

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3106

Appeals MA13-394 & MA13-395

Toronto Police Services Board

September 30, 2014

Summary: The appellant is a journalist who is seeking police investigation records under the *Municipal Freedom of Information and Protection of Privacy Act* relating to a home invasion and assault that took place at a house in Toronto. The police located an occurrence report and the notes of 18 officers who investigated this incident. They denied access to these records in full under the mandatory personal privacy exemption in section 14(1) of the *Act*. The adjudicator finds that these records contain the personal information of four individuals who were in the house when the assault occurred and two individuals who were stopped by the police shortly after the home invasion. This personal information qualifies for exemption under section 14(1). However, he also finds that there is a compelling public interest in disclosure that clearly outweighs the purpose of the section 14(1) exemption with respect to some of the personal information in the records. He orders the police to disclose a severed version of the records to the appellant.

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"), 2(2.1), 14(1), 14(3)(a), 14(3)(b) and 16.

Orders and Investigation Reports Considered: Orders 43, P-230 and MO-2012.

Cases Considered: *Canadian Broadcasting Corporation and Others v. HMQ*, 2013 CanLII 75897 (ON SC), [2013] O.J. No. 5422.

OVERVIEW:

[1] The appellant is a journalist who submitted two access requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Police Services Board (the police). In particular, he requested access to all police officers' notes, general occurrence reports and incident reports relating to an assault that the police investigated at a specific address in Toronto on May 21, 2013.

[2] The house at this address has been the subject of intense media attention during the past year. Some media outlets have reported that the infamous crack-smoking video involving Toronto Mayor Rob Ford was filmed at this house. On May 16, 2013, reporters from the U.S. gossip website, *Gawker*, and *The Toronto Star* both claimed that an individual showed them this video on a mobile phone but did not give them a copy.

[3] Five days later, there was a home invasion at this address. At approximately 11:00 p.m. on May 21, 2013, patrol cars were dispatched to the house after they received a call that there was an assault in progress. The police later advised the media that a man had forced his way in the house and then assaulted two people with a weapon before fleeing on foot.¹ The police conducted an investigation into the assault but have not arrested anyone to date.

[4] The appellant is seeking the police investigation records relating to this incident. In response, the police located 65 pages of responsive records, including the notes of 18 officers and an occurrence report. They then sent two decision letters to the appellant in which they denied him access to these records in full under the mandatory exemption in section 14(1) (personal privacy), read in conjunction with the presumption in section 14(3)(b) of the *Act*. They also claimed that some information in the officers' notes is not responsive to the access requests.

[5] The appellant appealed the police's decisions to deny him access to these records to the Information and Privacy Commissioner of Ontario (IPC). The IPC opened two appeal files: MA13-394 (police officers' notes) and MA13-395 (occurrence report).

[6] The IPC assigned a mediator to assist the parties in resolving the issues in dispute in these appeals. During mediation, the police sent a supplementary decision letter to the appellant with respect to the officers' notes and indicated that they were denying access to "10-codes"² in these records under the discretionary law enforcement

¹ "Assault took place at home linked to alleged Rob Ford photo," *CTV News*, June 6, 2013; "In Etobicoke, locals find a clue to the Rob Ford photo mystery," *The Globe and Mail*, June 6, 2013; "Etobicoke house linked to Rob Ford crack cocaine scandal," *Toronto Sun*, June 6, 2013.

² "10-codes" are codes used to represent common phrases, particularly in radio transmissions and other communications between individuals employed in law enforcement.

exemption in section 8(1)(l) (commission of an unlawful act or control of crime) of the *Act*.

[7] The appellant advised the mediator that he is not seeking information in the records that is not responsive to his access requests. In addition, he claimed that there is a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption. Consequently, the public interest override at section 16 of the *Act* is at issue in these appeals.

[8] These appeals were not resolved during mediation and were moved to adjudication for an inquiry. I sought and received representations on the issues from the police, the appellant, and four affected parties. The affected parties, who are identified in the records, include the two individuals who were assaulted at the house and two other individuals who were also in the house at the time. In response, I received representations from both the police and the appellant but not from any of the affected parties.

[9] In his representations, the appellant states that he is not seeking access to the police "10-codes" in the records. Consequently, the section 8(1)(l) exemption is no longer at issue.

RECORDS:

[10] The records at issue in these appeals are summarized in the following chart, which is based on my review of the records and the page numbering in the police's index of records:

Page numbers	Description of record	Police's decision	Exemption claimed
1-7	Occurrence report	Withheld in full	s. 14(1)
8-9	Notes of officer #1	Withheld in full	s. 14(1)
10-12	Notes of officer #2	Withheld in full	s. 14(1)
13-15	Notes of officer #3	Withheld in full	s. 14(1)
16-18	Notes of officer #4	Withheld in full	s. 14(1)
19-24	Notes of officer #5	Withheld in full	s. 14(1)
25-26	Notes of officer #6	Withheld in full	s. 14(1)

27-28	Notes of officer #7	Withheld in full	s. 14(1)
29-33	Notes of officer #8	Withheld in full	s. 14(1)
34-35	Notes of officer #9	Withheld in full	s. 14(1)
36-39	Notes of officer #10	Withheld in full	s. 14(1)
40	Notes of officer #11	Withheld in full	s. 14(1)
41-42	Notes of officer #12	Withheld in full	s. 14(1)
43-44	Notes of officer #13	Withheld in full	s. 14(1)
45-46	Notes of officer #14	Withheld in full	s. 14(1)
47-49	Notes of officer #15	Withheld in full	s. 14(1)
50-51	Notes of officer #16	Withheld in full	s. 14(1)
52-59	Notes of officer #17	Withheld in full	s. 14(1)
60-65	Notes of officer #18	Withheld in full	s. 14(1)

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 mandatory exemption at section 14(1) apply to the personal information in the records?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

PERSONAL INFORMATION

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

[11] The personal privacy exemption in section 14(1) of the *Act* only applies to "personal information" in records. Consequently, it is necessary to determine whether the occurrence report and officers' notes 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;

[12] 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.³

[13] The police submit that the records at issue contain the personal information of several identifiable individuals, including their names, addresses, birth dates and other information that they provided to the officers investigating the assault.

[14] The appellant acknowledges that the records likely contain the personal information of private citizens, such as their names, birth dates and contact information. However, he submits that he has made it abundantly clear to the police that he is not interested in such information and that it can be "readily redacted" from the records.

[15] The occurrence reports and officers' notes contain information about various individuals, including:

- four individuals who were at the house when the home invasion occurred, including the two individuals who were assaulted;
- two individuals in a car which was stopped by the police;
- the suspected assailant; and
- the officers who investigated the assault.

[16] The information in the records relating to the four individuals at the house and two individuals stopped by the police includes their names, birth dates, sex, race/colour, addresses, telephone numbers and medical history. I find that all of this information qualifies as their personal information, because it falls within paragraphs (a), (b), (d) and (h) of the definition in section 2(1).

[17] In addition, the records also include other information that these individuals provided about themselves in response to questions from the investigating officers, and the officers' observations about these individuals. Although some of this information does not necessarily fit within the non-exhaustive list in paragraphs (a) to (h) of section 2(1), it still qualifies as these individuals' personal information because it is recorded information about an identifiable individual.

³ Order 11.

[18] The information in the records relating to the suspected assailant includes his sex, race/colour, approximate height/weight and a description of his clothing. To date, this individual has not been identified or arrested by the police. Neither the police's nor the appellant's representations address whether the records contain his personal information.

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴ In my view, the generic information relating to the suspected assailant could apply to numerous individuals, and it is not reasonable to expect that he may be identified if this information is disclosed. There would need to be additional information in the records relating to this individual that is more particular or distinguishable for this information to be truly identifiable. Consequently, I find that the general description of the suspected assailant in the records does not qualify as his personal information. Given that the personal privacy exemption in section 14(1) only applies to personal information, I find that this information cannot qualify for exemption under that provision and must be disclosed to the appellant.

[20] Finally, the records contain the names, job titles and badge numbers of the officers who investigated the assault. Section 2(2.1) of the *Act* excludes specific 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.

[21] In addition, previous IPC orders have found that 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 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

[22] In my view, the officers' names and job titles identify them in a professional rather than a personal capacity. This information 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 qualify as the officers' personal information.

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

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.

[23] In addition, it is well established in IPC orders that a badge number does not qualify as personal information because it is associated with an officer in a professional rather than a personal capacity and does not reveal anything of a personal nature about that individual.⁷ I agree with these previous orders and find the badge numbers in the records do not qualify as the officers' personal information.

[24] Given that the personal privacy exemption in section 14(1) only applies to personal information, I find that the names, job titles and badge numbers of the officers identified in the records cannot qualify for exemption under that provision and must be disclosed to the appellant.

PERSONAL PRIVACY

B. Does the mandatory exemption at section 14(1) apply to the personal information in the records?

Section 14(1)

[25] Where a requester seeks personal information of another individual, the personal privacy exemption in section 14(1) of the *Act* prohibits the police from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) 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.

[26] I have found that the records contain the personal information of the four individuals who were in the house when the assault occurred and the two individuals who were stopped by the police. Under section 14(1)(f), if disclosing these individuals' personal information to the appellant would not constitute an unjustified invasion of their personal privacy, it is not 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.

⁷ Orders MO-2527, MO-2252, MO-2050, MO-2112, MO-2862 and MO-2911.

[27] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of these individuals' personal information to the appellant is presumed to constitute an unjustified invasion of their personal privacy under section 14. The police submit that the presumption in section 14(3)(b) applies to these individuals' personal information in the records. 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;

[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.⁸

[29] The police submit that section 14(3)(b) applies because their officers compiled personal information about identifiable individuals as part of an investigation into a possible violation of the law. The appellant submits that the section 14(3)(b) presumption cannot apply because it presumes the disclosure of "personal information," and he is not seeking the personal information of private citizens that may appear in the records, such as their names, birth dates, contact information, etc.

[30] I do not find the appellant's submissions on section 14(3)(b) persuasive. As will be discussed in more detail below, even if the names, birth dates and contact information of these individuals is severed from the records, the remaining information about them still qualifies as their "personal information," because it is reasonable to expect that they may be identified if this information is disclosed.

[31] The personal information of these individuals was clearly compiled by the police as part of an investigation into possible violations of the *Criminal Code* by the assailant. Consequently, I find that disclosing their personal information to the appellant is presumed to constitute an unjustified invasion of their personal privacy under section 14(3)(b).

⁸ Orders P-242 and MO-2235.

[32] In my view, the section 14(3)(a) presumption also applies to some personal information in the records. This provision states:

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

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

[33] Some parts of the occurrence report and officers' notes contain information about the injuries suffered by the two assault victims and identify the health care institution to which they were brought for treatment. This personal information relates to their medical history, diagnosis, condition, treatment and evaluation. Consequently, I find that it fits squarely within section 14(3)(a) and disclosing it to the appellant is presumed to constitute an unjustified invasion of these individuals' personal privacy.

[34] The Ontario Divisional Court has found that once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.⁹ In my view, none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to the personal information in the records. However, in Issue C of this order, I will examine whether there is a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption.

[35] The appellant submits that the factor favoring disclosure of personal information in section 14(2)(a) may apply in the circumstances of this appeal. This factor requires an institution to consider whether disclosing the personal information in a record is desirable for the purpose of subjecting the activities of the institution to public scrutiny. However, the Divisional Court has found that once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).¹⁰ Given that I have found that the presumptions in section 14(3)(a) and (b) apply to the personal information of various individuals in the occurrence report and officers' notes, it cannot be rebutted by the factor in section 14(2)(a).

[36] In short, I find that disclosing the personal information of the four individuals who were in the house and the two individuals who were stopped by the police would constitute an unjustified invasion of their personal privacy, and it qualifies for exemption under section 14(1) of the *Act*.

⁹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

¹⁰ *John Doe*, cited above.

Section 4(2): Severance of records

[37] Section 4(2) of the *Act* requires the police to disclose as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions. The IPC has found in previous orders that one purpose of section 4(2) is to require institutions to try, wherever possible, to sever records so as to remove them from the scope of the exemptions. By properly discharging the obligation to sever an exempt record under subsection 4(2), an institution, in many instances, will alter the record in such a way that it no longer meets the requirements of the exemption. In other words, a record considered in its entirety may be exempt, but the same record, properly severed, may be eligible for release.¹¹ In the circumstances of these appeals, it must be determined whether the records can be severed in such a way that some of the information no longer meets the requirements of the section 14(1) exemption and can be disclosed.

[38] The personal privacy exemption in section 14(1) only protects "personal information" from disclosure. Consequently, in applying the severance requirement in section 4(2) to the occurrence report and officers' notes in these appeals, it is necessary to determine whether severing identifying information, such as individuals' names, birth dates and contact information, will remove the remaining information about them from the definition of "personal information" in section 2(1). If this is the case, disclosing this remaining information cannot be an unjustified invasion of these individuals' personal privacy and it is not, therefore, exempt from disclosure under section 14(1).

[39] The appellant submits that the police should be able to provide him with a severed version of the records. In his view, the personal information in the records, such as the individuals' names, birth dates and contact information, can be "readily redacted." He submits that if the records are severed in this matter, disclosing the remaining information cannot constitute an unjustified invasion of these individuals' personal privacy under section 14(1), because such information is no longer about identifiable individuals and does not, therefore, qualify as their "personal information."

[40] The police did not provide representations on whether the occurrence report and officers' notes can be reasonably severed under section 4(2). However, given that they have withheld these records in full, I will assume they take the position that these records cannot be reasonably severed in the manner suggested by the appellant.

¹¹ Order 43.

[41] In Order P-230, former Commissioner Tom Wright stated the following with respect to severing records that contain personal information:

I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

[42] As noted in the "personal information" discussion in Issue A of this order, the information in the records relating to the four individuals at the house and the two individuals stopped by the police includes their names, birth dates, sex, race/colour, addresses, telephone numbers and medical history. In addition, the records also include other information that these individuals provided about themselves in response to questions from the investigating officers, and the officers' observations about these individuals.

[43] The names of the individuals who live in the home have been widely reported in the media and on the internet.¹² In my view, even if the records are severed to remove the names, birth dates and contact information of the individuals referred to in them, the remaining information about these individuals would still qualify as their "personal information" under section 2(1). Given the widespread media attention on the home and the small pool of people associated with it, it is reasonable to expect that the individuals in the records may be identified even after such severances are made.

[44] There is no evidence before me to indicate whether the names of the two individuals who were stopped by the police are also in the public domain. In my view, however, even if these individuals' names, birth dates and contact information are severed from the records, the remaining information about them may still be distinguishable enough to make them identifiable, particularly in their own neighbourhood. Consequently, I find that this remaining information would still qualify as their "personal information" under section 2(1), because it is reasonable to expect that they may be identified if this information is disclosed.

[45] In certain circumstances, it may be possible to sever personal information in police records in the manner suggested by the appellant to facilitate disclosure of the remaining parts of these records. However, I find that in the particular circumstances of these appeals, severing the names, birth dates and contact information of the individuals in the records would not remove the remaining information about them from

¹² "Rob Ford crack video scandal: Here's the house where the photo was taken," *The Toronto Star*, June 5, 2013; "Rob Ford crack video scandal: Resident of home in photo trafficked cocaine," *The Toronto Star*, June 7, 2013; "Etobicoke family find themselves at heart of Rob Ford photo mystery," *The Globe and Mail*, June 7, 2013.

the definition of "personal information" in section 2(1). I conclude, therefore, that these records cannot be reasonably severed in such a way that some of the information no longer meets the requirements of the section 14(1) exemption. As a result, all of the information at issue in the records is exempt under section 14(1).

PUBLIC INTEREST OVERRIDE

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[46] The appellant submits that the occurrence report and officers' notes should be disclosed because the public interest override in section 16 of the *Act* applies to these records.

[47] 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.

[48] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[49] 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 his or her 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, the IPC 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.¹³

Compelling public interest

[50] 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.¹⁴ 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

¹³ Order P-244.

¹⁴ Orders P-984 and PO-2607.

the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹⁵

[51] The appellant submits that there is clearly a compelling public interest in disclosure of the records. He states:

The incident is connected to the ongoing police investigation into Mayor Ford, chief magistrate of the largest city in Canada. The location of the incident was the backdrop of a now notorious photograph of the mayor standing with three alleged members of a gang accused of trafficking drugs and guns in Toronto. Two of the men pictured with the mayor in front of the house were shot, one fatally, and the other faces serious criminal charges.

Furthermore, the residence is the location where the mayor was videotaped smoking what appears to be crack cocaine. A close friend of the mayor has since been charged with extortion for his alleged attempts to retrieve the video. The incident discussed in the requested records is believed to be connected to that video and its whereabouts.

As such, the officers' observations, recordings of fact and narratives contained in their notes and occurrence reports are of compelling public interest. They could provide the public with a greater understanding of an event associated with the alleged criminal behaviour of an elected official.

[52] The appellant also cites a passage from a decision of Justice Ian Nordheimer of the Ontario Superior Court of Justice, who has issued a series of rulings with respect to media applications to unseal "informations to obtain" (ITOs)¹⁶ relating to the police's investigation into various matters, including about the actions of Mayor Ford and a close friend.¹⁷ Justice Nordheimer, who has ordered the disclosure of significant amounts of information from these ITOs, stated the following in one of his decisions:

It cannot be denied that the actions of the mayor are a matter of very significant public interest and concern at this time, as are the actions of police in relation to them. . . .

. . . We are dealing with the actions of the duly elected mayor of the country's largest city and the extensive investigation undertaken by police.

¹⁵ Orders P-984 and PO-2556.

¹⁶ An ITO is a summary of evidence collected by police to persuade a judge to issue a search warrant.

¹⁷ *The Globe and Mail et al v. HMQ*, 2013 ONSC 6836 (CanLII); *Canadian Broadcasting Corporation and Others v. HMQ*, 2013 ONSC 6983 (CanLII); *Canadian Broadcasting Corporation and Others v. HMQ*, 2013 CanLII 75897 (ON SC), [2013] O.J. No. 5422; *Toronto Star Newspapers Limited v. H.M.Q.*, 2014 ONSC 2131 (CanLII).

In terms of legal proceedings, it is hard to conceive of a matter that would be of more importance to the public interest, at this particular point in time, than the one that is presented by this case in the context in which it has unfolded.¹⁸

[53] The police submit that there is no compelling public interest in disclosing the occurrence report and officers' notes. They state that the assault took place at a private residence, the appellant does not reside there, and the information in the records "is of no interest to the public."

[54] In addition, they submit that the appellant's arguments are "based solely in conjecture that falls well short of establishing any foundation to legitimately support a claim of public interest override." They further submit that it is not within the appellant's purview to scrutinize the conduct of the police because there is already a process in place whereby the public can submit complaints to the Office of the Independent Police Review Director (OIPRD).

[55] In addition, the police refer to section 5(1) of the *Act* and state:

In regards to the greater public interest argument, the "public interest" in this circumstance does not meet the criteria as defined under section 5(1) of [the *Act*], and the appellant is attempting to include a public's curiosity within section 5(1).

[56] I have considered the parties' representations on the public interest override and reviewed the records at issue in these appeals. For the reasons that follow, I find that there is a compelling public interest in disclosing these records.

[57] At the outset, I note that the police have referred to section 5(1) of the *Act*, which requires the head of an institution, as soon as practicable, to disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public. The appellant did not raise section 5(1) in his representations, nor was it identified as an issue in the notices of inquiry that I sent to the parties. Consequently, I find that section 5(1) does not apply in the circumstances of these appeals. The issue to be resolved here is whether the public interest override in section 16 applies to the records at issue.

[58] In ordinary circumstances, there would likely not be a public interest, let alone a compelling public interest in disclosing police records relating to a home invasion or assault. However, the circumstances connected to this particular assault are not ordinary, nor is the house where it occurred. In my view, the facts underlying this

¹⁸ *Canadian Broadcasting Corporation and Others v. HMQ*, 2013 CanLII 75897 (ON SC), [2013] O.J. No. 5422 at paras. 70-71.

incident clearly demonstrate that there is a compelling public interest in disclosing these records.

[59] The house at this address has been the subject of intense media attention during the past year. Some media outlets have reported that the infamous crack-smoking video involving Mayor Ford was filmed at this house. The home invasion took place five days after journalists from *Gawker* and *The Toronto Star* reported that they had seen this video but were not given a copy. In addition, there appeared to be an unusually significant police response, with at least 18 officers investigating the home invasion and assault. To date, the police have not arrested anyone in connection with this incident.

[60] I note that the records do not appear to contain any direct references to Mayor Ford or the "close friend" referred to by the appellant. In my view, however, this does not weigh against finding that there is a compelling public interest in disclosing these records. On March 19, 2014, an edited version of a 504-page ITO relating to an extensive police investigation, which included the actions of Mayor Ford and this individual, was released by the Ontario Superior Court of Justice. This ITO includes a summary of a police interview with one victim of the assault, and an extract from the same occurrence report that is at issue here.¹⁹ Consequently, it appears that the police investigation into the home invasion and assault was seen by the police to possibly have some connection to their broader investigation that included the activities of Mayor Ford and his close friend.

[61] Given all of these facts, I find that there is a public interest in disclosing the occurrence report and officers' notes relating to the home invasion and assault. In particular, disclosing these records would serve the purpose of informing or enlightening the residents of Toronto about the police investigation into this highly publicized incident. Moreover, given the massive amount of information relating to the broader police investigation that has been ordered released by the Ontario Superior Court of Justice on public interest grounds, it would be inconsistent, in my view, to find that there is no public interest in disclosing the records at issue in these appeals.

[62] I am not persuaded by the police's submission that the appellant's arguments with respect to the public interest in disclosure are "based solely in conjecture," and that it is not within his purview to scrutinize the conduct of the police, because there is already a process in place whereby the public can submit complaints to the OIPRD. In my view, withholding these records actually perpetuates public conjecture about the home invasion. The reference to the OIPRD does not assist as the appellant has not suggested that he wishes to make a complaint about the conduct of any officer. The fact that a public complaints process exists to ensure accountability in policing does not obviate the public interest in disclosing the types of records at issue in these appeals.

¹⁹ This ITO is available on *The Toronto Star's* account on Scribd at www.scribd.com/doc/213369458/Rob-Ford-Warrant. See pp. 471-475.

[63] To satisfy the requirements of section 16, the public interest in disclosure must also be "compelling." The word "compelling" has been defined in previous orders as "rousing strong interest or attention."²⁰ In my view, there is abundant evidence that this incident has "roused strong interest or attention" in Toronto, which means that the public interest in disclosing the records is "compelling."

[64] In short, I find that there is a compelling public interest in disclosing the occurrence report and officers' notes relating to the home invasion and assault.

Purpose of the exemption

[65] For section 16 to apply, it is not sufficient to show that there is a compelling public interest in disclosure of the records at issue. It must also be demonstrated that this compelling public interest clearly outweighs the purpose of the exemption that has been claimed.

[66] The police submit that any public interest in disclosing these records does not outweigh the purpose of the section 14(1) exemption. The appellant submits that the compelling public interest in disclosing the matters documented in the records "easily" outweighs any privacy concerns.

[67] Section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.²¹ In the particular circumstances of these appeals, it must be determined whether the compelling public interest in disclosing the occurrence report and officers' notes clearly outweighs the purpose of the section 14(1) exemption.

[68] The privacy interests of the four individuals who were at the house when the home invasion and assault occurred have been somewhat diminished by the fact that there has been widespread media coverage of this incident.²² In addition, the names of the two assault victims are in the excerpt of the occurrence report found in the ITO ordered publicly disclosed by the Ontario Superior Court of Justice.²³

[69] In the circumstances of these appeals, I find that the compelling public interest in disclosing a severed version of the occurrence report and officers' notes clearly outweighs the purpose of the section 14(1) exemption with respect to some of the personal information of the four individuals who were at the house, particularly the information in the statements they provided to the police that describe the home invasion and assault.

²⁰ Order P-984.

²¹ Order MO-2012.

²² See notes 1 and 12 above.

²³ See note 19 above.

[70] However, the appellant had made it clear that certain information can be severed from the records before they are disclosed to him, including the four individuals' names, birth dates, addresses and telephone numbers. In addition, I am not convinced that the compelling public interest in disclosing the records clearly outweighs the purpose of the section 14(1) exemption with respect to other personal information about them in the records such as their sex, race/colour, medical history, height, weight, hair colour, clothing, etc. In my view, all such information can also be severed from the records.

[71] Finally, I find that the compelling public interest in disclosing the records does not clearly outweigh the purpose of the section 14(1) exemption with respect to the personal information of the two individuals who were stopped by the police shortly after the home invasion. These individuals do not appear to have any connection to the events or the residence. In my view, their privacy interests should not yield to the compelling public interest in disclosing the records. Consequently, I will order that those parts of the records containing these individuals' personal information be severed in full.

ORDER:

1. I order the police to disclose the occurrence report and officers' notes to the appellant, except for the following information, which must be severed:
 - (a) the names, birth dates, sex, race/colour, addresses, telephone numbers, medical history, height, weight, hair colour, clothing, etc. of the four individuals who were at the house when the home invasion and assault occurred;
 - (b) those parts of the records that contain the personal information of the two individuals who were stopped by the police shortly after the home invasion;
 - (c) police "10-codes"; and
 - (d) information that is not responsive to the appellant's access requests.
2. I have provided the police with a copy of the records and highlighted in green those parts that must be severed under order provision 1.
3. I order the police to disclose the records to the appellant by **November 5, 2014** but not before **October 29, 2014**.

4. I reserve the right to require the police to provide me with a copy of the records that they disclose to the appellant.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ September 30, 2014