

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3574

Appeal MA17-94

Woodstock Police Services Board

March 13, 2018

**Summary:** The Woodstock Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the address and phone number of a witness to a motor vehicle accident. The police denied access to this information, citing the discretionary personal privacy exemption in section 38(b) of the *Act*.

In this order, the adjudicator upholds the police's decision that the affected person's address and phone number are exempt under section 38(b).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 38(b), 14(3)(b), 14(2)(d); *Rules of Civil Procedure*, O. Reg. 575/07, section 30.10(1).

**Orders Considered:** Orders M-1146 and MO-2980.

### OVERVIEW:

[1] The Woodstock Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for records relating to a motor vehicle accident. The following records were requested:

- Notes from all the investigating police officers' notebooks;
- Field notes made by all officers;

- Any witness statements;
- Any other statements taken by the police;
- All notes and records of any technical accident investigator, including all drawings, sketches, measurements, etc.;
- Photographs and any videos.

[2] The police issued a decision granting partial access to the responsive records. The police denied access to the remaining information in the responsive records, citing the law enforcement exemption in section 8(1) and the personal privacy exemption in section 14(1) of the *Act*.

[3] The requester (now the appellant) appealed the police's decision to this office.

[4] During mediation, the police raised the application of sections 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1), and the discretionary personal privacy exemption in 38(b) of the *Act*.

[5] The appellant confirmed that he is not interested in pursuing access to the information severed under sections 38(a) and 8(1) of the *Act*, or the information removed as not responsive. As a result, this information and sections 38(a) and 8(1) of the *Act* are no longer at issue in this appeal.

[6] The appellant clarified that he is only seeking access to the information identified as personal information and withheld under sections 38(b) and 14(1) of the *Act*. The mediator notified the affected person to determine whether she or he would consent to the disclosure of the information at issue. The affected person did not provide consent.

[7] No further mediation was possible. Accordingly, this file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

[8] I sought the representations of the police and the affected person, initially. The affected person consented to disclosure of his name. As such, this information was disclosed to the appellant by the police.

[9] The affected person provided representations objecting to the disclosure of his remaining information in the records.

[10] I sent the police's representations to the appellant. The appellant provided representations in response. I then sought reply representations from the police and the affected person. Only the affected person provided reply representations.

[11] In this order, I uphold the police's decision that the affected person's address and phone number are exempt under section 38(b).

## **RECORDS:**

[12] The records remaining at issue consist of a motor vehicle collision report and a witness statement. At issue in these records are the affected person's address and phone number.<sup>1</sup>

## **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. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

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

[13] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "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,

---

<sup>1</sup> The appellant is not interested in receiving access to the affected person's date of birth. As such, this information is not at issue.

- (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;

[14] 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>

[15] 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>

[16] 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>

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

---

<sup>2</sup> Order 11.

<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.).

[18] The police state that the information at issue is the personal information of the affected person.

[19] The appellant agrees that the information at issue is the personal information of the affected person.

### ***Analysis/Findings***

[20] I agree with the parties that the information at issue, the address and phone number of the affected person, is the personal information of the affected person in his personal capacity, in accordance with paragraph (c) of the definition of that term in section 2(1).

[21] The records also contains the personal information of the appellant. As the records contain the personal information of the appellant and the affected person, I will consider whether section 38(b) applies to it.

### **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.

[24] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[25] If the information fits within any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of section 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal, these paragraphs do not apply.

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

[27] 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).

[28] The police rely on the presumption at paragraph (b). This section reads:

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.

[29] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>7</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>8</sup>

[30] The police state that the personal information in the records was compiled from the witness as part of an investigation into a motor vehicle collision.

[31] Although the appellant does not dispute that the personal information was compiled as part of a law enforcement investigation into a possible violation of law, the appellant takes the position that the exception in section 14(3)(b) applies because disclosure is necessary for him to continue the investigation into the liability of the at-fault driver and any other responsible persons involved in the accident.

[32] I agree that the presumption in section 14(3)(b) applies as the personal information was compiled and is identifiable as part of an investigation into a possible violation of law under the *Highway Traffic Act*.

[33] I find that the exception in section 14(3)(b) relied upon by the appellant does not apply. This office has found that a requester's own investigation does not constitute the continuation of the investigation referred to in section 14(3)(b). That investigation is

---

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

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

<sup>8</sup> Orders MO-2213, PO-1849 and PO-2608.

the one in which the information at issue was compiled.<sup>9</sup>

[34] 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.<sup>10</sup>

[35] 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).<sup>11</sup>

[36] The police did not provide representations on section 14(2) in its representations.

[37] The appellant provided submissions on the factors in section 14(2)(d) to (g) and (i), which read:

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,

(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;

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

[38] The appellant states that disclosure of the affected person's address and telephone number is relevant to the fair determination of his rights vis-a-vis the at-fault driver in the subject accident. He submits that it would be unfair to require him to pursue his claim without this highly relevant information.

---

<sup>9</sup> Order PO-2236.

<sup>10</sup> Order P-239.

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

[39] The affected person was a witness to the accident that the appellant was in. The appellant submits that disclosure will not unfairly expose the affected person to pecuniary or other harm nor will it unfairly damage his reputation.

[40] The appellant further states that this information is not highly sensitive and is not likely to be inaccurate or unreliable.

[41] The appellant submits that to obtain a disclosure order by way of a Rule 30.10 motion under the Rules of Civil Procedure would put the appellant to unnecessary expense, only to achieve the same result.

[42] The affected person states that a complete account of the subject accident already exists in the documents released through the Freedom of Information process and that most other information, such as the weather and road conditions, can be easily determined from publicly available sources. Therefore, he believes that, referring to section 14(2)(d), there is not any impediment to the fair determination of rights of the appellant by withholding his address and phone number.

[43] The affected person further states that if this case continues to an appearance before a judge, he will likely be subpoenaed and required to answer questions about the subject accident at that time, presumably without the need to release the personal information at issue in this appeal.

[44] The police did not provide reply representations.

[45] The only factor cited by the appellant that favours disclosure of the information at issue is that in section 14(2)(d). The remaining factors cited by the appellant favour privacy protection.

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

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and



(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing<sup>12</sup>

[47] The records at issue are an accident report and the affected person's witness statement about an accident where a motor vehicle collided with the appellant, who was a pedestrian.

[48] The appellant has received the entirety of both records, except for the witness's address and phone number. The appellant indicated in correspondence with this office that he had further questions for the affected person. The affected person has refused to respond to these questions and has refused to provide the appellant with his address and phone number.

[49] The appellant indicates that he is able to obtain the affected person's address and phone number by bringing a motion under Rule 30.10 of the Rules of Civil Procedure, which reads in part:

(1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.<sup>13</sup>

[50] Adjudicator Laurel Cropley in Order M-1146, made the following findings regarding the privacy interests at stake in disclosure of an individual's address in connection with their name:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn,

---

<sup>12</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>13</sup> <https://www.ontario.ca/laws/regulation/900194>.

may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. ...

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

[51] In Order MO-2980, Adjudicator Colin Bhattacharjee stated:

The IPC has found in previous orders that the existence of disclosure processes available to parties under the Rules of Civil Procedure<sup>14</sup> reduces the weight that should be given to the section 14(2)(d) factor.<sup>15</sup>

[52] Based on my review of the parties' representations and relying on the findings in Orders M-1146 and MO-2980, I find that although the factor in section 14(2)(d) favouring disclosure applies, its weight is reduced by the disclosure processes available to parties under the Rules of Civil Procedure.

[53] Based on my review of the appellant's representations, I find that the factor in section 14(2)(d) weighs somewhat in favour of the appellant.

[54] I have also considered the other factors in section 14(2) and any unlisted factors raised by the parties. I find that there are no other factors applicable that favour disclosure.

[55] As noted above, 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. I have done so and find that the presumption that disclosure constitutes an unjustified invasion of personal privacy in section 14(3)(b) outweighs the weight I have given to the factor favouring disclosure in section 14(2)(d).

[56] Therefore, subject to my review of the absurd result principle and the police's exercise of discretion, I find that the affected person's address and telephone number are exempt under section 38(b).

---

<sup>14</sup> R.R.O. 1990, Reg 194.

<sup>15</sup> Orders MO-2943 and PO-1715.

***Absurd result***

[57] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under sections 14(1) or 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.<sup>16</sup>

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

- the requester sought access to his or her own witness statement<sup>17</sup>
- the requester was present when the information was provided to the institution<sup>18</sup>
- the information is clearly within the requester's knowledge<sup>19</sup>

[59] 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.<sup>20</sup>

[60] The appellant submits that it would be absurd and inconsistent with the purpose of the section 38(b) exemption to withhold the sought information. He points out that the witness's name is already within his knowledge and all that is requested is the witness's address and telephone number so that he can have a complete account of the subject accident, and have his claim for damages assessed on its merits.

[61] The appellant states that it is absurd that he is being denied access to the sought information when he would be able to obtain a disclosure order for this information by way of a 30.10 motion under the Rules of Civil Procedure.

[62] The affected person states that he fails to understand how it is absurd that his personal information is being protected, as this is the intention of the *Act*. He states that if the appellant desires to acquire his personal information through other means, the possibility of that should have no bearing on the decision of the IPC.

---

<sup>16</sup> Orders M-444 and MO-1323.

<sup>17</sup> Orders M-444 and M-451.

<sup>18</sup> Orders M-444 and P-1414.

<sup>19</sup> Orders MO-1196, PO-1679 and MO-1755.

<sup>20</sup> Orders M-757, MO-1323 and MO-1378.

### ***Analysis/Findings***

[63] As noted above, the absurd result principle has been applied where a requester has sought access to their witness statement, the requester was present when the information was provided to the institution, or when the information is clearly within the requester's knowledge. None of these situations are present here.

[64] It is clear from the appellant's representations that the appellant did not originally supply the information, or is otherwise aware of it. Therefore, I find that the absurd result principle does not apply and to withhold the information would not be absurd and inconsistent with the purpose of the section 38(b) exemption.

#### **C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[65] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

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

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

[67] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>21</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>22</sup>

[68] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>23</sup>

- the purposes of the *Act*, including the principles that

---

<sup>21</sup> Order MO-1573.

<sup>22</sup> Section 43(2).

<sup>23</sup> Orders P-344 and MO-1573.

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

[69] The police state that section 38(b) was applied in this case, taking into account the appellant's right of access to information against the affected person's right to protection of his privacy. It states that:

To the extent the records contained personal information about other individuals, the institution exercised its discretion based on the belief that the unjustified invasion of another individual's personal privacy outweighed the appellant's right to information, and applied the exemption accordingly.

[70] The appellant states that the IPC should not uphold the police's exercise of discretion because he has a compelling need to receive the requested information, as described in his representations.

[71] The affected person submits that the presumption that there will be any further useful information about the subject accident acquired from the release of his personal information does not seem to be reasonable enough to create a breach of his privacy.

[72] Furthermore, the affected party states that the release of his name does not guarantee the public availability of any other personally identifying information.

***Analysis/Findings***

[73] Taking into consideration the parties' representations and the considerations listed above, I find that the police exercised their discretion under section 38(b) in a proper manner taking into account all relevant factors, including the purpose of the section 38(b) exemption which includes protecting the privacy of the affected person.

[74] Therefore, I uphold the police's exercise of discretion and find that the address and phone number of the affected person are exempt under section 38(b).

**ORDER:**

I uphold the police's decision that the affected person's address and phone number are exempt under section 38(b), and I dismiss this appeal.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ March 13, 2018