

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4040

Appeal MA18-00828

Toronto Police Services Board

April 27, 2021

Summary: The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a specified incident. The police issued a decision granting partial access to the responsive records with severances under sections 14(1) and 38(b) of the *Act*. The requester, now the appellant, appealed the police's decision. In this order, the adjudicator partially upholds the police's decision to withhold personal information under section 38(b), but orders the police to disclose additional information to the appellant.

Statutes Considered: The *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)(e) and (h), 14(3)(b), and 38(b).

Cases Considered: Orders MO-2318 and MO-3418.

OVERVIEW:

[1] This order deals with the issue of access to specified police records relating to a picture of a gun displayed in the window of a residence. The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

All available documentation related to [a specified incident number],
including

-attachments to the complaint (as filed initially)

-date, time, name of person taking the "incriminating" picture of the gun poster

-final report of [two named police officers] who performed the inspection on location on 31.08.2018

[2] The police issued a decision granting partial access to the records. Access to the withheld information was denied under sections 38(b) and 14(1) (personal privacy) of the *Act*. Some information was also withheld on the basis that it was non-responsive to the request.

[3] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During the course of mediation, the appellant advised that he believes additional records exist. The police agreed to perform another search and located additional records. The police issued a supplementary decision granting partial access to the additional records and again relied on the personal privacy exemption to deny access. Some information was also withheld as non-responsive to the request.

[5] The appellant advised that he is not interested in obtaining information that is not responsive to his request. The appellant confirmed his interest in obtaining the information relating to the other individuals identified in the records. The IPC notified two of these individuals, affected party A and affected party B, to seek consent to disclose their personal information to the appellant. However, these two affected parties did not consent.

[6] As no further mediation was possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I decided to commence an inquiry by inviting representations from the police and affected parties A and B, initially. I shared the non-confidential representations of the police with the appellant, but I withheld the representations of affected parties A and B in full due to confidentiality concerns. I invited and received representations from the appellant.

[7] During the inquiry, the IPC contacted the appellant's wife to seek her consent to disclose the information about her in the records to the appellant. The appellant's wife provided consent and her personal information will be ordered disclosed in this order. Accordingly, page 8 of record 2 is no longer at issue in this appeal.

[8] In this order, I partially uphold the police's decision, and order the police to release additional information to the appellant, which I have highlighted on a copy of the severed records provided to the police along with a copy of this order.

RECORDS:

[9] The records at issue in this appeal consist of:

Record 1 – an initial general occurrence report (page 2);

Record 2 – officers’ handwritten notes (pages 7, 9-11);

Record 3 – a supplementary general occurrence report (page 15);

Record 4 – officer’s handwritten notes for the supplementary report (page 16); and

Record 5 – email correspondence to the police (pages 19-21).

[10] Remaining at issue are the withheld portions of the pages noted above, as indicated in the police’s index of records. As the appellant is not seeking the non-responsive portions of the records, I find that portions of pages 9, 10, and 16 in records 2 and 4, the handwritten notes, have been properly withheld as non-responsive by the police because they are about other police matters. Therefore, these portions of records 2 and 4 are no longer at issue in this appeal.

ISSUES:

- A. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary personal privacy 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:

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

[11] 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, 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;

[12] 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

[13] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

¹ Order 11.

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

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

[14] 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

[15] 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

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

Representations

[17] The police submit that the records at issue contain the personal information of several individuals that fits within paragraphs (d), (f), (g), and (h) of the definition of "personal information" in section 2(1) of the *Act*. The police submit that the personal information in the records was gathered as part of a police investigation and includes the name, phone number, and/or comments made to the police.

[18] The police acknowledge the exception in section 2(2.1) of the *Act*, but they submit that the information at issue is the personal information of identifiable individuals, and maintain that the information is not business related or about someone in a business capacity. The police submit that it is reasonable to expect that these other individuals may be identified if the information is disclosed to the appellant.

[19] As noted above, I withheld the affected parties' representations due to confidentiality concerns. However, I note that the affected parties acknowledge that the records at issue contain their personal information.

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.).

[20] The appellant's representations acknowledge that there is information about the complainant and other individuals in the records at issue. However, the appellant does not specifically address whether it is personal information as defined by section 2(1) of the *Act*.

Analysis and findings

[21] Having reviewed the records, I find that records 1, 2 and 5 contain the personal information of the appellant, such as his address, phone number, and the views or opinions of the affected parties about him under paragraphs (a), (b), (d), (e), (g), and (h), of the definition in section 2(1) of the *Act*. I also find that records 1 and 2 contain the personal information of the appellant's wife, such as her name, address, and age, which fits within paragraphs (a), (d), and (h). Finally, I also find that record 5 contains the personal information of other identifiable individuals that fits within paragraphs (e), (f), (g), and (h) of the definition in section 2(1) of the *Act*.

[22] Given the context in which the incident occurred, the exception for business information may be relevant in this appeal. The police have argued that the individuals other than the appellant, whose personal information is in the records, are not identified in a business capacity. As noted above, I sought representations from two of those individuals, affected party A and affected party B. Affected party A is the building property manager. Affected party B is the author of one of the emails provided to the police as part of the investigation into the specified incident.

[23] From the information that the police have already disclosed to the appellant, affected party A's identity is already clear to the appellant, and I will address that aspect. Records 1 and 2 contain the property manager's name, title, and business phone number, as well as a description of what occurred and their comments to the police about the specified incident. Records 3 and 4 contain the property manager's name, title, and clarification of their previous comments to the police.

[24] As noted above, under the exception to the personal information definition in section 2(2.1) of the *Act*, an individual's name, title and contact information that identifies them in a business capacity is not considered personal information. Applying the exception in section 2(2.1), I find that affected party A's name, title, and phone number contained in records 1-4 identifies them in a business capacity as the building property manager, and therefore, is not personal information under the *Act*.

[25] With respect to the property manager's comments to the police, which includes a description of the incident in question, I find that affected party A provided this information to the police in their business capacity as the building property manager. 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.⁵ I have also considered whether disclosure of affected party A’s comments would reveal anything of a personal nature about them, and I am satisfied that it would not. Accordingly, I find that records 1-4 do not contain the personal information of affected party A.

[26] Having found that the information about affected party A in records 1-4 appears in a business capacity and does not qualify as “personal information” under the *Act*, I find that records 3 and 4 do not contain any personal information.

[27] As the personal privacy exemption can only apply to personal information, and I have found that records 3 and 4 do not contain any personal information, the personal privacy exemption cannot apply to it. As no other mandatory exemption is claimed (or would apply) to records 3 and 4, there is no basis for withholding them under the *Act*, and I will order them disclosed, except for the non-responsive portions of record 4.

[28] Additionally, records 1 and 2 only contain the personal information of the appellant and his wife who provided her consent to disclosure. With reference to section 14(1)(a), disclosure of this personal information to the appellant would not be an unjustified invasion of another individual’s personal privacy under the section 38(b) exemption. Furthermore, having found that the information about affected party A was provided in a business capacity, and is not personal information, I will order that records 1 and 2 be disclosed to the appellant, except for the non-responsive portions of record 2.

[29] As noted above, record 5 contains the mixed personal information of the appellant and other identifiable individuals. For this record, I must review the application of the discretionary personal privacy exemption in section 38(b) of the *Act*.⁶

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

[30] 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.

[31] 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

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁶ When a record does not contain a requester’s personal information, the applicable personal privacy exemption is the mandatory one in section 14(1).

requester.

[32] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). As I found above, records 1 and 2 only contain the personal information of the appellant and his wife who provided her consent to disclosure. With reference to this consent and applying section 14(1)(a), I find that disclosure of this personal information to the appellant would not be an unjustified invasion of privacy under section 38(b). Furthermore, as records 1 and 2 otherwise only contain information about affected party A that was provided in a business capacity, I will order records 1 and 2 be disclosed to the appellant, except for the non-responsive portions of record 2.

[33] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[34] In determining 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

[35] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) also lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁸

Representations of the parties

[36] The police argue that section 38(b) applies to the withheld information, because its disclosure would result in an unjustified invasion of "the privacy of another individual". The police note that the appellant was the subject of the investigation and say that he was provided access to his own personal information.

[37] The police submit that none of the exceptions in paragraphs (a) to (e) of section

⁷ Order MO-2954.

⁸ Order P-99.

14(1) applies in this appeal. The police argue that the presumption against disclosure in section 14(3)(b) applies in this appeal, because the information in the records was clearly compiled and is identifiable as part of an investigation into a possible violation of law. The police submit that they collected and recorded personal information to aid in a law enforcement investigation.

[38] The police argue that the factors at sections 14(2)(e), (pecuniary or other harm) and 14(2)(h) (supplied in confidence) apply to the withheld information and weigh against its disclosure.

[39] The police submit that they withheld information from the appellant so that the other identifiable individuals contained in the records would not be subjected to "punitive repercussions" by the appellant. The police submit that the appellant's intent to instill fear is obvious, and they observe that the affected parties did not consent to release their personal information. The police argue that the potential harm to these individuals' safety far outweighs any right to access of the appellant.

[40] The police submit that they possess a unique status and authority to collect personal information and therefore, have a greater responsibility to safeguard the privacy interests of individuals when personal information is collected. The police further submit that police investigations imply an element of trust that the law enforcement agency will act responsibly in how it handles recorded personal information. In support of their position, the police rely on Orders MO-3418 and MO-3593. The police submit that the balance between the right of access and the protection of privacy in this appeal must weigh in favour of protecting the privacy of the other parties involved.

[41] As noted above, representations of affected parties A and B were withheld due to confidentiality concerns. Generally, however, affected parties A and B submit that they do not want their personal information released to the appellant, because it would be an unjustified invasion of their personal privacy. Affected parties A and B say that the factor at section 14(2)(e) applies to the information relating to them.

[42] In his representations, the appellant describes what occurred during the specified incident outlined in the records. The appellant seeks the date and nature of allegations made against him in the complaints by the board of his condominium, which led to the police investigation against him. The appellant submits that he wants this information, because he suspects the allegations against him are baseless and "possibly frivolous and/or slanderous". The appellant further submits that it is unusual for a "condo board" to act anonymously against an owner without any prior attempt to clarify the situation. The appellant submits that the withheld information would help him gain clarity as to the substance of those allegations and allow him to relate them to the police visit to his home.

[43] The appellant's representations outline a dispute between him and a former neighbour, and he submits that he suspects this former neighbour contributed to the

complaints against him. The appellant submits that these complaints were “driven by motives unrelated to reality”, causing unwarranted waste of police resources.

[44] The appellant submits that the police visit to his home caused malicious and damaging rumours about him to spread in his community. The appellant submits that because of these rumours, neighbours that were formerly friendly stopped greeting him and his wife, and turned their backs on them. The appellant submits that he filed this appeal as a last resort to obtain the information necessary to remedy the damage caused to his and his wife’s good name in the community by repeated frivolous complaints and malicious rumours. The appellant submits that the consequences of the complaints and rumours have had a serious impact on their privacy, and their privacy deserves at least equal protection to the privacy of those who caused their grief and aggravation.

Analysis and findings

[45] The only personal information left at issue in this appeal is the withheld personal information about individuals other than the appellant in record 5, so I must determine whether the section 38(b) exemption applies to exempt it from disclosure. Based on my review of the withheld information and the representations of the parties, I find that none of the exceptions at sections 14(1)(a) to (e) or 14(4) apply. I must therefore consider and weigh any section 14(2) factors and section 14(3) presumptions that apply.

Section 14(3)(b): investigation into a possible violation of law presumption

[46] The police argue that the presumption in section 14(3)(b) applies in this appeal. Section 14(3)(b) states:

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

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

[47] Based on my review of the personal information in record 5 that is at issue, which includes email correspondence from the affected parties to the police regarding the complaints, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁹ Therefore, I

⁹ Orders P-242 and MO-2235.

find that section 14(3)(b) applies to the personal information at issue in record 5, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the individuals to whom the information relates.

[48] Under section 38(b), the presumption in section 14(3)(b) must be weighed and balanced with any factors in section 14(2) that are relevant. The police argue that the factors at sections 14(2)(e) (pecuniary or other harm) and 14(2)(h) (supplied in confidence) apply to the withheld information. The affected parties also argue that the factor at section 14(2)(e) applies to the withheld information. These factors weigh against disclosure, if they are found to apply.

[49] Sections 14(2) (e) and (h) state:

14(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,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

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

[50] The appellant did not specifically argue that any factors favouring disclosure in section 14(2) apply, but as I noted above, the list is not exhaustive and other relevant circumstances must be considered. I have considered the appellant's arguments and address them below.

Section 14(2)(e): pecuniary or other harm

[51] The police and affected parties argue that the factor at section 14(2)(e) applies to the withheld information in record 5. For section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm with disclosure that is envisioned by the clause be present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. The police argue that they denied access to the withheld information to prevent the appellant from subjecting the affected parties and any other individuals involved to "punitive repercussions". In their confidential representations, the affected parties explain how disclosure of the withheld information would unfairly expose them to harm. I accept the submissions in this regard.

[52] In Order MO-2318, former Commissioner Brian Beamish provided guidance on "unfair harm" as contemplated by section 14(2)(e). He stated:

Turning to the factor at section 14(2)(e), this office has held that although the disclosure of personal information may be uncomfortable for those involved in an already acrimonious matter, this does not mean that harm

would result within the meaning of this section, or that any resulting harm would be unfair [Order PO-2230]. However, it has also been held that the unfair harm contemplated by section 14(2)(e) is foreseeable where disclosure of personal information is likely to expose individuals to unwanted contact with the requester [Order M-1147], or where such disclosure could expose the individuals concerned to repercussions as a result of their involvement in an investigation by the institution [Order PO-1659].

[53] I adopt the analysis set out by former Commissioner Beamish in this appeal. Based on the representations of the parties objecting to disclosure, I find that the unfair harm contemplated by section 14(2)(e) is foreseeable and that the factor at section 14(2)(e) applies to weigh against disclosure of the withheld personal information in record 5.

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

[54] The police argue that the supplied in confidence factor at section 14(2)(h) applies to the withheld personal information. Section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹⁰ As stated, the police rely on Orders MO-3418 and MO-3593. In Order MO- 3418, Adjudicator Hamish Flanagan wrote:

I accept the police's submission that section 14(2)(h) is a factor that weighs in favour of withholding the information at issue in this appeal. Particularly in the context of a dispute between neighboring landowners as is in issue here, I am satisfied that information provided to police by an individual is given with an expectation that the police will generally keep at least the source of the information in confidence. Here, where disclosing information would generally also disclose its source, it follows that the information supplied to police was supplied in confidence, even though there is no evidence that any explicit confidentiality assurance was provided by police.

[55] I agree with this analysis and adopt in this appeal. The withheld information is contained in email correspondence from affected parties A and B to the police as part of their investigation into the specified incident. It is clear from the content of the correspondence, which includes an explicit request to keep the information provided confidential, that it was both implicitly and explicitly of a private or confidential nature.

¹⁰ Order PO-1670.

Based on my review of the record and the representations of the parties, I am satisfied that affected parties A and B had a reasonable expectation that the personal information about themselves or other individuals that they supplied to the police would be treated confidentially. Therefore, I find that the factor in section 14(2)(h) applies to the withheld information in this appeal and weighs against its disclosure.

Unlisted factors

[56] I have considered the appellant's reasons for seeking access to the withheld personal information to determine if they support the application of any unlisted factors that would weigh in favour of disclosure.

[57] In particular, I considered the appellant's argument that he requires the withheld information to remedy his damaged reputation in his community following the incident described in the records. However, he has not explained how disclosure of the withheld personal information of other individuals would assist him in remedying that damage, and the connection is not self-evident. While it is apparent that the appellant is frustrated with the damage he believes has been caused to his and his wife's reputation as a result of the specified incident, I am not persuaded by his submissions that disclosure of the withheld information could reasonably be expected to assist him in remedying this damage. Therefore, I find that this argument does not support, or establish, an unlisted factor weighing in favour of disclosure.

[58] I have also considered the appellant's position that he requires the withheld information to understand the allegations made against him in the board complaint, which led to the police investigation into the specified incident. After reviewing the withheld information and considering the circumstances of this appeal, I accept the appellant's submission in this regard and conclude that it raises inherent fairness issues, which is an unlisted factor that has been found to weigh in favour of disclosure.¹¹ Previous IPC orders have held that individuals who face accusations, which result in administrative or judicial proceedings, are entitled to know the case, which has been made against them.¹² In this appeal, while the board complaint did not result in administrative or judicial proceedings, it resulted in a police investigation being conducted. Therefore, there is reason to conclude that the appellant is entitled to know the accusations against him, and I find that inherent fairness is an unlisted factor that applies and weighs in favour of disclosure.

Summary

[59] Overall, however, I have found that the factors at sections 14(2)(e) and 14(2)(h)

¹¹ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

¹² Order P-1014.

weigh against disclosure and that the section 14(3)(b) presumption applies to the withheld personal information. In the circumstances of this appeal, I am not persuaded that the appellant's desire to obtain access to the withheld information to better understand the allegations made against him in the board complaint which led to the police investigation, outweighs the privacy interests of the other individuals whose personal information is contained in the record. Balancing the interests of the parties, the totality of the facts of this appeal weigh against disclosure of the withheld personal information in record 5. Therefore, I find that the withheld information in record 5 is exempt from disclosure pursuant to the discretionary exemption at section 38(b) of the *Act*, subject to my findings on the police's exercise of discretion below.

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

[60] 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.

[61] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[62] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ The IPC may not, however, substitute its own discretion for that of the institution.¹⁴

[63] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁵

- the purposes of the *Act*, including the principles that
 - information should be available to the public

¹³ Order MO-1573.

¹⁴ Section 43(2).

¹⁵ Orders P-344 and MO-1573.

- 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.

Representations

[64] The police submit that they exercised their discretion under section 38(b) appropriately, withholding information only to the extent required to protect the privacy and personal information of the affected parties. Furthermore, the police submit that they did not exercise their discretion in bad faith, and that all relevant factors were taken into account and no irrelevant factors were taken into account in exercising their discretion.

[65] The police submit that they considered the following factors when choosing not to disclose the information at issue in the appeal:

- The information withheld was not personal information solely belonging to the appellant;
- The privacy of the other affected parties should be protected; and
- The risk of harm to the affected parties.

[66] The police submit that they withheld information in a limited and specific manner and disclosed as much of the records as they could reasonably sever without disclosing

exempt information.

[67] The appellant's representations do not address the police's exercise of discretion.

Analysis and findings

[68] After considering the police's representations and the circumstances of this appeal, I find that the police did not err in their exercise of discretion with respect to their decision to deny access to the withheld personal information in record 5 under section 38(b) of the *Act*. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose.

[69] I am also satisfied that the police took into account relevant factors, and did not take into account irrelevant factors in the exercise of discretion. In particular, it is evident that the police considered the fact that the records contain the appellant's own personal information, and I am satisfied that the police provided him with access to as much information as possible by applying section 38(b) in a limited and specific manner.

[70] Accordingly, I find that the police exercised their discretion in an appropriate manner in this appeal, and I uphold it.

ORDER:

1. I partially uphold the police's access decision. However, I do not uphold the police's decision to withhold the portions of records 1-4 that I have highlighted on the copy of the records provided to the police along with this order. The police must also disclose the portions of record 2 for which consent from the appellant's spouse was obtained, as highlighted on the police's copy of this order.
2. I order the police to disclose to the appellant the information that is highlighted in the copy of the records provided with this order. This information is to be disclosed by **June 1, 2021** but not before **May 27, 2021**.
3. In order to verify compliance with order provision 2, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.
4. The timelines noted in order provision 2 may be extended if the police are unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such extension requests.

Original signed by: _____

Anna Truong
Adjudicator

April 27, 2021