

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3126

Appeal MA14-52

Ottawa Police Services Board

November 25, 2014

Summary: The police received a request for access to records describing their investigation into the appellant's father's death. The police granted partial access to the responsive records, denying access to portions of them pursuant to the mandatory personal privacy exemption at section 14(1) and the discretionary personal privacy exemption at section 38(b) of the *Act*. This order finds that some of the records contain only the personal information of individuals other than the appellant, some of the records contain the personal information of both the appellant and other identifiable individuals, and sections 14(1) and 38(b) apply to the information that has been withheld. The police's decision is upheld and the appeal is dismissed.

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"), 14(1)(f), 14(2)(f) and (h), 14(3)(b), 14(4)(c), and 38(b).

Orders and Investigation Reports Considered: Order PO-3129.

OVERVIEW:

[1] The Ottawa Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a police investigation into the appellant's father's death.

[2] The police located records responsive to the request and issued a decision granting access to the majority of them. The police denied access to portions of the records (specifically, to the personal information of and statements made by individuals other than the appellant and to polygraph information relating to individuals other than the appellant), pursuant to the mandatory exemption at section 14(1) (personal privacy), read in conjunction with the presumptions at sections 14(3)(a) (medical information) and (b) (investigation into a possible violation of law). The police advised that it notified three affected parties of the request, seeking their views on the possible disclosure of their contact information and statements. Two of the affected parties did not consent to the disclosure of their information; the third affected party did not respond to the notice. Finally, the police advised that as some of the records contain the personal information of both the appellant and other identifiable individuals, section 38(b) (discretion to refuse an appellant's own information) of the *Act* applied to that information contained in those records.

[3] The appellant, appealed the police's decision.

[4] During mediation, the affected party that did not respond to the police's notice confirmed with the mediator that they did not consent to the release of any information pertaining to them or any information that they provided to the police about the deceased. Accordingly, all three affected parties do not consent to the disclosure of their personal information as it appears in the records.

[5] The police advised that they had considered disclosing some information about the appellant's deceased father pursuant to the application of the exception at section 14(4)(c) of the *Act* that permits disclosure in compassionate circumstances. The police stated that they were of the view that the exception did not apply to the information that has not been disclosed and that it is exempt under section 14(1), read in conjunction with the presumptions at sections 14(3)(a) and (b), and section 38(b) of the *Act*.

[6] The appellant confirmed that he seeks as much information as possible regarding the circumstances surrounding his father's death, for compassionate reasons. He advised that he is not pursuing access to any personal information of individuals other than his father, with the exception of information that they provided to the police regarding his father.

[7] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I began my inquiry by seeking submissions from the police, who provided representations. Although the appellant was invited to make submissions in response to those of the police, he chose not to do so.

[8] In this order, I uphold the police's decision to deny access to portions of the responsive records. In the discussion that follows, I reach the following conclusions:

- the records at issue contain the "personal information" of both the appellant and other identifiable individuals within the meaning of the definition of that term at section 2(1) of the *Act*;
- the exception allowing for disclosure for compassionate reasons at section 14(4)(c) does not apply to the information at issue;
- the mandatory exemption at section 14(1) of the *Act* applies to the information for which it was claimed;
- the discretionary exemption at section 38(b) of the *Act* applies to the information for which it was claimed; and,
- the police's exercise of discretion to deny access to portions of the records pursuant to section 38(b) was reasonable.

RECORDS:

[9] The information at issue in this appeal consists of the withheld portions of occurrence reports, police officer memorandum book notes, statements and polygraph information. The majority of the information has been disclosed.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) of the *Act* apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b) of the *Act*? If so, should this office uphold their exercise of discretion?

DISCUSSION:

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

[10] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.¹ Where the records contain the requester’s own information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records contain the personal information of individuals other than the appellant but do not contain the personal information of the appellant, access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[11] Accordingly, in order to determine which sections of the *Act* 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,

¹ Order M-352.

- (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.²

[13] 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.³

[14] 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.⁴

[15] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[16] The police submit that the records at issue contain the personal information of individuals who were interviewed during the course of the investigation into the incident that resulted in the appellant's father's death. They submit that this information includes their names, dates of birth, race and contact information, all of which falls within the definition of personal information in section 2(1) of the *Act*.

[17] Having reviewed the responsive records which consist of occurrence reports, statements, police officer memorandum book notes, and polygraph results, I find that all of them contain the personal information of the deceased as they relate to the

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

police's investigation into his death. I also find that that they contain the personal information of the appellant, the deceased's son, as well as that of other identifiable individuals who were involved or interviewed in the course of the police's investigation into the incident identified in the request. Specifically, the personal information contained in the records includes information relating to race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status (paragraph (a)), medical, psychiatric, psychological, criminal or employment history (paragraph (b)), addresses and telephone numbers (paragraph (d)), personal opinions or views of individuals (paragraph (e)), and the names of individuals together with other personal information about them (paragraph (h)).

[18] Accordingly, I find that all of the records at issue contain the "personal information" of both the appellant and other identifiable individuals, including the deceased, within the meaning of the definition of that term at section 2(1) of the *Act*. Some of them contain just the personal information of individuals other than the appellant (including the deceased) while some of them contain the personal information of the appellant mixed with that of other individuals.

B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) of the *Act* 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.⁶ Section 38(b) reads:

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

where the disclosure would constitute an unjustified invasion of another individuals' personal privacy.

⁶ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

[21] In contrast, under section 14, where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless disclosure would not be an unjustified invasion of personal privacy under section 14(1)(f). Section 14(1)(f) reads:

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.

[22] In both section 38(b) and section 14 situations, sections 14(1) to (4) of the *Act* provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy.

[23] In the circumstances of this appeal, it appears that the following sections should be considered:

- the factors at sections 14(2)(f) and (h) addressing information that is highly sensitive or supplied in confidence;
- the presumptions at section 14(3)(a), addressing information relating to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation and section 14(3)(b), addressing information relating to an investigation into a possible violation of law; and,
- the exception at section 14(4)(c) allowing for disclosure of information for compassionate reasons, might be relevant.

Presumptions – sections 14(3)(a) (medical history) 14(3)(b) (investigation into a possible violation of law)

[24] Although they do not make any representations on this issue, in their decision the police claim that some of the information at issue constitutes medical information belonging to an identifiable individual and as a result, it falls under the presumption at section 14(3)(a). That section reads:

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;

[25] Having reviewed the records, I accept that some of the information contained in the portions of the records at issue relates to the medical history, diagnosis, condition, treatment or evaluation of an identifiable individual other than the appellant. As a result, I find that the presumption at section 14(3)(a) applies to that information.

[26] The police also submit that the disclosure of the information remaining at issue would constitute a presumed unjustified invasion of the personal privacy of the individuals other than the appellant as contemplated by section 14(3)(b). That 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;

[27] The police submit that police investigation reports such as the one that is made up of the records at issue are compiled to investigate "the conduct of citizens and are both confidential and privileged to the investigative body to maintain fairness and presumption of innocence." The police submit that "the information was collected for the sole purpose of interviewing to ascertain if charges were warranted" and that it was therefore "compiled and is identifiable as part of an investigation into a possible violation of law."

[28] With respect to the application of the presumption in section 14(3)(b), on my review of the records and having considered the police's representations, I accept that all of the information at issue was compiled by the police in the course of their investigation into the death of an individual, the appellant's father and whether a possible violation of law under the *Criminal Code* took place.

[29] It has been well established by this office that, 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.⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁸

[30] The records at issue in this appeal consist of occurrence reports, statements, police memorandum book notes and polygraph information and comprise the police's investigation into the death of an identifiable individual. In my view, all of the information at issue fits within the presumption in section 14(3)(b) of the *Act*.

Factors – sections 14(2)(f) (highly sensitive) and (g) (supplied in confidence)

[31] The factors weighing against disclosure in sections 14(2)(f) and (h) might also be relevant in the circumstances of the current appeal. Those sections 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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

[32] There is no evidence to suggest that any of the factors weighing in favour of disclosure outlined in section 14(2) apply.

[33] The police submit that the information that was severed from the records is highly confidential and sensitive information belonging to the individuals to whom it relates and that it describes their relationship to the deceased.

[34] To be considered highly sensitive as contemplated by section 14(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.⁹ The information at issue describes in detail several individuals' perceptions of the incident that is the subject matter of the investigation and their responses to interviews conducted by the police. Given the character and quality of the information that is at issue, I accept that the personal information that has been withheld can be considered to be "highly sensitive" within the meaning of section 14(2)(f) and that its disclosure could reasonably be expected to result in significant personal distress to the individuals about whom it relates. Accordingly, I find that this factor weighing against disclosure is relevant.

⁷ Orders P-242 and MO-2235.

⁸ Orders MO-2213, PO-1849 and PO-2608.

⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[35] The factor at section 14(2)(h) also weighs in favour of privacy protection. For it to apply, both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹⁰

[36] In my view, the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied to the police by the individuals identified in the records would be subject to a degree of confidentiality. Accordingly, I find that in the context of this appeal, the factor in section 14(2)(h) is a relevant consideration that weighs in favour of protecting the privacy of the other identified parties and withholding their personal information.

Consideration – section 14(4)(c) (compassionate reasons)

[37] The police submit that when determining which information should not be disclosed to the appellant it considered section 14(4)(c) which allows that the disclosure of information in circumstances where it is desirable for compassionate reasons does not amount to an unjustified invasion of privacy. That section reads:

Despite section (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

Discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[38] The police submit that it considered the compassionate basis for the request and the relationship between the appellant and the individuals to whom the severed information relates, including their concerns regarding the disclosure of the requested information to the appellant, when determining that section 14(4)(c) did not apply to the information at issue.

[39] The term “close relative” is defined in section 2(1) of the *Act* as follows:

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption; (“proche parent”);

¹⁰ Order PO-1670.

[40] The application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or "close relative" of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?¹¹

[41] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).¹²

[42] After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons".¹³

1. Do the records contain the personal information of a deceased individual?

[43] I have found above that all of the records at issue contain the personal information of the deceased as they relate to the police investigation into his death.

2. Is the requester a spouse or "close relative" of the deceased individual?

[44] The appellant is the son of the deceased person and clearly meets the criteria required to be his "close relative".

¹¹ Orders MO-2237 and MO-2245.

¹² Order MO-2237.

¹³ Order MO-2245.

3. *Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?*

[45] The police submit that they considered whether disclosure of the information at issue, which includes the personal information of the deceased mixed with that of other identifiable individuals, was desirable for compassionate reasons as contemplated by section 14(4)(c). The police determined that in the circumstances, it was not desirable for compassionate reasons to disclose the personal information after considering the concerns of the individual to whom the information relates as well as the history of the relationship between that individual and the deceased.

[46] Although the appellant has not submitted any representations, generally, in access to information requests for records relating to the death of a close relative, most appellants describe how they wish to obtain as much information as possible about the circumstances surrounding the incident. While they may recognize that the privacy interests of any affected persons needs to be respected, they are interested in finding out more about the incidents involving the death of their relative.

[47] In Order PO-3129, Assistant Commissioner Brian Beamish discussed the application of the provincial equivalent to section 14(4)(c) in circumstances where the personal information of a deceased individual is mixed with that of another individual. He provided the following guidance to assist in making a determination about the application of section 14(4)(c), stating that:

Section [14(4)(c)] requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeal, I find that the privacy interests of other individuals, including the affected person and her children, should not automatically yield to the compassionate reasons that may call for full disclosure to the appellant.

However, as the grieving father of the deceased, I do find that the appellant is entitled to disclosure of at least some portions of the records for compassionate reasons. I have carefully reviewed the records in light of the representations submitted by all parties and find that the ministry carefully balanced all of the competing interest, including the compassionate reasons for and against disclosure. The ministry thoroughly considered all the circumstances of the request and the appeal and withheld portions that, if disclosed, could cause serious emotional distress to the affected person and her children. As such, I find that the ministry properly applied the exception to the personal privacy exemption in section [14(4)(c)] and uphold its decision.

[48] In the present appeal, the police have disclosed the great majority of the information contained in the records related to the appellant's father death and have only severed information that relates to individuals who have not consented to its disclosure. Much of the information relates to one of the individuals who has specifically declined to provide consent to the disclosure of their personal information. In the majority of the undisclosed portions of the records, this individual's personal information is mixed with that of the deceased. Although the disclosure of this information might provide a small additional amount of information about the incident that has not currently been disclosed to the appellant, given the character and quality of this information and the relationship of the individual to the deceased, I accept that its disclosure could reasonably result in an unjustified invasion of this person's personal privacy and its disclosure is, therefore, not desirable for compassionate reasons as contemplated by section 14(4)(c).

[49] Additionally, the remaining undisclosed personal information primarily consists of contact information relating to the affected parties. Not only did the appellant indicate at mediation that he did not wish to obtain access to this type of personal information, I also do not accept that it would provide the appellant with substantially more information about the incident and its disclosure would not be desirable for compassionate reasons.

[50] While I appreciate the appellant's reasons for seeking access to the remaining information, having taking into consideration the information that remains at issue and balancing the compassionate reasons for and against disclosure, I do not accept that section 14(4)(c) applies to it.

Summary of analysis and findings

[51] As noted above, for the records that contain only the personal information of individuals other than the appellant, the relevant exemption claim is the mandatory personal privacy exemption at section 14(1). For these records to be exempt under section 14(1), a presumed unjustified invasion under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies.¹⁴

[52] In the discussion above, I have found that the presumption at section 14(3)(b) applies to all of the records at issue as the information was compiled as part of an investigation into a possible violation of law. I have also determined that the presumption at section 14(3)(a) applies to some of the personal information as it relates to an identifiable individual's medical history. I have also found that the exception at section 14(4)(c) allowing for disclosure for compassionate reasons does not apply to information remaining at issue. Section 16 has not been claimed in this

¹⁴ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

appeal and does not appear to be relevant. Accordingly, with respect to the records that contain only the personal information of individuals other than the appellant, I find that the exemption at section 14(1) applies to the personal information that has been withheld and I uphold the police's decision not to disclose it.

[53] Also as noted above, for records that contain the personal information of the appellant as well as that of other identifiable individuals, the relevant exemption claim is the discretionary personal privacy exemption at section 38(b) of the *Act*. Under section 38(b), this office will consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.¹⁵

[54] I find that the presumptions at sections 14(3)(a) and 14(3)(b) apply to some or all of the records at issue, these findings are also relevant to the information that must be examined under section 38(b). For that information, I have found that the factors weighing against disclosure at sections 14(2)(f) and (h) are also relevant considerations as the information is highly sensitive and can be said to have been supplied to the police by the individuals to whom it relates in confidence. No factors weighing in favour of disclosure have been established and I have found that the exception to the exemption allowing for disclosure for compassionate reasons in section 14(4)(c) does not apply to the information at issue. As a result, I find that the disclosure of the remaining information that contains the personal information of both the appellant and other identifiable individuals would constitute an unjustified invasion of the personal privacy of those other individuals and the discretionary exemption at section 38(b) applies. Accordingly, subject to my discussion below on the exercise of discretion, I uphold the police's decision not to disclose it.

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

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

[56] 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

¹⁵ Order MO-2954.

- it fails to take into account relevant considerations.

[57] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁶ This office may not, however, substitute its own discretion for that of the institution.¹⁷

Relevant considerations

[58] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁸

- 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
- 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

¹⁶ Order MO-1573.

¹⁷ Section 43(2).

¹⁸ Orders P-344 and MO-1573.

- the age of the information
- the historic practice of the institution with respect to similar information.

[59] The police submit that their exercise of discretion was made in good faith. They submit that they disclosed much of the occurrence report to the appellant as consent was received from some individuals to whom the information relates. They also submit that in exercising their discretion to deny access to portions of the information, including statements and polygraph information, they considered that disclosure of the information would constitute an unjustified invasion of other individuals' personal privacy, specifically the personal information of those who did not consent to the disclosure of their information.

[60] Based on my review of the information at issue and the representations submitted by the police, I accept that the police exercised their discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors. I note that the police disclosed the great majority of the responsive records, severing only the personal information of those individuals who did not provide their consent. In exercising their discretion to deny access to information under section 38(b), I accept that they considered the following:

- the lack of consent from the identifiable individuals to whom the personal information relates;
- the privacy rights of the identifiable individuals whose personal information is in the responsive records;
- the exemption at section 14(1) and the application of the presumption at section 14(3)(b) that serves to protect the privacy rights of the identifiable individuals; and
- the right of access of the appellant including the possible application of the compassionate grounds consideration at section 14(4)(c).

[61] Accordingly, I uphold the police's exercise of discretion as reasonable and find that the information which is subject to section 38(b) is properly exempt under that discretionary exemption.

ORDER:

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

Original signed by: _____
Catherine Corban
Adjudicator

_____ November 25, 2014