

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3918

Appeal MA19-00203

Windsor Police Services Board

April 17, 2020

Summary: The Windsor Regional Police Services Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified police report. The police granted partial access to the record, and withheld portions under the discretionary personal privacy exemption at section 38(b) of the *Act*. The adjudicator finds that disclosure of the personal information remaining at issue would be an unjustified invasion of personal privacy. Therefore, she upholds the police's decision to withhold that information under section 38(b).

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

Orders and Investigation Reports Considered: Orders MO-1410 and MO-2830.

OVERVIEW:

[1] The Windsor Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

I am requesting an unredacted copy of the police report for [report #].
That contains the address and date of birth of the other party involved,
[named individual].

[2] The police issued a decision granting partial access to the responsive record with

severances pursuant to the discretionary personal privacy exemption at section 38(b) with reference to section 14(3)(b) of the *Act*. In particular, the police withheld the named individual's date of birth, address, phone number, and driver's licence number, as well as the information that they had provided to the police.

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

[4] During the mediation stage of the appeal process, the appellant advised the mediator that he seeks access to the portions of the record that were withheld by the police; however, the police maintained their decision to deny access to that information. When contacted by the mediator, the named individual (the affected party) did not consent to additional information being disclosed to the appellant.

[5] As no further mediation was possible, the file was transferred to the adjudication stage where an adjudicator may conduct an inquiry under the *Act*. During my inquiry, I sought and received representations from the police, the appellant, and the affected party. The parties' representations were shared in accordance with *Practice Direction Number 7* and the IPC's *Code of Procedure*.

[6] For the following reasons, I uphold the police's decision under section 38(b) not to disclose the withheld information.

RECORDS:

[7] The information at issue consists of the withheld portions of pages 2, 3, 4, and 5 of a six-page general occurrence report.

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?

[8] The police rely on the personal privacy exemption in section 38(b) of the *Act* to

deny access to portions of the requested record. This exemption is only available to the police if the record contains the appellant's personal information, as well as the personal information of other individuals. Therefore, in order to determine whether section 38(b) 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;

[9] 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.¹

[10] 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.

[11] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official, or business capacity will not be considered to be “about” the individual.² Even if information relates to an individual in a professional, official, or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

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

Representations

The police's representations

[13] The police submit that the record contains the appellant and affected party's personal information. In particular, the police maintain that the severed portions of pages 2, 3, and 4 contain the affected party's date of birth, address, telephone number, driver's licence number, and ethnicity, while page 5 contains the affected party's view or opinions.

The appellant's representations

[14] The appellant points to paragraph (a) of section 7(2) of the *Act*, which states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, and PO-2225.

³ Orders P-1409, R-980015, PO-2225, and MO-2344.

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

(a) factual material.

[15] The appellant submits that information that reflects what an individual told police about a situation leading to the police's involvement should be considered factual, not personal, information, because it is unlawful to give false statements to police. The appellant maintains that to categorize these types of statements as opinions would be incorrect according to established English language definitions.

[16] The appellant also submits that the affected party was operating in a professional capacity when the police investigation began, as he did not own or live at the property where he was constructing a fence. In support of this assertion, the appellant provided an affidavit sworn by the affected party, in which he attests that he did not own or live at the property in question. Accordingly, the appellant maintains that the information relating to the affected party constitutes his professional, and not personal, information.

The police's reply representations

[17] In response, the police note that the appellant is relying on an exception to the exemption in section 7(1) of the *Act*, which allows institutions to deny access to a record if disclosure would reveal advice or recommendations of an officer or employee of an institution, or a consultant retained by an institution. The police maintain that the redacted portions of the record do not contain information that could be withheld under the exemption in section 7(1). In addition, the police advise that statements recorded during an investigation are not considered to be the facts of a case. Accordingly, the police maintain that neither section 7(1) nor 7(2) is applicable in this case.

[18] The police further maintain that the record does not contain information that would lead to the conclusion that the affected party was acting in a professional capacity. The police note that both the 911 call taker and the responding officer classified the incident as "neighbour trouble," which further suggests that the information at issue is not professional information.

The appellant's sur-reply representations

[19] By way of sur-reply, the appellant reiterates her position that statements provided to police should be presumed to be factual and true, and should therefore not be considered opinions.

[20] She also repeats her belief that the affected party was acting in a professional capacity at the time of the incident. The appellant provided copies of a property survey and a parcel register from the Land Registry Office to support her position. According to the appellant, this information is not evident in the record at issue because the affected party omitted these facts when speaking with the police. The appellant suggests that the police's classification of the incident as "neighbour trouble," means that the affected party either lied to the police, or the police did not question him about ownership of the

property. Regardless, she maintains that the “neighbour trouble” classification does not “negate the fact that [the affected party] was commissioned by the owner [...]” and was at the property in a professional capacity.

Analysis and finding

[21] To begin, I agree with the police's observation that the appellant's submissions refer to sections of the *Act* that are not relevant to the issues before me. In particular, the appellant relies on section 7(2), which is an exception to the “advice or recommendations” exemption in section 7(1) of the *Act*. This exemption is not at issue in this appeal and is also not relevant to a determination of whether the record contains “personal information,” as that term is defined in the *Act*.

[22] Based on my review of the record and the parties' submissions, I find that the record contains the personal information of both the appellant and affected party.

[23] The personal information contained in the records includes these individuals' names,⁵ along with their dates of birth, ethnicity, and sex (paragraph (a) of the definition of “personal information”), their addresses and telephone numbers (paragraph (d)), and their driver's licence information (paragraph (c)). The record also reflects the statements made by these individuals to the police, including the individuals' views or opinions of the situation that resulted in the police's involvement, which also constitutes their personal information (paragraph (e)).

[24] Having regard to the information before me, including the content of the record itself, I am not persuaded by the appellant's assertion that the professional information exception in sections 2(2.1) and 2(2.2) applies to the information at issue, or that the information about the affected party does not reveal anything of a personal nature about him. In my view, the affected party provided his information to the police as a result of unusual circumstances which led to the police being involved, and not as part of his usual course of employment. In other words, applying the two-part test in Order PO-2225 and others, I find that even if the information were to appear in a professional capacity, it would reveal something of a personal nature about the affected party. I find, therefore, that the affected party's information is his personal information.⁶

[25] Given that the records contain the personal information of the appellant together with that of another identifiable individual, I must consider whether the discretionary personal privacy exemption in section 38(b) applies to the information that has been withheld by the police.

⁵ The affected party's name has already been disclosed to the appellant.

⁶ Order PO-2225. Under the two-part test established in Order PO-2225, even if information is found to be about an individual in a professional capacity, the information may still be found to be personal information if its disclosure would reveal something of a personal nature about the individual.

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

[26] 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.

[27] 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.

[28] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an “unjustified invasion of personal privacy” under section 38(b).

[29] If the information fits within any of paragraphs (a) to (e) of section 14(1), or paragraphs (a) to (d) of section 14(4), then disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Neither party submits that these sections are applicable in the circumstances of this appeal, and I agree.

[30] Sections 14(2) and (3) also help in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁷

[31] In this appeal, the police rely on section 38(b), with reference to the presumption in section 14(3)(b), to withhold portions of the record at issue. This section states:

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

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

[32] The presumption in section 14(3)(b) may apply even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be

⁷ Order MO-2954.

an investigation into a possible violation of law.⁸ This section can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁹

[33] The police's representations also suggest the relevance of the factor weighing against disclosure in section 14(2)(h), while the appellant's submissions allude to the factor weighing in favour of disclosure in section 14(2)(d). These sections state:

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

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

[34] The factor weighing against disclosure under section 14(2)(h) may be a relevant consideration if both the individual supplying the information and the recipient of the information 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.¹⁰

[35] The section 14(2)(d) factor weighing in favour of disclosure may apply if the appellant is able to 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

⁸ Orders P-242 and MO-2235.

⁹ Orders MO-2213, PO-1849 and PO-2608.

¹⁰ Order PO-1670.

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.¹¹

[36] The appellant also raises the applicability of the absurd result principle, which has been found to apply where the requester originally supplied the information at issue,¹² or is otherwise aware of it.¹³ In such circumstances, 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.¹⁴

Representations

The police's representations

[37] The police maintain that they withheld the information at issue because disclosing it would be an unjustified invasion of the affected party's privacy. In support of this position, the police rely on the presumption in section 14(3)(b), which is applicable where there has been an investigation into a possible violation of law. The police explain that the record at issue was created as a result of an officer's investigation into the appellant's complaint about the affected party. The police explain that during the investigation, the officer contacted the affected party and conducted an interview, during which the officer obtained the affected party's personal information.

[38] The police further maintain that individuals who provide information to the police have a reasonable expectation that their personal information will be kept confidential. According to the police, disclosing this information to the appellant would serve to undermine the affected party's confidence in the police service, and reduce the likelihood that he would voluntarily cooperate in future police investigations.

[39] The police say that there are no factors in section 14(2) that weigh in favour of disclosing the affected party's personal information to the appellant.

The appellant's representations

[40] The appellant maintains that she has a civil proceeding against the affected party and requires his address in order to serve him with a notice of examination. She also says that the affected party will be exposed to the "rigours of cross examination - which would include the statements he gave to the police," in the event that he files a defence

¹¹ 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.).

¹² Orders M-444 and M-451.

¹³ Orders M-444, P-1414, MO-1196, PO-1679, and MO-1755.

¹⁴ Orders M-444 and MO-1323.

in the civil matter.

[41] In addition to the civil proceeding, the appellant explains that she would like to swear a private criminal charge against the affected party. According to the appellant, she requires the police report to “continue her investigation” and to know what possible crimes have been committed against her by the affected party. The appellant notes that there is an exception to the presumption in section 14(3)(b), where disclosure of information collected as part of an investigation is necessary to prosecute the violation, or to continue the investigation.

[42] The appellant also argues that the absurd result principle should apply on the basis that she is already aware of the address at which the affected party resides and operates his construction business.

The affected party's representations

[43] The affected party advises that the civil action between him and the appellant has settled, and he has since paid damages to the appellant. Accordingly, the affected party maintains that the requested information is no longer required by the appellant for the purposes of the civil proceeding.

[44] The affected party agrees with the police's decision to withhold the information at issue. He expresses his concern that if the information is disclosed to the appellant, she may use it to harass him.

The police's reply representations

[45] The police maintain that the exception to the presumption in section 14(3)(b), relied upon by the appellant, is intended to pertain to disclosures to law enforcement agencies. In support of this position, the police point to section 32 of the *Act*, which permits law enforcement agencies to share personal information for the purpose of prosecuting a violation or law, or to continue an investigation.¹⁵

[46] According to the police, their decision letter explained that, when notified of the access request, the affected party did not consent to his personal information being disclosed to the appellant. Therefore, the police's decision letter advised the appellant of the option to obtain a court order or subpoena requiring the police to produce the records at issue at a court hearing.

[47] With respect to the appellant's submissions regarding the absurd result principle, the police say that the withheld portion of the record “simply [does] not contain” the information cited by the appellant. In particular, the police say there is no indication

¹⁵ Section 32(f) of *MFIPPA*.

that the address listed in the record is a business address.

The appellant's sur-reply representations

[48] In response to the affected party's submissions, the appellant says that the suggestion that she would use the information at issue to harass the affected party is "highly offensive" and unsubstantiated by the evidence. She maintains that her actions are only motivated by a desire to obtain justice with respect to a fence dispute between the parties.

[49] The appellant also disagrees with the affected party's suggestion that the civil matter has concluded and damages have been paid. She says that she has not received payment or communication from the affected party or his representative since the "initial examination hearing." Regardless, the appellant says that even if the civil matter is drawing to a close, she still requires the requested information in order to bring a private criminal charge against the affected party.

[50] In response to the police's reply representations, the appellant says that the *Act* does not state that section 14(3)(b) only pertains to law enforcement agencies. She says that she has a right to bring a criminal charge against someone that she believes has committed a crime, and that she requires an unredacted copy of the record in order to do so.

Analysis and finding

[51] Based on my review of the parties' submissions and the record at issue, and having considered the applicable factors and presumptions under sections 14(2) and 14(3), I conclude that the affected party's personal information is exempt from disclosure under section 38(b) of the *Act*.

[52] Specifically, I note that the record was created as a result of the police responding to the appellant's complaint against the affected party. Therefore, I find that the record was compiled and is identifiable as part of an investigation into a possible violation of law, as required by the presumption in section 14(3)(b).

[53] I have considered the appellant's representations concerning the exception in section 14(3)(b) and the need to disclose the information at issue for her to bring a private criminal charge against the affected party. The appellant argues that the *Act* does not specify who is required to continue the investigation for the purpose of exception, and therefore does not require that disclosure be made to another law enforcement agency, as suggested by the police.

[54] A similar argument was raised by the appellant in Order MO-1410. In addressing this argument, Adjudicator Dora Nipp held:

[...] the exception contained in the phrase "continue the investigation" *refers to the investigation for which the personal information was compiled*, i.e. the investigation "into a possible violation of law".
[emphasis added]

[55] In the circumstances of this appeal, the investigation conducted by the police, upon complaint by the appellant, has been concluded. Therefore, the disclosure of the information at issue is not necessary to continue that particular investigation. In my view, the appellant seeks access to this information in order to commence her own investigation into the affected party's conduct. In the circumstances, therefore, I find that the exception to section 14(3)(b) contained in the words "continue the investigation" does not apply. Accordingly, I find that the presumption in section 14(3)(b) applies, such that disclosure of the affected party's personal information is presumed to be an unjustified invasion of his personal privacy.

[56] However, as mentioned above, a section 38(b) analysis requires any relevant section 14(3) presumptions to be weighed with the applicable factors and considerations in section 14(2), and balanced with the interests of the parties.¹⁶ The factors that may be relevant in this balancing exercise are set out in paragraphs (a) to (i) of section 14(2), although this list is not exhaustive. Other relevant circumstances must be considered, even if they are not listed under section 14(2).¹⁷ Generally speaking, the factors in paragraphs (a), (b), (c) and (d) weigh in favour of disclosure, while the factors in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.¹⁸

[57] Although the parties' representations do not specifically refer to the factors in section 14(2), the police's arguments suggest that the factor weighing against disclosure at section 14(2)(h) may be relevant, while the appellant's representations suggest that the factor weighing in favour of disclosure at section 14(2)(d) may apply.

[58] As mentioned above, for section 14(2)(h) to apply, both the affected party and the police officer must have had an expectation that the information would be treated confidentially, and that expectation must have been reasonable in the circumstances.¹⁹ In Order MO-2830, Adjudicator Colin Bhattacharjee stated that whether an individual has supplied their personal information to the police in confidence during an investigation is contingent on the particular facts, and such a determination must be made on a case-by- case basis. This approach has been adopted in subsequent

¹⁶ Order MO-2954.

¹⁷ Order P-99.

¹⁸ Order PO-2265.

¹⁹ In Order PO-1670.

orders.²⁰

[59] Based on the content of the record, I am satisfied that some of the personal information at issue could reasonably have been supplied to the police by the affected party in confidence. In particular, I find that the factor at section 14(2)(h) applies to the affected party's views or opinions of the situation that resulted in the police's involvement, and weighs against disclosing that information to the appellant.

[60] For the factor at section 14(2)(d) to apply, the appellant must establish that the affected party's personal information is required in order to prepare for a proceeding or to ensure an impartial hearing (among other things).²¹ The appellant maintains that she requires the affected party's address for the purpose of her civil proceeding. In my view, this assertion conflicts with the appellant's submissions regarding the absurd result principle, which she maintains should apply because she believes that she is already aware of the address at which the affected party resides and operates a business. In addition, both the appellant and affected party's submissions indicate that the appellant was able to engage the affected party in a civil matter without obtaining his address from the record. Therefore, I am not persuaded that disclosure of this information under the *Act* is required for the purpose of the appellant's civil proceeding.

[61] The appellant also submits that she requires access to the affected party's statements to the police in order to know what possible crimes he committed against her. However, I am not persuaded based on the evidence before me that the appellant requires access to the affected party's statements, which would include his views or opinions of the incident, in order to pursue her private criminal charge regarding the fence dispute. I am also not satisfied that she requires access to any of his other personal information in the record for this purpose. Accordingly, I find that the factor at section 14(2)(d) is not applicable in the circumstances of this appeal.

[62] After considering and weighing the factors and presumption, and balancing the interests of the parties, I find that disclosing the information that is subject to the presumption in section 14(3)(b) and the factor in section 14(2)(h) would constitute an unjustified invasion of the affected party's personal privacy. Therefore, I find that the information is exempt from disclosure under section 38(b), subject only to my review of the absurd result principle and the police's exercise of discretion, below.

Absurd result

[63] As mentioned above, past orders of this office have found the absurd result

²⁰ See, for example, Order MO-3393.

²¹ 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.).

principle to apply where the requester originally supplied the information at issue or is otherwise aware of it. In such cases, the information may not be exempt under section 38(b), because withholding it would be absurd and inconsistent with the purposes of the exemption.

[64] The appellant maintains that the principle applies in this case because she believes that she is already aware of the affected party's address.²² However, my review of the record does not support a finding that the withheld information was provided by the appellant or that it is otherwise within the appellant's knowledge. Although it appears that the appellant has some contact information for the affected party, I am not satisfied that she is aware of the specific information at issue in the record. Accordingly, I find that the absurd result principle does not apply, and that withholding the information at issue would not be absurd or inconsistent with the purpose of the personal privacy exemption in section 38(b).

[65] In reaching these conclusions, I have considered the police's obligation under section 4(2) to disclose as much of the responsive record as can reasonably be severed without disclosing material that is exempt. In particular, I have considered whether the portions of the record that I have found to be subject to section 38(b) can be severed for the purpose of disclosure to the appellant. In my view, portions of the appellant's personal information on page five of the record is inextricably intertwined with that of the affected party, such that it cannot be severed and disclosed without disclosing information that I have found to be exempt under section 38(b), or without disclosing only meaningless snippets of information. As identified in previous orders, an institution is not required to sever records for disclosure where to do so would reveal only "disconnected snippets," or "worthless" or "meaningless" information.²³

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

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

[67] 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.

²² That is, the address for both his place of residence and place of business.

²³ See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 192 O.A.C. 71 (Div. Ct.).

[68] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁴ This office may not, however, substitute its own discretion for that of the institution.²⁵

[69] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²⁶

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

²⁴ Order MO-1573.

²⁵ Section 43(2).

²⁶ Orders P-344 and MO-1573.

Representations

[70] The police maintain that they carefully balanced the appellant's right of access to her own information with the affected party's personal privacy rights. The police explain that the appellant was granted access to the information that related exclusively to her because they concluded that disclosing any of the withheld information would amount to an unjustified invasion of the affected party's personal privacy. In the circumstances, the police believe that the affected party's privacy rights in the information at issue outweigh the appellant's right of access.

[71] The other parties did not address the police's exercise of discretion.

Analysis and finding

[72] I have considered the police's representations, the record at issue, and the broader circumstances of this appeal, in order to assist me in making a determination about the police's exercise of discretion under section 38(b). In light of the information before me, I am satisfied that the evidence supports a proper exercise of discretion by the police under section 38(b). Accordingly, I see no basis to interfere with the police's exercise of discretion on appeal, and I uphold it.

ORDER:

I uphold the police's decision to withhold portions of the record under section 38(b).

Original signed by _____
Jaime Cardy
Adjudicator

_____ April 17, 2020