

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## **ORDER MO-3461**

Appeal MA16-475

Ottawa Police Services Board

June 26, 2017

**Summary:** The appellant sought access to police records relating to a criminal harassment complaint filed against her. The police granted the appellant partial access to the responsive records, disclosing the appellant's personal information to her, but withholding information relating to the individuals who complained to the police under the discretionary exemption in section 38(b) with reference to section 14(3)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*. The adjudicator upholds the decision of the police and dismisses the appeal.

**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), 14(3)(b), and 38(b).

**Orders and Investigation Reports Considered:** Order MO-2954.

### **OVERVIEW:**

[1] The appellant submitted a request to the Ottawa Police Services Board (the police) for access to records under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant requested information relating to a criminal harassment complaint made about her by her former employer and her former colleague (the complainants) from September 2011 to the date of her request. In her request, the appellant specified she sought access to all information including notes, notebook entries, computer notes, emails from (a named detective), and the

complainants' statements.

[2] The police located records responsive to the request and issued a decision granting the appellant partial access. The police relied on the discretionary exemption in section 38(b) (personal privacy), with reference to section 14 (personal privacy), and the discretionary exemption in section 13 (danger to safety or health) to withhold information in the records relating to the complainants.

[3] The appellant was not satisfied with the disclosure the police provided and she appealed the decision to the Office of the Information and Privacy Commissioner (IPC). The IPC attempted to mediate the appeal, however, a mediated resolution was not possible. As a result, the appeal was moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[4] During my inquiry, I sought and received representations from the police and the appellant, and shared these in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*.

[5] In this order, I uphold the decision of the police and dismiss the appeal.

## **RECORDS:**

[6] The records at issue in this appeal are the withheld portions of the General Occurrence Hardcopy in pages 4 to 12, and the complainants' statement in pages 18 to 29 and email communications between the police and the complainants in pages 30 to 32 that have been withheld in their entirety by the police.

## **ISSUES:**

- A. Do the records at issue contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary personal privacy exemption in section 38(b) apply to the records?
- C. Did the police exercise their discretion under section 38(b) and, if so, should the exercise of discretion be upheld?

## **DISCUSSION:**

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

[7] The first step in considering whether section 38(b) applies is determining whether the records contain “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual[.]

[8] 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.<sup>1</sup> Sections 2(2.1) and (2.2) also relate to the definition of personal information and 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.

[9] Generally, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup> However, if information relates to an individual in a professional, official or business capacity, it may qualify as personal information if it reveals something of a personal nature about the individual.<sup>3</sup>

[10] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that the individual may be identified if the information is disclosed.<sup>4</sup>

### ***The parties' representations***

[11] The police submit that the records contain the personal information of the complainants and the names and employment information of other indirectly involved individuals. They state that although the information may identify the individuals in their official capacity as members of the government and involves employment-related matters, it reveals these individuals' dates of birth, personal addresses and phone numbers. The police add that even though the appellant knows who the complainants are and may know the temporary residence of one of them, release of the information would identify the complainants' permanent residences.

[12] The appellant states that she is not seeking personal information "like place of residence, date of birth, gender, financial records, phone numbers etc of the complainants or anyone else." She states that she does seek access to the names and/or employment titles of "other" individuals so that she can confirm that the police conducted a diligent investigation.

---

<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA).

### ***Analysis and findings***

[13] Having reviewed the records at issue, I find that they all contain the personal information of the appellant, the complainants, and a number of other individuals. The records all relate to the complaint that the complainants filed with the police about the appellant.

[14] The General Occurrence Hardcopy contains information relating to the age, sex, employment history, address, telephone number, and personal opinions of the complainants, which engage paragraphs (a), (b), (d), (e) and (h) of the definition of "personal information" in section 2(1) of the *Act*. It also contains the names, sex and contact information of a number of other individuals and reveals their involvement in the police's investigation, which engage paragraphs (a), (d) and (h) of the "personal information" definition. The complainants' email communications with the police and their attached statement engage paragraph (f) of the definition as well as paragraph (h) since these records contain the complainants' names along with other personal information relating to them.

[15] Although the complainants' interaction with the appellant originated in a professional capacity through employment related matters, the information relating to the complainants in the records reveals something of a personal nature about them; namely, how they felt about particular interactions they had with the appellant which gave rise to their complaint to the police. Accordingly, the complainants' information in the records is personal, rather than professional, in nature. Similarly, the information relating to the other individuals who are identified in the records reveals these individuals' connection to the police's investigation, which is of a personal nature and qualifies as these other individuals' personal information.

[16] Finally, as all of the records relate to a complaint filed about the appellant, they contain her personal information including her name, along with other personal information about her.

[17] Having found that the records contain the personal information of the appellant, the complainants and other individuals, I will now consider whether disclosure of the personal information in the records would be unjustified invasion of personal privacy under section 38(b).

### **B. Does the discretionary personal privacy exemption in section 38(b) apply to the records?**

[18] Section 38 of the *Act* provides a number of exemptions from individuals' general right of access under section 36(1) to their own personal information held by an institution. Under section 38(b), the police may refuse to disclose information in records that contain the personal information of the complainants and the appellant if disclosure of that information to the appellant would be an "unjustified invasion" of the

complainants' personal privacy. Since the section 38(b) exemption is discretionary, the police may also decide to disclose the information to the appellant.<sup>5</sup>

[19] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). There is no suggestion in this appeal that any of paragraphs (a) to (e) of section 14(1) applies and I find that none does.

[20] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the IPC considers, and weighs, the factors and presumptions in sections 14(2) and (3) and balances the interests of the parties.<sup>6</sup>

[21] If any of paragraphs (a) to (h) of section 14(3) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). The police submit that the presumption at paragraph (b) applies in this appeal. Sections 38(b) and 14(3)(b) state:

38 (b) A head may refuse to disclose to the individual to whom the information relates personal information,

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

14. (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[.]

[22] Previous IPC decisions have found that section 14(3)(b) may apply even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into a possible violation of law<sup>7</sup> that was ongoing at the time that the records were created.<sup>8</sup>

---

<sup>5</sup> See Issue C below regarding the police's exercise of discretion under section 38(b).

<sup>6</sup> Order MO-2954.

<sup>7</sup> Orders P-242 and MO-2235.

<sup>8</sup> Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

### ***The police's representations***

[23] The police submit that they gathered the information in the records for law enforcement purposes, at the request of the complainants, for their investigation of criminal harassment by the appellant. They assert that the records were compiled as part of their investigation into a possible violation of section 264 of the *Criminal Code*. They assert that the complainants supplied the information in the records in confidence in order to assist their law enforcement investigation. They add that the complainants' personal information in the records is highly sensitive because it consists of the complainants' personal description of the appellant's harassing behavior. The police assert that if this information is disclosed, it may lead to further harassment of the complainants by the appellant.

[24] The police also submit that disclosure of the personal information may unfairly damage the reputation of any person referred to in the records. The police explain that the appellant has subjected the complainants to "years of ongoing harassment" by sending malicious emails to various members of the government, pursuing her complainants regarding her employment dismissal through the Department of Justice, the Canadian Human Rights Commission and the courts. The police add that the appellant has also reached out to the media and a specific news program ran a story about her. The police argue that disclosure of the complainants' statement would allow the appellant to use the statement against the complainants "as it appears she will not stop until she receives her desired results."

[25] The police argue that it is not absurd to withhold the information from the appellant as she does not have knowledge of what the complainants said about her. They add that they considered section 51(1) of the *Act* before making their decision. The police conclude by stating that if the appellant continues to bring her employment issues before any legal proceedings or is a party to litigation, she can obtain the records by court order or through disclosure in any such proceedings.

### **The appellant's representations**

[26] The appellant provides extensive representations, including materials she states support her position, and she asks me to consider the correspondence she provided to the IPC throughout the course of her appeal. The bulk of the appellant's representations consists of her version of the events leading up to and following her termination and the criminal harassment complaint that the complainants subsequently brought against her. She alleges that the complainants terminated her while she was on medical leave, and she seeks access to the records in their entirety to ensure that her reputation and character "continue to be in good standing and the truth comes to light." The appellant denies that her intention is to obtain personal information of the complainants or to obtain information to use inappropriately or under false pretenses.

[27] The appellant submits that the discretionary exemption in section 38(b) does not

apply to the records at issue. She asserts that the complainants provided false statements to the police, in confidence, without evidence to support their complaints about her allegedly harassing conduct and that I should consider the fabricated nature of the complaint in making my decision. She adds that this false information could damage her reputation and that it should be disclosed to her so that she is aware of it. The complainant submits that she wants to protect her rights and seeks to resolve and correct her employment file, which she alleges contains "egregious errors" made by one of the complainants as a result of the "mishandling of [her] termination while on medical leave."

### ***Analysis and findings***

[28] Having reviewed the records and considered the representations of the parties, including all of the submissions that the appellant asked me to consider, I am satisfied that the records at issue qualify for exemption under the discretionary exemption in section 38(b) of the *Act*. The General Occurrence Hardcopy, the complainants' statement to the police and the email communications between the police and the complainants that are at issue in this appeal all relate to the complainants' harassment complaint to the police about the appellant and the police's related investigation. I find that the records were compiled as part of the police's law enforcement investigation into a possible violation of law, namely, the criminal harassment provisions of the *Criminal Code*, and that the presumption in section 14(3)(b) applies to them. Records related to law enforcement investigations are generally regarded as particularly sensitive. Considering the information contained in the records at issue in this appeal, I give the section 14(3)(b) presumption significant weight.

[29] Turning to the factors in section 14(2), the appellant's representations allude to the factor in section 14(2)(g), while the police's allude to sections 14(2)(e), (f), (h) and (i) of the *Act*. 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,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

(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.

[30] I am not convinced that a single factor weighing in favour of disclosure applies in this appeal. The appellant's submissions consist of her assertions of what happened, her arguments that her version of events is correct, that I should accept her version as the truth, and that she needs the withheld records to protect her rights and her reputation. These submissions, supported only by the appellant's assertions about the alleged errors and misdeeds of the complainants, do not establish that the personal information in the records is unlikely to be accurate or reliable and they do not persuade me that the factor in section 14(2)(g) applies in this appeal.

[31] The police's representations and the nature of the records themselves, satisfy me that the factors in sections 14(2)(f) and (h) that favour privacy protection apply. As the complainants' personal information relates to a criminal harassment complaint they made about the appellant to the police, it qualifies as highly sensitive. The complainants contacted the police because they had concerns about the appellant's conduct and her contacts with them. In these circumstances, I accept that the complainants supplied their personal information to the police in confidence. It is reasonable for the complainants to expect that the statement they provided to the police as part of their complaint remain confidential and not be shared with the appellant about whose conduct they complained. As well, the police have maintained the confidentiality of the complainants' personal information in the records. I give the factors in sections 14(2)(f) and (h) considerable weight.

[32] As I have found that no factor favouring disclosure applies, that the presumption in section 14(3)(b) applies and that the factors in sections 14(2)(f) and (h) apply and weigh in favour of privacy protection, the balancing of interests is against disclosure in this appeal. Accordingly, I find that the discretionary exemption in section 38(b) of the *Act* applies to the information at issue in this appeal, subject to my review of the police's exercise of discretion below.

[33] I also agree with and accept the police's submissions that the absurd result principle has no application in this appeal. The appellant did not originally supply the withheld information and is not otherwise aware of it; nor would it be absurd and inconsistent with the purpose of the section 38(b) exemption to withhold the complainants' personal information in the records.

**C. Did the police exercise their discretion under section 38(b) and, if so, should the exercise of discretion be upheld?**

[34] Because the section 38(b) exemption is discretionary, the police may decide to disclose exempt information, despite the fact that they could withhold it. The police must exercise their discretion. On appeal, I may determine whether the police failed to do so and I may find that they erred in exercising their discretion if they:

- did so in bad faith or for an improper purpose
- took into account irrelevant considerations
- failed to take into account relevant considerations.

[35] In either case I may send the matter back to the police for an exercise of discretion based on proper considerations.<sup>9</sup> Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>10</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
- the relationship between the requester and any affected persons
- 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 historic practice of the institution with respect to similar information.

[36] The police submit that they exercised their discretion under section 38(b) in good faith after taking into account all relevant considerations as outlined in their decision letter. They submit that they considered the personal information of the appellant and that of the complainants and other individuals contained in the records. The police explain that they decided to exercise their discretion in favour of privacy protection after carefully considering the factors noted above. They ask that I uphold their exercise of discretion.

---

<sup>9</sup> Order MO-1573.

<sup>10</sup> Orders P-344 and MO-1573.

[37] The appellant states that the police should have considered the “extenuating circumstances” for which she continues to “protect her rights and request meetings, send emails and inform those in positions that can help.” She adds that she continued to correspond with one of the complainants 11 times since 2011, and 6 times with the second. She also acknowledges that she sent emails to the prime minister, and to various cabinet ministers and their chiefs of staff who oversaw the departments that house her government files that were in error. She takes issue with the police’s criticism that “she will not stop until she receives her desired results” and submits that she only desires the compensation and documentation to which she is entitled as a result of her termination.

***Analysis and findings***

[38] I accept that the police exercised their discretion under section 38(b) in denying access to the withheld information at issue in this appeal. The police considered the significance of the personal privacy exemption, the presumption in section 14(3)(b), and the important interests these sections of the *Act* are meant to protect. One of the two purposes of the *Act* is the protection of individuals’ privacy with respect to their personal information. The police also appropriately considered the relationship between the appellant and the complainants. There is no evidence before me that the police exercised their discretion in bad faith or for an improper purpose, or that they took irrelevant factors into account. For all of these reasons, I uphold the police’s exercise of discretion in deciding to deny the appellant access to the withheld records.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ June 26, 2017