Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3465

Appeal MA16-47

Toronto Police Services Board

June 30, 2017

Summary: The appellant requested records from the Toronto Police Services Board (police) for a specified time period. The appellant appealed the police's decision to rely on the discretionary exemption in section 38(b) (personal privacy) to withhold some information in the responsive records. Except for some information that is not personal information or can be severed and disclosed, the police's decision to withhold information under section 38(b) is upheld. The public interest override does not apply to the withheld information.

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), 38(b), 14, 16.

Case Considered: *R. v Quesnelle*, 2014 SCC 46.

OVERVIEW:

[1] The appellant made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (*the Act*) for access to all police records created between November 22, 2013 and January 31, 2014 related to the appellant and two other named individuals. The appellant provided evidence that she was authorized to receive any of the named individuals' personal information that could be disclosed.

[2] The police granted access to some of the information in the responsive records. Some information was withheld under sections 14(1)(f), 14(3)(b) and 38(b) of the *Act*

and some was withheld on the basis that it was not responsive to the request.

[3] The appellant appealed the police's decision to this office. During mediation of the appeal, the appellant agreed not to seek access to the information withheld as not responsive. The appellant also raised the issue of whether disclosure of the withheld information was in the public interest.

[4] As a mediated resolution of the appeal was not possible, the appellant elected to proceed to the adjudication stage of the appeal process, where an inquiry is held.

[5] During the inquiry, the police, an affected party and the appellant submitted representations, which were shared with the parties in accordance with *IPC Practice Direction 7*.

[6] This order upholds the police's decision to withhold information in the records under section 38(b), except for some information that is not personal information and some personal information that can be severed and disclosed. There is not a public interest in disclosure of the withheld information for the purpose of section 16 of the *Act*.

RECORDS:

[7] The records at issue consist of withheld information in police general occurrence reports and officer's notes. The police listed 55 pages of records in the index of records it created in response to the appellant's request, but some of these pages have been disclosed in full or only contain information withheld as not responsive. As noted above, the appellant agreed to exclude the information withheld as not responsive from the scope of the appeal. 43 pages of records contain some withheld information that remains at issue. The records containing withheld information comprise:

- Police records in the "general occurrence hardcopy" format relating to events on November 30, 2013 (pages 1-11)
- Two officer's notebook entries relating to events on November 30, 2013 (pages 12-13 and 36-47)
- An officer's notes relating to a December 1, 2013 phone call with the appellant (pages 14-20)
- Three officer's notebook entries relating to events on December 4, 2013 (pages 21-33, 35-40 and 48-54)

ISSUES:

The issues in this appeal are:

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

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

C. Did the police properly exercise its discretion?

D. Is there a compelling public interest in disclosure of the records?

DISCUSSION:

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

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the responsive records contain "personal information" and, if so, to whom it relates. The term "personal information" is defined in section 2(1):

> "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;

[9] 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]

[10] Section 2(2.1) also relates to the definition of personal information. It states:

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

[11] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.[2]

[12] As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[3] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[4]

Parties' submissions

[13] The police submit that the records at issue contain the personal information of several affected parties, including their name, address and date of birth.

[14] The police also submit that the withheld information is not about an individual in a professional, official or business capacity; so section 2(2.1) of the *Act* does not apply.

[15] The affected party submits that disclosing the withheld information would reveal their name and other personal information about them.

---

[1] Order 11.
[2] Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, 2002 CanLII 30891 (ON CA).
[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.

[16] The affected party also submits that the withheld information contains personal information about several other affected parties and that it is reasonable to expect that the other affected parties will be identified if the information is disclosed. The affected party states that the information about one of the other affected parties includes medical information.

[17] The affected party says that if some information is about them or other affected parties in a professional, official or business capacity, that it reveals information of a personal nature.

[18] The appellant accepts that many of the records at issue contain "personal information" as defined in the *Act*.

[19] The appellant submits that some information, including all names and badge numbers of police officers, should be disclosed, because this information is about individuals in a professional capacity and is therefore not personal information. The appellant also raises a concern that responsive non-personal information, such as dates and times in officer's notes, have been withheld. The appellant notes that their limited knowledge of the specific contents of the withheld information makes it difficult for them to point to specific examples in the record where this has occurred.

[20] With regard to the personal information of the affected parties in the records, the appellant submits that redactions ought to be carefully applied to permit the release of responsive information while ensuring that personal information of the affected parties is not revealed (ie. names, addresses and phone numbers of the affected parties).

[21] The appellant further submits that any personal information about the appellant and the two named individuals in the records should be disclosed. The appellant refers specifically to paragraph (e) of section 2(1) the *Act,* which provides that "views or opinions" about an individual are part of that individual's personal information. The appellant submits that any information of this type about them and the named individuals should be disclosed.

[22] The appellant submits further that it should be possible to sever the records in such a way that the appellant and named individual's personal information is disclosed without identifying the affected parties who have requested the non-disclosure of their identifying information. The appellant observes that where personal information of a requester is intermingled with personal information of other parties, an approach which balances both parties' rights is appropriate.

Analysis

[23] I have carefully reviewed the information that falls within the scope of the appellant's request.

[24] The responsive records contain personal information of the appellant, the two named individuals whose personal information the appellant is authorized to receive, the affected party and other affected parties, including those identified in the affected party's and appellant's representations. In many instances in the withheld information, personal information of more than one individual is contained in the same sentence or snippet of information.

[25] Small amounts of the withheld information is not personal information because it comprises the name, contact information or statements of individuals in a professional capacity.[5] I am satisfied that this information does not disclose information that is personal in nature. This information, appearing on pages 21, 22, 30, 32, 48, 53 and 54, can therefore be disclosed to the appellant. I have highlighted in a copy of the records at issue accompanying the police's copy of this order the information that can be disclosed.

[26] I also find that the withheld information on page 51, an entry that relates to the appellant's address, is the personal information of the appellant and another named individual whose personal information the appellant is permitted to receive. This piece of information should also be disclosed to the appellant. On page 45, a small amount of information is about one of the named individuals and, as it can be severed from the surrounding information of affected parties, it also can be disclosed to the appellant.

[27] The remaining withheld information is primarily the personal information of affected parties, though in some instances the affected parties' personal information is interwoven with personal information of the appellant or the named individuals. For example, some withheld sentences in the records contain statements or views about both an affected party and a named individual.

[28] The withheld information about the affected parties includes names, addresses, telephone numbers and dates of birth, as well as statements, including views or opinions, about affected parties. The withheld information also contains some medical information of an affected party. Some of the affected parties' personal information is contained in officers' notes of statements made by the appellant or a named individual.

[29] With respect to the appellant's concern that responsive non-personal information, such as dates and times in officer's notes, have been withheld, I am satisfied from my review of the records that the police have only withheld either personal information or information that is not responsive to the appellant's request. The information treated as not responsive typically comprises officers' notebook entries about incidents that are unrelated to the incidents the appellant seeks information about. The appellant's representations regarding potentially relevant non-personal information specifically refer to page 45 of the records. I note that I found above that a

---

[5] See also Order MO-3310.

small piece of information on that page is the information of a named individual and can be severed and disclosed. The remainder of page 45 is the personal information of affected parties.

[30] Since the records contain the appellant and the named individuals' personal information, as well as that of affected parties, I will now consider whether to uphold the police's decision to withhold information from the appellant under section 38(b).

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

[31] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[32] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. I will discuss these provisions further below.

[33] 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). The police and affected party submit that section 14(4) has no application and it is not raised by the appellant. From my review of the records, I agree that section 14(4) does not apply.

[34] If the information falls within any of paragraphs (a) to (e) of section 14(1), disclosure is also not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[35] For section 14(1)(a) (consent) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request.[6] The affected parties whose personal information appears in the records did not consent to disclosure of the withheld information that relates to them, so section 14(1)(a) does not apply. In fact, the police and the affected party's representations emphasize that the affected party does not want any personal information relating to them or other affected party family members disclosed to the appellant.

---

[6] See Order PO-1723.

[36] Neither party addresses the other disclosure criteria in sections 14(1)(b) to (e), and from my review of the records none of these sections apply.

[37] I will therefore proceed to consider whether disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b) after considering and weighing the factors and presumptions in sections 14(2) and (3), and balancing the interests of the parties.[7]

Section 14(3) presumptions

[38] 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). I will consider potentially relevant presumptions below.

Section 14(3)(a): medical history

[39] The affected party submits that some of the withheld information falls within section 14(3)(a), which states:

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

[40] The affected party says that some of the withheld personal information relates to an affected party's medical condition and evaluations, including the affected party's mental health diagnosis and condition.

[41] I agree with the affected party's submission that some of the withheld information falls within the scope of section 14(3)(a) because it relates to an affected party's medical, psychiatric or psychological history, diagnosis, condition or evaluation.

Section 14(3)(b): investigation into possible violation of law

[42] The police submit that the presumption listed at section 14(3)(b) applies, which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[43] This presumption requires only that there be an investigation into a possible

---

[7] Order MO-2954.

violation of law.[8] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) can still apply. Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[9]

[44] The police submit that the withheld information was supplied to the police in the course of an investigation into a possible law enforcement matter. The police say it was initially called to investigate a dispute.

[45] The affected party and the appellant submit that section 14(3)(b) does not apply.

[46] The appellant says there is no specific evidence that the police's actions related to a possible violation of law. The appellant points to portions of the records already disclosed, which it submits describe the incidents which gave rise to the records as a dispute,[10] and most likely a "civil issue."[11] The appellant says the police then changed their description of the incident to a "wellbeing check"[12] which resulted in a police apprehension under s. 17 of the *Mental Health Act*. The appellant points to the heading of a police Occurrence Report of November 30, 2013, which states "MHA SEC 17 (POWER OF APP)".

Analysis

[47] I will consider the two incidents to which the records relate, the November 30 incident and the December 4 incident, in turn.

[48] The appellant made a call to the police, shortly before the November 30 police visit involving the appellant and affected parties that led to the creation of some of the records at issue. A transcript of that phone call made by the appellant reveals that the appellant called 911 and described to the 911 operator a possible criminal offence. However, as the call progresses, and the appellant further describes the subject of the call, it becomes apparent to the 911 operator that the matter is more in the nature of a family disagreement. The 911 operator advises the appellant that the police officers who will be attending will listen to the parties and then, if necessary, use their powers under the *Mental Health Act* to apprehend an individual.

[49] Also significant is that it is a call by the affected party to police, not the appellant's 911 call, that was the catalyst for the police visit that the records in issue relate to. From the officer's notes it is clear that the purpose of the police visit was to

---

[8] Orders P-242 and MO-2235.
[9] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.
[10] Pages 5, 12 and 41 of the records.
[11] Page 42 of the records.
[12] Pages 12 and 42 of the records.

check on the wellbeing of an affected party, not to investigate a possible offence. Accordingly, I agree with the appellant's submission that the police records characterize the incident as a possible apprehension under the *Mental Health Act*, as the 911 operator who spoke with the appellant anticipated.

[50] A transcript of a portion of the police visit on November 30 that the appellant recorded on an audio recording device is also relevant. It reveals that while some disagreements occurred during the visit, the police officers present maintained that the clear purpose of their visit was to exercise their powers under section 17 of the *Mental Health Act* to apprehend an individual, acting on information the police had received. The transcript, while not a complete record of the incident, supports the appellant's submission about the nature of the police involvement. In summary, I am satisfied that the purpose of the police's November 30 visit was to determine whether to make an apprehension under s. 17 of the *Mental Health Act*.

[51] Order MO-3063 adopted the reasoning in Orders MO-1428 and MO-1384 to find that the requirements of section 14(3)(b) were not met when police apprehended an individual under the *Mental Health Act*. In Order MO-1384, Assistant Commissioner Tom Mitchinson stated:

> Section 17 of the *Mental Health Act* does not create an offence for the actions of individuals which may justify the involvement of the Police. The Police have provided no evidence to suggest the appellant's behaviour harmed or threatened to harm any other person. Rather, it would appear that the Police decided to approach the appellant on the basis of possible harm she might inflict on herself. In my view, absent evidence to the contrary, the actions taken by the Police, under the apparent authority of the *Mental Health Act*, do not fall within the scope of section 14(3)(b) because, while involving police officers, the actions do not involve or relate to "a possible violation of law". This situation can be distinguished from investigations undertaken by police services in situations involving a suspicious death, where possible foul play may have occurred. In those circumstance, it is often reasonable for a police service to conclude that there may have been "a possible violation of law", specifically the *Criminal Code of Canada*.

[52] In Order MO-1428, Adjudicator Dora Nipp found that the principles articulated in Order MO-1384 were applicable in the appeal before her. She stated:

> To satisfy the requirements of section 14(3)(b), the information at issue must have been compiled as part of an investigation into a possible violation of law. Although the police have stated that an investigation was initiated to locate the appellant, they have not persuaded me that the appellant was engaged in any potential criminal activity or that the

> "investigation" undertaken by the police, after a Form 9 was issued, was related to a possible breach of the *Criminal Code* or any other law.

[53] I reach the same conclusion. The records of the November 30 police visit show that it did not involve an investigation into a possible violation of law. The police's visit was focused on determining whether to exercise authority under the *Mental Health Act*. As the orders cited above have found, that does not bring the records of the police visit within the scope of section 14(3)(b).

[54] Regarding the records that relate to the police's December 4 activities, the catalyst for their creation is related to, but distinct from, the November 30 police visit. From my review of the December 4 records I am satisfied that police considered the investigation was in relation to a civil dispute not a criminal matter. Police were involved only to the extent that police officers needed to ascertain the wellbeing of individuals. In this way, the December 4 events, which centre around a wellbeing check, also do not involve an investigation for the purposes of section 14(3)(b).

[55] Accordingly, I find that the section 14(3)(b) presumption does not apply to the withheld information.

[56] No other section 14(3) presumptions are raised by the parties, and from my review of the records, no others arise.

Section 14(2) factors

[57] 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.[13] Some of the factors listed in section 14(2), if present, weigh in favour of disclosure, while others weigh in favour of non-disclosure. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[14]

Parties' representations

[58] The appellant submits that an analysis of the factors set out in section 14(2) of the *Act* weighs in favour of disclosure of the withheld information. The appellant submits that the police did not take into account the relevant considerations discussed below in deciding not to disclose the records. In particular, the section 14(2) factors the appellant raises are sections 14(2)(a) (public scrutiny), 14(2)(f) (highly sensitive information), 14(2)(g) (inaccurate or unreliable information), and 14(2)(h) (information supplied in confidence).

---

[13] Order P-239.
[14] Order P-99.

[59] The affected party also raised section 14(2)(f) and (h), but as factors that weigh against disclosure, as well as sections 14(2)(e) (pecuniary or other harm) and (i) (unfair damage to reputation).

[60] The police's representations do not raise any section 14(2) factors but refer to the affected parties having an expectation of confidentiality and the possibility that release of the affected parties' personal information could expose them to further negative attention from the appellant. These arguments raise the application of sections 14(2)(h) and 14(2)(i).

Section 14(2)(a): public scrutiny

[61] The appellant says disclosure of the records allows scrutiny of the role of the police in supporting vulnerable individuals, which deserves careful public scrutiny because it is essential to ensuring that vulnerable individuals in society interact with law enforcement in a way that ensures their human rights are respected. The appellant also says that access will demonstrate the information gathering processes exercised by police in such circumstances. In particular, the appellant says disclosure will provide insight into what information is considered relevant to the decision of officers to exercise their authority pursuant to section 17 of the *Mental Health Act*. The appellant references Order P-237, where the Commissioner referred to the police being "entrusted" with significant powers by the public, and that in return, the public has a right to be aware of how the police are carrying out their duties.

[62] I agree with the appellant's representations that public scrutiny of police interactions with vulnerable persons is of high importance. However, section 14(2)(a) contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[15] The withheld information, though contained in police records, predominantly documents the actions of private individuals, which means that disclosure of the withheld information would do little to promote public scrutiny of police actions. Information in the records that reveals police actions has generally already been disclosed. The extent of the information in the records already disclosed, and the nature of the withheld information, which predominantly comprises information about affected parties, mean that any additional scrutiny that could be achieved by disclosure of the remaining withheld information is very limited.

[63] The appellant states that the need for scrutiny is heightened by the fact that the records already disclosed to the appellant by the police demonstrate that the police did not follow standard record keeping procedures in relation to the incidents in issue. In particular, the appellant states the police have provided virtually no records relating to two 911 calls the appellant made, one of which the appellant provided a transcript of in

---

[15] Order P-1134.

evidence, and two phone calls the appellant made to officers subsequent to the November 30, 2013 police visit.

[64] I am satisfied that the responsive records contain officer's notes relating to the appellant's two phone conversations with the police after November 30.

[65] In regards to the lack of records regarding two calls to 911 the appellant made related to the incident, the appellant's representations refer to these calls as having occurred on November 11, 2013. If this is the date of the calls they would be outside the scope of the appellant's request, which was for records made November 22, 2013 and January 31, 2014. However, I believe the November 11, 2013 reference is an error, and the appellant is referring to 911 calls made November 30, 2013, the date of a 911 call transcript referenced in the appellant's arguments. Assuming this is the case, I note that the responsive records contain references to a November 30, 2013 phone call to the police by the appellant.

[66] I appreciate that a concern about the completeness of the police's records heightens the desire for scrutiny of the complete records that the police has identified. However, I do not find it bears much weight. The content of the withheld information and the factors relating to the contents of the withheld information are more significant than whether the withheld information may not represent a complete record.

14(2)(e) and 14(2)(i): pecuniary or other harm including unfair damage to reputation

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

[68] The affected party submits that while disclosure will not result in pecuniary harm, it will expose the affected party to other harm. In my view, the concerns the affected party outlines, fall more into section 14(2)(i), which asks whether disclosure may unfairly damage the reputation of any person referred to in the record, and in fact the affected party repeats much of the evidence above in providing a submission on section 14(2)(i).

[69] I accept that the affected party has established through several examples that the appellant has publicised other family member's personal information in a manner that has cast those family members in a negative light, resulting in damage to those family members' reputations. While the appellant clearly holds sincere and forthright beliefs that motivate these actions, in my view the impact is unfair, for the purposes of section 14(1)(i), because the publicity underplays the family member's efforts to navigate through difficult decisions regarding care of their vulnerable fellow family members. I therefore consider section 14(1)(i) a relevant factor to weigh in this appeal when considering whether disclosure would be an unreasonable invasion of the affected

parties' personal privacy.

14(2)(f): highly sensitive

[70] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[16]

[71] The appellant and affected party both submit that section 14(2)(f) is a relevant factor, but for different reasons.

[72] The affected party submits that the information is highly sensitive for the affected parties whose information is contained in the records and that there is a reasonable expectation of significant personal distress if the information is disclosed. The affected party refers in particular to medical and mental health information of an affected party in the records.

[73] I agree that some of the withheld information is highly sensitive for the purposes of section 14(2)(f) and that is a factor that weights against disclosure. I am satisfied that disclosure of personal health information of affected parties relating to mental health and capacity would cause significant personal distress to the family members of the individuals whose information is withheld in the records.

[74] The appellant cites section 14(2)(f) in support of disclosing certain information. Typically, section 14(2)(f) is considered a factor that would weigh against disclosure of information.[17] However, as the list of factors under section 14(2) is not exhaustive; the institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[18] Therefore, I will consider the appellant's argument on its merits because, even if not strictly within the legislative intent of section 14(2)(f), if it is a relevant factor then it needs to be weighed in determining whether section 38(b) applies to the withheld information.

[75] The appellant submits that the personal information requested about one of the named individuals should be disclosed to the appellant because it includes information about the individual's capacity and mental health, which is highly sensitive. The appellant cites particular information about a named individual that is sensitive and which the appellant argues the named individual has a right to know, because it is about them.

[76] I accept the appellant's arguments that, to the extent the withheld information contains information of the type described about the named individual, that this is a strong factor in favour of disclosure. However, as I identified when I described the

---

[16] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[17] Order PO-2265.
[18] Order P-99.

withheld information, most of it is the personal information of affected parties. Where information is solely about the named individual and can be severed, I have already found that information should be disclosed.

14(2)(g): inaccurate or unreliable

[77] The appellant suggests section 14(2)(g) is a factor in favour of disclosure. As with section 14(2)(f), section 14(2)(g) is generally considered a factor that weighs against disclosure.[19] However, in Order PO-1731 the fact that withheld information may have been inaccurate or unreliable was found to weigh in favour of disclosure of that information where the information comprised comments made about the appellants by affected persons which was the personal information of the appellants. I will therefore consider whether section 14(2)(g) is a factor in favour of disclosure in the present context.

[78] The appellant refers to a statement in the records that has been disclosed to them that it asserts is inaccurate, because it states a named individual has a condition the individual does not have. The appellant did not provide evidence to support their position that the information is incorrect, and I note that elsewhere in the records there is some evidentiary support that the information is accurate. I am aware that whether the named individual has the condition or not is a disputed matter between family members and I lack evidence to reach a definitive conclusion on this point. In any case, the more important point with regard to this appeal, and one already established above, is that to the extent that the records contains information about the named individuals' health, that is information that should be disclosed to the appellant (as the named individual's representative) unless it would be an unreasonable invasion of another individual's personal privacy to do so. I am satisfied that there is no information of this type withheld in the records.

[79] I also find that some of the withheld information in the records comprises statements by the appellant about affected parties that are inaccurate or unreliable,[20] and this is therefore a factor that weighs against disclosure of that information. I cannot describe this information further without disclosing the information at issue.

14(2)(h): supplied in confidence

[80] The affected party says that when speaking with police officers, the appellant was not present and that information was shared with the police with the expectation that it would be treated confidentially. The affected party also says that given the adversarial relationship that existed between the appellant and the affected parties, the expectation of confidentiality was reasonable in the circumstances.

---

[19] Order PO-2265.
[20] Information at pages 12, 15, and 17.

[81] The police's representations state that the affected party supplied personal information believing there to be a certain degree of confidentiality. The police add that police investigations imply an element of trust that the law enforcement agency will act responsibly in the manner in which it deals with recorded personal information.

[82] The appellant questions whether section 14(2)(h) applies. The appellant says the reasonable expectation of privacy in information provided by a person to a peace officer is very limited. The appellant cites *R. v. Stinchcombe*,[21] for the proposition that in the criminal context, absent the promise of confidentiality to someone such as a police informant, police records are typically created with the expectation of disclosure to an accused as part of a proceeding. The appellant also cites the following excerpt from Order M-167:

> The Police have provided no evidence of how the individuals other than the appellant provided any of the information in confidence. I do not agree with the proposition that any information obtained through a law enforcement investigation is somehow presumed or "understood" to have been obtained in confidence.

Analysis

[83] Section 14(2)(h) 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.[22]

[84] I note that the Supreme Court of Canada has observed that the rule in *Stinchcombe* applies to:

> "the Crown" and does not refer to all Crown entities, federal and provincial: "the Crown" is the prosecuting Crown. All other Crown entities, including police, are "third parties". With the exception of the police duty to supply the Crown with the fruits of the investigation, records in the hands of third parties, including other Crown entities, are generally not subject to the *Stinchcombe* disclosure rules."[23]

[85] In Order MO-2830, Adjudicator Bhattacharjee stated that whether an individual supplied his or her personal information to the police in confidence during an investigation is contingent on the particular facts, and such a determination must be made on a case-by-case basis. This approach has been adopted in subsequent orders.[24]

---

[21] [1991] 3 S.C.R. 326.
[22] Order PO-1670.
[23] *R. v Quesnelle*, 2014 SCC 46 at para. 11.
[24] For example Order MO-3451.

While I have found that records do not form part of an investigation for the purpose of section 14(3)(b), I nonetheless adopt the approach in MO-2830.

[86] I accept that given the generally adversarial relationship between the family members involved, that information, particularly personal information, provided to the police was supplied with the expectation that it would be treated in the way the police describe in their representations, cognisant of the sensitivity of the setting. As the Supreme Court of Canada stated in *R. v. Quesnelle*.[25]

> "People provide information to police in order to protect themselves and others. They are entitled to do so with confidence that the police will only disclose it for good reason. The fact that the information is in the hands of the police should not nullify their interest in keeping that information private from other individuals."

[87] I therefore am satisfied that for the personal information of affected parties that was supplied by them, that it was supplied, and subsequently maintained by the police in confidence even though there is no direct evidence that any explicit confidentiality assurance was provided by the police.[26] I note that some of the withheld information was supplied by the appellant or a named individual, not by the affected parties, so section 14(2)(h) is not a relevant factor for all of the information at issue. Also, despite the affected party's representations, some information may also have been supplied to police in the presence of the appellant, so it is doubtful that it can be said that information supplied in this setting was supplied in confidence to police.

Other factors/relevant circumstances under section 14(2)

Some of the withheld information consists of the appellant's own statements

[88] An institution must consider any relevant factors, even if they are not listed under section 14(2). In Order MO-3393, Adjudicator Shaw found the fact that the withheld information contained some of the appellant's own statements was a factor that weighed in favour of disclosure of this information to the appellant. That is also a relevant factor here as some of the withheld personal information consists of the appellant's or one of the named individual's own statements to the police. The information consists of the police's notes of statements that the appellant made to them. I adopt the same approach as in MO-3393 and consider this as a factor in favour of disclosure of the withheld information that contains the appellant's own statements.

---

[25] *R. v Quesnelle*, 2014 SCC 46 at para. 43.

[26] My finding is consistent with the statements of Karakatsnis J. in *R. v Quesnelle*, 2014 SCC 46, [2014] 2 SCR 390 that there is generally a reasonable expectation of privacy in information provided to police.

Is disclosure an unjustified invasion of personal privacy?

[89] I have carefully considered and weighed the factors in the *Act* and those additional factors raised by the parties to determine whether disclosure of the withheld information is an unjustified invasion of personal privacy for the purposes of section 38(b) of the *Act*.

[90] Some of the withheld information is subject to a presumption against disclosure under section 14(3)(a). The factors at sections 14(2)(f), (g) (h) and (i) are factors weighing against disclosure for some of the personal information in the records. The main factor in favour of disclosure for some of the information is that it consists of the appellant or named individuals' own statements to the police. Section 14(2)(h) also does not apply to the appellant's and named individuals' own statements. However, most of the content of the appellant's or named individuals' statements have already been disclosed, and the remaining withheld information contains the information of affected parties, some of which is inaccurate or unreliable. Section 14(2)(a) is the other factor that weighs in favour of disclosure, though for the reasons discussed above, I give it little weight.

[91] Weighing the factors, I uphold the police's decision that disclosure of the withheld information I have not already found should be disclosed would be an unjustified invasion of personal privacy, even for the small amounts of withheld information in the appellant's own statements.

Absurd result

[92] This office has found that 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.[27]

[93] The absurd result principle has been applied where the requester sought access to his or her own witness statement;[28] the requester was present when the information was provided to the institution;[29] or the information is clearly within the requester's knowledge.[30] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[31]

[94] The appellant submits that the absurd result principle applies here because the

---

[27] Orders M-444 and MO-1323.
[28] Orders M-444 and M-451.
[29] Orders M-444 and P-1414.
[30] Orders MO-1196, PO-1679 and MO-1755.
[31] Orders M-757, MO-1323 and MO-1378.

withheld information likely contains information that is publicly available as a result of previous court action involving the appellant and some of the affected parties. The appellant provided excerpts of a document filed in court to support this argument. The appellant also submits that they and the affected parties acting in non-professional roles and the appellant are all members of the same family and their views are well known to each other.

[95] The appellant also says that the absurd result principle applies because some of the information, such as the home address of an affected party, is obviously known to the appellant and the named individuals, given their family history.

[96] I recognize that the parties to this appeal have familial ties and also familiarity with the views and events the records relate to. However, this general familiarity does not easily diminish the privacy rights of the parties in the context of a request for the affected parties' personal information. The relevant factors set out in the *Act*, including the absurd result principle and any other relevant factors must be properly weighed.

[97] Turning therefore to the absurd result principle. I agree with the appellant that some information that would qualify as personal information of the affected parties has been publically disclosed in an affidavit filed in the course of civil proceedings involving the parties. I note that the final paragraph of the affidavit of the affected party provided by the appellant states that the affidavit is made in support of a particular application and for no other purpose. A key difference between the records at issue and the information prepared for the civil proceedings is that the affidavit contains statements by the affected party made knowing that the statements would be disclosed, at least to the parties to the proceedings, while the information at issue in this appeal involves records recorded by police without the affected parties' assent to disclosure of their contents. I also note the clearly expressed desire in the affected party's representations that their personal information and other affected party family member's personal information not be disclosed.

[98] Further, the information at issue is contained in police records, which differ from material filed in court proceedings.

[99] I recognize that some of the withheld information is contained in the appellant or named individuals' own statements, and that the absurd result principle has been found to apply in previous orders involving information of this type. Ultimately however, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle will not apply, even if the information was supplied by the requester or is within the requester's knowledge. In my view that is the case here. Most of the content of the appellant's or named individuals' own statements have been disclosed by the police, the only withheld information in the appellant's or named individuals' statements is personal information of affected parties. The submission of the affected party on behalf of the affected parties is that the affected parties do not want their personal information disclosed. Some of the information is inaccurate or unreliable. I therefore do not

consider it would be an absurd result to withhold the information at issue in this context.

[100] I will now consider the police's exercise of discretion.

C. Did the police properly exercise its discretion?

[101] 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.

[102] In addition, I 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; or it fails to take into account relevant considerations.

[103] In either case I may send the matter back to the institution for an exercise of discretion based on proper considerations.[32] I may not, however, substitute my own discretion for that of the institution.[33]

[104] The police submit that it did not exercise its discretion in bad faith and took into account all relevant considerations addressed in this appeal. In particular, the police submit that in exercising its discretion to exempt information in favour of protecting the privacy of another person it considered sections 28 and 29 of the *Act.* It submits that in light of section 28 that it considered the balance between the right of access and the protection of privacy must be in favour of protecting the privacy of the affected parties.

[105] The police also submit that in assessing the value of protecting the privacy interests of an individual other than the requester, it considered the nature of the police as a law enforcement institution with a responsibility to record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police.

[106] I am satisfied that the police exercised its discretion in good faith when it relied on section 38(b) to withhold information. In particular, the police made extensive disclosures of information to the appellant, generally only withholding from the appellant words or phrases that contained personal information of affected parties. The police's representations and the extent of their disclosures to the appellant demonstrate that it sought to balance the competing interests of the parties. I am satisfied that the police did not consider irrelevant factors and there is no evidence that the police acted in bad faith.

---

[32] Order MO-1573.
[33] Section 43(2).

[107] I uphold the police's exercise of discretion in relation to the information withheld under section 38(b).

D. Is there a compelling public interest in disclosure of the records?

[108] The appellant raises the potential application of the public interest override at section 16, which provides that an exemption from disclosure of a record under section 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[109] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[110] The *Act* is silent as to who bears the burden of proof in respect of section 16. The onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, I have reviewed the records to determine whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

[111] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening citizens about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices. A public interest does not exist where the interests being advanced are essentially private in nature. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.

[112] The police submit that the records at issue were created in response to a private dispute and quote from Order PO-3608:

> I find that there is no compelling public interest in the disclosure of the personal information of the affected parties because the information in the records relates to a private matter between the appellant and the affected parties, the disclosure of which would not shed light on the operations of government or its agencies. Therefore, I find that section 23 is not applicable in these circumstances.

[113] The appellant argues that disclosing the withheld information contained in the records has the potential to provide information about how police interact with vulnerable individuals and officers' responsibilities pursuant to the *Mental Health Act*.

The appellant submits that how police carry out their duties, when not investigating criminal matters, is not an area that receives particular scrutiny in the judicial system through the open court principle.

[114] I am satisfied that a public interest in disclosure of the withheld information does not exist. As discussed above, the withheld information is predominantly the personal information of affected parties. It appears in the context of a largely private dispute. I appreciate the appellant has an interest in advocating for the interest of vulnerable persons, but the withheld information is not of a type that will further that interest or cause. I note that much of the information in the responsive records has already been disclosed and the events that are the subject of the records are well known to the appellant. This information provides sufficient information to promote debate on the issues the appellant wishes to raise, and the appellant's own evidence suggest the appellant has actively done so by writing to public officials and other actions. There is not a public interest in disclosure of the withheld information in the records for the purposes of section 16 of the *Act*.

ORDER:

1. I uphold the police's decision to withhold information in the records under section 38(b), except for the information I have found does not qualify as personal information, and two pieces of personal information that can be severed and disclosed. I have highlighted in a copy of the records accompanying the police's copy of this order at pages 21, 22, 30, 32, 45, 48, 51, 53 and 54 the information to be disclosed.

2. I order the police to disclose the highlighted information to the appellant **by August 4, 2017** but not before **July 28, 2017.**

Original Signed by: June 30, 2017

Hamish Flanagan
Adjudicator