Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3805-I

Appeal MA17-493-2

Toronto District School Board

July 15, 2019

Summary: The appellant made a six-part access request for records relating to one of her children to the Toronto District School Board (the board). The board granted access, in part, and relied on the discretionary exemption at section 12 (solicitor-client privilege) and the mandatory exemption at section 14(1) (personal privacy) to withhold information. The board also found some information not to be responsive to the request. During mediation, the appellant raised the issue of reasonable search. During the inquiry, she also raised the issue of late raising of a discretionary exemption (section 38(b)) by the board.

In this interim order, the adjudicator finds that the board is able to claim the discretionary exemption at section 38(b). She upholds the board's application of sections 14(1) and 38(b). She also upholds the board's application of section 12. Finally, the adjudicator finds that the board did not conduct a reasonable search, and orders it to conduct further searches and to exercise its discretion with respect to the records withheld under sections 12 and 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"), 12, 14(1), 17, and 38(b).

Orders and Investigation Reports Considered: Orders PO-3690, PO-3258, and PO-3923.

BACKGROUND:

[1] The Toronto District School Board (the board) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act)*:

1. All e-mail correspondence sent or received by any of the following TDSB staff pertaining to my son [specified name] between February 1, 2017 and August 8, 2017: [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], and any members of the ASD[1] team.

2. All phone logs, and handwritten or electronically recorded notes made by any TDSB staff regarding any phone conversation(s) and any voicemail messages made regarding my son [specified name] between February 1, 2017 to August 8, 2017. This pertains to the following list of TDSB staff: [named individual] (Acting), [named individual], [named individual], [named individual], [named individual], [named individual], Ward Trustee [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], and any members of the ASD team.

3. All hand written or electronically recorded notes or any other records created pertaining to a conference call taking place in May regarding my son, [specified name] and his consideration for admission to the Keli program – likely on May 15th between Superintendent [named individual] and [named individual] Chief of Speech-Language Pathology for the KELI program and [named school] Principal [named individual].

4. All e-mails, and/or recorded notes sent to TDSB's General Counsel [named individual] (Acting) regarding the Duty to Accommodate as it pertains to the Human Rights Code and my son [specified name] and his consideration for admission to the Keli program.

5. All e-mails or recorded notes (handwritten or electronic) pertaining to TDSB's consideration of the Duty to Accommodate as detailed in the May 1, 2017 correspondence sent by myself [specified name]'s mother [named requester]. This pertains to the following list of staff [named individual] (Acting), [named individual], [named individual], [named individual], [named individual], [named individual], Ward Trustee [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], [named individual], and any members of the ASD team

[1] It appears that ASD is the abbreviation for Autism Spectrum Disorder.

6. All e-mails sent to the 3rd parties by TDSB staff pertaining to my son [specified name] between February 1, 2017 and August 8, 2017.

[2] The board acknowledged receipt of the appellant's request and advised that pursuant to section 20 of the *Act*, the time for response had been extended by 60 days to November 7, 2017. The board noted that the additional time was required to complete the search for records and finalize review of the documents and related work.

[3] The appellant appealed the time extension and Appeal MA17-493 was opened to address it.

[4] Following discussions with the mediator, the board agreed to issue a final access decision by October 31, 2017. On that basis, the appellant agreed not to pursue the time extension appeal any further and Appeal MA17-493 was closed.

[5] Subsequently, the board issued a decision[2] granting partial access to the records, relying on sections 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act* to deny access. The board also assessed fees for the responsive records in the amount of $10.00 and requested payment of the fees. Shortly afterwards, the appellant sent payment of the fees.

[6] The board then issued a revised decision[3] in which it added the discretionary personal privacy exemption at section 38(b) of the *Act.* The board stated that it also withheld information that it deemed not responsive to the request. At this time, the board provided a copy of the severed records to the appellant.

[7] The requester, now the appellant, appealed the board's decision and Appeal MA17-493-2 was opened to address it.

[8] During mediation, the appellant advised the mediator that she wishes to pursue access to the withheld information, including the information deemed not responsive to the request. The appellant also advised the mediator that she believes that further records responsive to her request exist and that the board failed to conduct a reasonable search for responsive records. As such, reasonable search has been added as an issue to this appeal.

[9] As mediation did not resolve the appeal, it was moved to the next stage, where an adjudicator conducts a written inquiry under the *Act*.

[10] During the inquiry, I sought and received representations from the parties. Pursuant to section 7 of this office's *Code of Procedure* and *Practice Direction Number*

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[2] Dated October 31, 2017.
[3] Dated January 16, 2018.

7, non-confidential copies of the parties' representations, reply representations and sur-reply representations were shared with the other party.[4]

[11] In her representations, the appellant raised the issue of the board's late raising of a discretionary exemption at section 38(b) of the *Act*. As such, I added this issue to the appeal as a preliminary issue.

[12] In this interim order, I find that the board is able to claim the discretionary exemption at section 38(b). I uphold the board's application of sections 14(1) and 38(b). I also uphold the board's application of section 12. Finally, I find that the board did not conduct a reasonable search, and order it to conduct further searches and to exercise its discretion with respect to the records exempted under sections 12 and 38(b).

RECORDS:

[13] The records at issue consist of email chains, case logs, and handwritten notes. Of the 793 pages of responsive records, 123 pages were partially withheld while 60 pages were fully withheld.

Batch #5	Total Pages	General Description	Relied upon exemptions
1	19	Emails sent and received by ASD team	Section 14
2	73	Emails sent and received by H. Sharpe	Sections 14 & 38(b), N/R
3	141	Emails sent and received by Professional Support Services	Sections 12, 14 & 38(b)
4	82	Emails sent and received by S. Walia	Section 38(b)
5	12	All notes	Section 38(b)
6	9	ASD Case Log	Section 38(b)

[4] Some portions of the parties' representations were withheld as they met the criteria for withholding representations found in this office's *Practice Direction Number 7: Sharing of representations*.
[5] I have renamed the groups of records provided by the board. In the Index of Records, the records were referred to as follows: Record 1 (now consist of batch #1, 2, 3 and 4); Record 2 (now consist of batch #5, 6 and 7); Record 3 (now is batch #8); Record 4 (now is batch #9); and Record 5 (now is batch #10).

7	198	Emails sent and received by T. Vine	Sections 12, 14 & 38(b), N/R
8	86	All emails combined	Sections 12 & 14
9	18	Emails sent and received by L. Pon	Section 12
10	59	All emails combined	Sections 12 & 38(b)

[14] I note that the responsive records relate to the appellant's son. I also note that a small number of the responsive records mention her other child. Under section 54(c) of the *Act*, the appellant exercised both of her children's right to request their own personal information, as they are under sixteen years of age and she is their legal guardian. As such, she is entitled to information pertaining to the other child as if he were the requester. In the circumstances of this appeal, I will be adding section 38(a) (discretion to refuse requester's own information) in conjunction with section 12 as issues in this appeal. The requester's own information includes the personal information of the appellant and her two children.

[15] The appellant has confirmed with this office that she is not interested in pursuing the employee staff numbers contained on pages 12 and 39 in batch #4. As such, this information is no longer at issue in this appeal.

[16] The board also has confirmed that it will disclose the record on page 6 of batch #1. Previously it had claimed that the withheld information in this record was not responsive to the request. As such, this record is no longer at issue in this appeal.

ISSUES:

Preliminary issue: late raising of a discretionary exemption

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

B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

C. Does the discretionary exemption at section 38(a) in conjunction with the section 12 exemption apply to the records at issue in batch #3, 7, 8, 9 and 10?

D. Did the institution exercise its discretion under sections 38(b) and 12? If so, should this office uphold the exercise of discretion?

E. What information is responsive to the request?

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

DISCUSSION:

Preliminary Issue: Late Raising of a Discretionary Exemption

[17] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal.

[18] Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[19] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.[6]

[20] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the board and to the appellant.[7] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[8]

[21] The board did not claim section 38(b) in its initial decision letter. However, it claimed the application of this exemption in a revised decision letter dated January 16, 2018. In accordance with section 11.01 of the *Code*, the board must claim new discretionary exemptions within 35 days after being notified of the appeal. As the board

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[6] *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).
[7] Order PO-1832.
[8] Orders PO-2113 and PO-2331.

was notified on January 19, 2018, I find that it was not late in claiming the section 38(b) exemption. In addition, I note that the appellant is not prejudiced by the section 38(b) exemption claim. It appears the board claimed section 38(b) for information that it had already withheld under the mandatory exemption at section 14(1). Section 38(b) provides the appellant with a higher right of access to the records at issue as they contain both her and her children's personal information and other individuals. Moreover, the board was obligated to claim section 38(b) as the majority of the records at issue contain both the appellant and/or her children's personal information along with the personal information of other identifiable individuals.

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

[22] The board claims the application of the personal privacy exemptions at sections 38(b) and 14(1) to some of the withheld information in the records. In order to determine whether the personal privacy exemption at section 14(1) or section 38(b) of the *Act* applies, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[23] Relevant paragraphs of the definition of "personal information" are the following:

> "personal information" means recorded information about an identifiable individual, including,
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> > (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,
> >
> > (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,
> >
> > (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;

[24] 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.[9]

[25] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[10]

[26] The board submits that the records at issue contain personal information about board officials and other identifiable individuals (including both of the appellant's children). The types of information range from names (combined with other personal information), personal phone numbers (home or cellular), personal email addresses, as well as information about personal leaves and medical leaves.

[27] The appellant submits that the records at issue contain personal information about her family members and board officials. She submits that there is information about her children's education and their medical diagnoses. The appellant also submits that there is information about her home address and telephone number. She finally submits that there is information containing the views of specific identified board officials named in the request concerning her and her immediate family members.

[28] On my review of the records, I find that they contain "personal information" of identifiable individuals as defined by the *Act*. Specifically, they contain personal information of the appellant, the appellant's children, board officials (as individuals and not in their official capacity) and other individuals, which would fall within paragraphs (a), (b), (d), (e), (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[29] I also find that the withheld information on page 9 of batch #1, pages 7 and 18-20 of batch #2, pages 56 and 81 of batch #3, and pages 32, 47, 50 and 76 of batch #8 of the records contain personal information only of individuals other than the appellant and/or the appellant's children. Accordingly, because these records do not contain the personal information of the appellant or her children, Part I of the *Act* applies to them and I must consider whether these records are exempt pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[30] In addition, I find that the withheld information in the records of batch #2 (pages 12–16, 17, 24–25, 27, 29, 30, and 67–68), batch # 3 (pages 21–23, 24–29, 30, 31–44, 66–71, 72–79, 84–86, 87–88, 89–90, 120–121, 122–123, and 129), batch #4 (pages 2, 5, 13–22, 31, 39–41, 46, 49, 65–66, 72–76, and 80 (first severance)), batch #5 (page 8), batch #6 (pages 1, 2, and 4), batch #7 (pages 1, 3, 6–7, 8, 44, 60, 67, 69, 83–84, 85–86, 91, 94, 97, 104, 108, 123, 183 (second sentence), 190–191, and

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[9] Order 11.
[10] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

194), and batch #10 (page 40) contain the personal information of the appellant and/or the appellant's children along with other identifiable individuals. Accordingly, Part II of the *Act* applies to these records and I must consider whether these records are exempt pursuant to the discretionary personal privacy exemption at section 38(b) of the *Act*.

[31] I further find that the withheld information in the records of batch #2 (page 6) and batch #7 (pages 69 (first severance), 71, and 104 (first sentence of the first severance) and 183 (excluding the second sentence) does not contain personal information. With respect to page 6 of batch #2 and pages 69 (first severance), 71 and 183 (excluding the second sentence) of batch #7, the withheld information is not about an identifiable individual or identifiable individuals. With respect to page 104 (first sentence of the first severance) of batch #7, I find that the first sentence of this severance is about the writer's work schedule. Accordingly, I do not find that it contains any personal information about the writer. As the withheld information in these records is not personal information, I will order it disclosed since the personal privacy exemptions at sections 14(1) and 38(b) can only apply to personal information and the board has not claimed any other exemptions for this information.

[32] Finally, I note that the board has already disclosed in duplicates the information withheld in the second and third severances on page 80 of batch #4.[11] As such, I order that these severances be disclosed.

[33] I will now turn to consider the application of sections 14(1) and 38(b) to the withheld personal information of the individuals other than the appellant and her children.

[34] In conclusion, the board is to disclose the withheld information about the appellant's other child, besides the withheld information in the records of batch #2 (page 6) and batch #7 (pages 69 (first severance), 71, 104 (the first sentence of the first severance) and 183 (excluding the second sentence)).

Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

[35] 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. Section 38(b) provides:

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

[11] See page 60 of batch #7.

> where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[36] 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.[12] Section 38(b) introduces a balancing principle, which involves weighing the requester's right of access to their own personal information against the other individual's right to protection of their privacy. On appeal, to uphold the application of section 38(b), I must be satisfied that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy.[13] Sections 14(2) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy under section 38(b) is met.

[37] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 14(1)(f)].

[38] In determining whether the disclosure of the personal information in the records *would not* be an unjustified invasion of personal privacy under section 14(1)(f) or *would* be an unjustified invasion of personal privacy under section 38(b), sections 14(2) to (4) provide guidance.

[39] Where a record (taken as a whole rather than just the portions remaining at issue), contains "mixed" personal information (the personal information of both the appellant and another individual), section 38(b) in some cases permits an institution to disclose information that it could not disclose if section 14(1) were applied.[14] This record-by-record analysis is significant because it determines what exemptions that the records as a whole (rather than only certain portions of it) must be reviewed under. Only where an entire record does not contain personal information of the appellant can the section 14(1) exemption apply. A critical difference between section 14(1) and 38(b) is that section 38(b) requires an exercise of discretion whereas section 14(1) is a mandatory exemption. I will discuss the implications of this distinction when discussing the board's exercise of discretion below under Issue D.

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[12] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).
[13] Order M-1146.
[14] Order MO-1757-I.

Section 14(1)(a) – (e)

[40] If the withheld information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b) and the information also cannot be withheld under section 14(1). Neither party addresses the exceptions in section 14(1)(a) to (e), and I find that they are not relevant here.

Section 14(4)

[41] If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information cannot be withheld under sections 14(1) or 38(b). Neither party addresses the exceptions in section 14(4). From my review of the records, no section 14(4) exceptions apply.

14(1)(f) or 38(b): would disclosure be an unjustified invasion of privacy?

[42] The appellant submits that disclosing the withheld information would not be an unjustified invasion of personal privacy.

[43] In considering the section 38(b) and 14(1) exemptions, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

Sections 14(2) and (3)

[44] 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.

[45] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the appellant's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 of the *Act* applies.[15] I have already found no section 14(4) factors arise and section 16 is not at issue. Therefore, in this appeal, a finding that section 14(3) presumptions apply to information claimed to be exempt under section 14(1) means this information must be withheld.

[46] For records not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will

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[15] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13. O.R. (3d) 767.

be exempt unless the circumstances favour disclosure.[16]

[47] For information claimed to be exempt under section 38(b) (i.e., records that contain the appellant's own personal information), this office will consider, and weigh, the factors and presumptions in both sections 14(2) and (3) and balance the interest of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[17]

Do any of the presumptions in section 14(3) apply?

[48] The board submits that section 14(3)(d) (relates to employment or educational history) applies to some of the records on the basis that they are educational records. The board states that some of these records contain the board's school support team (SST) agenda and references other identifiable students (who are not the appellant's children) as they are receiving support from the SST. The board explains that the SST is used by the board to bring together a variety of board support services, including special education, psychology, social work, attendance counselling, speech-language pathology, occupational therapy and physiotherapy. It submits that this information is personal information as it identifies and partially describes the student's involvement with the SST.

[49] In the circumstances, I am satisfied that section 14(3)(d) applies to the personal information on pages 12–16 and 18–20 of batch #2, pages 21–23, 24–29, 31–44, 66–71 and 72–79 of batch #3, pages 13–22 and 72–76 of batch #4, and pages 190–191 of batch #7 of the records.

[50] In addition, the board submits that the presumption in section 14(3)(a) (relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation) applies to some of the records on the basis that the records contain medical information and diagnoses of identifiable individuals.

[51] I am also satisfied that section 14(3)(a) applies to the personal information on page 9 of batch #1, pages 46 and 65–66 of batch #4, page 2 of batch #6, pages 6–7, 44 and 97 of batch #7 of the records as they contain medical information or diagnoses of identifiable individuals other than the appellant or her children.

Personal information withheld under section 14(1): conclusion

[52] Of the personal information withheld under section 14(1) (i.e. those records that do not contain the personal information of the appellant or her children), some consists of the educational history of identifiable students while one small portion contains

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[16] Order P-239.
[17] Order MO-2954.

medical information of an identifiable individual. Accordingly, I find that the disclosure of these portions is presumed to constitute an unjustified invasion of personal privacy under sections 14(3)(a) or (d).

[53] As outlined above, for information withheld under section 14(1), no one factor, or combination of factors, in section 14(2) can overcome a section 14(3) presumption so I do not need to review the possible relevance of the considerations in section 14(2) for that information. Accordingly, I find that disclosing the personal information in the records to which sections 14(3)(a) or (d) apply would constitute an unjustified invasion of personal privacy. The exception to the section 14(1) exemption in section 14(1)(f) therefore does not apply, and the personal information is exempt under section 14(1). The information that falls within this category is the personal information on page 9 of batch #1 and pages 18–20 of batch #2.

[54] The personal information withheld under section 14(1) that does not fall within one of the section 14(3) presumptions is the personal information on page 7 of batch #2, pages 56 and 81 of batch #3, and pages 32, 47, 50, and 76 of batch #8, which comprises personal phone numbers and information about personal leaves. For the personal information within this category, I must consider whether any of the factors in section 14(2) are relevant.

Sections 14(2)(d) and (f)

[55] The board takes the position that the factor in section 14(2)(f) is relevant while the appellant submits that the factor in section 14(2)(d) is relevant. These sections 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,
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> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (f) the personal information is highly sensitive;

[56] The factor at section 14(2)(d) favours disclosure if the personal information is relevant to a fair determination of rights affecting the person who made the request. In order for section 14(2)(d) to apply, the appellant must establish that:

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

> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
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> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[18]

[57] Although the appellant raises this factor, she has not provided any details to establish the above components of the test. As such, I am not satisfied that the test set out above has been established. However, as an unlisted factor, I will consider that the appellant wants the withheld information to ensure that the board considered all relevant information in making its decision not to refer her son to a named specialized program. Although I have considered this unlisted factor, I find that it does not apply because disclosing the remaining personal information would not provide the appellant with additional information on how the board handled the issues she raised about her son's education.

[58] To be considered highly sensitive, previous orders of this office have found there must be a reasonable expectation of significant personal distress if the information is disclosed.[19] I find that this factor applies to the remaining personal information as there is a reasonable expectation of significant personal distress if the information (personal phone numbers or information about personal leaves) were disclosed. Accordingly, I give some weight to this listed factor.

[59] Considering the applicable factors, I find that the highly sensitive factor applies. Accordingly, I find that the disclosure of the remaining personal information in the records (page 7 of batch #2, pages 56 and 81 of batch #3, and pages 32, 47, 50 and 76 of batch #8) would result in an unjustified invasion of personal privacy for the individuals in question. As such, I find that the personal information in these records is exempt under section 14(1) of the *Act*.

Presumptions and factors relevant to section 38(b): analysis and conclusion

[60] As outlined above in discussing section 14(1), the sections 14(3)(a) and (d) presumptions also apply to some of the personal information withheld under section 38(b). No other presumptions were raised by the parties. I will proceed to consider the section 14(2) factors and any other relevant factors for the information withheld under section 38(b).

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[18] See 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.)

[19] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[61] I will discuss the section 14(2) factors raised by the parties in turn:

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

[62] As discussed above, the appellant raises this factor but I am not satisfied that she established the test for its application. As such, I considered (as an unlisted factor) that the appellant wants the withheld personal information to ensure that the board considered all relevant information in making its decision not to refer her son to a named specialized program. Although I have considered this unlisted factor, I find that it does not apply because disclosing the remaining personal information would not provide the appellant with additional information on how the board handled the issues she raised about her son's education.

14(2)(f): highly sensitive

[63] As discussed above, to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[20]

[64] The board cites this provision as a factor in withholding the personal information about identifiable students (other than the appellant's children), and the personal leave information, personal phone numbers, and personal email addresses of identifiable individuals. This factor is also relevant to the personal information pertaining to the opinion of an identifiable individual about another identifiable individual.

[65] I am satisfied that there would be a reasonable expectation of significant distress to these identifiable individuals if the above-noted personal information about them were disclosed.

14(2)(h): supplied in confidence

[66] With respect to this factor, the board relies on Order MO-2453, where Adjudicator Jennifer James restated the principle set out in a prior order:

> This factor applies if both the individual supplying the information and its recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation [Order PO-1670].

[67] I agree and adopt this reasoning for this appeal.

[68] On my review, I find that the supplier and recipient had a reasonable expectation

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[20] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

that the personal information on pages 120–121 and 122–123 of batch #3 would be treated confidentially. I am satisfied that the context and content of the withheld personal information supports the board's position that confidentiality was expected with respect to these exchanges.

Conclusion:

[69] Balancing the section 14(2) factors (listed and unlisted) and the section 14(3) presumptions, I am satisfied that disclosing the personal information of the identifiable students and identifiable individuals is an unjustified invasion of personal privacy under section 38(b). There are no factors favouring disclosure, and factors and presumptions weighing in favour of non-disclosure.

[70] Subject to my review of the board's exercise of discretion, I find that the personal information in batch #2 (pages 12–16, 17, 24–25, 27, 29, 30, and 67–68), batch #3 (pages 21–23, 24–29, 30, 31–44, 66–71, 72–79, 84–86, 87–88, 89–90, 120–121, 122–123, and 129), batch #4 (pages 2, 5, 13–22, 31, 39–41, 46, 49, 65–66, 72–76, and 80 (first severance)), batch #5 (page 8), batch #6 (pages 1, 2, and 4), batch #7 (pages 1, 3, 6–7, 8, 44, 60, 67, 69, 83–84, 85–86, 91, 94, 97, 104, 108, 123, 183 (the second sentence), 190–191, and 194), and batch #10 (page 40) of the records is exempt from disclosure under the discretionary personal privacy exemption at section 38(b).

Does the discretionary exemption at section 38(a) in conjunction with the section 12 exemption apply to the records at issue in batch #3, 7, 8, 9, and 10?

[71] As stated above, section 36(1) 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.

[72] 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.

[73] 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.[21]

[74] 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. I will discuss the board's exercise of discretion under Issue D.

[75] In this case, the board relies on 38(a) in conjunction with section 12.

[76] Section 12 states as follows:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[77] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law, and encompasses two heads of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege. Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons. Given my finding in this order, I will only address the first branch.

Branch 1: common law privilege

[78] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

Solicitor-client communication privilege

[79] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[22] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[23]

[80] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at

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[21] Order M-352.
[22] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.) (*Descôteaux)*.
[23] Orders PO-2441, MO-2166 and MO-1925.

keeping both informed so that advice can be sought and given.[24] During this "continuum of communications" between the solicitor and a client, privilege will attach.[25]

[81] Confidentiality is an essential component of the privilege. Therefore, the city must demonstrate that the communication was made in confidence, either expressly or by implication.[26]

Representations

[82] The board submits that the solicitor-client communication privilege applies to exempt the applicable records contained in batch #3, 7, 8, 9 and 10. It submits that the records at issue in batch #7 contain advice from its legal counsel. The board also submits that the emails, when read together, demonstrate a series of communications and meetings between the board's legal counsel and board staff to apprise and seek legal guidance from the board's legal counsel.

[83] With respect to batch #8, 9, and 10, the board submits that these records at issue fall within the continuum of communications between both of the board's legal counsel and a number of board officials with respect to a request made by the appellant about her son on May 1, 2017. The board relies on *Balabel v. Air India*[27] for the principle that solicitor-client privilege does not apply only to legal advice but to a continuum of communications between counsel and client to keep each other informed of developments and information in the context of a legal matter.

[84] The appellant submits that the solicitor-client privilege does not apply to the records at issue for various reasons. She submits that the board has not fulfilled the confidentiality requirement as it has not demonstrated that the communications were made in confidence, either expressly or by implication. The appellant also submits that the board did not act prudently or sensibly in the relevant legal context as it failed repeatedly to respond to the matter for which board officials sought legal advice. She points out that the board failed to provide any response to her with respect to her formal written accommodation request with respect to her son, despite repeated follow up email correspondence sent by her to various board officials to obtain a response. Finally, the appellant submits that a board official disclosed an opinion to a specific party, intentionally and without any restrictions on its use. As such, she submits that the release constituted a waiver of the solicitor-client privilege.

[85] In response, the board submits that it has met the confidentiality requirement. It

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[24] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.) (*Balabel*).
[25] *Balabel, supra*.
[26] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[27] *Balabel*, cited above.

submits that adjudicators of this office have routinely implied the confidential nature of communications between legal counsel and institutional clients from their content and context. The board points out that the appellant has not asserted that these communications were disclosed to the public in any manner. It also submits that lawyers in Ontario are governed by a duty of confidentiality under the Rules of Professional Conduct promulgated by the Law Society of Ontario. The board finally submits that emails sent by board officials and the board's counsel were on their work email addresses, which contained a confidentiality notice.

[86] With respect to the appellant's claim that the board's communications did not meet the *Balabel* criteria, the board submits that the appellant has mischaracterized the scope of the solicitor-client privilege claim, which is extended to practical (as well as legal) advice provided by counsel. It submits that *Balabel* does not refer to how, if at all, a client acts upon such advice.

[87] In response, the appellant again asserts that a confidential relationship is an essential condition of the effective administration of justice, where an institution is relying on a solicitor-client privilege exemption.

[88] In addition, the appellant asserts that "legal advice" does not include information which was provided about a matter having legal implications where no legal opinion was expressed or where no course of action based on legal considerations was recommended. She also submits that simply having a lawyer review a record does not make that record fall within the exemption.

Analysis and findings

[89] Having reviewed the records at issue and the parties' representations, I am satisfied that section 12 applies to the majority of the applicable email chains contained in the records of batch #3, 7, 8, 9, and 10, and as such they are exempt under section 38(a) of the *Act*.

[90] Before I discuss my findings any further, I will first address the appellant's arguments. Her first argument is that the board did not demonstrate that the communications in these email chains were made in confidence, either expressly or by implication. I note that the board argues that adjudicators of this office have routinely implied the confidential nature of such communications from their content and context. In support of its argument, the board cites, as an example, Order PO-3382 where Adjudicator Stephanie Haly found that there was an implied confidentiality in the communications between crown counsel and the various ministry staff. I agree that the confidential nature of communications could be implied from their content and context. In this case, I find that there is an implied confidentiality in the communications between the board's counsel and board officials due to the context and content of the emails. Furthermore, a confidentiality notice is contained at the end of the majority of these emails.

[91] The appellant also argues that the board did not act prudently or sensibly with respect to the legal advice provided by legal counsel as required by the criteria in *Balabel*. I have carefully reviewed *Balabel*, and do not find that it requires the client to act prudently or sensibly with respect to the legal (or practical) advice. *Balabel* states that legal advice is not limited to advising the client about the law, but also includes advice as to what should prudently and sensibly be done in the relevant legal context. As such, it is irrelevant to the finding of solicitor-client privilege how board officials acted upon the legal (or practical) advice they were provided.

[92] In addition, the appellant argues that there is a loss of solicitor-client privilege due to waiver. She argues that a board official disclosed an opinion to a specific party, intentionally and without any restriction on its use. In support of her argument, she provided an email chain between the principal of a named school and another individual who is associated with the Ontario Principals' Council. I note that the emails in this chain are both dated March 6, 2017, a couple of months prior to the email chains at issue were sent. Moreover, I find that the email from the principal of a named school does not reveal the substance of any solicitor-client privileged communication. As such, I do not find that the board has waived its solicitor-client privilege. Furthermore, as there is no other evidence before me to suggest that waiver has occurred, I find that there has not been a waiver of solicitor-client privilege in relation to the email chains at issue.

[93] With respect to the records in batch #7, it contains three emails chains. The recipients of these emails include board officials and legal counsel. Based on my review, I am satisfied that the withheld information in the email chains on pages 149, 151, 152 and 160 either contain a response from legal counsel, or they were created to keep both board officials and legal counsel informed so that legal advice may be sought and provided as required. I find that these email chains contain confidential communications between legal counsel and her clients regarding legal matters, and therefore fall within the ambit of the solicitor-client communication privilege in Branch 1 of section 12 of the *Act*.

[94] With respect to the records in batch #8, 9 and 10, I find that these email chains form part of a continuum of communications between various legal counsel and her clients with respect to responding to the appellant's written accommodation request relating to her son. I note that many of these email chains are duplicates. I am satisfied that these email chains are confidential solicitor-client communications directly related to the seeking or giving of legal advice. Moreover, I also accept that the advice, at times, was not confined to a strict analysis of the law, but included what measures should prudently and sensibly be done, as contemplated by *Balabel*, cited above. Accordingly, I find that they are subject to the common law solicitor-client communication privilege in Branch 1 of section 12, and as such are exempt under 38(a).

[95] With respect to the records in batch #3, it contains two email chains. Although

the withheld information on pages 93 and 96 of these email chains are duplicate and do not include legal counsel, past orders of this office have recognized that email exchanges between non-legal staff can form a part of the "continuum of communication" covered by solicitor-client privilege.[28] This includes where disclosure would "indirectly reveal information exchanged between the [counsel] and [client] for the purpose of keeping both […] informed so that legal advice may be sought and given as required,"[29] and where emails between non-legal staff refer to the need for the communications to be sent to legal counsel.[30] Accordingly, I find that they are subject to the common law solicitor-client communication privilege in Branch 1 of section 12, and as such are exempt under 38(a).

Did the institution exercise its discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

[96] The sections 12 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.

[97] 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.

[98] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[31] This office may not, however, substitute its own discretion for that of the institution.[32]

[99] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant and additional unlisted considerations may be relevant:[33]

- The purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right to their own personal

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[28] Orders P-1409, P-1663, and PO-2624.
[29] Order MO-2789.
[30] Order PO-2624.
[31] Order MO-1573.
[32] Section 43(2).
[33] Orders P-244 and MO-1573.

information, exemptions from the right of access should be limited and specific, and 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 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; and
- The historic practice of the institution with respect to similar information.

[100] Although the board provided representations, its representations did not address this issue.

[101] Given the absence of representations on this issue and, hence, any evidence from the board on its exercise of discretion, I am unable to determine whether it properly exercised its discretion under sections 38(a) and 38(b). Accordingly, I will order the board to exercise its discretion to claim these exemptions.

What information is responsive to the request?

[102] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> > (a) make a request in writing to the institution that the person believes has custody or control of the record;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
> >
> > . . .

> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[103] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[34]

[104] To be considered responsive to the request, records must "reasonably relate" to the request.[35]

[105] The board claims that the withheld information on page 9 of batch #2 and the withheld information on pages 1, 16, 57, 58, 59, 75, 76, 162, 163 (excluding the severed name), 164, 171 and 180 of batch #7 is not responsive to the appellant's request.[36]

[106] The appellant submits that if the board is claiming these withheld information is not responsive to her request then it should cite an exemption to justify the non-disclosure of these records. She submits:

> … if the decision is that these records are non-responsive, the institution should provide it anyway (subject to exemptions). If the institution would see the non-responsive records as being exempt from disclosure, then of course, the records should not be provided but the applicant should be advised in the response that there are records that are non-responsive but also exempt under a particular section of the legislation. The institution's representations do not specify any relevant exemptions to the non-disclosure of these records, and as such the appellant seeks an order that these records be provided by the institution.

[107] It appears that the appellant is not aware that once a record or portion(s) of a record is found not to be responsive to a request, the institution does not need to claim an exemption to withhold the record or information as under the *Act* the requester is entitled to receive records responsive to their request.

[108] On my review of these records, I find that they are not responsive to the appellant's six-part request.

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[34] Orders P-134 and P-880.
[35] Orders P-880 and PO-2661.
[36] I note that the board claims page 189 of batch #7 to not be responsive but this is clearly a mistake as that page contains information about the appellant's named child, and, therefore, would be responsive to the request.

[109] With respect to the withheld information on page 9 of batch #2, I find that it is about a board official attending a meeting that does not involve or relate to the appellant's son.

[110] With respect to the withheld information on page 1 of batch #7, I find that it is about a human resource matter that does not involve or relate to the appellant's son.

[111] With respect to the withheld information on page 16 of batch #7, I find that it is about the appellant's other child but it does not relate to her six-part request for information about her named son.

[112] With respect to the withheld information in the email chains on pages 57–59 and pages 162–164 of batch #7, I find that they are about a named school's autism campaign and that the appellant's children are briefly mentioned in these two records but the withheld information does not relate to her request.

[113] With respect to the withheld information on pages 75–76 of batch #7, I find that it is an email exchange between two board officials not relating to the appellant's request.

[114] With respect to the same withheld information on pages 171 and 180 of batch #7, I find that it is not responsive to the appellant's request as it is about the physical location of a board official.

Did the institution conduct a reasonable search for records?

[115] 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.[37] 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.

[116] 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.[38]

[117] 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.[39]

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[37] Orders P-85, P-221 and PO-1954-I.
[38] Orders P-624 and PO-2559.
[39] Orders M-909, PO-2469 and PO-2592.

[118] 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.[40]

[119] 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.[41]

[120] The board asserts that it has conducted a reasonable search. In support of its assertion, the board attached an affidavit sworn by the Freedom of Information and Privacy Analyst, whose functions include being responsible for the preparation of responses to access requests under the *Act*. In her affidavit, she lists the staff who were tasked to search for records responsive to the request. The affiant states that board trustees were invited to exercise the option to have any computer portion of the search conducted by the board's IT services. Consequently, a named trustee elected to have this portion of his search conducted by IT services.

[121] In response, the appellant submits that the board did not conduct a reasonable search. She relies on Order MO-2581-I, where Adjudicator Bernard Morrow found that the board did not conduct a reasonable search for records as it provided insufficient details, besides certain records having a substantial number of pages missing without adequate explanations accompanying them.

[122] The appellant submits that the affiant did not specify the dates she requested the board officials to conduct a search for records responsive to her request. Moreover, her affidavit did not contain any dates with respect to the search. The appellant also submits that the affiant failed to specify the types of records that were searched. The appellant further submits that the board did not provide any evidence that it conducted a search of work-issued Blackberry text messages, deleted emails of board officials for the time frame specified or that it completed a search of handwritten or electronic notes (relating to part 3 of her request). Furthermore, she submits there is a reasonable basis for believing that additional emails exist for the named principal. She points out that, in one of his emails, the principal makes a comment regarding emails.

[123] In response, the board clarified that the search ended as of October 31, 2017 (the date of its initial decision). It also attached two sworn affidavits. One of the affidavits is from the named principal in which he indicated that he did not take the action referred to in his email. The named principal explained that he made the comment in jest to a work colleague. The other affidavit is from the Freedom of Information Analyst (Acting) in which she indicated that she spoke to the Freedom of

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[40] Order MO-2185.
[41] Order MO-2246.

Information and Privacy Analyst and believes it to be true that the search was completed on October 31, 2017.

[124] In response, the appellant questions how a decision could be sent out on the same date that the search was completed/concluded. She argues that there would be insufficient amount of time for the board staff to review the responsive records and issue a decision on the same date. The appellant questions the affidavit of the named principal and finds his statements not credible. She further argues that, at a minimum, to preserve the board's integrity a further search of the named principal's emails should be conducted by another staff.

[125] For the reasons that follow, I am not satisfied that the board conducted a reasonable search for responsive records. The board's evidence lacked details about when the search was conducted, what places were searched, and what types of files were searched. It is also unclear the types of records that were searched by the named board officials. For example, it is unclear whether any of the named board officials searched for any handwritten or electronic notes made during a teleconference call on May 15, 2017 relating to the appellant's named son (part 3 of the request).

[126] Although the appellant argues that the board should have searched for records in all formats, her request specifically asked for emails, phone logs, handwritten or electronic notes, and recorded notes. As such, it is outside the scope of her request to expect board officials to search for Blackberry text messages.

[127] The appellant also argues that named board officials should search for emails in their "Deleted items" folder. In my view, it is unnecessary to state that a search for responsive records includes searching for emails in the "Deleted items" folder.

[128] As stated above, the *Act* does not require the board to prove with certainty that further records do not exist, but it does require the board to 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. In the circumstances of this appeal, I do not find that the board has provided sufficient evidence that it has made such reasonable efforts. Accordingly, I do not uphold the board's search as reasonable and will order a further search.

ORDER:

1. I uphold the board's application of sections 38(a) and 12.

2. I order the board to disclose the information that the board withheld under sections 38(b)/14(1) that is not "personal information" to the appellant by **August 20, 2019** but not before **August 15, 2019** in accordance with the highlighted records I have enclosed with the board's copy of this order. To be

clear, the highlighted information should be disclosed to the appellant. I also order the board to disclose the information about the appellant's other child.

3. I otherwise uphold the board's application of the personal privacy exemptions at sections 14(1) and 38(b).

4. I order the board to exercise its discretion with respect to sections 38(a) and 38(b) for the information it withheld under these exemptions.

5. I uphold the board's decision to withhold the information it withheld as not responsive to the appellant's request.

6. I order the board to conduct further searches for records responsive to the request. I order the board to provide me with an affidavit sworn by the individual or individuals who conduct the searches within 21 days of the date of this Interim Order. At a minimum, the affidavit should include information relating to the following:

    a. information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;

    b. the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

    c. information about the record holdings searched, the nature and location of the search, and the steps taken in conducting the search;

    d. the results of the search;

    e. if as a result of the further searches it appears that no responsive records exist, a reasonable explanation for why such records would not exist.

7. The affidavit referred to in the above provision should be forwarded to my attention, c/o Information and Privacy Commissioner of Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me will be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in *IPC Practice Direction 7*.

8. If the board finds additional records in its further searches, I order the board to issue an access decision for these records in accordance with the *Act*. For the purposes of section 19, 22 and 23 of the *Act*, the date of this order shall be deemed to be the date of the request.

9. I remain seized of this matter to address issues arising out of order provisions 6 and 7 of this order.

Original Signed By: July 15, 2019

Lan An
Adjudicator