

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4016

Appeal MA19-00294

York Regional Police Services Board

February 25, 2021

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

**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).

### OVERVIEW:

[1] This appeal deals with access to records created as a result of attendances by police at a dwelling in response to complaints relating to a residential tenancy. Specifically, the York Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to three police reports, identified by occurrence number, relating to tenant disputes, as well as to any additional records pertaining to the requester during a specified period of time.

[2] The police conducted a search and located responsive records. They issued a decision in which they granted partial access to the three specified occurrence reports.

The police withheld portions of the reports pursuant to the personal privacy exemption at section 38(b) of the *Act*, and claimed the application of the presumption in section 14(3)(b) (investigation into possible violation of law).

[3] After they issued their decision, the requester submitted a follow-up request, seeking "All Report[s] May 2010 [to] Present." The police agreed to expand the scope of the appeal to include this follow-up request,<sup>1</sup> located additional responsive records, and issued a supplementary decision granting partial access to those additional records. The police again withheld some information under section 38(b), with reference to the presumption in section 14(3)(b), because some of the withheld information relates to identifiable individuals other than the requester (the affected parties).

[4] The requester, now the appellant, appealed the police's decision to the IPC.

[5] The parties participated in mediation to explore the possibility of resolution. The appellant confirmed during mediation that he only seeks access to the statements the affected parties provided to the police, and not to any of their identifying or biographical information. As a result, the only issue in this appeal is the application of section 38(b) to the narrative portion of the affected parties' statements to the police.

[6] Based on the appellant's view, expressed during mediation, that the affected parties would not consent to the disclosure of their personal information, they were not contacted during mediation. When no further mediation was possible, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[7] I decided to conduct an inquiry, and I began by seeking representations from the police and the appellant in response to the issues outlined in a Notice of Inquiry. The non-confidential portions of their representations were shared between them.<sup>2</sup> I also sought representations from the affected parties, but they did not respond to the Notice of Inquiry and did not submit any representations.

[8] In this order, I find that the responsive records contain the appellant's personal information, as well as the personal information of other, identifiable, individuals (the affected parties), and that disclosure of the affected parties' personal information would constitute an unjustified invasion of their personal privacy. I find that this personal information is exempt from disclosure under section 38(b), and that the police properly exercised their discretion in withholding it under section 38(b). I uphold the police's

---

<sup>1</sup> According to their representations, the appellant claimed he received incomplete access in response to his initial request. It was ascertained that two incidents occurred after the initial request was made. The police agreed to expand the scope of the appeal to include access to records relating to the new incidents that occurred after the initial request, after the appellant expressed that it would be a hardship to submit a new request.

<sup>2</sup> In accordance with IPC *Practice Direction 7*.

decision and dismiss this appeal.

## **RECORDS:**

[9] The records consist of four police occurrence reports (reports) and a two-page document containing call and dispatch information. At issue is information withheld by the police from the reports that contains statements the affected parties provided to the police.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Should the police's exercise of discretion under section 38(b) be upheld?

## **DISCUSSION:**

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

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, whose. "Personal information" is defined in section 2(1), and the relevant parts read 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,

...

(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, and

...

(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 individual;

[11] The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>3</sup> It must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

### ***Representations***

[12] The police submit that the records contain "personal information" as defined in section 2(1) of the *Act*. They submit that the records contain the names, addresses and other identifying information relating to the appellant and affected parties, as well as their views and opinions regarding the allegations under investigation.

[13] The appellant does not dispute that the records contain his own personal information or that of the affected parties whom the police interviewed.

### ***Analysis and findings***

[14] I have reviewed the records and find that they contain the personal information of the appellant and of other identifiable individuals, namely the affected parties, including biographical and other personal information relating to each.

[15] With respect to the appellant, I find that the records contain his name, address, telephone number, gender, ethnicity, age and date of birth, driver's licence number, as well as his opinions and views regarding the incidents described in the records. I therefore find that the records contain information about the appellant that qualifies as his personal information within the meaning of paragraphs (a), (b), (d), (e) and (h) of the definition in section 2(1).

[16] With respect to the affected parties to whose information the appellant seeks access, I find that the records likewise contain their names, addresses and telephone

---

<sup>3</sup> Order 11.

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

numbers, ages, dates of birth, gender, ethnicity and nationality, driver's licence numbers, and their opinions and views regarding the incidents. This is information that also qualifies as their personal information within the meaning of paragraphs (a), (b), (d), (e) and (h) of the definition in section 2(1).

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

[17] I note at the outset that, in their decision, the police rely on the discretionary personal privacy exemption in section 38(b), with reference to the presumption against disclosure in section 14(3)(b) to withhold the information at issue. In their representations, however, the police submit that the appropriate exemption is the mandatory personal privacy exemption in section 14(1) because the information at issue consists of the personal information of individuals other than the appellant.

[18] Previous IPC orders have established that where a record contains both the personal information of the requester and another individual, or individuals as in this case, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b).<sup>5</sup> Some exemptions, including the personal privacy exemption, are mandatory under Part I (section 14(1)), but discretionary under Part II (section 38(b)), so that in the latter case, an institution may disclose information under Part II that it would not disclose if Part I is applied.<sup>6</sup>

[19] Former Commissioner Brian Beamish wrote in Order PO-3129 that the correct approach is to review the *entire* record, and not only those portions at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole, rather than only certain portions of it, must be reviewed under Part I or Part II of the *Act*.<sup>7</sup>

[20] As noted above, the police claimed that section 14(1) applies to exempt some of the information at issue. However, I have already found (and the police do not dispute) that the record also contains the appellant's personal information.

[21] Applying a record-by-record approach, I find that the appropriate exemption is the discretionary exemption at section 38(b). I will therefore consider whether the information at issue, namely the narrative portions of the affected parties' statements to the police that are contained in the record, qualify for exemption under the discretionary personal privacy exemption at section 38(b).

[22] Finally, because the appellant does not seek access to the affected parties'

---

<sup>5</sup> Order M-352.

<sup>6</sup> Orders MO-1757-I and MO-2237.

<sup>7</sup> Order M-352.

identifying personal information (names, dates of birth, contact information or similar identifying information), but only to the statements they provided to the police, I will consider the possible application of the discretionary personal privacy exemption in section 38(b) only in relation to the narrative portions of the affected parties' statements to the police that remain in issue. The affected parties' other personal information is removed from the scope of this appeal.

***Does the discretionary personal privacy exemption at section 38(b) apply?***

[23] 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.

[24] Under section 38(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the appellant. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information. This involves a weighing of the appellant's right of access to his own personal information against the other individuals' right to protection of their privacy.

[25] Sections 14(1) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy under section 38(b) is met. Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an invasion of personal privacy.

[26] Section 14(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. In the circumstances of this appeal, the police submit that section 14(4) is not relevant. I agree and I find that section 14(4) does not apply.

[27] In determining whether the disclosure of the personal information in a record would be an unjustified invasion of personal privacy under section 38(b), the IPC will consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>8</sup>

***Representations***

*The police's representations*

[28] The police submit that the information at issue was collected during their investigations of complaints of threats, property mischief and damage, excessive noise

---

<sup>8</sup> Order MO-2954.

and other requests for police assistance. They say that, although there were no grounds to lay criminal charges because of discrepancies between the parties' versions of events and because complainants were unwilling to provide information to police, the information at issue nevertheless falls under the presumption in section 14(3)(b) because the police were investigating possible violations of law.

[29] The police also submit that the factor at section 14(2)(h) applies and weighs against disclosure of the information at issue because the affected parties gave their statements to the police in confidence. The police state that the appellant has disclosure rights outside of the *Act* because he has commenced litigation against the affected parties.

### *The appellant's representations*

[30] The appellant submits that he does not seek access to any identifying or biographical information belonging to the affected parties, just to their statements to the police. The appellant submits that the affected parties' statements should be disclosed because the appellant has brought a claim against them in small claims court.<sup>9</sup> The appellant submits that he needs access to the withheld statements in order to challenge the affected parties' credibility at an eventual trial. He says that there is no prejudice to the affected parties if their statements are disclosed "because this is what they told police." He says that he, however, will be prejudiced if access is denied because the court may not accept his version of events at trial.

[31] The appellant also says that the affected parties' statements should be disclosed because the appellant was present when they were made and he could hear them.

### ***Analysis and findings***

[32] Section 14(3)(b) states that:

(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;

[33] I find that the personal information in the records was compiled and is identifiable as part of investigations into possible violations of law. Each occurrence report was created after the police responded to complaints alleging unlawful activity at an address shared by the parties, and to requests for police assistance. The fact that no charges were laid is immaterial, since the presumption only requires that there be an

---

<sup>9</sup> The appellant included a copy of his statement of claim with his representations.

investigation into a possible violation of law.<sup>10</sup> As a result, I find that the presumption against disclosure in section 14(3)(b) applies and that disclosure of the information at issue is presumed to constitute an unjustified invasion of the affected parties' personal privacy.

*Do any factors in section 14(2) apply?*

[34] The police argue that the factor in section 14(2)(h) applies and weighs against disclosure of the information. The appellant, meanwhile, submits that he needs access to the withheld witness statements to use as evidence in a civil trial. I have therefore also considered whether disclosure of the withheld information might be relevant to a fair determination of the appellant's rights (in the context of a civil claim), as the factor in section 14(2)(d) contemplates.

*Section 14(2)(h): supplied in confidence*

[35] The police submit that the affected parties provided their statements to the police with the expectation that they would remain confidential. They argue that there is an expectation of confidentiality when police collect personal information that must be safeguarded. They also submit that the records themselves reveal that the personal information at issue was relayed to the police in confidence, and they note that the appellant himself suggests that the affected parties would not consent to its disclosure if asked. The police say that the information at issue contains an affected party's statements and views about the incidents under investigation and reveals tensions between the parties.

[36] For the factor at section 14(2)(h) to apply, both the individual supplying the information and the recipient must have an expectation that the information would be treated confidentially and that this expectation is reasonable in the circumstances. As such, section 14(2)(h) requires an objective assessment of the reasonableness of the expectation of confidentiality.<sup>11</sup>

[37] I find that this factor applies in the circumstances and weights against disclosure. In my view, the context of the witness statements and surrounding circumstances are such that a reasonable person would expect that the information supplied to the police by the individuals identified in the records would be subject to a degree of confidentiality. Although the affected parties did not submit representations, the appellant has himself acknowledged that the affected parties would not consent to disclosure of their personal information, including their statements to the police. I have reviewed the statements at issue and, while I have not summarized those statements because to do so would disclose contents of the information at issue, I accept the

---

<sup>10</sup> Orders P-242 and MO-2235.

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



police's submission that they were provided in circumstances where there existed a reasonable expectation of confidentiality.

[38] Accordingly, I find that in the context of this appeal, the factor at section 14(2)(h) is a relevant consideration that weighs against disclosure.

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

[39] The appellant has also argued that he needs access to the withheld information to assist him with his small claims court action to assist with findings of credibility should his evidence not be believed. In order to establish that the factor at section 14(2)(d) applies, the appellant must show 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.

[40] All four parts must be established for section 14(2)(d) to apply. Although the appellant submits that he has commenced an action in small claims court against one or more of the affected parties, I find that this factor does not apply in the circumstances. This information is otherwise available to the appellant in the context of his litigation and before a court that is familiar with the issues in dispute and therefore able to make findings on what is relevant and required for a fair hearing. I find that the police's withholding of the affected party's witness statements under the *Act* does not prevent the appellant from pursuing disclosure remedies available to him within the civil litigation process, so that disclosure under the *Act* is not required in order for the appellant to prepare for or to ensure an impartial hearing in court for the purpose of part 4 of the test under section 14(2)(d). In this regard, I note that the *Act* does not restrict a party's disclosure remedies within litigation. Section 51(1) of the *Act*, which governs the relationship between access under the *Act* and civil litigation, states that the *Act* does not impose any limitation on the information otherwise available by law to a party to litigation.<sup>12</sup>

[41] I therefore find that that the four-part test of section 14(2)(d) has not been met,

---

<sup>12</sup> See, for example, Order MO-3900.

and that section 14(2)(d) does not apply to weigh in favour of disclosure.

[42] The parties did not submit that any unlisted factors favouring either disclosure or non-disclosure apply, and I find that none do.

[43] For the reasons set out above, I find that the presumption in section 14(3)(b) applies to the information at issue, and that no factors in favour of disclosure apply. I therefore find that disclosure of the withheld information would constitute an unjustified invasion of the affected parties' personal privacy under section 38(b).

*Absurd result*

[44] As noted above, the appellant submits that he should have access to the affected parties' statements because he "was there when statements were given by the [affected parties] to police and heard" what was said. I have therefore considered the absurd result principle in the circumstances, but I find that it does not apply.

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

[46] The police submit that they did disclose some personal information in the record that was clearly within the appellant's knowledge, such as the affected parties' names and address (because of certain of their shared amenities, such as an entryway and mailbox). However, they submit that the affected parties' personal opinions and views are not within the appellant's knowledge. Referring to the disclosed portions of the records, the police say that the parties were interviewed separately and in different locations apart from each other: in one case, in their respective dwellings; in another case at different locations other than their residence; and on a third occasion, the affected party attended a police district headquarters to speak to police at the same time that officers were attending the appellant's home to speak to him.

[47] The police say that it would not be absurd to withhold this information because it is "clearly personal information from individuals who did not consent to the release of their information that was obtained by police during the investigations of complaints reported to the police."

[48] Having reviewed the records, I note that they expressly state that police interviewed the appellant and the affected parties separately, either in their respective dwelling units, or offsite. There is no indication in any of the records that the appellant was present or even nearby when the police took statements from the affected parties.

[49] Based on the contents of the records, I accept the police's submission that the

statements at issue were not collected in the appellant's presence and that they would not otherwise be known to him, and I reject the appellant's suggestion that he was present and heard the affected parties give their statements to the police.

[50] I find that disclosure under the absurd result principle would be inconsistent with the section 38(b) exemption. I therefore find that the absurd result principle does not apply. Given my finding, disclosure of the withheld information would be an unjustified invasion of personal privacy under section 38(b).

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

[51] 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. The Commissioner may also determine whether an institution erred in its exercise of discretion, did so in bad faith or for an improper purpose, or whether it failed to take into account relevant considerations in the exercise of its discretion.

[52] While I may send the matter back to the institution for an exercise of its discretion based on proper considerations,<sup>13</sup> I may not, however, substitute my own discretion for that of the institution.<sup>14</sup>

[53] Relevant considerations may include, but are not limited to, those listed below:<sup>15</sup>

- the purposes of the *Act*, including that information should be available to the public
- exemptions from the right of access should be limited and specific
- the wording of the exemption and the interests it seeks to protect
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- whether disclosure will increase public confidence in the operation of the institution

---

<sup>13</sup> Order MO-1573.

<sup>14</sup> Section 43(2) of the *Act*

<sup>15</sup> Orders P-244 and MO-1573.

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester, or any affected person.

### ***Representations***

[54] The police submit that the statements contain personal information collected from affected parties during police investigations, and under circumstances where they concluded that disclosure would constitute an unjustified invasion of personal privacy. The police say that, in exercising their discretion under section 38(b) to withhold information, they considered that the appellant has a right to his own personal information and that exemptions from the right of access should be limited and specific.<sup>16</sup>

[55] The police submit that they took into account relevant factors, such as the circumstances under which the information was collected and the relationship between the parties, and granted access to almost all of the records, with the limited exception of some of the affected parties' personal information. By disclosing the amount of information they did, the police submit that they balanced the appellant's right of access to information against the protection of the affected parties' right to privacy. They submit that they did not exercise their discretion in bad faith or for an improper purpose.

[56] The appellant did not make representations on the police's exercise of discretion.

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

[57] I find that, in withholding access to limited portions of the records, the police took into account that the information in the records contains the appellant's own personal information. The police disclosed a majority of the information in the records, including some personal information of affected parties that they were satisfied was already within the appellant's knowledge. However, the police also considered that some information would not be in the appellant's knowledge, and I find that they properly exercised their discretion to withhold this information.

[58] In doing so, I find that the police weighed their obligation to give access to information against the affected parties' right to privacy, and considered that the appellant has alternate means to access the requested information.

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

---

<sup>16</sup> Section 1 of the *Act*.

[60] For the reasons above, I find that the withheld information at issue is exempt from disclosure under section 38(b) and I dismiss this appeal.

**ORDER:**

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

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

February 25, 2021 \_\_\_\_\_