or the *Highway Traffic Act*.

[26] The appellant did not provide direct representations on this issue, other than saying he believes the information in the records is untrue.

⁸ Order MO-2954.

[27] In the circumstances, it appears that the presumption at paragraph (b) could apply. This section reads:

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

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

[28] 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.⁹ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁰

[29] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.¹¹

[30] Based on my review of the information at issue in the records, I find that all of this information was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the presumption in section 14(3)(b) applies.

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

[32] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹³

[33] The police rely on the factors that favour privacy protection in section 14(2)(f), (h) and (i), which read:

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

⁹ Orders P-242 and MO-2235.

¹⁰ Orders MO-2213, PO-1849 and PO-2608.

¹¹ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹² Order P-239.

¹³ Order P-99.

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

[34] The police state that since no consent was received from the individuals whose personal information is in the records, it was determined that the personal information and the personal opinions or views of the individuals had been supplied by the individuals to whom the information relates to in confidence. The police submit that although the appellant may have the right to information that has been supplied by other individuals and is about him, the individuals who supplied the information have the right of privacy.

[35] The police further submit that if information collected by the police is released without the consent of the individual who supplied it then the same individual may be hesitant to assist police in the future, as there would be no guarantee that the information would not be released.

[36] The appellant disputes the application of these factors that favour privacy protection apply and says that he seeks access to the information other individuals provided about him to verify the truth of this information.

[37] Based on my review of the information remaining at issue in the records, I find that the factors that favour privacy protection apply and outweigh any factors raised by the appellant in favour of disclosure of this information. As the factors in favour of privacy protection apply and as the presumption in section 14(3)(b) applies, I find that the information at issue in pages 32-33, 37, 39, 40, 42-44, 48, 66-70, 72, 74, 76, 86, 87, 91, 92, 107-111, 125-127, 132-139, 141-143, 147-148, and 151 is exempt by reason of section 38(b), subject to my review of the police's exercise of discretion.

C. Does the discretionary exemption at section 38(a) in conjunction with the discretionary law enforcement section 8 exemption apply to the information at issue?

[38] The police have applied the discretionary section 38(a) exemption in conjunction with section 8, to the following:

| Record # | Pages | Pages at Issue | Exemptions claimed |
|-----------------|--------------|-----------------------|---------------------------|
| 1 | 1-2 | 1 | 8(1)(g) |

| | | | |
|----|--|---------|-------------------------|
| 3 | | 47 | 38(a), 8(1)(i), 8(2)(a) |
| 4 | | 77 | 38(a), 8(1)(d), 8(2)(a) |
| 5 | | 94 | 38(a), 8(1)(i), 8(2)(a) |
| 10 | | 152-153 | 38(a), 8(1)(g), 8(2)(a) |

[39] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[40] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[41] 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.¹⁴

[42] 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.

[43] In this case, the institution relies on section 38(a) in conjunction with section 8(1)(d), (g) and (i) and 8(2)(a). These sections read:

8(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure

¹⁴ Order M-352.

established for the protection of items, for which protection is reasonably required;

8(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

[44] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

"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).

[45] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁵

[46] Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.¹⁶

[47] It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.¹⁷

¹⁵ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹⁶ Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

¹⁷ Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

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

[48] The police have claimed that section 8(2)(a) applies to pages 47, 77, 94, and 152-153.

[49] In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.¹⁸

[50] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.¹⁹

[51] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.²⁰

[52] Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.²¹

[53] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous.²²

[54] Regarding section 8(2)(a), the police state that:

...the record is a part of a report was prepared in the course of a law enforcement investigation and was prepared by the [police].

¹⁸ Orders 200 and P-324.

¹⁹ Orders P-200, MO-1238 and MO-1337-I.

²⁰ Order MO-1337-I.

²¹ Order PO-2751.

²² Order MO-1238.

[55] The appellant did not directly address this issue.

Analysis/Findings re section 8(2)(a)

[56] Each page at issue consists of excerpts from separate occurrence reports.²³ None of the pages at issue contain information that qualifies as a report prepared in the course of law enforcement.

[57] In Order PO-1959, Senior Adjudicator Sherry Liang considered whether certain records, including notes of police officers and general occurrence reports, constituted "reports" for the purpose of this section 14(2)(a) of the *Freedom of Information and Protection of Privacy Act*.²⁴ In addressing this issue, she wrote:

[The identified records] consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers' notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of "report" under [the *Act*], in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1341, M-1141 and M-1120.

[58] In Order M-1109, former Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a "report".

[59] I agree with the approach taken in these previous orders issued by this office, and adopt it for the purpose of my analysis in this appeal. On my review of the records at issue, I am satisfied that they do not meet the definition of a "report" under section 8(2)(a) of the *Act*. The records primarily consist of observations, recordings of fact and collection of information, rather than formal statements of the results of the collation and consideration of information obtained during investigations.²⁵ Accordingly, I find that section 8(2)(a) of the *Act* does not apply, and that pages 47, 77, 94, and 152-153 of the records do not qualify for exemption under section 38(a) read in conjunction with section 8(2)(a).

²³ Pages 152-153 are from the same occurrence report.

²⁴ The section at issue in that order was section 14(2)(a) of the *Freedom of Information and Protection of Privacy Act*, which is the provincial equivalent of section 8(2)(a) at issue in this appeal.

²⁵ See Orders M-1109, MO-2065, PO-1845 and PO-1959.

Section 8(1)(d): confidential source

[60] The institution must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.²⁶

[61] The police applied section 8(1)(d) to page 77. They provided both confidential and non-confidential representations on this issue. In their non-confidential representations, the police state that page 77 contains the name and personal observations and opinions of a confidential source who supplied information about the appellant. The information also identifies how and where the observations were made.

[62] The appellant did not directly address this issue.

Analysis/Findings re section 8(1)(d)

[63] Based on my review of the information on page 77, I agree with the police that disclosure of this page could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter, as well as revealing the information furnished by the confidential source. Accordingly, subject to my review of the police's exercise of discretion, I find that page 77 is exempt by reason of section 38(a), read in conjunction with section 8(1)(d).

Section 8(1)(g): law enforcement intelligence information

[64] The term "intelligence information" means:

Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.²⁷

[65] The police applied section 8(1)(g) to one line on page 1 and all of the information on pages 152 to 153. They did not provide representations on the information at issue on page 1.

[66] The police state that pages 152-153 contain confidential and sensitive intelligence information gathered as a result of a routine traffic stop. They state that:

²⁶ Order MO-1416.

²⁷ Orders M-202, MO-1261, MO-1583, PO-2751; see also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

...Through the course of various queries the officer determined that some of the information was similar to that of a person of interest. It was unknown at that time of the stop if the information gathered was in fact the same as the information of the query therefore the information was submitted. Disclosure of intelligence information gathered in street checks could reveal information on individuals who are being monitored and who could then take steps to conceal their activities or their associates, affecting the way that Police do their investigations and hamper the control of crime.

[67] The appellant disputes what happened at this traffic stop.

Analysis/Findings re section 8(1)(g)

[68] Based on my review of pages 152 and 153, I agree with the police that the information at issue could reveal information on individuals who are being monitored and who could then take steps to conceal their activities or their associates, affecting the way that police do their investigations and hamper the control of crime. This information was not gathered as part of the investigation of a specific occurrence but was gathered by the police in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law.

[69] Accordingly, I find that disclosure could reasonably be expected to reveal law enforcement intelligence information respecting persons under section 8(1)(g). Subject to my review of the police's exercise of discretion, I find that the information is exempt under section 38(a), read in conjunction with section 8(1)(g).

[70] However, based on my review of the one line of information at issue on page 1 of the records, and in the absence of representations from the police on this information, I find that section 8(1)(g) does not apply to this information. As no other exemptions have been claimed for the information at issue on page 1 of the records, I will order it disclosed.

Section 8(1)(i): security of a building, vehicle, system or procedure

[71] Although this provision is found in a section of the *Act* dealing specifically with law enforcement matters, its application is not restricted to law enforcement situations but can be extended to any building, vehicle or system which reasonably requires protection.²⁸

²⁸ Orders P-900 and PO-2461.

[72] The police state that the information on pages 47 and 94 was obtained from CPIC (Canadian Police Information Centre) and is provided and maintained by the RCMP. They state that:

... the information is for Police use only and cannot be divulged. The Ottawa Police is held accountable under the CPIC Policy and we do not have the right to release the information from CPIC to any individual. To release the information from the CPIC system could jeopardize the security of the tables of the computer system and the confidentiality and credibility of the system which is used throughout Canada and other countries by law enforcement agencies. We must strive to protect the security of such a system to prevent possible misuse or potential dangers by leaving the information or the system viewable or accessible to the public.

[73] The appellant did not directly address this issue in his representations.

Analysis/Findings re section 8(1)(i)

[74] I agree with the police that the CPIC system is a system established for the protection of items, for which protection is reasonably required. However, I find that not all of the information in the record is information disclosure of which could reasonably be expected to endanger the security of the CPIC system.

[75] The police did not provide specific representations on the actual information on pages 47 and 94 of the records. I find that certain portions of this page is information about the appellant and would not reveal information about the CPIC system or gaining access to it. This information is found in other records and is not specific to the CPIC records. As no other exemptions have been claimed for the information that I have found not subject to section 38(a), read in conjunction with section 8(1)(i), on pages 49 and 74 of the records, I will order it disclosed.

[76] Accordingly, subject to my review of the police's exercise of discretion, I find that portions of pages 49 and 74 are exempt by reason of section 38(a), read in conjunction with section 8(1)(i).

D. Did the institution exercise its discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

[77] The sections 38(a) and 38(b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[78] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[79] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁹ This office may not, however, substitute its own discretion for that of the institution.³⁰

[80] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:³¹

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons

²⁹ Order MO-1573.

³⁰ Section 43(2).

³¹ Orders P-344 and MO-1573.

- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[81] The police did not provide direct representations on the exercise of their discretion under section 38(a).

[82] Concerning section 38(b), the police state that although the appellant may have the right to information that has been supplied by other individuals and is about him, the individuals who supplied the information have the right of privacy. They state that if information collected by them is released without the consent of the individual who supplied it, then the same individual may be hesitant to assist police in the future as there would be no guarantee that the information would not be released. They state that they determined that the privacy rights of the individuals who supplied information override the appellant's right to this information and they exercised their discretion to deny access to the information.

[83] The appellant did not provide representations on this issue.

Analysis/Findings

[84] Based on my review of the police's confidential and non-confidential representations on sections 38(a) and 38(b), I find that the police exercised their discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[85] Accordingly, I uphold the police's exercise of discretion.

ORDER:

1. I order the police to disclose to the appellant by **February 18, 2014** the information at issue on page 1 and the information on pages 47 and 94 of the records that I have found not exempt. For the sake of clarity, with this order I have enclosed a copy of pages 47 and 94 which have been highlighted to indicate the information that should be disclosed.
2. I uphold the police's decision to deny access to the remaining information at issue in the records.

3. In order to verify compliance with provision 1 of this order, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant pursuant to provision 1.

Original Signed By:
Diane Smith
Adjudicator

January 27, 2014