Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3491

Appeal MA16-627

Hamilton Police Services Board

August 31, 2017

Summary: The appellant requested records from the Hamilton Police Services Board (police) relating to a specified incident. 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. This order finds that the police conducted a reasonable search for the requested records and upholds the police's decision to withhold information under section 38(b). Further, 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 38(b), 14, 16, 17.

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of all records generated by three named officers of the Hamilton Police Services Board (the police) for a specified incident, where the appellant had an interaction with the police.

[2] The appellant advised that he was not seeking certain personal information of affected parties, except to the extent that the personal information contained the affected parties' views or opinions about the appellant.

[3] The police issued a series of decisions granting access to the records in part. The police relied on the law enforcement exemption (section 8) and the personal privacy

exemptions (sections 38 and 14) of the *Act* to withhold access to portions of the records, which comprise a police occurrence report, officers' notes, an event information/chronology record and an audio recording of a call to the police.

[4] During mediation, the appellant advised the mediator that he was not seeking access to any police "10 codes", patrol zone information or statistical codes that have been withheld. As this type of information was the only information withheld under section 38(a), section 38(a) in conjunction with sections 8 (1)(e) and 8(1)(l) are no longer at issue in the appeal.

[5] Also during mediation, the police advised that they would no longer be relying on the factor in section 14(2)(e) (pecuniary or other harm) of the *Act*.

[6] With respect to the event information/chronology record, the appellant narrowed his request to the information in the "remarks" and "caller information" sections (on page 1), the "event remark" redaction (on page 2) and the telephone number withheld on page 4. As a result, pages 3 and 5-12 of that record are no longer at issue in this appeal.

[7] After reviewing the event information/chronology record, the appellant advised that he believed additional records exist. As a result, whether the police conducted a reasonable search for responsive records is an issue on appeal.

[8] The appellant believes that any records relating to Canadian Police Information Centre (CPIC) searches that were made concerning him by police officers, should be responsive to his request. Accordingly, the responsiveness of records to the request is at issue in this appeal.

[9] As part of his request for records, the appellant provided the police with documentation from two individuals as evidence of their consent to disclosure of any of their personal information in the responsive records to the appellant. The police did not accept this documentation as valid evidence of consent.

[10] The mediator subsequently obtained a consent to release some of the information at issue from one of the affected parties which was shared with the police. The police issued a supplemental decision letter disclosing additional information in the occurrence report and officers' notes to the appellant as a result of the consent. The appellant expressed dissatisfaction with how the police dealt with the issue of affected party consent.

[11] The appellant also objected to the police's decision not to notify any of the affected parties about the appellant's request, and to the police's reference to affected parties not having provided consent to disclosure given that the police had not contacted the affected parties to seek their views on disclosure.

[12] The appellant also requested that the application of the public interest override

at section 16 of the *Act* be included as an issue in this appeal.

[13] This inquiry began by inviting representations from the police on the issues set out in a Notice of Inquiry. The appellant was invited to provide representations on the police's non-confidential representations and on the issues in the Notice of Inquiry. The police were then invited to reply to the appellant's representations.

[14] In this order, I uphold the police's decision to withhold the information remaining at issue.

RECORDS:

[15] At issue are

- an audio recording of a call to the police; and
- except for withheld police "10 codes", patrol zone information or statistical codes, the withheld portions of
    - a 2-page occurrence report;
    - 6 pages of police officers' notes; and
    - the information in the "remarks" and "caller information" sections on page 1, the "event remark" redaction on page 2 and the telephone number withheld on page 4 in the 12-page event information/chronology record.

[16] I note that the information in the "remarks" section on page 1 is a duplicate of the withheld in the "event remark" section on page 2 and the telephone number withheld on page 4 duplicates withheld information in the "caller information" field on page 1. Withheld information in the officer's notes also largely duplicates information in the occurrence report and audio recording.

ISSUES:

[17] The issues in this appeal are:

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

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

C. Did the police exercise its discretion under section 38(b)? If so, should the exercise of discretion be upheld?

D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

E. What is the scope of the request? What records are responsive to the request?

F. Did the institution conduct a reasonable search for records?

DISCUSSION:

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

[18] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information," as defined in section 2(1) of the *Act*, and, if so, to whom it relates. Section 2(1) defines "personal information" as recorded information about an identifiable individual.

[19] On my review of the representations, I find that the records at issue contain the personal information of the appellant, and other individuals who interacted with the police during the incident that is the subject of the appellant's request. Information relating to the appellant includes his name, address and contact information and other information about him. The records also contain the name, address and telephone number of an affected party whose call to police precipitated the incident at issue and details of the content of that call. The records also contain the name, date of birth and contact information of other affected parties who were spoken with by officers following the call to police.

[20] The appellant submits that certain address information is not personal information. However, where disclosure of an address would reveal the identity of an affected party, it is personal information of the party to which it relates.

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

[21] 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.

[22] 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.

[23] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. Neither party raises the application of section 14(4) and I find it is not relevant to this appeal.

Section 14(1)

[24] 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).

14(1)(a): consent

[25] For section 14(1)(a) 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.[1]

[26] The parties disagreed about the requirements for consent prior to mediation and whether valid consents to disclosure of personal information existed for two individuals.

[27] During mediation an affected party whose personal information is contained in the records provided their consent to disclosure and that party's information was disclosed to the appellant by the police. I am satisfied that the information of the affected party who provided written consent to disclosure of their personal information has been disclosed to the appellant.

[28] No other affected parties whose information has been withheld consented to disclosure of their personal information. Accordingly, it is not necessary for me to consider the issue of consent further for the purpose of this appeal. I do observe that to the extent that the police require an affected party to physically attend at a police station to provide consent, this practise exceeds the statutory requirements. Though I appreciate the police's actions are motivated by the desire to avoid unauthorized disclosure of personal information, I find imposing such a requirement could well operate to impede the purposes of the *Act*.

[29] The appellant objected to the police's decision not to notify any of the affected parties about the appellant's request, and their statement that affected parties had not provided consent to disclosure, when the police had not contacted the affected parties to seek their views on disclosure. The appellant referred to the offence provisions at section 48(1)(d) and (e) of the *Act*.

[30] To the extent that the police's statement about not having obtained consent from affected parties implies that affected parties' consent had been sought when it had not been, I find such statements could mislead and potentially prejudice

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[1] See Order PO-1723.

requesters, which would be contrary to the purposes of the *Act*. However, in the circumstances of this appeal, where all the affected parties' views on consent were ultimately canvassed, I will not consider this issue further.

Is disclosure an unjustified invasion of personal privacy under section 38(b)?

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

[32] 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).

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

[33] 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;

[34] This presumption requires only that there be an investigation into a possible violation of law.[3] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) can still apply.

[35] It is clear that the section 14(3)(b) presumption applies because the information at issue was compiled as part of an investigation into a possible breach of the *Criminal Code*. The withheld information shows clear evidence of officer's investigations arising from a call they received about possible criminal activity.

[36] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[4] The appellant argues that the occurrence report was created after the completion of the investigation and therefore falls outside the scope of section 14(3)(b). I am satisfied from my review of the report that it is a record that was completed during the investigation and therefore is part of the investigation. Accordingly, I find that the personal information contained in the

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[2] Order MO-2954.
[3] Orders P-242 and MO-2235.
[4] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

record fits within the scope of the section 14(3)(b) presumption.

[37] 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.[5] 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).[6] Both the police and the appellant raised various factors as weighing in favour of and against disclosure of the personal information at issue.

14(2)(a): public scrutiny

[38] The appellant raises this factor as weighing in favour of disclosure, arguing that it is necessary to disclose the information to examine the police's activities in systematically recording inaccurate information in its databases.

[39] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[7] The information at issue, while recorded by the police, comprises information the police have recorded from affected parties. There is no evidence that the information has been altered or recorded inaccurately. In fact, as some of the information appears in both an affected party's call, database entries and officer's notes, its contents can be compared for inaccuracies. I am satisfied that the records are broadly consistent, and that the nature of the information means that disclosing it would not assist in subjecting the activities of the government to scrutiny in any meaningful way.

14(2)(b): public health and safety and 14(2)(e): pecuniary or other harm

[40] The appellant argues access to the personal information would promote public health and safety because he is the victim of harassment and vigilante actions. The appellant argues section 14(2)(e) is a factor in favour of disclosure for similar reasons- that disclosure will prevent harm that could occur to him from vigilante type action.

[41] Section 14(2)(e) is intended to be a factor that weighs against disclosure, where pecuniary or other harm could arise from disclosure. Regardless, considering the merits of the appellant's argument, I do not consider the argument the appellant raises is a factor in favour of disclosure. There is no link between disclosure of the information at issue and a reduced risk of harm to the appellant. There is no evidence that the affected party has any prior dealings with the appellant, let alone having engaged in harassing or intimidating behaviour. Accordingly, I am satisfied that there is no connection between any harassment or intimidation the appellant may have

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[5] Order P-239.
[6] Order P-99.
[7] Order P-1134.

experienced and disclosure of the withheld information. As a result, I am satisfied that disclosure of the withheld information will not promote health and safety or reduce the risk of harm to the appellant.

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

[42] 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
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> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
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> (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
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> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing[8]

[43] The appellant argues these requirements are met, in particular because he needs access to the information in order to exercise his right to correct inaccurate information and to seek to overturn prior convictions.

[44] I am satisfied that section 14(2)(d) does not apply, because:

- the nature of the information is factual information about affected parties and affected parties' views or opinions, information which is not subject to correction;
- There is no connection between the withheld information and any identifiable proceeding.

14(2)(f): highly sensitive

[45] The only section 14(2) factor the police raise is section 14(2)(f).To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[9]

[46] The police did not provide any supporting evidence for section 14(2)(f) applying,

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[8] 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.).
[9] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

except to say that all personal information is sensitive. If that were the case, section 14(2)(f) would be redundant, since section 14 only arises when personal information is at issue.

14(2)(g) and (i): inaccurate or unreliable and unfair damage to reputation

[47] The appellant argues sections 14(2)(g) and (i) are factors in favour of disclosure. However, as with section 14(2)(e) discussed above, the intent of these provisions is that they may weigh against disclosure. Nonetheless, I have considered and dismiss the appellant's arguments about the need to disclose the withheld information on the grounds it is likely unreliable or inaccurate or could unfairly damage the appellant's reputation. The information predominantly comprises affected parties' own information and there is nothing about the withheld information that suggests it is inaccurate or unreliable. As noted above, that the same information is repeated consistently across the original recording of an affected party's call to the police, several officers notes and reports, supports the accuracy of the information. The appellant has not shown that disclosure of the information would avoid or allow remediation of unfair damage to his reputation. I am satisfied that sections 14(2)(g) and (i), and the arguments the appellant makes relating to these factors do not support disclosure of the withheld information.

14(2)(h): supplied in confidence

[48] 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.[10] I also note the Supreme Court of Canada stated in *R. v. Quesnelle*.[11]

> "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."

[49] I am satisfied the personal information of affected parties that was supplied by them was subsequently maintained by the police in confidence even though there is no direct evidence that any explicit confidentiality assurance was provided by the police. With regard to the affected party caller, it is apparent from the context that they contacted and shared information with the police in confidence, at least with regard to their identity.

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[10] For example, Order MO-3451.
[11] *R. v Quesnelle*, 2014 SCC 46 at para. 43.

Other factors: pattern of harassment

[50] The appellant submits that the incident his request relates to is another in a "persistent course of abusive conduct spread over several years of harassment and intimidation of the appellant." I accept that systematic harassment could be a factor that weighs against affording an individual carrying out such activities the privacy protections normally provided under the *Act*. However, based on my review of the information at issue and the representations I am satisfied that there is no connection between any harassment or intimidation the appellant may have experienced and disclosure of the withheld information.

Is disclosure an unjustified invasion of personal privacy?

[51] I have carefully considered and weighed the factors 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*.

[52] The withheld information is subject to a presumption against disclosure under section 14(3)(b). Section 14(2)(h) is a factor weighing against disclosure for much of the personal information in the records. The main factor in favour of disclosure is that some of the information relates to the appellant. However, the information of the appellant is inseparable from the information of affected parties to which section 14(3)(b) and 14(2)(h) applies. Weighing the factors, I uphold the police's decision that disclosure of the withheld information would be an unjustified invasion of personal privacy.

Absurd result

[53] 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.[12]

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

- the requester sought access to his or her own witness statement[13]
- the requester was present when the information was provided to the institution[14]
- the information is clearly within the requester's knowledge[15]

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[12] Orders M-444 and MO-1323.
[13] Orders M-444 and M-451.
[14] Orders M-444 and P-1414.
[15] Orders MO-1196, PO-1679 and MO-1755.

[55] 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.[16]

[56] The appellant argues that the absurd result principle applies to some information because it is within his knowledge. I am satisfied from my review of the records that the absurd result principle does not apply to the withheld information. Even if, as the appellant claims, he knows some of the withheld information of affected parties, in the context I am satisfied that it would be inconsistent with the purposes of the *Act* to disclose any of the withheld information.

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

[57] 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.

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

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

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

[60] The police submit that they exercised their discretion, weighing the appellant's right to access their personal information against their discretion with regard to the records.

[61] The appellant raises various factors that he says the police failed to consider before exercising their discretion. I am satisfied that the factors raised by the appellant are not relevant to the exercise of discretion in this appeal.

[62] While the police's representations are brief, I am satisfied from my review of the police's actions in responding to the request that they have exercised their discretion. In

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[16] Orders M-757, MO-1323 and MO-1378.
[17] Order MO-1573.
[18] Section 43(2).

particular, I note that the police made a series of additional disclosures of information to the appellant during the course of the appeal. This demonstrates that the police considered the appellant's right to his own personal information and that the police were willing to re-consider their position. The relatively small amounts of information the police continue to withhold, demonstrates that the police considered their position and disclosed as much information to the appellant as it considered possible, while protecting the privacy rights of affected parties.

D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

[63] Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[64] 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.

Compelling public interest

[65] 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.[19] 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 the citizenry 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.[20]

[66] A public interest does not exist where the interests being advanced are essentially private in nature.[21] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[22]

[67] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[23]

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[19] Orders P-984 and PO-2607.
[20] Orders P-984 and PO-2556.
[21] Orders P-12, P-347 and P-1439.
[22] Order MO-1564.
[23] Order P-984.

[68] Any public interest in *non*-disclosure that may exist also must be considered.[24] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[25]

[69] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[26]
- the integrity of the criminal justice system has been called into question[27]
- public safety issues relating to the operation of nuclear facilities have been raised[28]
- disclosure would shed light on the safe operation of petrochemical facilities[29] or the province's ability to prepare for a nuclear emergency[30]
- the records contain information about contributions to municipal election campaigns[31]

[70] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations[32]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[33]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[34]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[35]

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[24] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[25] Orders PO-2072-F, PO-2098-R and PO-3197.
[26] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[27] Order PO-1779.
[28] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.
[29] Order P-1175.
[30] Order P-901.
[31] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[32] Orders P-123/124, P-391 and M-539.
[33] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[34] Orders M-249 and M-317.

- the records do not respond to the applicable public interest raised by appellant[36]

Purpose of the exemption

[71] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[72] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[37]

Analysis

[73] I have reviewed the records with a view to determining whether there is a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[38]

[74] I am satisfied that there is not a public interest in disclosure of the records. I accept that there is a general level of interest in scrutiny of the actions of police, and the appellant has a particular interest in this. However, this general interest in scrutiny of police alone is not sufficient to meet the compelling public interest threshold. Otherwise, virtually all police records would be disclosed under the public interest override. This is clearly not the intent of the *Act*, which contains several exemptions to enable the proper conduct of law enforcement activities.

[75] In addition, the purposes of the *Act* in section 1 include protecting the privacy interests of individuals. The public interest here would need to outweigh the privacy interest of individuals whose information the appellant seeks. There is no compelling evidence to make the case that such an invasion of the privacy rights provided under the *Act* is justified. The appellant makes a range of high-level arguments about systemic issues that he uses to argue the public interest override should be invoked. None of these arguments are persuasive because there is no link between disclosure of the withheld information and the furtherance of the public interest. I am satisfied there is not a public interest in disclosure of the withheld information. Any public interest in transparency of police actions is not advanced by disclosure of the records, because of the nature of the information at issue, which predominantly comprises information of affected parties.

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[35] Order P-613.
[36] Orders MO-1994 and PO-2607.
[37] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).
[38] Order P-244.

E. What is the scope of the request? What records are responsive to the request?

[76] The appellant believes that any records relating to Canadian Police Information Centre (CPIC) searches that were made concerning him by police officers, should be responsive to his request. The police took the position that any such records would not be responsive to the appellant's request. Accordingly, the responsiveness of records to the request is an issue in this appeal.

[77] The one CPIC record at issue in this appeal was created as a result of the police's search for responsive records. It is not responsive either to the appellant's original request or to his clarified request seeking CPIC records, because it was generated as part of the police's search for records. As the police clarified in their representations, the record shows that the officers involved in the incident at issue did not make a CPIC query and that therefore, there are no CPIC records responsive to the appellant's request. The police provided me a copy of this record in confidence in their representations and I am satisfied from my review of it that it is as described by the police. Specifically, it is a record of a search of CPIC for any query by the officers that are the subject of the appellant's request. The record shows that the officers did not make any CPIC query in relation to the incident involving the appellant. Accordingly, there are no CPIC records responsive to the appellant's request.

[78] The appellant's detailed arguments that information about him exists in CPIC are not relevant here. That information about the appellant may exist in CPIC is not at issue. The scope of the appellant's request focussed on the actions of the officers involved in the specified incident. The evidence of the police, as noted above, is that the officers did not access CPIC. That is why no CPIC records are responsive to the appellant's request.

F. Did the institution conduct a reasonable search for records?

[79] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[39] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[80] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[40]

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[39] Orders P-85, P-221 and PO-1954-I.
[40] Orders P-624 and PO-2559.

To be responsive, a record must be "reasonably related" to the request.[41]

[81] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[42]

[82] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[43]

[83] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[44]

[84] I have considered the appellant's arguments about why additional responsive records should exist. I am satisfied that they do not meet the threshold to require the police to conduct a further search for records.

[85] The appellant made a request under the *Act* for copies of all records generated by three named officers of the Hamilton Police Services Board (the police) for a specified incident where the appellant had an interaction with the police.

[86] The police provided an affidavit from it's Freedom of Information Steno about the process followed to locate records responsive to the request. Her evidence satisfies me that the police conducted a reasonable search for records responsive to the appellant's request. The police did locate additional records during mediation, but I am satisfied that the fact that these records were located does not bring into question the adequacy of the police's search for records. This is because it was reasonable based on the scope of the appellant's request that these additional records were not located in the police's initial search.

ORDER:

I uphold the police's decision to withhold information in the records under section 38(b) and the reasonableness of the police's search for records. I dismiss the appeal.

Original Signed by: August 31, 2017
Hamish Flanagan
Adjudicator

[41] Order PO-2554.
[42] Orders M-909, PO-2469 and PO-2592.
[43] Order MO-2185.
[44] Order MO-2246.