Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4034

Appeal MA17-492

Niagara Regional Police Services Board

March 30, 2021

Summary: Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the appellant submitted an access request to the Niagara Regional Police Services Board (the police) for records related to two identified incidents that resulted in charges under the *Criminal Code*. Claiming the mandatory personal privacy exemption at section 14(1) of the *Act*, the police denied access to all of the responsive records. The appellant took the position that the public interest override at section 16 applies to permit disclosure of the responsive records.

In this order, the adjudicator upholds the police's decision to deny access to the responsive records. She finds that all of the records contain the personal information of identifiable individuals involved in the police investigation into the incidents mentioned in the request and that this personal information qualifies for exemption under section 14(1). She also finds that as there is no compelling public interest in the disclosure of the records, the override at section 16 does not apply to permit disclosure. She upholds the police's decision to deny access to the responsive records and dismisses this 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"), 4(2), 14(3)(a) and (b) and 16; *Criminal Code,* R.S.C.1985, c. C-46, s.268, as am. S.C. 1997, c.16, s. 5.

Orders and Investigation Reports Considered: Order MO-3491.

OVERVIEW:

[1] In the early 2000's a young girl alleged that she had been a victim of the practice of female genital mutilation (FGM), which is illegal in Canada.[1] The Niagara Regional Police conducted an investigation and laid charges under the *Criminal Code.* The charges were ultimately withdrawn.

[2] The requester, a reporter for a national media organization, submitted an access request to the Niagara Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to two incidents connected to charges laid in the suspected case of FGM. The requester specified that she seeks copies of any and all records in the files for both incidents including case summaries for court, charge information, occurrence reports, background information, police notes and witness interviews and statements. She also specified that in order to preserve the privacy of the complainant and witnesses, she does not seek access to their names, birthdates and addresses if they appear in the records. In her request, the requester stated that she believes that there is a compelling public interest in the disclosure of this information as contemplated by section 16 of the *Act*.

[3] The police issued a decision, denying access to the records in their entirety. The police claimed the application of the mandatory personal privacy exemption at section 14(1) of the *Act*. The police explained that it would be impossible to disclose any information while preserving the privacy of identified individuals, as that information could be considered together with other information that might be publicly available through other sources, such as the courts. The police stated that, in their view, there is no compelling public interest in the disclosure of the particular records at issue.

[4] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner (the IPC). A mediator was appointed to explore the possibility of resolving the appeal.

[5] During mediation, the police located additional responsive records and issued a supplemental decision denying access to them pursuant to the exemption at section 14(1) of the *Act*.

[6] Also during mediation, the appellant confirmed that she is not interested in obtaining access to "media releases or public information" but seeks access to all other types of information. I note that among the responsive records there are some that could be described as "public information" in that they are publicly available or already in the public realm. These include media releases and clippings about these incidents. These records are therefore no longer at issue, and I will not be considering them in this appeal.

[7] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process. I conducted an inquiry into the appeal by seeking representations on the facts and issues on appeal. Both parties submitted representations

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[1] In Canada, the performance of FGM is aggravated assault under section 268(3) of the *Criminal Code, R.S.C.1985, c. C-46, s.268, as am. S.C. 1997, c.16, s. 5.*

which were shared in accordance with the sharing procedure set out in the IPC's *Code of Procedure* and *Practice Direction 7.*

[8] In this order, I find that all of the records contain the personal information of identifiable individuals involved in the police investigation and that this personal information qualifies for exemption under section 14(1). I also find that section 16 does not apply to any of the records because a compelling public interest in the disclosure of the records has not been established. I uphold the police's decision to deny access to the responsive records and I dismiss the appeal.

RECORDS:

[9] There are 12 CDs containing more than 500 pages of responsive records, as well as videos of interviews conducted with the accused, the complainant and a number of witnesses. The records include:

- police officer notes;
- police reports (including incident reports and supplementary reports);
- statements of officers, the accused, the complainant and witnesses;
- transcripts of interviews conducted with the accused, the complainant and witnesses; and,
- other records containing information gathered by the police during their investigation into the incidents referred to in the appellant's access request.

ISSUES:

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

B. Does the mandatory personal privacy exemption at section 14(1) of the *Act* apply to the records at issue?

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

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

[10] Before considering whether the exemption at section 14(1) might apply to the records, it is necessary to decide whether they contain personal information and, if so, to whom it relates. Section 2(1) of the *Act* defines personal information as "recorded

information about an identifiable individual." The definition also includes the following non-exhaustive list of examples of personal information:

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 our 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 individuals[.]

[11] Information that does not fall under paragraphs (a) to (h) of the definition may still qualify as personal information.[2] There are exceptions to the personal information definition for "business information" and for individuals deceased more than 30 years, but these exceptions are not relevant in this appeal.

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

The parties' representations

[13] The police submit that all of the records contain the personal information of identifiable individuals including names, dates of birth, sex, race, ethnicity, marital status, addresses, telephone numbers and statements. They submit that for the most part, the information is about individuals in their personal capacity, although they acknowledge that in some limited instances the information involves individuals in their professional capacity. They submit however, that the disclosure of the information related to individuals in their professional capacity would reveal personal information of other individuals in their

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[2] Order 11.

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

personal capacity, including the personal information of the complainant and the alleged perpetrator.

[14] The appellant submits that without access to the records she "can only assume" that the records contain personal information about individuals in their personal capacity including "the main witness, her family and others." She acknowledges that this personal information may include names, dates of birth and contact information. However, she states that she "made it abundantly clear" during the process of filing her request and appealing the police's decision that she is not interested in obtaining access to any personal information. She submits that section 4(2) of the *Act* requires the police to disclose as much of the record as can reasonably be severed without disclosing information that falls under the personal information exemption at section 14(1). She submits that in this case, personal information "can be readily redacted" from the records.

[15] The appellant also takes the position that the records must contain a substantial amount of information that "cannot be considered" personal information. She submits that this would include "the officers' observations and recordings of fact of what occurred." She submits that information gathered by a Niagara Regional police officer is done in his or her professional capacity. In support of her position, the appellant points to orders previously issued by this office where police occurrence reports were ordered disclosed with only the information that qualified as personal information severed.[4] She submits that the same course of action should be taken in this appeal.

[16] In reply, the police respond to the appellant's argument that the records must contain information that "cannot be considered" personal information. The police note that while officers' notes and narratives do not qualify as the officers' personal information, it does not mean that they do not contain personal information of other identifiable individuals. The police submit that in "incidents reported by members of the public there are few simple statements of fact distinct and separate from the individuals who supply them or from those about whom they are made." They submit that this is the case here.

The records contain personal information

[17] Having reviewed the records at issue, I find that all of them contain the personal information of identifiable individuals including the complainant, the accused and other individuals who were involved in the police investigation. As noted by the police, this personal information includes:

- information relating to individuals' race, ethnic origin, age, sex, marital or family status (paragraph (a) of the definition in section 2(1) of the *Act*);
- information relating to individuals' education, medical, psychological, criminal or employment history (paragraph (b));
- addresses, telephone numbers (paragraph (d));

[4] The appellant specifically refers to Orders MO-2862, MO-2911 and M-704.

- personal opinions or views of individuals' (paragraph (e));
- views or opinion of other individuals about an individual (paragraph (g)); and
- individuals' names, where they appear with other personal information relating to that individual or where disclosure of their name would reveal other personal information about them (paragraph (h)).

[18] The appellant submits that the records must also contain a substantial amount of information that cannot be considered personal information, including "officers' observations and recordings of fact." I disagree. I acknowledge that all of the records were created by individuals in their professional capacity and notes drafted by a police officer or a medical professional do not qualify as the officers' or medical professional's own personal information. However, in the context of an investigation of the type that is at issue in this appeal, those notes contain a considerable amount of personal information of identifiable individuals intertwined with the facts and observations made by the individuals involved in their professional capacity. Specifically, with respect to the records before me, none of them amount to records that set out straight facts or observations in a manner that does not reference identifiable individuals or render them identifiable in the context; all of the records at issue contain the personal information of identifiable individuals.

[19] I note that the appellant submits that she does not seek access to any personal information and suggests that the police sever the personal information from the records in a manner that allows for the disclosure of the remaining information. I will address the possibility of severing the records that contain personal information below, in my discussion of section 4(2) of the *Act*.

Issue B: Does the mandatory personal privacy exemption at section 14(1) of the *Act* apply to the records at issue?

[20] Where a requester seeks the personal information of other individuals, the mandatory personal privacy exemption at section 14(1) of the *Act* prohibits the police from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In my view, the only exception that could apply in this case is section 14(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
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> > if the disclosure does not constitute an unjustified invasion of personal privacy.

[21] I have found that the records contain the personal information of a number of identifiable individuals, including the complainant of the alleged assault, the alleged perpetrator and a number of witnesses who were contacted during the police's investigation into the matter. Under section 14(1)(f), if disclosing these individuals' personal information to the appellant would not constitute an unjustified invasion of their personal privacy, it is not exempt from disclosure. Sections 14(2), (3) and (4) help in

determining whether disclosure would or would not be an unjustified invasion of personal privacy.

Section 14(3): presumptions against disclosure

[22] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of these individuals' personal information to the appellant is presumed to constitute an unjustified invasion of their personal privacy under section 14. The police submit that the presumption at section 14(3) applies to the personal information in the records. Section 14(3)(b) states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> > was complied 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[.]

[23] Even if no criminal proceedings were commended 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.[5]

[24] The police submit that section 14(3)(b) applies because all of the information at issue relates to a police investigation into possible violations of law. They submit that charges were laid under the *Criminal Code of Canada.*

[25] The appellant submits that disclosure of the information that she seeks would not constitute an unjustified invasion of privacy under section 14(1). She submits that the complainant's identity and any identifying information will never be revealed to the public because she "was a minor at the time so her identity cannot be published." She also submits that in the "roughly 20 years since this case began, time has itself dispensed with many of the circumstances that could have identified the girl in question." She further submits that the names and identities of others who may appear in the records and reveal the complainant's identity will also not be published.

[26] The appellant submits that she acknowledges that the information that she seeks may contain information about the mental health and medical status of the complainant that falls within the presumption at section 14(3)(a) which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> > relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation[.]

[27] The appellant submits that throughout the process of filing her request and appealing it, she has made it "abundantly clearly that [she] is not interested in this

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[5] Orders P-242 and MO-2235.

information and that it can be readily redacted." In support of her position, she notes that this office has previously disclosed police occurrence reports under the *Act* with the personal information redacted.

[28] The appellant also submits that the factor at section 14(2)(a) is a relevant consideration in the circumstances of this appeal. Section 14(2)(a) states:

> A head, in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> > the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny[.]

[29] The appellant submits that the disclosure of the records at issue would "give the public a greater understanding of an issue that is connected to a local movement to stop the barbaric practice of FGM, a complicated issue that continues to plague women in Canada today." She submits that "[b]y shedding light on how police and courts, in this case, evaluated the witness' credibility, the records will show how a taboo subject is treated within the law." She further submits it "may also expose how attitudes 20 years ago may have influenced the decisions that ultimately [led] to abandonment of the case."

[30] From my review of the records, I accept that all of the personal information contained in the records was clearly compiled by the police as part of an investigation into possible violations of the *Criminal Code.* Consequently, I find that disclosing this personal information to the appellant is presumed, under section 14(3)(b), to constitute an unjustified invasion of the privacy of the individuals to whom the personal information relates.

[31] I also accept that the presumption at section 14(3)(a) applies to some of the personal information in the records. Given the nature of this investigation into incidents of alleged assault, within the records is the personal information of the complainant, particularly as it relates to medical and psychological evaluations. As a result, I find that it fits squarely within the presumption at section 14(3)(a) and its disclosure is presumed to constitute an unjustified invasion of this individual's personal privacy.

[32] As a result of my finding that the presumption against disclosure in section 14(3)(b) applies to all of the personal information at issue, it is not necessary for me to consider whether any of the factors set out in section 14(2) apply, including the factor contemplated in section 14(2)(a) raised by the appellant. The Ontario Divisional Court has found that once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.[6] None of the circumstances listed in paragraphs (a) to (c) of section 14(4) are relevant in the context of this appeal. However, below, I will review section 16

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[6] *Jon Doe v. Ontario* (*Information and Privacy Commissioner*)(1993), 1993 CanLII 3388 (ONSCDC), 13 O.R. (3d) 767 (Div. Ct.).

and consider whether there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption.

[33] In sum, I find that disclosure of the personal information in the records at issue would constitute an unjustified invasion of the personal privacy of the individuals to whom it relates and that it qualifies for exemption under section 14(1) of the *Act*.

Section 4(2): Severance of records

[34] I have also considered whether, as suggested by the appellant, any of the records can be severed in a manner that would permit disclosure and find that they cannot.

[35] Section 4(2) of the *Act* requires the police to disclose as much of the record as can be reasonably severed without disclosing information that falls under one of the exemptions.[7] In other words, a record considered in its entirety may be exempt, but the same record, properly severed, may be eligible for release.[8] Consequently, in considering section 4(2) in this case, I must determine whether any of the records can be severed such that some of the information no longer meets the requirements of the mandatory personal privacy exemption at section 14(1) and can be disclosed.

[36] The appellant has repeatedly stated that because she does not seek access to any personal information, she believes that the records can be severed in such a manner that the remaining information, including the facts and observations made by the professionals involved in the investigation, can be disclosed without rendering the individual to whom the information relates, identifiable.

[37] The police submit that it is not possible to sever the records in a manner that can render the personal information anonymous to protect the privacy of the individuals to whom that personal information relates. The police submit that the appellant is already in possession of a great deal of information that would identify, to the parties involved, this story as their own and there is no guarantee that their identities, if not already known, would not be revealed through the release of these records, even if not by the appellant herself.

[38] In her sur-reply representations, the appellant submits that, as a journalist who writes for a large Canadian newspaper, she is held to high and exacting ethical standards with respect to anonymity and confidentiality. She submits that while anonymity is only granted in exceptional circumstances in order to shield a vulnerable person or people from

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[7] Section 4(2) of the *Act* states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under section 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information thatfalls under one of the exemptions.

Also, see Order MO-3106.

[8] See Order 43.

being known to the public, "[i]n this case, anonymity must be granted to the woman because she was a minor at the time of the alleged incident and throughout the case." She argues, however, that anonymity does not mean that the people in question cannot identify themselves in the published narrative.

[39] I do not find the appellant's submissions as to the possibility of severance to be persuasive. Having considered the context and the content of the records at issue, I conclude that it is not reasonably possible for any of them to be severed in a manner where disclosure of the remaining information would not also disclose information that is subject to the mandatory personal privacy exemption at section 14(1)

[40] Given the nature of the investigation to which these records relate, the personal information that the records contain is so closely intertwined with facts and observations that, in my view, it cannot be severed for the purposes of section 4(2) of the *Act*. As a result, I find that even if the police were to sever the records to remove names and other "identifying information" as suggested by the appellant, the remaining information still qualifies as the "personal information" of identifiable individuals and its disclosure would be an unjustified invasion of their personal privacy under section 14(1).

[41] While I acknowledge the appellant's statement that, as a journalist, she is held to exacting ethical standards with respect to anonymity and confidentiality, there is nothing in the *Act* allowing for a different level of disclosure to be granted to journalists.

[42] As I have found that the records cannot reasonably be severed under section 4(2) of the *Act* without disclosing information that falls under the mandatory personal privacy exemption in section 14(1), I find that all of the records at issue are exempt from disclosure.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[43] The appellant argues that the records should be disclosed because the public interest override at section 16 of the *Act* applies in the circumstance of this appeal.

[44] Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest of the disclosure of the record clearly outweighs the purpose of the exemption.
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> [emphasis added]

[45] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[46] The *Act* is silent on who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submission in support of her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom,

if ever, be met by an appellant. Accordingly, this office will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[9]

Compelling public interest

[47] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[10] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[11]

[48] A public interest does not exist where the interests being advanced are essentially private in nature.[12] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[13] A public interest is not automatically established where the requester is a member of the media.[14]

Purpose of the exemption

[49] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also be demonstrated to clearly outweigh the purpose of the exemption that has been claimed which, in this case, is the personal privacy exemption at section 14(1). Section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.[15]

[50] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[16]

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[9] Order P-244.

[10] Orders P-984 and PO-2607.

[11] Orders P-984 and PO-2556.

[12] Orders P-12, P-347 and P-1439.

[13] Order MO-1564.

[14] Orders M-773 and M-1074.

[15] Order MO-2012.

[16] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

The parties' representations

[51] The police acknowledge that there may be a public interest in the subject matter that gave rise to the charges that resulted in the records at issue, but say they do not agree that in the circumstances, this public interest constitutes a compelling interest in the disclosure of the particular records that are at issue in this appeal.

[52] With respect to the investigation into and the resolution of this matter, the police submit that their role and conduct (as well as that of the courts) was not unusual or noteworthy. They also submit that their integrity was not called into question with respect to this matter. They further submit that it would not serve the public interest to release these records and that, conversely, to disclose them and make the details of this sensitive case public would result in a "grievous breach of privacy for the parties."

[53] The appellant disagrees with the position of the police. She submits that the disclosure of the records is of significant public interest as it would "enable the public to scrutinize the actions of the police, court and children's services in Niagara." She submits that it "would also enable stakeholders to view a pressing issue of public safety with fresh eyes in an era where attitudes have shifted when it comes to matter of sexual assault." She submits that the disclosure of the records will bring "necessary scrutiny to a case that was handled by police and the courts long ago and may now call into question the integrity of the process and institutions."

[54] The appellant submits that she believes that "the case disintegrated" because the complainant's credibility "was called into question over a trial issue." She submits that the "credibility issue may no longer hold up within the current climate of reckoning for those accused of sexual harassment and assault." As previously noted, she submits:

> By shedding light on how police and courts, in this case, evaluated the witness' credibility, the records will show how a taboo subject is treated within the law. It may also expose how attitudes 20 years ago may have influenced the decisions that ultimately [led] to abandonment of the case.

[55] Explaining her position that the public interest in disclosure of these records is "compelling" and that there is a "rousing strong interest or attention," the appellant submits:

> At the time this case was brought before a judge, female genital mutilation (FGM) was an emerging issue with little coverage. Today, it is a raging issue with mention in the news across the globe. More than 200 million women around the world experience FGM and many people from countries it is practiced immigrate to Canada regularly, bringing the ritual with them. Aside from enormous local medial attention, [in local and national media], with stories about women and girls who have undergone FGM and continue to fear the practice will be done to them, foreign practitioners are said to be crossing borders into this country regularly to perform FGM on girls [named newspaper] has reported. [Named newspaper] has also reported that girls are being sent to foreign countries for "vacation cuttings" before being returned to Canada with mutilations the local health system struggles to deal

> with. Global Affairs Canada is aware of the issue. Grass roots organizations across the country are studying the issue and trying to stop it. Local physicians are increasing called upon to perform surgeries to undo it, [named newspaper] has reported. This, in my view, is the definition of "rousing strong interest or attention."

[56] In reply, the police submit that they do not believe that there is any way to protect the privacy of the involved parties if they were to disclose the records and that a compelling public interest that would justify overriding the involved individuals' privacy interests does not exist in this case. They submit that the records do not involve a "pressing issue of public safety," as suggested by the appellant, because this was a private matter that was resolved some time ago.

[57] The police also reiterate that their actions with respect to this case were never called into question. They submit they took the allegation of the complainant seriously and laid the appropriate charges. They submit they did a thorough investigation. They submit that although the appellant states that disclosure would "[shed] light on how police and courts evaluated the witness' credibility" and "would show how a taboo subject is treated within the law," there was no failure of the law in its application or in statute. They submit that the "taboo subject" had nothing to do with the treatment of the case "within the law" and that they are of the view that the outcome of this particular matter would be the same today.

[58] The police concede that "there may be a case to be made that education and public action are needed;" however, they submit that they are not of the view that the disclosure of "the records of this case would add significantly to what is already known [about] this issue."

[59] In sur-reply, the appellant reiterates that "[t]he case at hand is a matter of significant and compelling public interest." She submits that "[t]he issue of FGM is nuanced and sensitive" and that while it has garnered media attention of late, that attention has lacked enough nuance to inform pressing aspects of this growing cultural issue." The appellant argues that disclosure of the records at issue would provide such "nuance."

[60] The appellant also submits that she cannot make a determination of whether or not the police failed in their duties without reviewing the records and that if the standard for disclosure is the police conceding they did something wrong, no information would ever be released to the public. She submits that the police should disclose the records to permit the public "to evaluate the truth about the case and the institutions that were involved with it."

Analysis and finding

[61] I have considered the parties' representations and have reviewed the records with a view to determining whether there is a compelling public interest in their disclosure, which clearly outweighs the purpose of the personal privacy exemption at section 14(1). I am satisfied that there is not a public interest in the disclosure of the particular records before me in this appeal, let alone a compelling one that outweighs the purpose of the mandatory personal privacy exemption in section 14(1). Section 16(1) does not apply.

[62] There is no doubt that there is a public interest in FGM. This public interest is arguably a compelling one. However, I do not accept that because there is a public interest in the general subject matter of FGM, it necessarily follows that the disclosure of the records before me, which are essentially of a private nature, advances that public interest.

[63] In ordinary circumstances, there is not a public interest, let alone a compelling one, in the disclosure of police records relating to investigations into allegations of possible violations of law, even when charges are laid. Moreover, as noted above, a public interest is not automatically established simply because the requester is a member of media.[17] I have not been provided with sufficient evidence to find differently in this case, particularly where the charges were ultimately withdrawn. In my view, taking into consideration all of the circumstances as well as the content of the records, this is not a case where the appellant's private interest in the disclosure of the records raises issues of more general application.[18]

[64] Additionally, I find there is not sufficient evidence before me of a public interest, compelling or otherwise, in the manner in which the police conducted its investigation into these allegations and their subsequent laying of charges against the accused. While it is accepted that there is a general level of interest in scrutiny of the actions of police, as stated by Adjudicator Hamish Flannigan in Order MO-3491:

> [T]his general interest in scrutiny of police alone is not sufficient to meet the compelling public interest threshold. Otherwise, virtually all police records could be disclosed under the public interest override. This is clearly not the intent of the *Act*, which contains several exemptions to enable the proper conduct of law enforcement activities.

[65] Moreover, having considered the specific nature of the information contained in the records at issue, which predominantly consists of the personal information of a number of affected parties, I do not accept that any public interest in the transparency of police actions would be served by the disclosure of these records.

[66] Even if it had been established that a compelling public interest in the disclosure of these records exists, I do not accept that in this case any such interest would clearly outweigh the purpose of the mandatory personal privacy exemption in section 14(1). Given the sensitive nature of the personal information that the records contain coupled with the fact that the charges were ultimately withdrawn, in my view, this is a case where the personal privacy of the involved individuals must be maintained. The evidence before me does not point to a conclusion that infringements on these privacy interests are justified.

[67] Accordingly, I find that the public interest override at section 16(1) of the *Act* does not apply.

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[17] Orders M-773 and M-1074.

[18] Order MO-1564.

ORDER:

I uphold the police's decision not to disclose the records to the appellant and I dismiss the appeal.

Original Signed by: March 30, 2021

Catherine Corban
Adjudicator