

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3867

Appeal MA18-00784

Waterloo Regional Police Services Board

November 28, 2019

**Summary:** The record at issue in this appeal is an occurrence report, which the appellant requested under the *Municipal Freedom of Information and Protection of Privacy Act*. The institution, the Waterloo Regional Police Services Board (the police) granted partial access to the record. The police withheld some of the information, claiming the application of the discretionary exemptions in section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1)(d) (confidential source of information), as well as section 38(b) (personal privacy). In this order, the adjudicator finds that the record contains the personal information of the appellant and another identifiable individual, and that the personal information of the other individual is exempt from disclosure under section 38(b). The police's exercise of discretion is upheld and the appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1) and 38(b).

### OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Waterloo Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an occurrence report relating to an incident at a specified property.

[2] The police identified a responsive record and advised the requester that his request may affect the interests of other parties and that those parties would be given an opportunity to make representations concerning the disclosure of the record.

[3] The police subsequently issued a decision granting the requester partial access to the record. They denied access to some of the information in the record, claiming the application of the discretionary exemptions in section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1)(d) (confidential source of information), as well as section 38(b) (personal privacy) of the *Act*.

[4] The requester (now the appellant), appealed the police's decision to this office and a mediator was assigned to the appeal. Mediation of the appeal was not successful, and the appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator assigned to the appeal sought representations from the police, the appellant and an affected party. She received representations from the police and the appellant, but not the affected party. Representations were shared between the police and the appellant, with portions withheld, as they met this office's confidentiality criteria under *Practice Direction 7 – Sharing of Representations*. The file was then transferred to me to continue the inquiry.

[5] For the reasons that follow, I uphold the police's decision to withhold portions of the record at issue under section 38(b), with the result that it is not necessary for me to also consider the application of section 38(a) to that information. I also uphold the police's exercise of discretion and dismiss the appeal.

## **RECORD:**

[6] The record is a two-page occurrence report relating to an incident, portions of which have been withheld from disclosure. The appellant has referred to two separate incidents in his representations. The record at issue in this appeal relates solely to what the appellant identifies as "incident 1."

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[7] 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,

(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;

[8] 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>1</sup>

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

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

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[10] To qualify as personal information, the information must be about the individual in a personal capacity. To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

[11] The police submit that the withheld information contains the personal information of an identifiable individual in their personal capacity, including the person's name, date of birth, address, telephone number, as well as their personal views. The police also submit that the record contains the appellant's personal information. The appellant submits that while he has not seen the record in its entirety, he knows to whom the information relates.

[12] I find that the record contains the personal information of two individuals, namely the appellant and another identifiable individual (the affected party). The police have already disclosed much of the appellant's own personal information to him. I find that the remaining information at issue qualifies as the personal information of the affected party. In particular, the record contains the age, sex and family status of the individual, falling within paragraph (a) of the definition of "personal information" in section 2(1) of the *Act*. In addition, the record contains the individual's address and telephone number, which qualifies as personal information under paragraph (d) of the definition. Further, I find that the record contains the individual's driver's license number, which qualifies as personal information under paragraph (c) of the definition. Lastly, I find that the record contains the individual's name, where it appears with other personal information about them, falling within paragraph (h) of the definition of personal information.

---

<sup>1</sup> Order 11.

<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[13] Having found that the remaining information at issue qualifies as the personal information of the affected party, I will now determine whether this information is exempt from disclosure under the discretionary exemption in section 38(b).

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

[14] 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.

[15] 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.

[16] If any of paragraphs (a) to (e) of section 14(1) apply, the personal privacy exemption is not available.

[17] In applying the section 38(b) exemption, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[18] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester’s personal information), 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>3</sup>

[19] In this appeal, the police argue that the presumption at paragraph 14(3)(b) applies, as well as the factor in section 14(2)(h). Section 14(3)(b) states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

---

<sup>3</sup> Order MO-2954.

[20] 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>4</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>5</sup>

[21] Section 14(2)(h) states:

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,

the personal information has been supplied by the individual to whom the information relates in confidence;

[22] The factor in section 14(2)(h) applies if both the individual supplying the information and the 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.<sup>6</sup>

### ***Representations***

[23] The police submit that the disclosure of the affected party's personal information would constitute an unjustified invasion of their privacy under section 38(b). The police argue that the presumption in section 14(3)(b) applies because the personal information was compiled as part of an investigation into a suspicious individual. In this instance, the police advise, there were no grounds to lay charges under the *Criminal Code of Canada* or the *Provincial Offences Act*, but the police officer collected the information in order to determine whether or not a violation of the law had taken place. The police further argue that the presumption in section 14(3)(b) does not require that criminal proceedings were commenced; it only requires that there be an investigation into a possible violation of law.

[24] In addition, the police submit that the factor in section 14(2)(h) applies, which is that the personal information that was supplied by the individual to whom it relates was done so in confidence. The police state:

. . . It is essential to the operation of the Waterloo Regional Police Service that trust bestowed upon us is maintained by protecting the personal information obtained in the course of the investigations. When victims,

---

<sup>4</sup> Orders P-242 and MO-2235.

<sup>5</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>6</sup> Order PO-1670.

witnesses, and individuals under investigation provide information to police, there is an expectation that police will maintain confidentiality. If we did not, members of the public would be wary of providing information to police.

[25] The police also submit that none of the exceptions in section 14(4) apply. Lastly, the police argue that the absurd result principle does not apply because the withheld personal information was not provided by the appellant, nor was he present when it was provided. Further, the police submit, the personal information of the affected party in the record is not known to the appellant.

[26] The appellant began his representations by confidentially describing two incidents that occurred, which he is of the view are related to each other. The record at issue in this appeal relates to the first incident.

[27] The appellant argues that with respect to the record at issue, two of the exceptions in section 14(1) apply, namely sections 14(1)(d) and 14(1)(f), which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[28] With respect to the possible application of section 14(1)(d), the appellant submits that section 53(1) of the *Act* states that:

this *Act* prevails over a confidentiality provision in any other *Act* unless the other *Act* or this *Act* specifically provides otherwise.

[29] The appellant then goes on to cite the relevance of the *Canadian Victims Bill of Rights* which provides that a victim means an individual who suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence,<sup>7</sup> and that every victim has the right to be apprised about the status and outcome of the investigation into the offence and the location, time and progress of proceedings.<sup>8</sup> The appellant submits that he is a victim of the incident that forms the subject matter of the occurrence report and that under section 7 of the *Canadian Victims Bill of Rights*, he is entitled to information about the status and

---

<sup>7</sup> Section 2 of the *Canadian Victims Bill of Rights*.

<sup>8</sup> Section 7.

outcome of the investigation into the offence.

[30] With respect to the exception in section 14(1)(f), the appellant submits that the disclosure of the record would not constitute an unjustified invasion of personal privacy because a valid justification of the disclosure exists, namely the application of the factor in section 14(2)(d), which states:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request.

[31] The appellant submits that the personal information in the record is relevant to a fair determination of his rights, meaning that the content of the record regarding incident 1 will help him to determine whether he initiates legal proceedings regarding incident 1, 2 or both. The appellant goes on to state:

In particular, I mean my rights to request a new investigation into incidents 1 and 2 as well as in the court, to protect my reputation and clear my name from unjust accusations, and recover the financial losses which I incurred as a result of incident 2.

[32] Concerning the police's claim that the factor in section 14(2)(h) applies, the appellant disagrees and submits that even if the "violator" supplied the police with his information, he did so against the "violator's" own wishes. The "violator" provided his identity, the appellant argues, not because he wanted to do so, but because he violated others' privacy and knew that the police must have identified him, which was not a voluntary act of supplying the police with information in confidence.

[33] Turning to the presumption in section 14(3)(b), the appellant submits that he clearly saw the offender in his backyard and, therefore, the police's statement that the officer collected the information in order to determine whether or not a violation of the law had occurred is not valid. The appellant goes on to submit that whether the person committed an offence or not did not depend on the personal information of the "invader," but rather depended on the actions and motives of the invader.

[34] In addition, the appellant submits that the second part of section 14(3)(b) is relevant. Section 14(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, was compiled and is identifiable as part of an investigation into a possible violation of law, **except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.**



[emphasis added]

[35] The appellant argues that the disclosure of the record is necessary to prosecute the violation or to continue the investigation of incidents 1 and 2, and he requests that the police continue the two investigations.

[36] In reply, the police address the appellant's representations with respect to the following sections of the *Act*.

*Section 14(1)(d)*

[37] The police submit that section 53(1) of the *Act* is not relevant, and has been misinterpreted by the appellant. Section 53(1) is the paramountcy section of the *Act* prevailing over other Acts unless the *Act* or the others specifically provide otherwise. This provision, the police argue, does the opposite of what is being argued by the appellant. The police go on to submit that, leaving aside the interplay between the *Act* and a federal piece of legislation (the *Canadian Victims Bill of Rights*), the federal legislation does not "provide otherwise."

[38] In addition, the police submit that a request for information under section 7 of the *Canadian Victims Bill of Rights* (federal legislation) is outside the scope of an access request under the *Act*. Further, the police argue that even if read liberally the "status and outcome of the investigation" is that there was no violation of law determined and no charges were laid. As a result, there were no "proceedings" to provide information about.

*Section 14(1)(f)*

[39] The police state that they have not been made aware of incident 2 referred to by the appellant.

*Section 14(2)(h)*

[40] The police submit that the personal information at issue was provided in confidence, and that the affected party did not have a positive obligation to identify themselves. In addition to identifying themselves, this individual also provided further personal information to the police. Lastly, the police argue that past orders of the Courts and this office have found that individuals have a reasonable expectation of privacy where an individual provides information to the police.<sup>9</sup>

---

<sup>9</sup> See *R. v. Quesnelle* 2014 SCC 46, and Order MO-3418.

*Section 14(3)(b)*

[41] The police reiterate that the collection of the personal information of the affected party was part of an investigation into a possible violation of law. The police go on to state:

The appellant accurately described the situation with the statement they claim to be absurd: personal information helped the police to find out whether a violation of law had occurred. This is in fact what happened in this incident. The police questioned the affected party and the personal details they provided in response led to the investigation being closed with no charges. This concept can be illustrated further with an example: had the affected party been in possession of break-in instruments, this may have led to further investigation and subsequent charges. In this case however, the personal details collected did not lead to charges.

[42] The police further submit that the justification to disclose personal information in section 14(3)(b) refers to an institution's ability to disclose personal information as necessary to prosecute a violation or to continue the investigation. In the present case, the police argue, the investigation was concluded and, therefore, this exception does not apply.

[43] In sur-reply, the appellant reiterates his initial arguments and also submits that it would be absurd to withhold the personal information at issue from him because this information is clearly within his knowledge. The appellant then provided confidential representations regarding the specific identity of the individual who he believes is the subject matter of the record at issue in this appeal.

***Analysis and findings***

[44] I find that the disclosure of the withheld information would constitute an unjustified invasion of privacy, and is exempt from disclosure under section 38(b). In coming to this conclusion I have reviewed the representations of the parties as well as the record itself.

[45] Regarding the appellant's position that section 14(1)(d) applies, which provides for the disclosure of personal information under an Act of Ontario or Canada that expressly authorizes the disclosure, I find that it does not apply in these circumstances. The appellant relies on the *Canadian Victims Bill of Rights*. I find that this law does not apply, as the investigation was concluded, no charges were laid and there are no proceedings resulting from the incident that forms the subject matter of the record at issue.

[46] Moving on to the possible application of the presumptions in section 14(3), I find that the presumption in section 14(3)(b) weighs heavily against the disclosure of the information at issue, as this information was compiled and is identifiable as part of an

investigation into a possible violation of law, which, in this case did not lead to charges being laid by the police. The second part of section 14(3)(b), on which the appellant relies, states that the presumption applies except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation. Past orders of this office have interpreted this sentence as meaning that disclosure of the personal information may be required in a prosecution or in order to continue an investigation. I am satisfied that, in this case, there is no prosecution and there is no ongoing investigation. As a result, that part of the presumption in section 14(3)(b) does not apply.

[47] Turning to the factors in section 14(2), I find that the factor in section 14(2)(d), which favours disclosure, does not apply in these circumstances. Past orders of this office have found that 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
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>10</sup>

[48] I find that the appellant's representations reveal that there is not an existing proceeding and that his evidence regarding the contemplation of a proceeding is speculative, at best.

[49] Turning to the factor listed by the police in section 14(2)(h), which does not favour disclosure, I find that in these circumstances, it applies. As previously stated, the factor in section 14(2)(h) applies if both the individual supplying the information and the 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.<sup>11</sup> I find that, based on the evidence before me, the affected party had a reasonable

---

<sup>10</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>11</sup> Order PO-1670.

expectation that the information they provided to the police would be kept in confidence.

[50] The appellant has taken the position that it would be absurd to withhold the information at issue, because he knows the identity of the affected party. The appellant identified an individual who he believes to be the affected party in his confidential representations. Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.<sup>12</sup> The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement;<sup>13</sup>
- the requester was present when the information was provided to the institution;<sup>14</sup> or
- the information is clearly within the requester's knowledge.<sup>15</sup>

[51] On my review of the withheld portions of the record at issue, I find that the absurd result principle does not apply because the appellant did not provide the information at issue, he was not present with the police when the information was provided to them, and the information is not clearly within the appellant's knowledge.

[52] Lastly, I find that none of the exceptions in section 14(1) apply. Having found that the presumption in section 14(3)(b) and the factor in section 14(2)(h) apply to the personal information at issue, and balancing the presumption and the factor against the appellant's right of access under the *Act*, I find that the withheld portions of the record at issue are exempt from disclosure under section 38(b), subject to my findings regarding the police's exercise of discretion. As the information at issue is exempt under section 38(b), it is not necessary for me to consider the possible application of section 38(a).

**Issue C: Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[53] 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

---

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

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

<sup>14</sup> Orders M-444 and P-1414.

<sup>15</sup> Orders MO-1196, PO-1679 and MO-1755.

institution failed to do so.

[54] 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, or it fails to take into account relevant considerations.

[55] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>16</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>17</sup>

[56] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>18</sup>

- the purposes of the *Act*, including the principles that, information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, 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 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; and
- the historic practice of the institution with respect to similar information.

---

<sup>16</sup> Order MO-1573.

<sup>17</sup> See section 54(2) of the *Act*.

<sup>18</sup> Orders P-344 and MO-1573.

### ***Representations***

[57] The police submit that they exercised their discretion to withhold the information at issue under section 38(b) in good faith, taking into account all relevant factors and not taking into account any irrelevant factors. In particular, the police submit that they took the following factors into consideration:

- 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 appellant is seeking his own personal information;
- whether the appellant has a sympathetic or compelling need to receive the information;
- the relationship between the appellant and any affected persons;
- the information at issue was sensitive to the affected party;
- the information was collected several years ago; and
- the historic practice of the police with respect to similar information.

[58] The police also submit that they sought to provide as much of the record as possible to the appellant, providing him with access to his own personal information, but that the nature of police work relies on the expectation of confidentiality when a report is made, and to breach that trust would bring the police service into disrepute.

[59] The appellant submits that the police exercised their discretion in bad faith and for an improper purpose, in that they protected the identity of the "violator of privacy" instead of protecting the interests of victims. The appellant's view is that the nature of police work is to protect the public from violators of the law. By protecting the identity of the violator from the victim, the police will breach the trust of the public, bringing the police service into disrepute.

[60] The appellant also submits that the police took into consideration irrelevant factors, including whether or not the appellant knows the identity of the other individual, and assuming that he did not know the identity of the other individual. The appellant states:

Probably, after collaboration of the moderator with the institution and with the invader, the institution and the moderator relied on the opinion of the invader instructing them to withhold maximum of information from the record because I still do not know who he is.<sup>19</sup>

[61] In reply, the police maintain that they exercised their discretion in good faith. One of the purposes of the *Act*, the police argue, is to protect the privacy of individuals, including, in the present case, the privacy of the affected party.

[62] In sur-reply, the appellant submits that the *Act* does not define the notion of “good faith,” but the Supreme Court of Canada has defined acting in good faith as a duty of honest contractual performance.<sup>20</sup> In the present case, the appellant argues, the police have a contract with taxpayers and, as a result, the withholding of the “violator’s” name from the victim is a breach of that contractual arrangement.

[63] The appellant further argues that the right of access to information is one of the purposes of the *Act* and is paramount over the idea of limitation and control of access.

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

[64] An institution’s exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law.<sup>21</sup> It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion.<sup>22</sup> Having found that the records at issue are exempt from disclosure under the personal privacy exemption in section 38(b), my finding regarding the police’s exercise of discretion is in relation to this exemption.

[65] I am satisfied that the police properly exercised their discretion in not disclosing the withheld portions of the record that I have found to be exempt from disclosure under the personal privacy exemption. I find that the police took relevant factors into consideration, including the purpose of the exemption in section 38(b), which is to protect the privacy of individuals.

[66] Further, I find that other relevant factors were taken into consideration in the exercise of discretion. Based on the police’s representations, I am satisfied that they took into consideration that the appellant is an individual, seeking his own information,

---

<sup>19</sup> I note that in the appellant’s non-confidential sur-reply representations, he advises that withholding the identity of the individual in the record would be absurd because the information is clearly within his knowledge.

<sup>20</sup> See *Bhasin v. Hrynew*, 2014 SCC 17.

<sup>21</sup> Order MO-1287-I.

<sup>22</sup> Order 58.

the age of the information and the historic practice of the police with respect to similar information. I also find that the police did not take any irrelevant factors into consideration in exercising their discretion, nor did it exercise its discretion in bad faith. Lastly, I note that, the police withheld only those portions of the record that contain the personal information of the affected party.

[67] Lastly, I note that the Supreme Court of Canada case that the appellant referred to in his representations dealt with an agreement governing the business relationship between a company and a retail dealer providing for automatic contract renewal at end of three-year term unless parties giving six months' written notice to contrary. I find that this case has no relevance to the police's exercise of discretion in the context of an access request made under the *Act*. In addition, I find that there is no contractual relationship between the appellant and the police.

[68] In sum, I uphold the police's exercise of discretion to not disclose the withheld portion of the record to the appellant under section 38(b).

**ORDER:**

I uphold the police's application of section 38(b) to the record, and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_  
November 28, 2019