

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## **ORDER MO-3083**

Appeal MA12-78-2

London Police Services Board

August 20, 2014

**Summary:** The appellant submitted an access request to the London Police Services Board (the police) for records relating to a disturbance at a townhouse complex that later resulted in an investigation by the police's Professional Standards Branch (PSB) into the conduct of some of the officers who responded. The police located records that are responsive to the appellant's access request, including the notebooks of various officers, police/civilian witness statements and a digital recording of an interview with the appellant. They claimed that the PSB records are excluded from the *Act* under section 52(3) (labour relations and employment records). In addition, they denied access to some information in the non-PSB records because it is not responsive to the appellant's request, or is subject to the discretionary exemptions in sections 8(1)(d), 8(1)(l) and 8(2)(c) (law enforcement) and the mandatory exemption in section 14(1) (personal privacy).

In this order, the adjudicator finds that the PSB records are excluded from the *Act* under section 52(3) because they were collected, prepared, maintained and used by the police in relation to meetings, consultations, discussions and communications about employment-related matters in which the police have an interest. He finds that some information in the non-PSB records is not responsive to the appellant's request. In addition, he finds that the personal information of an arrested individual in the non-PSB records qualifies for exemption under section 14(1), because its disclosure to the appellant would constitute an unjustified invasion of the arrested individual's personal privacy. He also finds that the "10-codes" and patrol zone codes in the non-PSB records are exempt under section 8(1)(l), because disclosing this information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. He upholds the police's access decision and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 8(1)(l), 14(1), 14(3)(b) and 52(3)3.

**Orders and Investigation Reports Considered:** Order M-757.

## **OVERVIEW:**

[1] In the early morning hours of September 6, 2008, a number of officers from the London Police Service arrived at a townhouse complex near Fanshawe College in response to reports of a disturbance. The police arrested several individuals. A camera crew from A-Channel, a local television station, was also at the scene and later broadcast footage showing officers using force to arrest some of these individuals.

[2] Ontario's Special Investigations Unit (SIU) launched an investigation into an incident that resulted in an injury to an arrested individual. In addition, the Chief of Police made a "chief's complaint" about the conduct of an officer, which triggered an investigation by the police's Professional Standards Branch (PSB).

[3] The appellant, who was working at the townhouse complex when the disturbance took place, submitted a five-part access request to the London Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following records:

1. **TUE-23-SEP-08/1430h** > An 18 minute meeting took place between the writer and [two named officers] of the LPS. The meeting took place at a parking lot within the area of Exeter & Wellington Roads, London. **COPY** of notebook entries and other reports, documentation, records or otherwise made as a result of this meeting. (13 documents were provided by the writer which I understand became part of the public information including a copy of an E-mail to [named officer]'s father of the S.I.U. and various reports or otherwise submitted for information purposes). \*Copies of the documents originally submitted to the LPS members on that date by the writer are not required.
2. **THU-02-OCT-08/1430h** > A more formal meeting was conducted between the writer and [two named officers] for a 2<sup>nd</sup> phase of PSB investigation. The meeting took place at the writer's office located at [appellant's address]. This took place subsequent to [named officer]'s father, [individual's name] of the SIU clearing the LPS to interview the writer after waiving the writer as an Independent Witness as part of the SIU investigation. A dual digital recording was made and it is understood that the recording made by [named officer] had been soon after transcribed to print and also considered public information. Comments and exchanges were made before and after the digital recording. Notes were made before, during and after the official

statement. [Named officer] made considerable notes as a result of the dialogue, questions, answers and exchanges throughout the meeting. These notes were made in full size duo-tang/binder style notebook. **COPY** of the transcribed version of [named officer]'s digital recording, a copy of the actual recording, a copy of notes made by both members of the LPS during, after and in relation to the interview/meeting.

3. **Copy** of [named officer]'s notebook entries and other reports, documentation, records or otherwise made as recorded happenings at or about 0310hrs on the above noted date/time (and afterward) as result the occurrence listed above. [Named officer] took custody of a young person arrested by the writer for Trespass, TPA, RSO and the LPS subsequently arbitrarily added a charge of Obstruct, CCC, RSC, which was later withdrawn by the LPS. **COPY** of notebook entries for the shift covering the occurrence date and time. And a specifically a **COPY** of the statement provided by [named officer] to the Professional Standards Branch of the LPS in relation to this occurrence.
4. **COPY** of [named officer]'s notebook entries and other reports, documentation, records or otherwise made as recorded happenings at or about 0310hrs on the above noted date/time (and afterward) as a result the occurrence listed above. Copy of notebook entries for the shift covering the occurrence date and time. **COPY** of the statement provided by [named officer] to the Professional Standards Branch of the LPS.
5. Excess (virtually all) members of the LSP were instructed by Sergeants on-scene to clear and vacate the property as soon as possible once things were eventually quickly buttoned up. [Named officer] was instructed to remain in order to obtain a *very quick* statement by the writer before clearing the scene. **COPY** of the very quick statement given to [named officer] by the writer.

[emphasis in original]

[4] The police located records that are responsive to the appellant's request, including the notebooks of various officers, police/civilian witness statements and a digital recording of an interview with the appellant. Most of these records were gathered from PSB officers who were investigating the conduct of certain officers relating to the incidents that occurred at the townhouse complex. However, they also include records gathered from officers who are not part of the PSB.

[5] In their decision letter to the appellant, the police claimed that the PSB records are excluded from the *Act* under section 52(3) (labour relations and employment records). However, they provided the appellant with partial access to the remaining

records, including those provided by officers who are not part of the PSB. They withheld some of these non-PSB records, in full or in part, under the following provisions:

- the discretionary exemptions in sections 8(1)(d), 8(1)(l) and 8(2)(c) (law enforcement); and
- the mandatory exemption in section 14(1), (personal privacy), read in conjunction with the factor in section 14(2)(h) and the presumption in section 14(3)(b).

[6] They also claimed that some information in the records is not responsive to the appellant's request.

[7] The appellant appealed the police's access decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to attempt to resolve the issues in dispute between the parties. The mediator advised the parties that the discretionary exemptions in sections 38(a) and (b) of the *Act* might be at issue if the records contain the personal information of the appellant. In addition, the police sent a supplementary decision letter to the appellant and provided him with access to the officers' names in six pages of records.<sup>1</sup>

[8] This appeal could not be resolved during mediation, and it was moved to adjudication for an inquiry. I sought representations from the police and the appellant on the issues in this appeal. In response, both parties submitted representations to me.

## **RECORDS:**

[9] There are 60 pages of records, including a digital recording, that remain at issue in this appeal. These records are summarized in the following chart, which is based on the police's decision letters, an index of records provided by the police, the parties' representations, and my review of the records remaining at issue.

<b>Page numbers</b>	<b>Description of record</b>	<b>Police's decision</b>	<b>Exclusion/exemptions claimed</b>
1-2	Notes of PSB officer	Withheld in full	ss. 52(3)1 and 3 Non-responsive
3-5a	Notes of PSB officer	Withheld in full	ss. 52(3) and 3 Non-responsive

<sup>1</sup> Pages 53, 54, 55, 58, 59 and 60.

6-10	Police witness statement (PSB officer)	Withheld in full	ss. 52(3)1 and 3 Non-responsive
11-30	Police witness statement (PSB officer)	Withheld in full	ss. 52(3)1 and 3 Non-responsive
31-41	Appellant's civilian witness statement to PSB	Withheld in full	ss. 52(3)1 and 3 Non-responsive
42	Digital recording of appellant's civilian witness statement to PSB	Withheld in full	ss. 52(3)1 and 3 Non-responsive
43-45	Notes of PSB officer	Withheld in full	ss. 52(3)1 and 3 Non-responsive
46	Notes of PSB officer	Withheld in full	ss. 52(3)1 and 3 Non-responsive
47-52	Police witness statement (PSB officer)	Withheld in full	ss. 52(3)1 and 3 Non-responsive
53-54	Notes of officer who attended at townhouse complex	Withheld in part	ss. 8(1)(d) and (l) s. 14(1) Non-responsive
55	Police witness statement of officer who attended at townhouse complex	Withheld in part	ss. 8(1)(d) and (l) s. 8(2)(c) s. 14(1) Non-responsive
56-57a	Police witness statement of officer who attended at townhouse complex (to PSB)	Withheld in full	ss. 52(3)1 and 3
58-60	Notes of officer	Withheld in part	Non-responsive

## **ISSUES:**

- A. Does section 52(3) exclude the records from the *Act*?
- B. Is some information in the records not responsive to the appellant's request?
- C. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- D. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
- E. Do the discretionary exemptions at sections 8(1)(d), 8(1)(l) and 8(2)(c) apply to the information at issue?
- F. Did the police exercise their discretion under sections 8(1)(d), 8(1)(l) and 8(2)(c)? If so, should the IPC uphold their exercise of discretion?

## **DISCUSSION:**

### **LABOUR RELATIONS AND EMPLOYMENT RECORDS**

#### **A. Does section 52(3) exclude the records from the *Act*?**

[10] The police claim that the following records are excluded from the *Act* under sections 52(3)1 and 3: pages 1-52 and 56-57a.

[11] Sections 52(3)1 and 3 state:

Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.

. . .

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[12] If section 52(3) applies to the records, and none of the exceptions found in section 52(4)<sup>2</sup> applies, the records are excluded from the *Act*.

[13] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.<sup>3</sup>

[14] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.<sup>4</sup>

[15] Although the police claim that both sections 52(3)1 and 3 apply to the records at issue, I will start by addressing the possible application of section 52(3)3. For section 52(3)3 to apply, the police must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[16] I am satisfied that the records at issue were collected, prepared, maintained and used by police officers assigned to the PSB and that this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or

---

<sup>2</sup> Section 52(4) states:

This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

<sup>3</sup> Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

<sup>4</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

communications about the conduct of the officers being investigated. Consequently, I find that parts 1 and 2 of the section 52(3)3 test have been met.

[17] The more significant issue for determination is whether these meetings, consultations, discussions and communications were about "labour relations" or "employment-related" matters in which the police have an interest, as stipulated in part 3 of the section 52(3)3 test.

[18] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.<sup>5</sup> The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.<sup>6</sup>

[19] The police submit that the meetings, consultations, discussions and communications that took place were about "employment-related" matters. In particular, they state that a "chief's complaint" was initiated under section 76(1) of the *Police Services Act (PSA)*<sup>7</sup> as a result of certain incidents that occurred at the townhouse complex. This provision states:

A chief of police may make a complaint under this section about the conduct of a police officer employed by his or her police force, other than the deputy chief of police, and shall cause the complaint to be investigated and the investigation to be reported on in a written report.

[20] The police further submit that they have disciplinary responsibilities under the *PSA* and that as a result of a PSB investigation, an officer may face informal or formal discipline. They then cite Order MO-1650 which found that records relating to complaints under the *PSA* about an officer's conduct are about "employment-related" matters, as stipulated in section 52(3)3. With respect to the records at issue in this appeal, they assert that the meetings, consultations, discussions and communications that took place were about "employment-related" matters because they "relate to a complaint against the officer(s) and ultimately to the officer's work performance."

[21] The appellant's representations do not directly address whether the meetings, consultations, discussions and communications that took place were about "labour relations" or "employment-related" matters, as required by the section 52(3)3 exclusion.

---

<sup>5</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.

<sup>6</sup> Order PO-2157.

<sup>7</sup> R.S.O. 1990, c. P.15, as amended.



[22] In the circumstances of this particular appeal, there is no evidence before me to suggest that the meetings, discussions, consultations and communications that took place were about the collective bargaining relationship between the police and its employees, particularly the officers whose conduct was being investigated. I find, therefore, that these meetings, discussions, consultations and communications were not about "labour relations."

[23] However, the IPC has found in previous orders that disciplinary matters involving police officers are "employment-related" matters.<sup>8</sup> In addition, in *Ontario (Ministry of Correctional Services) v. Goodis*, the Divisional Court stated the following with respect to section 65(6) of the *Freedom of Information and Protection of Privacy Act*<sup>9</sup> when it referred to a previous Court of Appeal decision<sup>10</sup> in which one of the records at issue was a copy of a public complaint file of the Police Complaints Commission:

. . . [T]here was no dispute in that case that the file documenting the investigation of the complaint was employment-related – not surprisingly because of the potential for disciplinary action against a police officer. . .<sup>11</sup>

[24] The records at issue in the appeal before me describe the PSB's investigation of the conduct of certain officers involved in the arrest of individuals at the townhouse complex. In my view, these records are "employment-related," because of the potential for disciplinary action against these officers. I find, therefore, that the meetings, discussions, consultations and communications that took place were clearly about "employment-related matters" for the purposes of part 3 of the section 52(3)3 test.

[25] To satisfy this part of the test, it must also be established that the police have "an interest" in these employment-related matters. The phrase "in which the institution has an interest" in section 52(3)3 means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce.<sup>12</sup> The employment-related matters that are documented in the PSB records concern members of the police's own workforce. In addition, given that the police are the employer of those officers whose conduct was being investigated by the PSB, they clearly have an interest in these employment-related matters that extends beyond a "mere curiosity or concern."

[26] In short, I am satisfied that the PSB records were collected, prepared, maintained and used by the police in relation to meetings, consultations, discussions and communications about employment-related matters in which the police have an

---

<sup>8</sup> E.g., Orders PO-2499 and PO-2426.

<sup>9</sup> The provincial equivalent to section 52(3) of the *Act*.

<sup>10</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.

<sup>11</sup> *Supra* note 4 at para. 29.

<sup>12</sup> *Supra* note 10.

interest. In my view, none of the exceptions in section 52(4) apply to these records. Consequently, the following PSB records are excluded from the *Act* under section 52(3)3, and the police have no obligation under the *Act* to disclose them to the appellant: pages 1-52 and 56-57a.<sup>13</sup>

## **RESPONSIVENESS OF RECORDS**

### **B. Is some information in the records not responsive to the appellant's request?**

[27] The police claim that the following records contain information that is not responsive to the appellant's request: pages 1-52, 53-54, 55 and 58-60.

[28] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>14</sup> Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>15</sup>

[29] I have already found that pages 1-52 are excluded from the *Act* in full under section 52(3)3. Consequently, it is not necessary to determine whether any information in these records is not responsive to the appellant's request.

[30] Pages 53-54 are the notes of an officer who went to the townhouse complex in response to reports of a disturbance. Page 55 is a police witness statement by the same officer. The police submit that there is information in these records that is not responsive to the appellant's request, such as information relating to other calls the officer responded to during his shift and administrative information. The appellant's representations do not address whether there is information on these pages of the records that is not responsive to his request.

[31] I have reviewed pages 53-55 and find that these records contain administrative information, information about unrelated incidents investigated by the officer during his shift and other information that do not reasonably relate to the appellant's request. Consequently, I find that this information is non-responsive and has been properly withheld by the police.

[32] In part 4 of his request, the appellant sought access to the following records:

**COPY** of [named officer]'s notebook entries and other reports, documentation, records or otherwise made as recorded happenings at or

---

<sup>13</sup> Given that I have found that these records are excluded from the *Act* under section 52(3)3, it is not necessary to assess whether they are also excluded under section 52(3)1.

<sup>14</sup> Orders P-880 and PO-2661.

<sup>15</sup> Orders P-134 and P-880.

about 0310hrs on the above noted date/time (and afterword) as a result the occurrence listed above. Copy of notebook entries for the shift covering the occurrence date and time. **COPY** of the statement provided by [named officer] to the Professional Standards Branch of the LPS.

[33] The police located the notes of that particular officer for September 5-6, 2008 but claim that the information in these records (pages 58-60) is not responsive to part 4 of the appellant's request. In particular, they submit that this particular officer's notes show that he was not involved in investigating the disturbance at the townhouse complex and that his notes identify other calls that he attended to during his shift.

[34] In his representations, the appellant does not directly address whether this officer's notes are responsive to part 4 of his request but states:

It is established that [the named officer] worked and was on duty at this specific time and date in question, as did his section/group/platoon and members of his section also attended the address. [The named officer] was apparently off-duty by 0500hrs the morning of 06-sep-08, approximately 2 hours after the original occurrence time and 1.5 hours after the scene was essentially cleared on the direction of senior members. Most members a couple weeks later couldn't remember who attended, other than stating "many".

. . . [L]ike most officers on-scene, there are no notations in [the named officer's] notebook indicating his location or what he was doing soon after 3am that date. [The named officer's] notebook in fact does not account for a great deal of time during his shift.

[35] I have reviewed the officer's notes (pages 58-60) and find that these records do not contain any reference to the disturbance at the townhouse complex near Fanshawe College or any indication that he joined other officers in responding to this disturbance at about 3:00 a.m. on September 6, 2008. I find that all of the information in the officer's notes do not reasonably relate to the wording in part 4 of the appellant's request and it is, therefore, non-responsive.

[36] It is evident from the appellant's representations that he believes that some of the officers who went to the townhouse complex in response to the disturbance did not properly document their attendance at this location in their notebooks. I agree with the appellant that police officers should have a duty to keep accurate notes, because a failure to adhere to proper records management practices can have an adverse effect on the public's ability to scrutinize the conduct of the police. However, the issue before me is whether the information in the records is responsive to the appellant's request, not whether particular officers properly documented what occurred on their shifts.

[37] In summary, I uphold the police's decision to withhold some information on pages 53-54 and 55 of the records, and all of the information on pages 58-60, because it is not responsive to the appellant's request.

## **PERSONAL PRIVACY**

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

[38] The personal privacy exemption in section 14(1) of the *Act* applies to records that contain "personal information." Consequently, it is necessary to determine whether the records at issue in this appeal contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

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

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

- (h) the individual's name 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;

[39] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>16</sup>

[40] The police submit that the records remaining at issue contain the personal information of various individuals:

As a result of the [police] conducting law enforcement activity under our Project "LEARN" (Liquor Enforcement and Reduction of Noise), personal information was collected about the appellant and other individuals. Information such as names, dates of birth and addresses were collected. Clearly, the records at issue contain the personal information of identifiable individuals, including the appellant.

[41] The appellant's representations do not directly address whether the records remaining at issue contain personal information, although he submits that the police are a public entity that "is subject to openness as it relates to names or activities of public employees."

[42] The records remaining at issue are pages 53-54 (officer's notes) and 55 (police witness statement). These records contain information about the appellant and an individual who was arrested by the police.

[43] The appellant, who is identified by name and occupation in these records, was working at the townhouse complex when the disturbance took place. Section 2(2.1) of the *Act* excludes certain information from the definition of personal information. It states:

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

[44] In my view, the information about the appellant (his name and occupation) identifies him in a business/professional capacity, rather than a personal capacity. It clearly falls within section 2(2.1) of the *Act*, which excludes such information from the definition of personal information. Consequently, I find that this information does not

---

<sup>16</sup> Order 11.

qualify as the appellant's personal information. The police have disclosed those parts of pages 53-55 that contain his business/professional information to him.

[45] The information relating to the arrested individual includes his name, age and address. I find that all of this information qualifies as his personal information, because it falls within paragraphs (a), (d) and (h) of the definition in section 2(1). The police have withheld this individual's personal information under the mandatory personal privacy exemption in section 14(1).

**D. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?**

[46] The police claim that the personal information of the arrested individual on pages 53-55 of the records is exempt under section 14(1) of the *Act*, because disclosing it to the appellant would constitute an unjustified invasion of the arrested individual's personal privacy.

[47] There are two personal privacy exemptions in the *Act*: sections 14(1) and 38(b).

[48] Section 14(1) is a mandatory exemption. Under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 14(1)(f)].

[49] Section 38(b) is a discretionary exemption. 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.

[50] Pages 53-55 only contain the arrested individual's personal information. As noted above, the information relating to the appellant identifies him in a business/professional capacity and it does not, therefore, qualify as his personal information. Given that these records contain only the personal information of another individual, and not that of the appellant, the applicable exemption to consider is section 14(1), not section 38(b).

[51] Section 14(1) prohibits the police from disclosing the arrested individual's personal information to the appellant unless one of the exceptions in paragraphs (a) to (f) applies. In my view, the only exception that could apply is section 14(1)(f), which states:

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

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

[52] Under section 14(1)(f), if disclosing the arresting individual's personal information to the appellant constitutes an unjustified invasion of that individual's personal privacy, his personal information is exempt from disclosure. Sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy.

[53] 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 14. The police submit that the presumption in section 14(3)(b) applies to the arrested individual's personal information. This provision states:

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

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

[54] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>17</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>18</sup>

[55] The police state that the "call for service" to the townhouse complex resulted in an investigation into possible offences under the *Criminal Code*. They submit, therefore, that the arrested individual's personal information in the records was compiled as part of an investigation into a possible violation of the law, as stipulated in the section 14(3)(b) presumption. The appellant's representations do not address whether the section 14(3)(b) presumption applies to the arrested individual's personal information.

[56] I have reviewed the officer's notes (pages 53-54) and the officer's witness statement (page 55), which contain the arrested individual's personal information. This information was clearly compiled by the police as part of an investigation into possible violations of the *Criminal Code* by this individual. Consequently, disclosing the arrested

---

<sup>17</sup> Orders P-242 and MO-2235.

<sup>18</sup> Orders MO-2213, PO-1849 and PO-2608.

individual's personal information to the appellant is presumed to constitute an unjustified invasion of that individual's personal privacy under section 14(3)(b).

[57] Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.<sup>19</sup> In my view, none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to the arrested individual's personal information. In addition, there is no evidence before me to suggest that the public interest override in section 16 applies to the records.

[58] In short, I find that disclosing the arrested individual's personal information to the appellant would constitute an unjustified invasion of that individual's personal privacy and it qualifies for exemption under section 14(1).

## **LAW ENFORCEMENT**

### **E. Do the discretionary exemptions at sections 8(1)(d), 8(1)(l) and 8(2)(c) apply to the information at issue?**

[59] The police have withheld certain codes on pages 53-55 under section 8(1)(l). They submit that disclosing this information could reasonably be expected to lead to the harms contemplated by section 8(1)(l). They state:

The zone numbers have historically been considered as confidential within the police community as these numbers are used in police communication in an effort to avoid verbalizing what the officer may or may not be doing or what area of the city the officer may or may not be patrolling in at a particular time and could enable those involved in criminal activities to monitor the activity and gain familiarity with the patterns of the police. In this way, they would be able to ascertain which day, time and area would be most conducive to their criminal activity.<sup>20</sup>

[60] The appellant's representations do not directly address whether such information falls within the requirements of the section 8(1)(l) exemption, although that he states that "a reasonable person naturally assumes that different areas of a city are assigned to different officers," and that it is "relatively innocuous information concerning the activities of a public officer, certainly 5 years afterward and that there is no harm in such release in consideration of time."

[61] I have reviewed pages 53-55, and it appears that the police have withheld several codes, which appear to be "10-codes" and the patrol zone codes. "10-codes" are codes used to represent common phrases, particularly in radio transmissions and

---

<sup>19</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>20</sup> The police also cite Orders M-757 and MO-1757-I to support their position.



other communications between individuals employed in law enforcement. Patrol zone codes are codes used to identify the particular areas of the city in which an officer is patrolling.

[62] Previous IPC orders that have consistently found that the disclosure of such information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.<sup>21</sup> For example, in Order M-757, Inquiry Officer Anita Fineberg stated:

The purpose of the exemption in section 8(1)(l) is to provide the police with the discretion to preclude access to records in circumstances where disclosure could reasonably be expected to result in the harm set out in this section. I am satisfied that, in this case, the police have provided sufficient evidence to establish that disclosure of the "ten" codes, patrol zones and patrol car identification numbers, and the rules and regulations governing the frequency that an officer is to check the cells where prisoners are lodged could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, I find that the requirements for exemption under section 8(1)(l) have been met with respect to this information.

[63] In the circumstances of this particular appeal, I am satisfied that disclosing the "10-codes" and patrol zone codes in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Although the appellant may not have any malevolent intention in seeking such information, disclosing these codes to him would amount to disclosure to the world. In short, I find that this information qualifies for exemption under section 8(1)(l).

[64] With respect to sections 8(1)(d) and 8(2)(c), the police state that they are not submitting representations on these exemptions. Based on my review of these records, it appears that all of the withheld information on pages 53-55 has been properly withheld because it is either not responsive to the appellant's request or it qualifies for exemption under the personal privacy exemption in section 14(1) or the law enforcement exemption in section 8(1)(l). Consequently, I find that it is not necessary to consider whether the sections 8(1)(d) and 8(2)(c) exemptions apply to the withheld information in those records.

---

<sup>21</sup> See, for example, Orders MO-2175, M-757 and PO-2970.

## **EXERCISE OF DISCRETION**

### **F. Did the police exercise their discretion under sections 8(1)(d), 8(1)(l) and 8(2)(c)? If so, should the IPC uphold their exercise of discretion?**

[65] The law enforcement exemptions in section 8(1) 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 IPC may determine whether the institution failed to do so.

[66] In this order, I have found that the "10-codes" and patrol zone codes on pages 53-55 that were withheld by the police qualify for exemption under sections 8(1)(l). Consequently, I will assess whether the police exercised their discretion properly in applying this exemption to this withheld information. It is not necessary to consider whether they police exercised their discretion properly in applying sections 8(1)(d) and 8(2)(c), because those exemptions are no longer at issue in this appeal.

[67] The IPC may find that an institution erred in exercising its discretion where, for example:

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

[68] Neither the police nor the appellant submitted representations on the issue of exercise of discretion with respect to section 8(1)(l). In my view, however, the police's representations on section 8(1)(l) reveal that they exercised their discretion and did so in a proper manner in withholding "10-codes" and patrol zone codes under this exemption. I find that they took relevant factors into account and did not consider irrelevant factors in applying this exemption. Consequently, I uphold the police's exercise of discretion under section 8(1)(l) with respect to the "10-codes" and patrol zone codes in the records.

### **ORDER:**

I uphold the police's access decision and dismiss the appeal.

---

Colin Bhattacharjee  
Adjudicator

---

August 20, 2014