

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3383

Appeal MA14-577

South Simcoe Police Services Board

November 25, 2016

**Summary:** The appellant submitted a request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to a dog bite incident involving her child. The police located the responsive records and notified the dog owner who objected to the release of any information relating to him contained in the records. The police decided to grant the appellant partial access to the records on the basis that disclosure of the withheld information would constitute an unjustified invasion of personal privacy of the dog owner under section 38(b). The appellant took the position that the dog owner's name, address and telephone number should be disclosed to her. This order finds that disclosing the dog owner's name to the appellant would not constitute an unjustified invasion of personal privacy taking into consideration the presumptions and factors in sections 14(2) and (3). However, the adjudicator upholds the police's decision to withhold the dog owner's address and telephone number as she was not provided with sufficient evidence demonstrating that the disclosure of this information is required for the appellant to pursue a civil claim. Accordingly, disclosure of this information is found to constitute an unjustified invasion of personal privacy under section 38(b).

**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(2)(b), (d), (e), (f), (h), and (i); 14(3)(b); 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, c D.16.

**Orders and Investigation Reports Considered:** Orders MO-2954, MO-2980, MO-3088 and MO-3370.

## **OVERVIEW:**

[1] The appellant, represented by a law firm, submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the South Simcoe Police Service (the police) for records relating to a dog bite incident involving a child. The law firm represents the mother of the child bit by a dog.<sup>1</sup>

[2] The police located responsive records and notified the dog owner (the affected party) under section 21(1). The police subsequently granted the appellant with partial access to the records. The police withheld portions of the records they claim contain police code information under section 38(a) in conjunction with section 8(1)(l)(law enforcement). The police also claimed that some of the withheld information did not respond to the request. Finally, the police claimed that disclosure of the remaining withheld information would constitute an unjustified invasion of the dog owner's personal privacy under section 38(b).

[3] The appellant appealed the police's decision to this office and a mediator explored settlement with the parties. During mediation, the appellant confirmed that she was only interested in pursuing access to the dog owner's name and contact information and the dog owner continued to object to this information being disclosed to the appellant. Accordingly, the police code information withheld under section 38(a) in conjunction with section 8(1)(l) along with the information identified as non-responsive was removed from the scope of appeal.

[4] The issue of whether or not the dog owner's name and contact information should be disclosed to the appellant was transferred to adjudication. During the inquiry, the police, affected party and appellant provided representations which were shared in accordance with this office's confidentiality criteria.

[5] In this order, I find that disclosure of the affected party's name to the appellant would not constitute an unjustified invasion of personal privacy under section 38(b) and order the police to disclose this information to the appellant. However, I find that disclosure of the affected party's address and telephone number would constitute an unjustified invasion of personal privacy under section 38(b) and uphold the police's decision to withhold this information.

## **RECORDS:**

[6] The withheld information is the dog owner's name, address and telephone number contained in the police occurrence report and related handwritten police officer notes.

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<sup>1</sup> Section 54(c) provides that any right or power conferred on an individual under the *Act* may be exercised by a person who has lawful custody of the individual if the individual is under sixteen years of age. For the remainder of this order, the appellant's daughter's personal information will be referred to as the appellant's.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Would disclosure of the personal information at issue constitute an unjustified invasion of personal privacy under section 38(b)?
- C. Did the police properly exercise its discretion under section 38(b)?

## **DISCUSSION:**

### **A. Do the records contain "personal information" as defined in section 2(1)?**

[7] To qualify as personal information, the information must be about the individual in a personal capacity. The parties do not dispute that the police occurrence report and notes contain the personal information of the appellant and the affected party.

[8] I have reviewed the records and am satisfied that it contains the personal information of the appellant and the affected party. The information relating to the affected party consists of his name and contact information which constitutes "personal information" as described in paragraph (d)[address and telephone number] and (h)[name appearing with other personal information] in section 2(1) of the definition of that term.

[9] As I have found that the records contain the personal information of the appellant along with the affected party, I will determine whether disclosure of the affected party's name, address and telephone number to the appellant would constitute an unjustified invasion of personal privacy under section 38(b).

### **B. Would disclosure of the personal information at issue constitute an unjustified invasion of personal privacy under section 38(b)?**

[10] Section 38(b) states:

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

if disclosure would constitute an unjustified invasion of another individual's personal privacy.

[11] Because of the wording of section 38(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in records which also contain the requester's personal information.<sup>2</sup>

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<sup>2</sup> Order M-352.

[12] In other words, where a record contains personal information of both the requester and another individual, and the 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.

[13] In the circumstances of this appeal, I must determine whether disclosing the personal information of the affected party to the appellant would constitute an unjustified invasion of his personal privacy under section 38(b).

[14] Sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Section 14(2) provides some criteria for the city 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. The parties have not claimed that any of the exceptions in section 14(1) or exclusions in section 14(4) apply and I am satisfied that none apply.

[15] The police claim that the presumption against disclosure in section 14(3)(b) applies in this appeal. The affected party agrees with the police's position and also claims that the factors favouring privacy protection at sections 14(2)(e), (f), (h) and (i) apply. The appellant claims that the factors favouring disclosure at sections 14(2)(b), (d) and an unlisted factor apply. These sections state:

(2) 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,

(b) access to the personal information may promote public health and safety;

(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;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

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

(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.

[16] In determining whether disclosure of the affected party's name and contact information would constitute an unjustified invasion of personal privacy under section 38(b), I will adopt the approach taken in Order MO-2954 and consider and weigh the presumption in section 14(3)(b) along with the factors in section 14(2) to balance the interests of the parties.<sup>3</sup> In Order MO-2954, Adjudicator Laurel Cropley found that in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b) that she was not bound by the decision in *John Doe v Ontario (Information and Privacy Commissioner)*, (1993), 13 O.R. (3d) 767 (Div. Ct.). She found that she was not bound by the decision in *John Doe*, which addressed only the application of section 14(1). As a result, she considered and weighed the factors and presumptions in sections 14(2) and 14(3) to determine whether disclosure would constitute an unjustified invasion of personal privacy under section 38(b).

***14(3)(b): investigation into violation of law***

[17] The police take the position that the presumption at section 14(3)(b) applies in this appeal. The affected party and the appellant do not dispute that the affected party's name and contact information was collected as part of the police's investigation into a possible violation of law. In addition, the parties appear to agree that the police's investigation did not result in criminal proceedings against the affected party.

[18] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>4</sup>

[19] Having regard to the submissions of the parties and the records, I am satisfied that the affected party's name and contact information was collected by the police as part of an investigation into a possible violation of the *Criminal Code*. The fact that the police decided not to pursue charges under the *Criminal Code* does not negate the fact that the information at issue was collected for this purpose. Accordingly, I find that disclosure of the affected party's name and contact information is presumed to be an unjustified invasion of personal privacy taking into consideration the presumption at section 14(3)(b).

[20] In my view, the presumption at section 14(3)(b) should be given significant weight.

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<sup>3</sup> This approach has also been applied in Orders MO-2980, MO-3088 and MO-3370. The Notice of Inquiry sent to the parties sought their representations on whether the approach taken in Orders MO-2954 and MO-2980 were applicable in this appeal.

<sup>4</sup> Orders P-242 and MO-2236.

**14(2)(b): public health and safety**

[21] In support of its position that this factor applies, the appellant states:

The appellant submits that providing access to the records pertaining to the 3<sup>rd</sup> party dog owner, may promote public health and safety. Disclosing the contact information of the dog owner responsible for the violent attack would assist the appellant seek the appropriate remedies to compensate her serious and permanent injuries and to help her return to physical and psychological health.

Such disclosure is necessary in the broader interests of making the public at large aware of the responsibilities and obligations in maintaining safe and proper control of their animals, so that such attacks are prevented in the future.

[22] The police and the affected party submit that this factor has no application in the circumstances of this appeal. The police state:

The issue of public health and safety *may* be relevant if the police had numerous complaints on file for the same dog. The report states that the dog was leashed, with a soft muzzle, both are precautions taken by the dog owner for public safety.

[23] The affected party submits that disclosure of his name and contact information would not address public safety concerns but rather “help the appellant pursue her private interests”.

[24] Though I accept that the police’s investigation determined that no criminal charges against the dog owner should be pursued, I note that previous decisions from this office have found that disclosing a dog owner’s name, in circumstances where the dog bit an individual, may lead to civil proceedings and a possible court order with public safety ramifications under the *Dog Owner’s Liability Act (DOLA)*.<sup>5</sup> Furthermore, in a more recent dog bite case this office found that disclosing a dog owner’s name along with his or her address may promote public safety under section 14(2)(b).<sup>6</sup>

[25] I agree and adopt the reasoning in these previous decisions and I find that disclosure of the affected party’s name may promote public health and safety in the circumstances in this appeal. In making my decision, I took into consideration the police’s assessment that the dog bite incident in question appeared to be isolated. Though there is no dispute between the parties that the dog in question was muzzled when the alleged attacked occurred, I was not presented with evidence confirming whether the dog was wearing a muzzle voluntarily or was required to do so. However, the appellant’s representations attached a letter the appellant received from the

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<sup>5</sup> See for example Orders MO-2980 and MO-3088.

<sup>6</sup> Order MO-3370.

affected party. In the letter, the dog owner provided the appellant with his first and last name and advised Animal Control Services intended to apply for a court order to destroy his dog. Though it is not clear whether Animal Control Services obtained such an order, I am satisfied that this particular dog bite incident raised questions about public safety evidenced by the municipality's consideration of a destruction order under the *DOLA*.

[26] Having regard to the circumstances of this appeal, I am satisfied that disclosure of the dog owner's name may promote public health and safety and find that the factor in section 14(2)(b) weighs in favour of disclosure. However, I reduce the weight given to this factor from significant to considerate taking into account that the police found that any public safety concerns relating to the dog bite incident should be addressed by the civil courts.

[27] My reasoning, however, does not extend to the dog owner's address and telephone number. There is insufficient evidence before me to conclude that disclosure of the remaining personal information to the appellant may promote public health and safety in the circumstances of this appeal. The appellant's submission that disclosure of the affected party's contact information "would assist the appellant seek the appropriate remedies" failed to persuade me that the appellant would have difficulty pursuing a civil claim with just the dog owner's name.

***14(2)(d): fair determination of rights***

[28] For section 14(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>7</sup>

[29] The appellant submits that the dog owner's name and contact information is relevant to a fair determination of her rights "to sue and seek damages from [the affected party] under the *DOLA*. In support of its position, the appellant states:

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<sup>7</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

The disclosure of the information contained in the records would provide insight as to the specific individual from whom redress should be sought, and ultimately, to obtain fair and just compensation for the appellant's injuries from the individual responsible.

[30] The police's representations did not specifically address whether the factor at section 14(2)(d) applies in this appeal and the affected party submits that this factor should not be determinative of the appeal given the fact that other avenues are available to the appellant to obtain his name and contact information.

[31] In order for the factor at section 14(2)(d) to be given any consideration, the appellant must establish that all four parts of the test have been met. I am satisfied that disclosure of the dog owner's name relates to the appellant's legal right to pursue a civil remedy under the *DOLA*. Given the appellant's evidence, I am also satisfied that the appellant's legal rights relate to a proceeding which has not yet been completed. Accordingly, I find that parts 1 and 2 of the section 14(2)(d) test has been met.

[32] Finally, I am satisfied that disclosure of the dog owner's name has some bearing on the appellant's right to pursue a civil claim against the dog owner and that this information is required for the appellant to prepare for the proceeding. Accordingly, I am satisfied that parts 3 and 4 of the section 14(2)(d) test has been met and find that the factor at section 14(2) applies in the circumstances of this appeal.

[33] As I was not presented with sufficient evidence to demonstrate that the appellant's ability to exercise her legal rights would be infringed if only the appellant's name is disclosed, I find that the factor at section 14(2)(d) does not apply to the dog owner's address or telephone number.

[34] Previous decisions from this office have addressed how much weight the factor at section 14(2)(d) should be given in dog bite cases. In Order MO-2980, Adjudicator Colin Bhattacharjee states:

The IPC has found in previous orders that the existence of disclosure processes available to parties under the *Rules of Civil Procedure*<sup>8</sup> reduces the weight that should be given to the section 14(2)(d) factor.<sup>9</sup> In particular, the appellant could commence a civil action against the dog owner as an unnamed defendant, by use of a pseudonym, and then use the *Rules of Civil Procedure* to obtain the dog owner's name and address from the police or another body that holds that information.<sup>10</sup>

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In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to

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<sup>8</sup> R.R.O. 1990, Reg 194.

<sup>9</sup> Orders MO-2943 and PO-1715.

<sup>10</sup> Orders PO-1728 and M-1146.



seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

However, I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

[35] I agree and adopt the reasoning in Order MO-2980, which was also followed in Orders MO-3088 and MO-3370 and reduce the weight given to the factor at section 14(2)(d) from significant to considerable in the circumstances of this appeal.

***14(2)(e): pecuniary or other harm***

[36] The affected party submits that disclosure of his name and contact information to the appellant would unfairly expose him to a "potentially lengthy and costly lawsuit". The appellant submits that this is unfair given that he took precautions to avoid the dog bite incident.

[37] In order for this section to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[38] In my view, the fact that the affected party may be exposed to pecuniary harm as a result of the appellant pursuing a civil claim does not necessarily lead to a conclusion that disclosure would result in the appellant being exposed to "unfair" pecuniary harm. In making my decision, I note that in Order MO-3088, Adjudicator Diane Smith found that a dog owner's exposure to pecuniary or other harm as the result of a dog bite incident is "merely a consequence that any defendant would be exposed to in a civil action".

[39] Accordingly, I find that the factor at section 14(2)(e) favouring privacy protection does not apply to the circumstances of this appeal.

***14(2)(f): highly sensitive***

[40] To be considered highly sensitive, there must be a reasonable expectation of

significant personal distress if the information is disclosed.<sup>11</sup>

[41] The appellant concedes that the personal information at issue (the dog owner's name and contact information) is sensitive but argues that it is not *highly sensitive* given that the police decided not to file criminal charges. In support of her position, the appellant refers to Order MO-2980, in which Adjudicator Colin Bhattacharjee states:

In my view, whether an individual's name and address is highly sensitive depends on the context and should be assessed on a case-by-case basis. An individual's name and address is not always sensitive information. For example, the names and addresses of most individuals appear in publicly accessible telephone or online 411 directories and are clearly not highly sensitive in that context.

However, the names and addresses of individuals have greater sensitivity when this information is collected by the state or agencies of the state such as the police. For example, if the police interview a witness who saw a murder and can identify the suspect, the witness's name and address would clearly be highly sensitive. In other cases, however, a witness' name and address may be sensitive, but not necessarily highly sensitive.

In the particular circumstances of this appeal, the police concluded that the dog attack was a matter that should be addressed in a civil law context, not a criminal context. In my view, this reduces the sensitivity of the personal information in these particular police records.

I find that the personal information of the dog owner, the other possible dog owner and the witness is sensitive but not highly sensitive. I note that both the dog owner and the witness were given an opportunity to submit representations but neither chose to do so and express whether disclosure would cause them significant personal distress. In my view, although disclosing these individuals' personal information might cause them personal distress, I am not persuaded that doing so would cause them significant personal distress.

[42] The affected party submits that disclosure of his personal information to the appellant would cause him significant personal distress given disclosure would lead to a lawsuit. The affected party also argues that the circumstances in the present appeal differ from the circumstances in Order MO-2980 and thus the reasoning in that order should not be followed. In support of this position, the affected party states:

The Adjudicator provided the example that [the dog owner's] name and address can be obtained through 411 [directories] and therefore the information is not highly sensitive.

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<sup>11</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

My name and address is highly sensitive information and I would respectfully disagree that my personal information is available through [the] 411 directory system to anyone who wishes to obtain it.

In fact, I am very vigilant about my personal and private information and who [has] access to it, since in this day and the personal data can be stolen and used against me. Therefore, the reasons that were given in MO-2980 decision can not be adopted in this appeal.

[43] I have considered the affected party's evidence and agree that the circumstances in this appeal do not mirror the circumstances in Order MO-2980. I note that in this appeal the affected party provided evidence in support of his position that the factor at section 14(2)(f) favouring privacy protection applies where in Order MO-2980 the dog owner did not submit representations. I also accept the affected party's evidence that he takes precautions to safeguard the disclosure of his name and contact information. However, the affected party's evidence fails to persuade me that disclosure of his name and contact information to the appellant would cause him significant personal distress. In making my decision, I agree and adopt the reasoning in MO-2980 and find that the fact that the police determined that the dog bite incident should be addressed in a civil as opposed to a criminal context reduced the sensitivity of the personal information at issue. In addition, I note that the affected party already provided the appellant with his name when he sent her a letter to advise her that the municipality was considering seeking a destruction order to destroy his dog.

[44] Having regard to the circumstances of this appeal I find that disclosing the affected party's personal information to the appellant would not cause him significant personal distress given the reduced sensitivity of the information and the fact that he already provided his name to the appellant.

[45] Having regard to the above, I find that the factor at section 14(2)(f) favouring privacy protection has no application in this appeal.

***14(2)(h): supplied in confidence***

[46] This factor applies if 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.<sup>12</sup>

[47] The police states:

The [affected party] supplied [his] personal information to police in confidence to comply and co-operate with a police investigation. There is a high level of expectation from the public that any information supplied to the police is treated confidentially.

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<sup>12</sup> Order PO-1670.

[48] I agree with the police's submission but find that the affected party's expectation of confidentiality is reduced given that the personal information at issue was collected as the result of a dog bite incident and him being the owner of the dog in question. I also find that the affected party's expectation of confidentiality is reduced for the same reasons the sensitivity of the personal information at issue was reduced above in my analysis of the applicability of the factor at section 14(2)(f)(highly sensitive). Namely, that the police determined that the dog bite incident should be addressed in a civil as opposed to a criminal context.

[49] Having regard to the above, I find that the factor at section 14(2)(h) favouring privacy protection applies but give it moderate weight.

***14(2)(i): unfair damage to reputation***

[50] The applicability of this section is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved.<sup>13</sup>

[51] The affected party submits that the factor at section 14(2)(i) "does not apply to the case at bar" but argues that there is a possibility that the information at issue may be used in the future to "damage [his] reputation in the community [he] lives". The police and appellant did not provide representations on this issue.

[52] For the same reasons I found that the factor at section 14(2)(e) (pecuniary or other harm) did not apply, I find that this factor does not apply. In my view, it does not necessarily follow that disclosure of the affected party's name and contact information in connection with a potential civil claim resulting from a dog bite incident would result in unfair damage to his reputation.

[53] Accordingly, I find that the factor at section 14(2)(i) favouring privacy protection does not apply.

***Unlisted factor favouring disclosure***

[54] In Order MO-2954, Adjudicator Cropley found that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. In that appeal, she found that withholding the exact nature of the complaint a municipality received and the impact the situation had on the complainant would hinder the requester's ability to pursue the avenues available to him and attributed significant weight to this factor.

[55] In Order MO-2980, Adjudicator Bhattacharjee found that the police's refusal to provide the requester with the dog owner's name in a dog bite case fettered her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries and attributed significant weight to this factor.

[56] In Order MO-3088 Adjudicator Diane Smith found that a municipal public health

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<sup>13</sup> Order P-256.

department's refusal to disclose a dog owner's name fettered the requester's right to bring civil proceedings under the *DOLA* and attributed considerable weight to this factor.

[57] In Order MO-3370, Adjudicator Smith found that non-disclosure of the dog owner's name and address fettered the requester's right to bring civil proceedings under the *DOLA* and attributed considerable weight to this factor.

[58] In my view, the same principles applied in the above-noted appeals apply in the circumstance of this appeal. Here, the appellant retained the services of a lawyer to explore legal remedies in response to a dog bite incident which left her child injured. One of the remedies available to her is to file a civil claim against the dog owner. I am satisfied that the police's refusal to provide the appellant with the dog owner's name could fetter her right to commence proceedings under the *DOLA*. I give significant weight to this unlisted factor but only with respect to the dog owner's name. There is insufficient evidence before me suggesting that the police's refusal to disclose the dog owner's address and telephone number would fetter the appellant's ability to commence civil proceedings. Accordingly, I find that the unlisted factor does not apply to the dog owner's address and telephone number.

### *Summary*

[59] As previously stated, in determining whether disclosure of the dog owner's name and contact information to the appellant would constitute an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and 14(3) and balance the interests of the parties.

[60] I found that:

- The presumption at section 14(3)(b) applies to the dog owner's name and contact information and find that the presumption should be given significant weight.
- The factor favouring privacy protection at section 14(2)(h) [supplied in confidence] applies and should be given moderate weight.
- The factors favouring privacy protection at sections 14(2)(e) [unfair pecuniary or other harm], 14(2)(f) [highly sensitive] and 14(2)(i) [unfairly damage reputation] do not apply in the circumstances of this appeal.
- The factor favouring disclosure at section 14(2)(b) [promote public health and safety] applies to the disclosure of the dog owner's name only and should be given considerable weight.
- The factor favouring disclosure at section 14(2)(d) [fair determination of rights] also applies to the dog owner's name only and should be given considerable weight.

- The unlisted factor that the *Act* should not be used in a way to prevent individuals from exercising their legal rights applies to the disclosure of the dog owner's name only and should be given significant weight.

[61] Though I attributed significant weight to the presumption at section 14(3)(b) and found that the factor favouring privacy protection at section 14(2)(h) applies, I find that they are outweighed by the public safety factor in section 14(2)(b), the fair determination of rights factor in section 14(2)(d), and the unlisted factor that the *Act* should not be used in a way that prevents individuals from exercising their legal rights.

[62] In my view, disclosure of the dog owner's name to the appellant would not constitute an unjustified invasion of personal privacy taking into consideration the factors and presumptions in sections 14(2) and 14(3). Accordingly, I will order the police to disclose the dog owner's name to the appellant, subject to my assessment of whether the police exercised their discretion under section 38(b) properly.

[63] However, I find that disclosure of the dog owner's address and telephone number to the appellant would constitute an unjustified invasion of personal privacy under section 38(b). In my view, I was not provided with sufficient evidence demonstrating that disclosure of the dog owner's address and telephone number was necessary for the appellant to proceed with a civil claim in the circumstances of this appeal.<sup>14</sup> In addition, though I was presented with evidence demonstrating that the appellant received a letter from the dog owner in which he provided the appellant with his name, there is no evidence before me suggesting that the dog owner provided his address or telephone number to the appellant or provided this information to the police in the presence of the appellant.

[64] Accordingly, I find that disclosure of this information would constitute an unjustified invasion of personal privacy under section 38(b) and that the absurd result principle could not apply to this information.<sup>15</sup>

### **C. Did the police properly exercise its discretion under section 38(b)?**

[65] The section 38(b) exemption 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.

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

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<sup>14</sup> This office recently ordered the disclosure of a dog owner's address in a dog bite case in Order MO-3370. However, the adjudicator in that appeal found that the "disclosure of the affected person's name and address is necessary to proceed with any potential claim in this matter".

<sup>15</sup> Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under sections 14(1) or 38(b) because to withhold the information would be absurd and inconsistent with the purpose of the exemption.

- 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.

[67] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>16</sup>

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

[68] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>17</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>18</sup>

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<sup>16</sup> Orders P-344 and MO-1573.

<sup>17</sup> Order MO-1573.

<sup>18</sup> Section 43(2).

[69] The police submit that they properly exercised their discretion to withhold the affected party's address and telephone number and did not exercise their discretion in bad faith or for an improper purpose. In support of their position, the police submit that it took into account all relevant factors in making the decision to withhold information to the appellant, such as the personal nature of the information and the fact that "[c]ontact information was not exchanged at [the] scene between parties to settle any issues at the time".

[70] The affected party agrees with the police's position.

[71] The appellant submits that the police failed to take into consideration the following relevant considerations which weigh in favour of disclosing the affected party's contact information:

- The requester has a sympathetic or compelling need to receive the information;
- The requester is an individual (as opposed to an institution); and
- The age of the information.

[72] I have considered the representations of the parties and am satisfied that the police properly exercised their discretion to withhold the affected party's address and telephone number and in doing so took into account relevant considerations. I am also satisfied that the police did not exercise their discretion in bad faith or for an improper purpose, nor is there evidence that they took into account irrelevant considerations.

[73] In making my decision, I note that the police considered that one of the purposes of the *Act* includes the principle that requesters should have a right of access to information which relates to them. However, in my view, the nature of the personal information at issue and the sensitivity of it outweighs this principle, particularly when I also considered that the police have been ordered to disclose the affected party's name.

[74] Having regard to the above, I find that the police properly exercised their discretion to withhold the affected party's address and telephone I found exempt under section 38(b).

## **ORDER:**

1. I uphold the police's decision to withhold the affected party's address and telephone number from the appellant.
2. I order the police to disclose the affected party's name in the records to the appellant by **December 28, 2016** but not later than **January 3, 2017**.
3. In order to verify compliance with order provision 2, I reserve the right to require a copy of the record disclosed to the appellant to be provided to me.



Original Signed By: \_\_\_\_\_  
Jennifer James  
Adjudicator

November 25, 2016 \_\_\_\_\_