

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3185

Appeal MA14-154

Orangeville Police Services Board

April 23, 2015

Summary: The appellant sought access to all police incident reports and records of 911 calls relating to her. The municipality located responsive records and denied access to portions of them pursuant to the discretionary personal privacy exemptions at section 38(a), read in conjunction with the law enforcement exemptions at sections 8(1)(d) and (e), and section 38(b) of the *Act*. This order upholds the police's decision, in part, and orders them to disclose portions 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, sections 2(1) (definition of "personal information"), 8(1)(d), 8(1)(e), 14(1)(f), 14(2)(h), 14(3)(b), 38(a) and 38(b).

OVERVIEW:

[1] The Orangeville Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the requester. The requester specifically sought access to:

...a copy of all police incident reports and police reports and 911 calls that are filed under my maiden name...

[2] The requester provided various spellings for her name and her date of birth, as well as the name and date of birth of her child. She explained that “calls may have been made under my child’s name....”

[3] The police located records responsive to the request and issued a decision granting partial access to them. They denied access to portions of the records pursuant to the mandatory personal privacy exemption at section 14(1), read in conjunction with the factor at section 14(2)(f) (highly sensitive), and the presumptions at sections 14(3)(a) (medical history) and 14(3)(b) (compiled as part of an investigation into a possible violation of law) of the *Act*. The police also claim that portions of the records are exempt pursuant to the discretionary personal privacy exemption at section 38(b) of the *Act*.

[4] The requester, now the appellant, appealed the police’s decision.

[5] During mediation, the appellant advised that she believes that additional records should exist, such as police officers’ notes and video records. As a result, the police agreed to conduct another search and located additional records. They issued a revised decision granting partial access to the newly located records, advising that in addition to the exemptions claimed in their original decision they were also claiming the application of the discretionary law enforcement exemptions at sections 8(1)(d) and (e). Specifically, the police advised that they were claiming section 8(1)(e) to the police 10-codes and that some information was removed from the handwritten police notes because it is not responsive to the request. The police later confirmed that they are also applying section 38(a) (discretion to refuse a requester’s own information) to the records located in their second search, read in conjunction with sections 8(1)(d) and (e).

[6] The appellant advised that she is not pursuing access to the police 10-codes, other identifiable individuals’ personal information, and the portions of the records that are not responsive to her request. Accordingly, the police’s handwritten notes and a one-page Occurrence Summary are no longer at issue in this appeal.

[7] The appellant confirmed that she continues to seek access to the information that was severed from two Supplementary Occurrence Reports.

[8] 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 under the *Act*. During the inquiry into the appeal, I sought and received representations from the police and the appellant. Representations were shared in accordance with section 7 of this office’s *Code of Procedure and Practice Direction 7*.

[9] In the order that follows, I uphold the police's decision in part. Specifically, I make the following findings:

- the records contain the personal information of both the appellant and other identifiable individuals;
- the discretionary exemption at section 38(a), read in conjunction with the exemption at section 8(1)(d), applies to some of the information for which it was claimed;
- the discretionary exemption at section 38(a), read in conjunction with the exemption at section 8(1)(e), does not apply to the information for which it was claimed;
- the discretionary exemption at section 38(b) applies to some of the information for which it was claimed; and
- the police's exercise of discretion was reasonable.

RECORDS:

[10] The records remaining at issue consist of two Supplementary Occurrence Reports that have been partially disclosed to the appellant. The first Supplementary Occurrence Report is dated 2012/12/21 15:38 and, for the purposes of this order, I will refer to it as Supplementary Occurrence Report 1. The second Supplementary Occurrence Report is dated 2012/12/19 20:20 and, for the purposes of this order, I will refer to it as Supplementary Occurrence Report 2.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(a), read in conjunction with the exemptions at sections 8(1)(d) and (e) apply to the information at issue?
- C. Does the discretionary exemption at section 38(b) apply to the information at issue?
- D. Did the police exercise their discretion under sections 38(a) and/or (b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

[11] 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 personal 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 requester but do not contain the personal information of the requester access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[12] Accordingly, in order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) of the *Act*. The portions of the definition that might be relevant to the current appeal are the following:

“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,
- ...
- (e) the personal opinions or views of the individual except if they relate to another individual,
- ...
- (g) the views or opinions of another individual about the individual, and

¹ Order M-352.

- (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;

[13] 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

[14] Section (2.1) also relates to the definition of personal information. It states:

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

[15] 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 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

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

Representations

[17] The police do not make any specific submissions on whether the records at issue contain information that qualifies as "personal information" within the meaning of the definition of that term in section 2(1) of the *Act*. However, they submit that the information contained within them "relates to [the appellant's] medical, psychiatric or psychological diagnosis or evaluation."

[18] The appellant submits that the information that she seeks is her own personal information and that, as a result, she has a right of access to it.

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.).

Analysis and findings

[19] Having closely reviewed the responsive records, I find that both of them contain the personal information of the appellant, as well as that of other identifiable individuals. Specifically, this information includes the personal information of the appellant, including information relating to her marital or family status (paragraph (a)), information relating to her psychiatric, psychological, criminal or employment history (paragraph (b)), the views or opinions of another individual about her (paragraph (g)) and her name, where it appears with other personal information about her (paragraph (h)).

[20] Regarding the personal information of other identifiable individuals, the records contain information relating to their marital or family status (paragraph (a)) and their names, where they appear with other personal information about them (paragraph (h)).

[21] The records also contain the names of a number of individuals who, in my view, were acting in their professional capacity, particularly Dufferin Child and Family Services workers. Section 2.1 states that 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. However, as noted above, previous orders have established that 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 From my review of the information contained in the records, these individuals' names, together with the information that they provided to police, is entirely professional in nature and does not reveal anything of a personal nature about them. Therefore, I do not accept that the names of these individuals qualify as personal information within the meaning of the definition of that term in the *Act*.

[22] In sum, I find that the records at issue contain the "personal information" of both the appellant and that of other identifiable individuals (the affected parties) within the meaning of the definition of that term at section 2(1) of the *Act*. As described above, in circumstances where the appellant's personal information is mixed with that of another identifiable individual, Part II of the *Act* applies and I must consider whether the information is properly exempt pursuant to the discretionary exemptions at sections 38.

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

B. Does the discretionary exemption at section 38(a) in conjunction with the exemptions at sections 8(1)(d) and (e) apply to the information at issue?

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

[24] Section 38(a) reads:

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

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

[25] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁷

[26] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[27] In this case, the police rely on section 38(a) in conjunction with sections 8(1)(d) and 8(1)(e). Those sections state:

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

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person.

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

"law enforcement" means,

⁷ Order M-352.

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)

[29] The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law.⁸
- a police investigation into a possible violation of the *Criminal Code*.⁹
- a children's aid society investigation under the *Child and Family Services Act*.¹⁰
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997*.¹¹

[30] The term "law enforcement" has been found *not* to apply in the following circumstances:

- an internal investigation by the institution under the *Training Schools Act* where the institution lacked the authority to enforce or regulate compliance with any law.¹²
- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.¹³

[31] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁴

⁸ Orders M-16 and MO-1245.

⁹ Orders M-202 and PO-2085.

¹⁰ Order MO-1416.

¹¹ Order MO-1337-I.

¹² Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.).

¹³ Order P-1117.

¹⁴ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[32] Except in the case of section 8(1)(e), where section 8 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient.¹⁵

[33] In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.¹⁶

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

Section 8(1)(d): confidential source

[35] The police must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.¹⁸

Representations

[36] The police submit that all of the information that it severed on page 1 of the Supplementary Occurrence Report dated 2012/12/21 (Supplementary Occurrence Report 1) and all of the information that it severed on page 1 of the Supplementary Occurrence Report dated 2012/12/19 (Supplementary Occurrence Report 2) consists of information that, if disclosed, would reveal the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

[37] Specifically, the police submit that the information severed from the second paragraph of page 1 of Supplementary Occurrence Report 1 “pertains to confidential information that was provided to the police by the Dufferin Child and Family Services” and is, therefore, exempt. Additionally, the police submit that the name of a Dufferin Child and Family Services worker that appears in that report is also exempt from disclosure under the exemption at section 8(1)(d).

¹⁵ Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), and *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

¹⁶ *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

¹⁷ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁸ Order MO-1416.

[38] With respect to the information that was severed under section 8(1)(d) in Supplementary Occurrence Report 2, the police submit that the names of the Dufferin Child and Family Services workers involved in the investigation and the last paragraph was severed because this information relates to an investigation and was provided to them by the Dufferin Child and Family Services in confidence.

Analysis and finding

[39] I accept that the names of the individuals who work for Dufferin Child and Family Services that have been severed on both supplementary occurrence reports are exempt pursuant to section 8(1)(d). I find that their disclosure could reasonably be expected to reveal the identity of these individuals who, in my view, are confidential sources of information with respect to one or more law enforcement matters, specifically, either a police investigation into a possible violation of the *Criminal Code* and/or a children's aid society investigation under the *Child and Family Services Act* related to these occurrence reports. Accordingly, I find that, subject to the police's proper exercise of discretion with respect to this information, it is properly exempt under section 38(a), read in conjunction with section 8(1)(d).

[40] However, I do not accept that the disclosure of the remaining information for which section 8(1)(d) was claimed is exempt from disclosure. In my view, I have not been provided with sufficient evidence to conclude that the disclosure the information in the second paragraph of Supplementary Occurrence Report 1 and the text in the last paragraph of Supplementary Occurrence Report 2 (the information other than the names) could reasonably be expected to disclose the identity of a confidential source of information. The information in the second paragraph of Supplementary Occurrence Report 1 is not attributed to any individual, but is instead a general statement that contains only the appellant's own personal information.

[41] As for the information in the last paragraph of Supplementary Occurrence Report 2, once the names of the Dufferin Child and Family Service workers are severed, I do not accept, nor have I been provided with the requisite detailed and convincing evidence to establish, that its disclosure could reasonably be expected to reveal the identity of the confidential source who provided the information. As noted above, evidence amounting to speculation of possible harm is not sufficient¹⁹ and in the circumstances of this appeal, I find that the evidence that has been adduced is not sufficient to establish the application of the exemption to this information.

[42] Accordingly, I find that the exemption at section 8(1)(d) does not apply to the information in the second paragraph of Supplementary Occurrence Report 1 and the text in the last paragraph of Supplementary Occurrence Report 2. As the police have

¹⁹ Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), and *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

also claimed that section 8(1)(e) applies to this information, I will go on to determine whether it is exempt under that section.

8(1)(e): life or physical safety

[43] A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.²⁰

[44] The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.²¹

Representations

[45] The police submit that if the information which it has severed pursuant to section 8(1)(e) disclosed, the life or physical safety of people other than the appellant could reasonably be expected to be endangered. They submit that "due to the serious nature of the information shared with the police and the concerns regarding the appellant, it was felt that there was a reasonable expectation to endanger the life or physical safety of another person."

Analysis and findings

[46] In my view, the police have not provided sufficient evidence to establish a reasonable basis for believing that someone's life or physical safety could be endangered by the disclosure of the information that remains at issue (the information in paragraph 2 of Supplementary Occurrence Report 1 and the information, other than the names of the Dufferin Child and Family Services workers, in the last paragraph of Supplementary Occurrence Report 2). Given that I have found that the names of the Child and Family Services workers are subject to severance under section 8(1)(d), I do not accept that the police have provided me with sufficient evidence to support that the disclosure of the remaining information could reasonably be expected to endanger the life or physical safety of these, or any other individuals. Accordingly, I find that section 8(1)(e) does not apply to the information remaining at issue.

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

[47] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

²⁰ Order PO-2003.

²¹ Order PO-1817-R.

[48] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[49] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1).

[50] The factors and presumptions in section 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). That section reads:

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

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

[51] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this case, paragraphs (a) to (c) of section 14(4) do not apply.

[52] 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.

[53] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies.²²

[54] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy, and the information will be exempt unless the circumstances favour disclosure.²³

[55] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in

²² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

²³ Order P-239.

determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.²⁴

Analysis and findings

[56] The police have claimed that section 38(b) applies to the severance made to paragraph 2 of Supplementary Occurrence Report 1. From my review, this information consists of the personal information of the appellant. Specifically, the severed information amounts to the views or opinions of another individual about her which falls squarely within the ambit of paragraph (g) of the definition of "personal information" in section 2(1) of the *Act*. None of the information contained in this severance consists of the personal information of any other individual. The individual who provided the view or opinions is not identified and it appears that these views and opinions were provided by an individual in their professional capacity. Regardless, there is nothing before me, either in the record itself or in the police's representations to suggest that there is anything that might bring this information into the personal realm for any individual other than the appellant.

[57] As noted above, section 36(1) gives individuals a general right of access to their own personal information held by an institution and section 38 provides a number of exemptions from this right. The police have claimed that section 38(b) applies and that they have exercised their discretion under this exemption not to disclose this information, which is the appellant's own personal information, to her. However, section 38(b) can only apply if the disclosure of the information would constitute an "unjustified invasion" of another individual's personal privacy. As the information that has been severed from paragraph 2 of Supplementary Occurrence Report 1 contains only the appellant's personal information and does not contain the personal information of any other identifiable individual, section 38(b) cannot apply to it.

[58] As I have already found that section 38(a), read in conjunction with sections 8(1)(d) and (e), do not apply to this information and no other exemption have been claimed for it, the appellant's general right of access to her own personal information is not restricted and, as it is her own personal information, I will order it disclosed.

[59] The police have also claimed that section 38(b) applies to the paragraph that has been severed from page 2 of Supplementary Occurrence Report 1.

[60] Although the police have not claimed that section 38(b) applies to a name that appears in the middle of the second paragraph of Supplementary Occurrence Report 2, as this information amounts to the personal information of an identifiable individual (their name where it appears in with other personal information about them (paragraph

²⁴ Order MO-2954.

(h) of section 2(1) definition of “personal information”), I will also determine whether section 38(b) applies to that name.

Section 14(3)(b)- compiled as part of an investigation into a possible violation of law

[61] The only presumption in section 14(3) that appears to be applicable to the information remaining at issue in this appeal is section 14(3)(b) which relates to records compiled as part of an investigation into a possible violation of law.

[62] 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.²⁵ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.²⁶

[63] From my review of the records at issue, they were clearly compiled by the police in the course of their investigation into a complaint involving the appellant and the affected party. The information remaining at issue consists of supplementary occurrence reports describing the police’s investigation into a possible incident. In my view, these records are clearly compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that all of the information in the records at issue falls under section 14(3)(b) of the *Act* and its disclosure constitutes a presumed unjustified invasion of the personal privacy of individuals other than the appellant, in this case, the affected party, under section 38(b). The police however, have exercised their discretion to a large part of the information contained in the occurrence reports and sever only portions. Accordingly, I find that section 14(3)(b) applies to paragraph 1 which has been severed from page 2 of Supplementary Occurrence Report 1 and the name that appears in the middle of the second paragraph of Supplementary Occurrence Report 2.

Section 14(2)(h) – factor weighing against disclosure: information supplied in confidence

[64] Section 14(2) provides some factors for the police to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the affected parties’ personal privacy. The list of factors under section 14(2) is not exhaustive. The police must also consider any circumstances that are relevant, even if they are not listed under section 14(2).²⁷ Some of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection.

²⁵ Orders P-242 and MO-2235.

²⁶ Orders MO-2213, PO-1849 and PO-2608.

²⁷ Order P-99.

[65] None of the parties have specifically raised the possible application of any of the factors listed at section 14(2) or any other relevant factors. However, on my review of the information at issue, the consideration weighing against disclosure listed at section 14(2)(h) might be relevant. That section reads:

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,

the personal information has been supplied by the individual to whom it relates in confidence;

[66] The factor at section 14(2)(h) 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.²⁸

[67] In my view, the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information in paragraph 1 of page 2 of Supplementary Occurrence Report 1 and the name in paragraph 2 of Supplementary Occurrence Report 2 that was supplied to the police would be subject to a degree of confidentiality. Accordingly, in this appeal, I find that the factor in section 14(2)(h) is a relevant consideration that weighs in favour of protecting the privacy of the affected party and withholding his or her personal information.

Summary

[68] In conclusion, I have found that the presumption at section 14(3)(b) applies to the personal information at issue, specifically, the information contained in paragraph 1 of page 2 of Supplementary Occurrence Report 1 and the name in the middle of paragraph 2 of Supplementary Occurrence Report 2 because it consists of personal information relating to an affected party that was compiled as part of an investigation into a possible violation of law. Accordingly, I find that disclosure of this information is presumed to result in an unjustified invasion of the personal privacy of an individual other than the appellant, the affected party.

[69] Even if it can be argued that some of the information is not covered by a presumption, there is no evidence to support a conclusion that any of the criteria in section 14(2) which favour disclosure apply in the circumstances. However, I have found that the factor weighing in favour of privacy protection and against disclosure at

²⁸ Order PO-1670.

section 14(2)(h) is a relevant consideration as the information at issue was, in my view, supplied to the police in confidence.

[70] As a result, I find that the disclosure of the information contained in paragraph 1 of page 2 of Supplementary Occurrence Report 1 and the name in the middle of paragraph 2 of Supplementary Occurrence Report 2 would constitute an unjustified invasion of personal privacy and the discretionary exemption at section 38(b) applies to it. Accordingly, subject to my discussion below on the police's exercise of discretion, I will uphold their decision not to disclose it.

D. Did the police exercise their discretion under sections 38(a) and/or (b)? If so, should this office uphold the exercise of discretion?

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

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

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

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

[74] With respect to its exercise of discretion, the police submit that it was exercised in good faith and for a proper purpose taking into account all relevant factors. It explains that considered the fact that the appellant should have a right of access to her own personal information, however, determined that in the circumstances it was weighed against the extent to which the disclosure of the information would reveal a confidential source as well as invade the personal privacy of another individual

[75] Considering the circumstances, I am satisfied that the police exercised in good faith and for a proper purpose taking into account all relevant factors. The police disclosed a large amount of the information in the supplementary occurrence reports and made only limited severances. I accept that they did not err in exercising their

²⁹ Order MO-1573.

³⁰ Section 43(2).

discretion to deny the appellant access to the information that I have found subject to the discretionary personal privacy exemptions in section 38. Accordingly, I find that the police considered all relevant factors and exercised their discretion under section 38(a) and (b) of the *Act* appropriately.

ORDER:

1. I order the police to disclose the information that has been severed from paragraph 2 of Supplementary Occurrence Report 1 and the information in paragraph 3 of Supplementary Occurrence Report 2, other than the names of the Dufferin Child and Family Service workers, to the appellant no later than **May 29, 2015** but not before **May 25, 2015**. For the sake of clarity, with the order sent to the police, I am enclosing a copy of the records at issue where I have severed the information that **is not to be disclosed**.
2. I uphold the police's decision not to disclose the remaining portions of the supplementary occurrence reports for which it has claimed exemptions.
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records that are disclosed to the appellant in accordance with Provision 1.

Original Signed By: _____
Catherine Corban
Adjudicator

April 23, 2015