Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3329

Appeal MA14-417

Hamilton Police Services Board

June 30, 2016

Summary: The appellant requested access to police records relating to identified incident numbers, and more generally, to information about herself and her sons. The Hamilton Police Services Board (the police) located a number of responsive records and granted partial access, withholding some information under the discretionary exemptions in section 38(a) in conjunction with sections 8(1)(e) and (l) (law enforcement), and section 38(b) (personal privacy) of the *Act*. The appellant objects to the denial of access. She also claims that the police did not conduct a reasonable search for records, and objects to the police's refusal, during mediation, to correct the personal information in certain records under section 36(2) of the *Act*. In this order, the adjudicator upholds, in part, the police's decision to deny access under section 38(a) in conjunction with section 8(1)(l), and under section 38(b), and orders disclosure of non-exempt information. The adjudicator dismisses the appeal on the issues of reasonable search and correction of personal information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of personal information), 2(2.1), 8(1)(e), 8(1)(l), 14(2)(a), (d), (e) and (f), 14(3)(b), 17, 36(2), 38(a), 38(b) and 42.

Orders and Investigation Reports Considered: M-777, MO-2446, P-186 and PO-2225.

Cases considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

OVERVIEW:

[1] The appellant submitted a request to the Hamilton Police Services Board (the

police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). She requested access to the following information:

> Records and Investigation Reports on those records, reports made by me as well by police as well by police officers at the front door.
>
> The following reports are:
>
> > 1) Report [number] Emergency Call. Please attach Investigation Report.
> >
> > 2) Report [number]. Attach Investigation Report as well.
> >
> > As well this: all information written in computer about me and sons.
> >
> > 3) All inputs in computer information about me as well children.

[2] After locating responsive records, the police issued a decision to the appellant granting her partial access to them. In the decision letter, the police rely on the discretionary exemption in section 38(a) of the *Act*, in conjunction with sections 8(1)(e) and (l) (law enforcement) to deny access to police codes, patrol zone and/or statistical information. They rely on the discretionary exemption in section 38(b) (personal privacy) to deny access to the remaining information. The police refer to the presumption in section 14(3)(b) (investigation into possible violation of law) and the factor in section 14(2)(f) (highly sensitive) to support their section 38(b) claim.

[3] The appellant filed an appeal of the police's decision.

[4] During mediation of the appeal, the appellant confirmed that she pursues access to all of the undisclosed information.

[5] Also during mediation, the appellant noted that the responsive records do not include an incident report relating to the occurrence number mentioned in item 1 of her request. The appellant identified the three officers she believes were involved in that incident. In response, the police issued a supplementary access decision advising the appellant that they located a print-out from their computer and dispatch system of the appellant's call to the police in relation to that incident. The police granted the appellant full access to that record and advised that the officers did not submit a report for that incident. Upon review of the police's supplementary decision letter, the appellant took the position that the report exists, thereby raising the issue of reasonable search in this appeal.

[6] In addition, during mediation, the appellant indicated that some of the records released to her contain incorrect information and submitted a correction request to the police pursuant to section 36(2) of the *Act*. The appellant requested that the police

correct the spelling of her name, and also asked that certain information be removed from some of the incident reports, and that some incident reports be erased in their entirety.

[7] In response to the appellant's correction request, the police indicated that they cannot remove or amend a report submitted by an officer and that a substitution of opinion does not qualify as a correction. The police further advised that they were able to correct the spelling of the appellant's name for the reports from 2006 to present, but not those created before 2006, as those reports are stored in a document imaging format and cannot be changed. Finally, the police advised that they would attach the appellant's nine-page correction request as a statement of disagreement to each of the incidents involving the appellant pursuant to section 36(2) of the *Act*.

[8] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. This office began the inquiry by inviting the police and a number of affected parties to make representations in response to the issues in this appeal. The police and many affected parties provided representations. Several affected parties consented to the disclosure of their information and others objected to disclosure.

[9] This appeal was then transferred to me to complete the inquiry. I invited the appellant to provide representations, and sent her the complete representations of the police. I also attached the non-confidential portions of a clarification provided by the police at the end of the mediation process, regarding the incident report she claimed was missing, referred to above. The appellant responded with representations.

[10] In this order, I uphold the decision of the police, in part, to deny access under section 38(a) in conjunction with section 8(1)(l), and under section 38(b). Non-exempt information is ordered disclosed. As well, I dismiss the aspects of the appeal relating to reasonable search and correction of personal information.

RECORDS:

[11] The records at issue consist of police occurrence reports, supplementary occurrence reports, occurrence details, emails and other police forms.

ISSUES:

[12] The following issues will be addressed in this order:

A. Does the record 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(b) apply to the information at issue?

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

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

E. Did the police conduct a reasonable search for records?

F. Should the police correct personal information under section 36(2)?

DISCUSSION:

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

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

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

> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[14] 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.[1]

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

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[16] 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.[2]

[17] 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.[3]

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[19] The police submit as follows:

> The "occurrence details" contain both the personal information of the appellant and other affected individuals as defined in [the following items in the definition of personal information:] (a), (b), (d), (e), (g) and (h).

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[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> This falls within the definition of personal information as defined in the Act.
>
> Consent for the disclosure of other affected individual's personal information was not obtained at the time of the initial decision letter.
>
> Although some of the information pertains to the appellant, and the appellant is aware of the identity of some parties some of the information contains statements made to the police during the investigation while there was a presumed understanding of confidentiality.
>
> These records contain the personal information of innocent affected parties that were drawn into this situation not by choice but due to their relationship with the involved individuals.

[20] One affected party, whose representations have been treated as confidential, also submits that the records contain personal information. Under the circumstances, I will not elaborate further, but I have considered this party's submissions in reaching my decision.

[21] A number of other affected parties have asked that their information not be disclosed, but did not provide representations on whether it is personal information.

[22] The appellant did not comment on this issue in her representations.

[23] Having reviewed the records in detail, I find that they contain the personal information of the appellant and members of her family.

[24] In addition, on page 23, there is a reference to an unnamed individual who was involved in an incident. I am satisfied from the contents of the record that it is reasonable to expect that this individual is identifiable, and I find that this qualifies as personal information.

[25] On pages 44 and 59, the dates of birth and gender of two individuals, and the gender of a third individual, are recorded. These individuals are affected parties whose involvement is professional. However, the dates of birth and gender of these individuals do not relate to any business or professional context. I find that they qualify as these individuals' personal information.

[26] On pages 62 and 63, the records contain information about an individual who spoke to the police. As her involvement appears to have been of a personal nature, I find that this constitutes the personal information of this individual rather than business information.

[27] The records also contain numerous references to the names and business contact information of a number of individuals. Section 2(2.1) indicates that this is not

personal information. Many of these individuals have objected to the disclosure of their information. However, as it is not personal information, it cannot be exempt under section 38(b). As no other exemptions have been claimed for this information, I will order it disclosed. This information appears on pages 6, 7, 10, 11, 44, 46, 54 and 59.

[28] Some badge numbers of police personnel have also been redacted. I find that these numbers are a "designation" within the meaning of section 2(2.1) and are therefore not personal information. Alternatively, this is business information and does not disclose anything of a personal nature.[5] I find that the badge numbers do not constitute personal information and are therefore not exempt under section 38(b). This information appears on pages 37, 44, 51, 57 and 59.

[29] In summary, I find that the records contain the personal information of the appellant, members of her family, the individual who was involved in an incident, the affected parties whose birth dates and gender are included in the records, and the individual who spoke to the police.

[30] The personal information of the appellant is not exempt under section 38(b). However, with three exceptions,[6] I find that where the police have withheld personal information of the appellant, it is sufficiently intertwined with the information of other individuals to constitute the personal information of those other individuals.

[31] In summary, I find that parts of pages 7, 23, 25, 26, 37, 42, 44, 51, 52, 59, 60, 61, 62 and 63, and pages 39, 40, 41 and 43 of the records in their entirety, constitute the personal information of individuals other than the appellant. I will now consider whether this information is exempt under section 38(b).

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

[32] Section 38(b) of the *Act* states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[33] 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

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[5] See Order PO-2225.

[6] The redacted personal information of the appellant on pages 44 and 54, and part of her redacted personal information on page 60, are exceptions to this finding because they are personal information of the appellant only, and will be ordered disclosed as no other exemptions have been claimed for this information.

"unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[34] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[35] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[7]

Representations

[36] The police submit:

> The records contain mixed personal information. Portions of the record were disclosed allowing the appellant access to her own personal information.
>
> Portions were withheld as the disclosure would constitute an unjustified invasion of another individual's personal privacy. The balance of the appellant's right to access and the protection of the other individual's right to privacy was considered.
>
> . . . Sections 14(1)(a) to (e) do not apply to this decision.

[37] In their decision letter, the police refer to sections 14(3)(b) and 14(2)(f) in support of their claim that section 38(b) applies.

[38] One affected party, whose representations have been treated confidentially, submits that the presumed unjustified invasion of personal privacy in section 14(3)(a) and the factors favouring non-disclosure in sections 14(2)(e) and (f) apply.

[39] The appellant's representations suggest the possible application of the factors favouring disclosure at sections 14(2)(a) and (d).

Analysis

Section 14(1)

[40] If any of sections 14(1)(a) through (e) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[41] In this case, several parties consented to disclosure of their information, which

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[7] Order MO-2954.

raises the possible application of section 14(1)(a).[8] In this case, however, I have found that these individuals' information in the records is not their personal information and is not exempt under section 38(b). For this reason, it is not necessary to engage section 14(1)(a).

[42] There is nothing to suggest that sections 14(1)(b) through (e) apply.

[43] Accordingly, I find that sections 14(1)(a) through(e) do not apply.

SECTION 14(3)

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

[45] Sections 14(3)(a) and (b) are relevant in this appeal. These sections state:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
> >
> > (b) 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;

14(3)(A): MEDICAL HISTORY

[46] As already noted, one affected party states that this section applies. Having reviewed the records, I agree. Information of this nature appears on pages 59-60 of the records, and relates to an individual other than the appellant. I find that the presumption in section 14(3)(a) applies to this information.

14(3)(B): INVESTIGATION INTO VIOLATION OF LAW

[47] 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

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[8] Section 14(1)(a) states: "A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, … upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;"

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

[48] Although the police refer to this section in their decision letter, their representations do not refer to it. However, it is clear that the records were compiled and are identifiable as part of an investigation into possible violations of law. On this basis, I find that the personal information of other individuals is subject to the presumed unjustified invasion of privacy in section 14(3)(b).

SECTION 14(2)

[49] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[11]

[50] The appellant's representations suggest the possible application of the factors favouring disclosure at sections 14(2)(a) and (d). The police and one affected party rely on the factor favouring non-disclosure at section 14(2)(f). The affected party also relies on section 14(2)(e).

[51] These sections state:

> 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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
> >
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive;

[52] The appellant's representations consist of unsubstantiated allegations that are not convincing. I find that sections 14(2)(a) and (d) do not apply.

[53] The affected party's representations are confidential, but I find that they are

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[9] Orders P-242 and MO-2235.
[10] Orders MO-2213, PO-1849 and PO-2608.
[11] Order P-239.

sufficient to establish that section 14(2)(e) applies to the information in the records pertaining to this individual.

[54] Although the police refer to section 14(2)(f) in their decision letter, they do not refer to it in their representations. The affected party makes confidential representations concerning this section.

[55] To be considered highly sensitive under section 14(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.[12] In the circumstances of this appeal, having reviewed the records and representations, I am satisfied that it is reasonable to expect significant personal distress to the individuals whose personal information appears in the records if that information, which appears in police records, is disclosed. I find that section 14(2)(f) applies to all of the personal information of individuals other than the appellant in the records.

Summary re: section 14(2)

[56] To conclude, I have found that the factors favouring disclosure under section 14(2)(a) and (d) do not apply. The factor favouring non-disclosure in section 14(2)(e) applies to the personal information of the affected party who relies on it. The factor favouring non-disclosure in section 14(2)(f) applies to all of the personal information of individuals other than the appellant in the records.

[57] None of the factors favouring disclosure apply.

Section 14(4)

[58] 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). I have reviewed these sections and find that they do not apply.

ABSURD RESULT

[59] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[13]

[60] The absurd result principle has been applied where, for example:

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[12] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[13] Orders M-444 and MO-1323.

- the requester sought access to his or her own witness statement[14]
- the requester was present when the information was provided to the institution[15]
- the information is clearly within the requester's knowledge[16]

[61] The police have disclosed a great deal of information that was supplied by the appellant, even where it includes personal information of others. Where they have not done so, I am satisfied that withholding the information is consistent with the privacy protective purpose of the section 38(b) exemption.

Conclusions under section 38(b)

[62] I have found that all of the personal information of individuals other than the appellant in the records is subject to the presumed unjustified invasion of personal privacy in section 14(3)(b), and that the factor favouring non-disclosure in section 14(2)(f) also applies to it. In addition, the presumed unjustified invasion of personal privacy in section 14(3)(a), and the factor favouring non-disclosure in section 14(2)(e), apply to some of this information. None of the factors favouring disclosure apply.

[63] Accordingly, I find that disclosure of the personal information of individuals other than the appellant in the records would constitute an unjustified invasion of personal privacy, and subject to the discussion of the exercise of discretion, below, I find this information exempt under section 38(b). Having made this finding, I will not consider whether information exempted here is also exempt under section 38(a). I now turn to that issue in relation to information I have not found exempt under section 38(b).

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

[64] 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. [Emphasis added.]

[65] 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

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[14] Orders M-444 and M-451.
[15] Orders M-444 and P-1414.
[16] Orders MO-1196, PO-1679 and MO-1755.

grant requesters access to their personal information.[17]

[66] 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.

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

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[68] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[18]

[69] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[19] The institution must provide evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[20]

[70] Based on my review of the records, the police claim that these sections apply to police codes, geographic codes, beat codes, a reference to a police information database, a cover note from another law enforcement agency, several police analysis forms, their conclusions about some matters reported to them, information about the purpose for creating the record, and information about the printing of some pages of the records.

[71] In some instances, information severed on one page was released elsewhere within the same document, or in other records.

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[17] Order M-352.
[18] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[19] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[20] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras. 52-4.

[72] In their entirety, the police's representations concerning sections 38(a), 8(1)(e) and 8(1)(l) consist of the following three paragraphs:

> Although section 36(1) of the act [sic] allows individuals a general right of access to their own personal information held by an institution, Section [sic] 38 provides a number of exemptions from this right.
>
> Sections [sic] 38(a) was used in conjunction with sections 8(1)(e) and (l) to deny portions of these records. The exercise of discretion was applied to this decision.
>
> The use of exemptions 8(1)(e) and (l) apply to the law enforcement portions of the records not the appellant's personal information. These exemptions are routinely used when dealing with law enforcement records and this information does not personally pertain to the appellant.

[73] As noted above, the police must provide evidence of harm in order to rely on sections 8(1)(e) and (l). The evidence must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm.[21]

[74] In addition, and more fundamentally,[22] section 42 of the *Act* states that ". . . the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head."

[75] The police's representations I have just quoted do not even refer to the types of information being exempted. No attempt is made to explain the nature of the exempted information, how it is used, or why disclosure could reasonably be expected to lead to the harms identified in sections 8(1)(e) and/or (l). There is no reference at all to the types of harm mentioned in these sections, let alone any explanation of how disclosure could reasonably be expected to produce them. Nor is this apparent from a review of the records.

[76] For that reason, with one exception, I find that section 38(a), in conjunction with sections 8(1)(e) and (l), does not apply to the information for which it has been claimed.

[77] The exception pertains to the police operational codes in the records. Many previous orders of this office have found that police codes are exempt under section 8(1)(l). For example, in Order MO-2446, Adjudicator Diane Smith stated:

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[21] See footnote 20.
[22] (and as pointed out in the Notice of Inquiry that was sent to the police)

> I note that this office has applied section 8(1) to exempt police operational codes. This office has consistently found that section 8(1)(l) applies to these codes (for example, see Orders M-93, M-757, MO-1715, MO-2414 and PO-1665). These orders adopted the reasoning stated in Order PO-1665 by Adjudicator Laurel Cropley:
>
> > In my view, disclosure of the "ten-codes" would leave OPP [Ontario Provincial Police] officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.
>
> I agree with Adjudicator Cropley's reasoning and find that it is relevant in the circumstances of this appeal.
>
> I am satisfied that disclosure of the police operational codes could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, I find that this information that has been withheld from the appellant qualifies for exemption under section 8(1)(l) of the Act.

[78] I agree with these conclusions and adopt them for the purposes of this order. I therefore find that police operational codes in the records are exempt under section 38(a) in conjunction with section 8(1)(l) of the *Act*. This information appears on pages 1, 4, 5, 6, 10, 21, 23, 24, 25, 26, 27, 32, 34, 35, 37, 42, 44, 45, 51, 52, 57, 59, 60 and 62. I am not upholding the exemption for information that has been released elsewhere within the same document, or in other records.

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

[79] The section 38(a) and (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.

[80] 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.

[81] The police submit:

> The exercise of discretion is paramount when dealing with an institution's records vs. a person's right to access their personal information. Decisions are always arrived at in good faith taking into account all relevant considerations and the right to protect other affected individuals' privacy.

[82] In their representations under sections 38(a), the police state (as quoted above) that "[t]he exercise of discretion was applied to this decision."

[83] Under section 38(b), the police stated (as quoted above) that "[t]he balance of the appellant's right to access and the protection of the other individual's right to privacy was considered." They also state: "Yes, this institution did exercise its discretion under section 38(b). Consideration was given to all relevant information with the right of privacy to all affected individuals including the appellant."

[84] The police's representations with respect to their exercise of discretion to claim section 38(a) are significantly lacking in detail. In this order, I have applied the section 38(a) exemption claim, in conjunction with section 8(1)(l), in a manner that is consistent with the purpose of the exemption and with previous decisions of this office. With respect to the information for which I have upheld section 38(a) in conjunction with section 8(1)(l), I conclude that the police properly considered the interests to be protected in making their decision to rely on these exemptions.

[85] With respect to section 38(b), it is evident that the police considered both the appellant's right of access to her personal information and the privacy interests of affected parties.

[86] There is no evidence that the police acted in bad faith, or for an improper purpose, or relied on irrelevant factors.

[87] For these reasons, I uphold the police's exercise of discretion to claim sections 38(a) and (b) for the information I have found exempt under those sections.

E. DID THE POLICE CONDUCT A REASONABLE SEARCH FOR RECORDS?

Background

[88] In the appellant's notice of appeal, she referred to a police report number that she had also mentioned in the first item of her request, and indicated that it is missing from the records that were located by the police. She referred to this report again during mediation, and at that time, she also identified the three officers she believes were involved in that incident.

[89] Prior to the conclusion of mediation, the police issued a supplementary access decision advising the appellant that they had located a print-out from their computer aided dispatch system relating to the incident. The police granted the appellant full access to this printout and advised that the officers did not submit a report for that incident. After receiving the supplementary decision, the appellant advised the mediator that she continues to believe that the report exists.

[90] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[23] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[91] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[24]

[92] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[25]

[93] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[26]

Discussion

[94] In their supplementary decision letter and their representations, the police indicate that they did the following in their efforts to locate the report that the appellant claims should exist:

- resolved an issue with the incident number provided by the appellant, which was missing a two-digit year indicator at the beginning of the number;
- identified the three officers referred to by the appellant as having been involved in the incident;
- determined that only one of the three officers was actually involved, and obtained hard copy documentation to back this up in the form of an email confirmation and a notebook extract for the day in question;

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[23] Orders P-85, P-221 and PO-1954-I.
[24] Orders P-624 and PO-2559.
[25] Orders M-909, PO-2469 and PO-2592.
[26] Order MO-2246.

- conducted a search through their NICHE query system for an incident report relating to the appellant under this incident number, and found that no such report had been prepared;

- determined that, although there was no incident report, a Computer Aided Dispatch (CAD) chronology existed[27]; and

- issued their supplementary access decision and released the CAD chronology to the appellant in full.

[95] In their notes to the mediator concerning their search for this record, which were shared with the appellant along with the Notice of Inquiry, the police provided the following further explanation:

> When a call comes into our Dispatch/Communications Branch the information is documented in the CAD system and officers are dispatched if applicable. Depending on the type of call the officers may or may not submit an incident report. In this case no incident report[28] was submitted therefore we advised the appellant accordingly. It wasn't until after the appeal process had been initiated and upon request of the Mediator we searched further and discovered the chronological system in the CAD system. This is not considered an incident report. This chronological information was released to the Appellant and the Mediator with explanation.
>
> I have also enclosed a copy of a name query print out from our Records Management System (NICHE). Each time an FOI request is made we query the requestor in this system to determine what incident reports exist for their request. As you can see from this print out incident [number] does not exist.

[96] The appellant does not address this issue in her representations, but I have taken into account her statement to the mediator that she believes this incident report exists.

[97] In view of the documented efforts made by the police to locate the incident report relating to the appellant's call to the police, and the explanations they have provided about the way responses by the police to telephone calls are documented, I am satisfied that the police have made reasonable efforts to locate this report.

[98] I therefore find that the police conducted a reasonable search for records and I

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[27] This is the printout referred to above, which was disclosed with the police's supplementary access decision.

[28] The police appear to use the terms "incident report" and "occurrence report" interchangeably.

dismiss this aspect of the appeal.

F. Should the police correct personal information under section 36(2)?

[99] Section 36(1) of the *Act* gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. Sections 36(2)(a) and (b) state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > (a) request correction of the personal information where the individual believes there is an error or omission therein;
> >
> > (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

[100] This office has previously established that in order for an institution to grant a request for correction, all three of the following requirements must be met:

1. the information at issue must be personal and private information; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.[29]

[101] Records of an investigatory nature cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.[30]

[102] The appellant's correction request was forwarded to the police during mediation. She requested the correction of a number of police reports. The police responded by correcting the spelling of the appellant's name in a number of the records.[31] As well, for each report she asked to have corrected, they attached her correction request as a statement of disagreement pursuant to section 36(2)(b) of the *Act*.

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[29] Orders P-186 and P-382.
[30] Orders M-777, MO-1438 and PO-2549.
[31] The police state that they cannot amend records older than 2006 because they are in a document imaging system that they cannot change.

[103] In their decision letter to the appellant in response to her correction request, the police stated:

> Unfortunately, we cannot remove or amend a report submitted by an officer and a substitution of opinion will not qualify as a correction to our files. Officers are trained to investigate and give their professional opinions. We appreciate this may not always be favourable to subjects involved in the reports but they will remain as written.

[104] Neither the police nor the appellant directly addressed the correction issue in their representations. I have reviewed the appellant's correction request, and the records she seeks to have corrected, as well as the decision letter issued to her by the police in connection with her correction request. I have concluded that the appellant seeks to substitute her opinion for that of the officers who investigated. As already noted, this is not a basis for correcting a record.[32] In addition, it is clear that the records she seeks to have corrected are investigatory records that reflect the views of the individuals whose impressions are being set out. There is no basis to conclude that there is any inaccuracy in the way the records reflect the authors' observations and impressions at the time they were created.[33]

[105] Accordingly, I find that by correcting the spelling of the appellant's name and attaching statements of disagreement, the police have responded appropriately to the appellant's correction request. I uphold their decision to refuse the remainder of appellant's correction request and I dismiss this aspect of the appeal.

ORDER:

1. I uphold the police's decision to deny access to the following records under section 38(b) of the *Act*: parts of pages 7, 23, 25, 26, 37, 42, 44, 51, 52, 59, 60, 61, 62 and 63, and pages 39, 40, 41 and 43 in their entirety.

2. I uphold the police's decision to deny access to the following records under section 38(a) of the *Act* in conjunction with section 8(1)(l): parts of pages 1, 4, 5, 6, 10, 21, 23, 24, 25, 26, 27, 32, 34, 35, 37, 42, 44, 45, 51, 52, 57, 59, 60 and 62.

3. I order the police to disclose to the appellant the portions of pages 6, 7, 10, 34, 37, 44, 45, 51, 52, 57, 59, 60, 61, 62 and 63 that are not highlighted on the copies of these pages that I am sending to the police with this order, and to disclose to the appellant pages 11, 28, 33, 38, 46, 53, 54 and 58 in their entirety, no earlier than **August 2, 2016** and not later than **August 8, 2016**. The highlighted information is not to be disclosed.

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[32] See Order P-186.
[33] See Order M-777.

4. With respect to the issues of reasonable search and correction, I dismiss the appeal.

Original Signed by: June 30, 2016

John Higgins
Adjudicator