

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3558

Appeal MA16-103

Halton Regional Police Services Board

February 2, 2018

**Summary:** The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all police occurrence reports involving the requester for a particular time period, as well as 911 calls for particular dates. The police withheld records with respect to two occurrences on the basis that they fall outside the scope of the *Act*. Access to the remainder of the records was provided in part, with portions of each record redacted in reliance on the law enforcement exemption at section 38(a) in conjunction with sections 8(1)(e) and 8(1)(l), and the personal privacy exemption at section 38(b). The requester appealed and also raised the issue of the reasonableness of the police's search. In this order, the adjudicator upholds the police's decision to withhold information under section 38(b), and partially upholds its decision to withhold information under section 38(a) in conjunction with section 8(1)(l). She upholds the police's search as reasonable.

**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"), 8(1)(l), 38(a) and 38(b).

**Orders and Investigation Reports Considered:** Order MO-2446.

### BACKGROUND:

[1] The appellant submitted two requests to the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of*

*Privacy Act* (the *Act*) for access to complaints, concerns, 911 calls and CAS information about her since August 20, 2009, as well as records involving specific individuals. The appellant subsequently clarified that she was seeking access to all police occurrence reports involving her from August 20, 2009, as well as 911 calls for two particular dates.

[2] The police located responsive records and notified two affected parties pursuant to section 21 of the *Act*. The affected parties did not provide consent to the disclosure of their personal information.

[3] The police then issued a decision in which they provided access to the records in part. Records with respect to two occurrences were withheld in full on the basis that they fall outside the scope of the *Act*. Access to the remainder of the records was provided in part, with portions of each record redacted in reliance on the law enforcement exemption at section 38(a) in conjunction with sections 8(1)(e), 8(1)(l), and 8(2)(a), and the personal privacy exemption at section 38(b).

[4] The appellant appealed the police's decision to this office. During mediation, the appellant stated that she felt that there should be additional police documentation that involved her, including an additional 911 call. The police located an additional 911 call recording and issued a supplemental decision, which provided partial access of the recording to the appellant. The police advised that no additional records exist.

[5] The appellant advised the mediator that she is seeking access to all the withheld information and that she still believes that additional records should exist. Consequently, the issue of reasonable search was added to the issues on appeal. As no further mediation was possible, the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[6] Before receiving my Notice of Inquiry, the appellant filed unsolicited representations. The material in those representations is either repeated in the appellant's subsequent representations or does not respond to the issues in this appeal. As a result, I did not find it necessary to share the appellant's unsolicited representations with the police or to ask the police to comment on them.

[7] I invited and received representations from the police, followed by the appellant. I then invited and received reply and supplementary reply representations from the police and sur-reply representations from the appellant.<sup>1</sup> The parties' representations were shared with each other in accordance with this office's *Practice Direction 7: Sharing of Representations* and section 7 of the *Code of Procedure*.

[8] Prior to filing their representations, the police issued a revised decision letter to

---

<sup>1</sup> I did not, however, require representations on the issue of records relating to two occurrences being outside the scope of the *Act*, and issued a letter order upholding the police's decision that these records are outside the scope of the *Act*. I do not address those records further in this order.

the appellant advising that a further computer search had identified four further occurrences, but that since the incidents were cleared as “no report”, no occurrence reports related to these incidents exist.

[9] In this order, I uphold the application of section 38(b) to the information that the police withheld under that section, and I partially uphold the application of section 38(a) in conjunction with section 8(1)(l) to the information that the police withheld under that section. I uphold the police’s search for responsive records as reasonable.

## **RECORDS:**

[10] The records at issue are occurrence reports and a recording of a 911 call.

## **ISSUES:**

- 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 personal privacy exemption at section 38(b) apply to the information at issue?
- C. Does the discretionary exemption at section 38(a) in conjunction with the law enforcement exemptions at sections 8(1)(e) and/or 8(1)(l) apply to the information at issue?
- D. Did the police exercise their discretion under section 38(a) in conjunction with section 8(1)(l), and section 38(b)? If so, should this office uphold the exercise of discretion?
- E. Did the police conduct a reasonable search for records?

## **DISCUSSION:**

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

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

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

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

[12] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>2</sup>

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

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

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

---

<sup>2</sup> Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[14] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>3</sup> However, 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.<sup>4</sup>

[15] To qualify as personal information, it must also be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

[16] The police submit that all of the records contain the personal information of the appellant. I agree. The occurrence reports name the appellant as a person involved in a variety of police matters. The 911 call was made by the appellant and the recording contains the appellant's conversation with the 911 operator. This is recorded information about the appellant in her personal capacity. The records also contain some personal information about her as defined in paragraphs (a) (family status), (b) (medical, psychiatric, psychological, criminal or employment history), and (d) (address).

[17] The police submit that the records also contain the personal information of third parties, including their names, addresses, dates of birth, telephone numbers and statements to the police.

[18] While the appellant did not make representations specifically on whether the records contain the personal information of others, I have taken into account her representations as a whole in making my determinations on this issue.

[19] I agree with the police that the records contain the personal information of third parties, including their addresses, dates of birth, telephone numbers and information they provided to the police about various matters. The records contain the names of third parties identifying them as parties involved in police matters in their personal capacities. The 911 recording also includes information about a third party in their personal capacity. None of the information that the police withheld under section 38(b) appears in a professional capacity, and all of it, therefore, is personal information under the introductory wording of the definition in section 2(1) as well as paragraphs (a) and (d).

[20] I conclude that the records at issue contain the personal information of the

---

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

appellant, and of various third parties.

[21] The police provided a substantial amount of information in the records to the appellant. I have reviewed the information that the police withheld pursuant to section 38(b) and I find that all of it is the personal information of third parties. Below I address whether the section 38(b) personal privacy exemption applies to that information.

**Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?**

[22] 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.

[23] 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.<sup>6</sup>

[24] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If any of paragraphs (a) to (e) of section 14(1) apply to the information, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Also, if any of the circumstances listed in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy. None of the circumstances listed in sections 14(1) or (4) is applicable here. In particular, section 14(1)(a), which allows disclosure if the third party consents, does not apply as none of the third parties in this case have consented to the release of their personal information.

[25] 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 considers, and weighs, the factors and presumptions in sections 14(2) and (3) and balances the interests of the parties.<sup>7</sup> Those sections provide as follows:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

---

<sup>6</sup> See below in the “Exercise of Discretion” section for a more detailed discussion of the institution’s discretion under section 38(b).

<sup>7</sup> Order MO-2954.

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[26] I will discuss the weighing of these factors after outlining the parties' representations on them.

### ***Representations***

[27] The police submit that the disclosure of the personal information of the third parties would be an unjustified invasion of their personal privacy. The police submit that they were called numerous times to investigate domestic incidents, and that the undisclosed information was compiled as part of a law enforcement investigation, such that the presumption at section 14(3)(b) applies to it. They submit that the personal information contained in the occurrence reports and the redacted portion of the 911 recording contains information gathered from a third party.

[28] The appellant submits that the information in the occurrence reports that the police have provided her to date is inaccurate and that the only privacy that could be violated by the release of further information in the records is her privacy, although she also notes that "I'm not even sure if lies about me constitute an invasion of my privacy or the privacy of the person from whom the lies originated". In the appellant's submission, the occurrence reports, which contain a large volume of lies and distortions of the truth, cannot qualify as a legitimate investigation into a possible violation of law. She submits that she never requested any information from the police that is not directly related to the crimes committed against her and her children.

[29] In the appellant's submission, the disclosure she is seeking is necessary in order for her and her children to obtain justice. She submits that withholding the information allows the police to cover up false accusations against her that led to her illegal apprehension and the illegal apprehension of her child. She states that she will never obtain justice if the police keep protecting their sources. In her submission, the records could possibly assist her in court, assist her in obtaining justice and perhaps also assist her family in obtaining compensation in the future.

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

[30] I found above that all of the information that the police withheld under section 38(b) consists of the personal information of third parties.



[31] The records relate to a variety of domestic incidents where the police were called. I am satisfied from my review of the occurrence reports that some of them were compiled and are identifiable as part of investigations into possible violations of law. I find, however, that others were not prepared as part of an investigation into a possible violation of law. The police attended the appellant's residence for a variety of reasons, not all of which involved any alleged criminal wrongdoing. For example, one attendance was in anticipation of the appellant's return home following a hospital stay as a result of having been apprehended under the *Mental Health Act*. However, given my other findings, below, it is not necessary for me to make a determination about whether section 14(3)(b) does or does not apply to each of the records at issue.

[32] I find that all of the third parties' personal information withheld from the appellant is highly sensitive within the meaning of the factor listed at section 14(2)(f), which weighs against disclosure. Previous orders of this office have found that to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>8</sup> I find that to be the case here. It is evident from my review of the records, both the disclosed and undisclosed portions, that there are difficult personal issues existing as between the involved parties. The Children's Aid Society has been involved with the appellant's family, and the appellant was committed to hospital under the *Mental Health Act* for a period of time. It is evident that the events surrounding these and other circumstances would have been emotionally fraught for all parties involved. In the circumstances, I find the withheld information to be highly sensitive as its disclosure could reasonably be expected to cause the third parties significant personal distress.

[33] I have also considered whether there are any factors favouring disclosure. The appellant submits that she requires the information in order to obtain justice, implicitly raising the possible application of section 14(2)(d) (fair determination of rights).

[34] Previous orders of this office have found that 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;
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
- (3) the personal information to which the appellant is seeking access has some bearing on or is significant to the determination of the right in question; and

---

<sup>8</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>9</sup>

[35] The appellant submits that the records could assist her in court, which I understand to mean the court presiding over a child protection proceeding involving her. The appellant provided me with a copy of a letter that the Children's Aid Society wrote in 2015 advising that it had no further protection concerns and that her file was closed. However, she also provided a copy of an Ontario Court of Justice judge's endorsement dated 2017. The endorsement does not describe the nature of the proceeding but it is evident that at the time there was again an ongoing CAS proceeding.

[36] The appellant submits that the onus is on the police to provide her with all the records that have caused her to lose her child for more than a year and to be unjustly prosecuted by the CAS in court for the last two years. The appellant submits that if she had been in a "real court", instead of a "CAS controlled court", the police could not have obstructed justice in this matter.

[37] However, it is not clear from the information before me that the third party personal information, which dates back to 2015, is relevant to whatever the ongoing issues between the appellant and the CAS are. In addition, it is my view that any issue regarding the production or lack thereof of relevant information can be addressed in the context of the court proceeding. I have very little information before me about the issues in that proceeding, or what production of documents has taken place in that proceeding. The Ontario Court of Justice, which is dealing with the CAS matter, is familiar with the issues between the parties and is in a better position than I to determine what evidence and disclosure is necessary in the context of that proceeding.<sup>10</sup>

[38] The appellant also refers to the possibility of seeking compensation at some point in the future in order to redress what she views as her illegal incarceration and the Children's Aid Society's illegal apprehension of her child. The appellant has not provided particulars. In my view, the possibility of an unspecified type of claim for compensation is too speculative and remote to be considered a contemplated proceeding for the purposes of section 14(2)(d). I also find that the information at issue is not required for the appellant to commence any such proceeding, if she wishes, since in referring to compensation, the appellant presumably is referring to compensation from the police, the CAS, and/or the hospital where she was apprehended under the *Mental Health Act*. The parties with whom the appellant takes issue are already known

---

<sup>9</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

<sup>10</sup> While I recognize that the police are not a party to that proceeding, the appellant could ask the court for a third party production order.

to her.

[39] For these reasons, I find that the factor at section 14(2)(d) does not apply.

[40] The list of factors under section 14(2) is not exhaustive, however. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>11</sup> I have also considered whether there are any other relevant factors.

[41] One factor that is relevant, in my view, is that some of the information that the police withheld from the appellant appears to have been obtained from the appellant's own statements to the police. This is a factor weighing in favour of disclosure of that information.

[42] Balancing the factors weighing for and against disclosure, and taking into account the interests of the parties, I conclude that the factors weighing against disclosure outweigh the factors weighing in favour of disclosure. With the exception of the information that appears to have originated from the appellant herself, there are no factors weighing in favour of disclosure. All of the information is highly sensitive. I find, therefore, that disclosure of this information would be an unjustified invasion of the third parties' personal privacy. As a result, the exemption at section 38(b) applies to it.

[43] A small amount of the withheld personal information consists of information that, while it is the personal information of third parties, appears to have originated with the appellant. Although this is a factor weighing in favour of disclosure, it is not a strong factor in the circumstances. It is evident from my review of the appellant's representations as a whole that her primary interest is in receiving statements of third parties, not information that she herself provided to police. I found above that all of the personal information in the records is highly sensitive. I am satisfied in the circumstances of this appeal that the highly sensitive nature of this information outweighs the fact that the appellant may be the source of some of the information. I find, therefore, that disclosure of it would constitute an unjustified invasion of the third parties' personal privacy. Therefore, the exemption at section 38(b) applies to it.

[44] In the Notice of Inquiry that I sent to the parties, I also asked whether the "absurd result" principle applies to any of the third parties' personal information. This office has found that where a requester originally supplied the information, or 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.<sup>12</sup> The absurd result principle has been applied where, for example, the requester sought access to his or her own witness statement.<sup>13</sup> However, if disclosure is

---

<sup>11</sup> Order P-99.

<sup>12</sup> Orders M-444 and MO-1323.

<sup>13</sup> Orders M-444 and M-451.

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.<sup>14</sup>

[45] I have considered the application of the "absurd result" principle to the information that appears to have originated with the appellant. In the circumstances of this appeal, however, I decline to apply the absurd result principle to that information. As noted above, this personal information is highly sensitive. Also, although the information appears to have originated with the appellant, it is not the appellant's statements *per se*; it consists of information about third parties that the appellant relayed to the police, as interpreted and recorded by the police in the occurrence reports. In the particular circumstances of this appeal, I find that disclosure of this information would be inconsistent with the purpose of the section 38(b) personal privacy exemption.

[46] I conclude, subject to my findings on the police's exercise of discretion, that all of the third party personal information withheld by the police is exempt from disclosure pursuant to section 38(b).

**Issue C: Does the discretionary exemption at section 38(a) in conjunction with the law enforcement exemptions at sections 8(1)(e) and/or 8(1)(l) apply to the information at issue?**

[47] As noted above, section 38 provides a number of exemptions from the general right of access to one's own personal information set out in section 36(1).

[48] Section 38(a) reads:

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

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[49] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.<sup>15</sup>

[50] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

---

<sup>14</sup> Orders M-757, MO-1323 and MO-1378.

<sup>15</sup> Order M-352.

[51] In this case, the police rely on section 38(a) in conjunction with sections 8(1)(e) and 8(1)(l) to withhold police operational codes. Although the police initially also relied on section 8(2)(a) for this information, that exemption was not pursued in their representations.

[52] Section 8(1) states, in part:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[53] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

[54] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>16</sup> However, it is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.<sup>17</sup> The institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>18</sup>

[55] The police submit that they denied access to police codes such as patrol zones

---

<sup>16</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>17</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>18</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

pursuant to section 38(a) in conjunction with sections 8(1)(e) and (l). The police rely on a previous order of this office, Order M-757, where the adjudicator found that disclosure of the ten-codes, patrol zones and patrol case identification numbers could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime, within the meaning of section 8(1)(l). The police submit that in this appeal, disclosure of the patrol zones and similar information withheld under this exemption would limit their effectiveness and allow individuals engaging in criminal activities to have the knowledge of how the police respond to emergency situations, which could result in harm to police officers or members of the public involved in a police investigation.

[56] The appellant submits that fear for personal safety should not apply to either the police or their sources, as she is already aware of the identity of most of the sources.

[57] Many previous orders of this office have found that police operational codes are exempt from disclosure pursuant to section 8(1)(l). For example, in Order MO-2446, the adjudicator stated:

I note that this office has applied section 8(1) to exempt police operational codes. This office has consistently found that section 8(1)(l) applies to these codes (for example, see Orders M-93, M-757, MO-1715, MO-2414 and PO-1665). These orders adopted the reasoning stated in Order PO-1665 by Adjudicator Laurel Cropley:

In my view, disclosure of the "ten-codes" would leave OPP [Ontario Provincial Police] officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

[58] The above reasoning applies also to the circumstances of this appeal. Although the appellant argues that disclosure could not reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person, the concerns addressed by section 8(1)(l) are different. I am satisfied that disclosure of the police operational codes or similar information in this case could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, subject to my findings on the police's exercise of discretion, below, I find that the police codes and similar information withheld from the appellant pursuant to section 8(1) qualify for exemption under section 38(a) in conjunction with section 8(1)(l) of the *Act*. Given my finding, I do not need to decide whether this information is also exempt under section 38(a) in conjunction with section 8(1)(e).

[59] However, some of the information that the police withheld under sections 8(1)(e)

and (l) does not in fact consist of police operational codes or information about how police respond to emergency situations, but rather, administrative information to do with the inputting of the occurrence reports. As the police have not raised any other basis for the withholding of this information, I will order them to disclose it to the appellant.

**Issue D: Did the institution exercise its discretion under section 38(a) in conjunction with section 8(1)(l), and section 38(b)? If so, should this office uphold the exercise of discretion?**

[60] The section 8(1)(l), 38(a) and 38(b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[61] 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

[62] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>19</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>20</sup>

***Relevant considerations***

[63] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>21</sup>

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific

---

<sup>19</sup> Order MO-1573.

<sup>20</sup> Section 43(2).

<sup>21</sup> Orders P-344 and MO-1573.

- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

### ***Representations***

[64] The police submit that they considered the purposes of the *Act*, including that information should be available to the public, that individuals should have the right to access their own personal information, that the exemptions from the right of access should be limited and specific, and that the privacy of individuals should be protected. The police submit that they require everyone involved in a police matter to provide their personal information and assure them that their personal information will be kept confidential in accordance with the *Act*. The police also considered the fact that the affected parties objected to the release of their personal information.

[65] The police submit that they exercised their discretion in favour of withholding the police codes under section 8(1)(l) because they are specific codes used while sending transmissions that are not generally known to the public and that the security of those codes would be compromised if they were released.

[66] While the appellant did not make representations specifically on the police's exercise of discretion, I have taken into account her representations as a whole in coming to my findings on this issue.

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

[67] Having reviewed the records and the severances the police made to those records, and having considered the parties' representations, I am satisfied that the



police's discretion should be upheld. The police provided a significant amount of information in the records to the appellant, while withholding specific information consisting of third party personal information and police operational codes. I am satisfied that the police took into account relevant considerations, including the appellant's general right to access her own personal information and the third parties' objections, and did not take into account irrelevant considerations or exercise their discretion in bad faith or for an improper purpose. In particular, having reviewed the information that the police withheld, I do not accept the appellant's submission that the police are hiding behind privacy legislation in order to protect their reputation, to obstruct justice or to prevent corrupt public servants from facing justice.

[68] I uphold the police's exercise of discretion in deciding to withhold information pursuant to section 38(b), and section 38(a) in conjunction with section 8(1)(l).

**Issue E: Did the police conduct a reasonable search for records?**

[69] 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.<sup>22</sup> 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.

[70] 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.<sup>23</sup> To be responsive, a record must be "reasonably related" to the request.<sup>24</sup>

[71] 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.<sup>25</sup>

[72] 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.<sup>26</sup> 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.<sup>27</sup>

---

<sup>22</sup> Orders P-85, P-221 and PO-1954-I.

<sup>23</sup> Orders P-624 and PO-2559.

<sup>24</sup> Order PO-2554.

<sup>25</sup> Orders M-909, PO-2469 and PO-2592.

<sup>26</sup> Order MO-2185.

<sup>27</sup> Order MO-2246.

## ***Representations***

[73] The police submitted representations and an affidavit sworn by a Freedom of Information Analyst (the second analyst). This individual explains that another Freedom of Information Analyst<sup>28</sup> (the first analyst) conducted a search on the Niche records management system using the appellant's name and date of birth, and found a number of occurrences. Partial access was granted to the occurrence reports. The second analyst explains that she, the second analyst, conducted an additional search of the database during the adjudication stage of this appeal, using the appellant's name, date of birth and address, and found the same occurrences as the first analyst, plus an additional four occurrence numbers for which the officers had not generated a police report; the incidents were cleared as "no report". The police issued a replacement decision letter (referred to in the background section of this order above) indicating that four additional incidents were located and that there were no reports generated.<sup>29</sup>

[74] The second analyst further explains that she conducted a search of the Legacy record information management system using the appellant's name and date of birth, and did not find any incidents involving the appellant. The legacy system is a database that contains historical incident numbers prior to the Niche system.

[75] The appellant submits that she is seeking evidence that certain individuals conspired to commit offences against her. She also provided a letter in support of her appeal from an individual who states that he has known the appellant for a number of years. He submits on the appellant's behalf that the fact that the police needed to conduct two searches is suspicious. He also questions why the names of the appellant's children were not used in the police's searches for records. He refers to another police incident involving the appellant that is not included in the records provided to her.

[76] In reply, the police submit that according to their IT department, when officers are dispatched to calls for service, the address where an incident has occurred auto links to the Niche records management system from the CAD system generating an incident number. However, the name of an involved individual does not always auto link the same way. The police explain that if the appellant's address had been used as a search parameter in the initial search, then the additional four incidents outlined in the police's revised decision would have been located. The police also explain that the additional incident referred to in the appellant's representations took place after the time period of her request.

---

<sup>28</sup> The first analyst was away from the office at the time the affidavit and representations were submitted.

<sup>29</sup> The decision letters issued to the appellant, and the records disclosed to her, make it clear that the police searched for records from August 2009 to December 2, 2015, the date of the appellant's access request. The police's reference to different dates in their original representations appears to be a typographical error.

[77] The police initially stated in their reply that additional searches using others' names could have resulted in locating additional responsive records, but that the appellant did not raise this in her initial request. The police also pointed out that they did not have the consent of the other individuals to run searches using their names. Upon further questioning from me, however, the police explained that all occurrence reports that have been linked between its two database systems would be expected to be located where the appellant is identified as a complainant, a suspect or an involved person using the appellant's name, address and date of birth. The incidents resulting in no report may not necessarily be linked between the two systems and therefore the "no report" incidents may not all be located.

[78] In her sur-reply representations, the appellant submits that the onus is on the police to provide her with all the records that have caused her to lose her child for more than a year and to be unjustly prosecuted by the Children's Aid Society. The appellant also provided a consent form signed by her son authorizing the police to search their records using her son's name and a letter from the individual noted above, who supports her in her view that the police should conduct further searches using others' names.

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

[79] As noted above, 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.<sup>30</sup>

[80] Although the police initially stated in their reply representations that searching again with the names of third parties might lead to finding additional responsive records, the police explained in their supplementary reply that the query it ran at the adjudication stage of this appeal – using the appellant's name, date of birth and address – would be expected to find all occurrence reports where the appellant is listed as a suspect, a complainant or an involved person.

[81] The appellant's clarified request was for occurrence reports involving her. It is clear from my review of her representations that she believes that there should be records relating to a plan to have her committed to hospital under the *Mental Health Act*, and to remove her son from her home. In my view, if such occurrence reports existed, they would be expected to list the appellant as a suspect or involved person. I find, therefore, that all occurrence reports reasonably related to the appellant's request would be expected to be found in the police's search. In my view, additional occurrence reports where the appellant is mentioned only peripherally would not be responsive records for the purposes of the appellant's request.

[82] The appellant stated in her representations that she also seeks officers' notes as

---

<sup>30</sup> Order MO-2246.

well as records for an incident post-dating her request. I agree with the police that the request was for occurrence reports, which does not include officers' notes. I also agree that the incident post-dating her request is not responsive to her request. If the appellant now seeks additional types of records and/or records for a different time period, she should submit a new request to the police.

[83] I accept the police's submission that the search was conducted by two experienced Freedom of Information Analysts. In my view, these analysts expended reasonable efforts to locate records responsive to the appellant's clarified request. Therefore, I uphold the police's search as reasonable in the circumstances.

[84] I realize that my findings may disappoint the appellant, who it is apparent has experienced a number of difficulties. My findings under the *Act* should not be taken as commentary on any of the other issues between the appellant and various other parties.

### **ORDER:**

1. I uphold the decision of the police to withhold information pursuant to section 38(b) of the *Act*.
2. I uphold, in part, the decision of the police to withhold information pursuant to section 38(a) of the *Act*, read in conjunction with section 8(1)(l), and order the police to disclose the non-exempt information to the appellant by **March 9, 2018**. With the police's copy of this order is a copy of the records at issue with the information to be disclosed to the appellant highlighted.
3. I uphold the police's search for records as reasonable.
4. In order to ensure compliance with provision 2 of this order, I reserve the right to require the police to provide me with a copy of the information disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Gillian Shaw  
Adjudicator

February 2, 2018 \_\_\_\_\_