

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3715

Appeal MA17-417

Halton Regional Police Services Board

December 28, 2018

**Summary:** The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to police occurrence reports and related officers' notes. The police granted partial access to responsive records, but withheld the personal information of an affected party under the discretionary personal privacy exemption in section 38(b). In this order, the adjudicator finds that disclosure of the withheld information would constitute an unjustified invasion of the affected party's personal privacy. She finds that the police exercised their discretion properly in withholding this information and she upholds the police's decision.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(3)(b), and 38(b).

### OVERVIEW:

[1] This appeal addresses a decision by the Halton Regional Police Services Board (the police) to deny access to certain information requested under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to the following police occurrence reports concerning incidents described as follows:

[specified incident] – called 911 – to [residential property #1], Oakville – around December 2002-2004? Called to our home and parties present were [named individual], [the requester] and two children. OCC [report

number] [residential property #1] and OCC [report number] [residential property #2] 911 from 2016-[occurrence report and date]

Please may I get:

1. Copy of the report
2. The officers notes.

[2] The police located responsive records and issued a decision in which they granted partial access to the records. The police withheld some information from the officers' notebook entries that was not responsive to the request because it relates to other, unrelated police calls.<sup>1</sup> The police also withheld some information related to affected parties, writing that, even though some of the information in the records pertains to the appellant, disclosure of an affected party's personal information would constitute an unjustified invasion of that individual's personal privacy under section 38(b). Finally, the police claimed the application of the exemption at section 38(a), read with certain law enforcement exemptions in section 8 of the *Act*.<sup>2</sup>

[3] The requester, now the appellant, appealed the police's decision.

[4] Mediation was commenced and during that stage, the appellant indicated that she was not seeking disclosure of the information that the police withheld on the basis of the law enforcement exemptions in sections 8(1)(e) (endanger life or safety) and 8(1)(l) (facilitate commission of unlawful act) of the *Act*. The police, in turn, advised that they were no longer relying on the law enforcement exemption set out in section 8(2)(a) (law enforcement report) of the *Act*. As a result, the application of section 38(a) was removed as an issue from the appeal. The information withheld by the police under section 38(b) relates to the appellant's children and to her former spouse.

[5] During mediation, the appellant and an affected party, who are former spouses of one another, agreed to be identified to each other. The appellant also confirmed during mediation that she seeks access only to the affected party's information, not information relating to their children or to information withheld as not responsive. The affected party did not provide consent to the release of any of his personal information to the appellant.

---

<sup>1</sup> This information was withheld and marked as "N/R" in the records. I have reviewed these portions of the records and am satisfied that they refer to incidents unrelated to the appellant or the affected parties, and are therefore not responsive to the request. The appellant confirmed during mediation that she is not seeking access to this information.

<sup>2</sup> More particularly, the police withheld portions of the records pursuant to section 38(a), read with sections 8(1)(e) (endanger life or safety), 8(1)(l) (facilitate commission of unlawful act), and 8(2)(a) (law enforcement report). The application of these exemptions is not at issue in this appeal.

[6] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry. Representations were solicited and received from the police, the appellant, and the affected party.

[7] With their representations, the police included a revised decision in which they granted partial access to additional records. According to the revised decision, the appellant had, after mediation, requested access to all records of occurrences in which she had been involved between 1996 and 2017. Based on the revised decision, it appears that the police permitted the appellant to expand the scope of her request during the appeal process. As a result, they conducted a further search and located six additional records. Of those six records, three related to motor vehicle accidents but had been destroyed due to their age. The police granted partial access to the remaining occurrence reports and officers' notebook entries, but claimed the same exemptions as above to withhold affected party information.

[8] The appellant was asked to make representations regarding the police's revised decision. She did not dispute the withholding of law enforcement information relating to police codes, but wrote in her representations that she continued to seek access to her ex-husband's information that the police withheld, both in their initial and revised decisions.

[9] In this order, I find that the records contain the appellant's personal information, as well as the personal information of the affected party to which the appellant seeks access. I find that disclosure of the affected party's personal information would constitute an unjustified invasion of that individual's personal privacy. I also find that the police properly exercised their discretion in withholding this information under section 38(b), and I uphold the police's decision.

## **RECORDS:**

[10] The records in this appeal consist of police occurrence reports and officers' handwritten notebook entries. The information remaining at issue is contained in the portions of the records that the police withheld.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1)?
- B. Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 38(b)?
- C. Should the police's exercise of discretion under section 38(b) be upheld?

## **DISCUSSION:**

### **Issue A: Does the record 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 record contains "personal information" and, if so, whose. 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] 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>

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

### ***Representations***

[14] The police submit that the records were created in connection with police investigations into domestic violence incidents and one incidence of an auto theft. As part of each investigation, the police submit that they collected information from several identifiable individuals relating to their age, sex, education, medical history, address, telephone number, and views or opinions, all of which is personal information as that term is defined in section 2(1) of the *Act*.

[15] The appellant was silent in her representations on whether or not the records contained personal information of the affected party, focusing instead on the reasons why she should be permitted access to the withheld information pertaining to the affected party.

### ***Analysis and finding***

[16] I have reviewed the records and find that they contain the personal information of the appellant and other identifiable individuals. With respect to the appellant, I find that the records contain her name, address and telephone number, gender, age and date of birth, family status as well as her opinions and views. Accordingly, I find that the records contain information about the appellant that qualifies as personal information within the meaning of paragraphs (a), (d), (e) and (h) of the definition of the term in section 2(1).

[17] With respect to the affected party to whose information the appellant seeks access, I find that the records also contains his name, address and telephone number, age, date of birth, sex, family status and his opinions and views. This is information that also qualifies as personal information within the meaning of paragraphs (a), (d),(e) and (h) of section 2(1).

[18] Accordingly, having found that the records contain the appellant’s personal information and the personal information of an affected party, I now turn to consideration of the application of the discretionary personal privacy exemption in

---

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

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

section 38(b) to the personal information withheld by the police.

**Issue B: Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 38(b)?**

[19] 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.

[20] The police rely on section 38(b), in conjunction with section 14(3)(b), to deny access to the withheld portions of the record.

[21] Under section 38(b), where a record contains personal information of both the appellant 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 appellant. This involves a weighing of the appellant’s right of access to her own personal information against the other individual’s right to protection of their privacy.

[22] 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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) sets out information whose disclosure is not an unjustified invasion of personal privacy.

[23] For records to be exempt 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 in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>5</sup>

***Representations***

[24] The police submit that section 38(b), read together with section 14(3)(b), applies to the withheld personal information because it was compiled as part of investigations into possible violations of law. They submit that they were investigating incidents of domestic disputes as well as the theft of contents from an automobile, any of which could have led to criminal charges. The police state that because the records were created as a result of those investigations, release of the affected party’s personal information would therefore constitute an unjustified invasion of that individual’s personal privacy.

[25] The appellant submits that access to the information would assist her in

---

<sup>5</sup> Order MO-2954.

overcoming flashbacks and moving forward with her life. She submits that, because the records relate to her, the details they contain should be shared with her. Although invited to make representations on the application of the section 38(b) exemption, the appellant's representations are silent on this issue.

[26] The affected party did not consent to the release of his personal information

***Finding***

[27] The information that the police did not disclose and which remains at issue in this appeal is not the appellant's information but that of the affected party. The affected party has not consented to the release of his personal information, which is contained in records that also contain the appellant's personal information. In this appeal, therefore, my analysis takes place under section 38(b). I must therefore consider and weigh any relevant provisions from section 14(2) and 14(3) to balance the appellant's entitlement to access the withheld personal information against the privacy interests of the affected party.

[28] As set out above, the police claim that section 14(3)(b) applies. Under section 14(3)(b) of the *Act*, the disclosure of another individual's personal information is presumed to be 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 of law or to continue the investigation.

[29] Even if no criminal proceedings were commenced against any individuals, as is the case here, section 14(3)(b) may still apply. The presumption only requires that there be an *investigation* into a possible violation of law.<sup>6</sup>

[30] I have reviewed the records and find that the personal information in them was compiled and is identifiable as part of investigations into possible violations of law. Based on reports of domestic occurrences and a theft, the police initiated investigations that could have resulted in criminal charges. My finding is not altered by the fact that no charges were laid, since the presumption only requires that there be an investigation into a possible violation of law. As a result, I find that disclosure of this personal information would result in a presumed unjustified invasion of personal privacy under section 14(3)(b).

[31] The police's representations are silent on the factors listed in section 14(2) and any unlisted factors. The appellant made no submissions regarding any factors in section 14(2).

---

<sup>6</sup> Orders P-242 and MO-2235.

[32] However, the list of factors in section 14(2) is not exhaustive; an institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>7</sup> In this regard, the appellant submits that disclosure of the withheld information would assist her in overcoming flashbacks and that, in fairness, since the occurrences involved the appellant, all details of them should be shared with her.

[33] In reviewing the records, I find that the factor in section 14(2) is relevant to this appeal. Section 14(2)(f) requires an institution to consider whether the personal information is highly sensitive. In this situation, I am satisfied by the nature of the withheld information that it is highly sensitive information, especially when considered in the context of these particular police investigations. Therefore, I find that the section 14(2) factor applies and weighs against disclosure.

[34] With respect to factors not listed under section 14(2), I have considered the appellant's desire for the withheld information in order to assist her with overcoming flashbacks. I have given this factor less weight when balanced against the nature of the information contained in the records. In the circumstances of this appeal, I find that the affected party's privacy interests in the context of the highly sensitive nature of the investigations outweighs any benefit of disclosure to the appellant, especially given that, of the affected party's personal information that was withheld, some of it is already within the appellant's knowledge.

[35] In summary, I find that the presumption in section 14(3)(b) and the factor in section 14(2)(f) both apply to the personal information of the affected party that is at issue and that these factors outweigh the factor raised by the appellant weighing in favour of disclosure. I therefore find that that disclosure of the withheld information would result in an unjustified invasion of personal privacy under section 38(b).

### ***Absurd result***

[36] I have also considered the absurd result principle, but I find that it does not apply to the circumstances of this appeal.

[37] Past orders have held that denying a requester access to information that she may originally have supplied, or is otherwise aware of, could lead to an absurd result. In certain cases, the information may not be exempt under section 38(b), because the adjudicator is persuaded that withholding it would be absurd and inconsistent with the purpose of the exemption. The absurd result principle has been applied where, for example, the requester sought access to his own witness statement, was present when the information was provided to the institution, or where the information is clearly within the requester's knowledge.

---

<sup>7</sup> Order P-99.



[38] Based on the relationship between the appellant and the affected party and her involvement in the investigations, it is clear that the appellant is aware of some of the withheld information. In her request and submissions, she conceded that she wants only her ex-spouse's personal information, in order to find closure and move forward with her life. Although the appellant may have knowledge of some of the withheld information, she has provided no basis on which I could find that its disclosure would not be inconsistent with the purpose of section 38(b).

[39] In the circumstances of this appeal, therefore, I find that disclosure of the affected party's personal information would be inconsistent with the purpose of the section 38(b) exemption, and that the absurd result principle does not apply.

**Issue C: Should the police's exercise of discretion under section 38(b) be upheld?**

[40] The section 38(b) exemption is discretionary and permits an institution to disclose information despite the fact that it could withhold it. Where an institution has the discretion to disclose information, the Commissioner may determine whether the institution erred in its exercise of discretion, or did so in bad faith or for an improper purpose, or whether it failed to consider relevant factors and considered irrelevant ones.

[41] While this office may send the matter back to the institution for an exercise of discretion based on proper considerations,<sup>8</sup> it may not, however, substitute its own discretion for that of the institution.<sup>9</sup>

***Relevant considerations***

[42] Relevant considerations may include, but are not limited to, those listed below:<sup>10</sup>

- the purposes of the *Act*, including that information should be available to the public
- exemptions from the right of access should be limited and specific
- the wording of the exemption and the interests it seeks to protect
- whether the requester has a sympathetic or compelling need to receive the information

---

<sup>8</sup> Order MO-1573.

<sup>9</sup> Section 43(2) of the *Act*.

<sup>10</sup> Orders P-244 and MO-1573.

- whether the requester is an individual or an organization
- 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.

### ***Representations***

[43] The police submit that the information sought is entirely an affected party's personal information that was collected during police investigations under circumstances where disclosure of the information would constitute an unjustified invasion of personal privacy. In exercising their discretion under section 38(b) to withhold the information, the police state that they considered that the appellant has a right to access her own personal information and that exemptions from the right of access should be limited and specific.<sup>11</sup> They submit that they also considered the relationship between the appellant and the affected party and the fact that disclosure of the information would identify the affected party as an individual involved in an investigation into a possible violation of law.

[44] The police submit that during investigations into possible violations of law, they require everyone involved to provide their personal information, with the assurance that the information collected will be kept confidential in accordance with the *Act*. The police further state that they considered relevant factors in exercising their discretion in favour of withholding the affected party's personal information from disclosure.

[45] The appellant made no representations regarding the police's exercise of discretion.

### ***Finding***

[46] Based on the circumstances of this appeal and the police's representations, I find that the police properly exercised their discretion under section 38(b) to withhold the affected party's information.

[47] In withholding the affected party's personal information, the police weighed the fact that the appellant and the affected party are known to each other and that the appellant would be aware of some of the withheld information, against the fact that the information was nevertheless the affected party's personal information which, if disclosed, would identify him and his involvement in certain police investigations. The police also considered that exemptions from the right of access should be limited and

---

<sup>11</sup> Section 1 of the *Act*.

specific in withholding only another individual's personal information.

[48] I am satisfied that the police did not take into account irrelevant factors in exercising their discretion and there is no evidence before me that the police acted in bad faith. Therefore, I uphold the police's exercise of discretion to withhold the affected party's personal information under section 38(b) of the *Act*.

[49] I uphold the police's decision to deny access to the withheld portions of the record and dismiss this appeal.

**ORDER:**

I uphold the police's decision to deny access to the withheld portions of the record and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

December 28, 2018 \_\_\_\_\_