

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4074

Appeal MA19-00791

Township of Guelph & Eramosa

June 23, 2021

Summary: The appellant submitted a request to the township under the *Act* for records relating to complaints filed about his commercial property. The township located records and granted the appellant access to them, in part. The township withheld some of the records under the personal privacy exemption in section 14(1) and various sections of the discretionary law enforcement exemption in section 8. The appellant appealed the township's decision and its fee. In this order, the adjudicator upholds the township's decision in part. She upholds the town's application of the personal privacy exemption in section 14(1) or 38(b) of the *Act* to withhold the personal information at issue. She finds two portions of the records are exempt under section 8(1)(d) (confidential source) or section 38(a), read with section 8(1)(d). However, the adjudicator finds the remainder of the records do not qualify for exemption and orders the township to disclose them to the appellant. Finally, the adjudicator upholds the township's fee, in part, and orders it to refund the difference to the appellant.

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), 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(2)(a), 14(1), 14(2)(f), 14(2)(h), 14(3)(b), 45(1); Regulation 823, sections 6 and 6.1.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Township of Guelph and Eramosa (the township) for

All complaints on the property located at [specific address] for the last 10 years, all inspections done on the property in the last ten years, all township records on the property, and all communication from township employees on the property excluding taxing information and well monitoring records.

[2] The township identified a number of responsive records and granted the appellant partial access to them. The township withheld portions of the records under the discretionary exemptions in sections 8(1)(a), (b), (c) and (d) (law enforcement) and 8(2)(a) (law enforcement report) and the mandatory personal privacy exemption in section 14(1) of the *Act*. To support its personal privacy exemption claim, the township claimed the application of the presumption in section 14(3)(b) (law enforcement investigation) and the factor favouring nondisclosure of personal information in section 14(2)(e) (exposure to pecuniary or other harm).

[3] The appellant appealed the township's decision.

[4] During mediation, the appellant confirmed his interest in obtaining access to all the withheld information. The appellant also takes issue with the township's fee, claiming it is excessive and the township should not have charged for personal information. The township refunded a portion of the fee relating to photocopy charges but confirmed the remainder of the fee. The township confirmed it would not disclose any additional records.

[5] No further mediation was possible and the appeal transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry into the issues under appeal. The adjudicator who was originally assigned the appeal began the inquiry by inviting the township to make submissions in response to a Notice of Inquiry, which summarizes the facts and issues under appeal. The township submitted representations. The adjudicator then sought and received representations in response to the Notice of Inquiry and the township's representations, which were shared in part in accordance with the confidentiality criteria in Practice Direction Number 7 of the IPC's *Code of Procedure*. The adjudicator then sought and received reply representations from the township in response to the appellant's representations. The adjudicator invited the appellant to submit further sur-reply representations in response to the township's reply representations, but he did not do so.

[6] The appeal was then transferred to me to complete the inquiry. In the discussion that follows, I uphold the township's decision, in part. I find the records contain personal information relating to the appellant and other identifiable individuals. I uphold the township's decision to withhold the personal information relating to other identifiable individuals under the personal privacy exemption in section 14(1) or 38(b). I find two portions of the records are exempt under section 8(1)(d) or section 38(a), read with section 8(1)(d). I uphold the township's exercise of discretion to withhold the information that qualifies for exemption under section 8(1)(d), section 38(a), read with section 8(1)(d), and section 38(b). I order the township to disclose the remainder of the records to the appellant. Finally, I uphold the township's fee in part and order it to

refund the difference to the appellant.

RECORDS:

[7] According to the township’s index of records, the following records remain at issue:

Record No.	Description	Exemption(s) claimed
41	Call logs regarding enforcement – withheld in full	Sections 8(1)(b) and (d) and 14(1)
42	Call log; Voicemail regarding enforcement – withheld in full	Sections 8(1)(b) and (d) and 14(1)
43	Email correspondence – withheld in full	Sections 8(1)(b) and (d) and 14(1)
71	Outlook calendar appointment – withheld in full	Sections 8(1)(b) and (d) and 14(1)
74	Outlook calendar appointment – withheld in full	Section 8(1)(a)
78	Task memo – withheld in full	Sections 8(1)(b) and (d) and 14(1)
81	By-law enforcement notebook entry – withheld in full	Sections 8(1)(a) and 8(2)(a)
82	By-law complaint intake form – withheld in full	Sections 8(1)(d), 8(2)(a) and 14(1)
83	Task memo – withheld in part	Section 14(1)
91	Email correspondence – withheld in full	Section 8(1)(a)
92	Map with enforcement officer’s notes – withheld in full	Sections 8(1)(a) and (c) and 8(2)(a)
93	Email exchange – withheld in full	Section 8(1)(a)
197-199	Voice messages – withheld in full	Sections 8(1)(a) and (c) and 14(1)
200	Task memo – withheld in part	Section 14(1)

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 exemption at section 38(b) (personal privacy) or the mandatory exemption at section 14(1) (personal privacy) apply to the information at issue?
- C. Does the discretionary exemption at section 38(a), read with the section 8 (law enforcement), exemption apply to the information at issue?
- D. Did the township exercise its discretion under sections 8(1)(d), 38(a), read with section 8(1)(d), or 38(b)? If so, should this office uphold the exercise of discretion?
- E. Should the fee 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?

[8] 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) of the *Act* as "recorded information about an identifiable individual."

[9] 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.¹ However, 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.²

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

[11] The township submits the records contain personal information relating to the affected party and other individuals. Specifically, the township submits the records

¹ See sections 2(3) and (4) of the Act and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

contain the affected party's gender, name, contact information and their personal views or opinions. The township states the records contain personal information relating to other identifiable individuals, such as their names and telephone numbers.

[12] The township states the records relate to a by-law enforcement matter concerning the appellant's property. Given the small number of individuals involved and the nature of the information at issue, the township submits there is a reasonable expectation that the disclosure of the records would disclose information about an identifiable individual even if the individual's name and contact information were severed.

[13] The township states that certain, limited portions of the records contain the personal information of the appellant.

[14] The appellant did not address whether the records contain personal information within the meaning of section 2(1) of the *Act* in his representations. However, the appellant takes the position that information relating to businesses and their employees or owners is not personal information and should be disclosed to him.

[15] In response, the township states there is no evidence showing the personal information of identifiable individuals other than the appellant relates to a business or an individual acting in an official or business capacity. The township refers to Order MO-3857, in which the adjudicator found that while work email addresses were at issue in by-law complaints, the complaints were made in a personal capacity and therefore, the work email addresses would disclose something of a personal nature about the individual involved (i.e. that they made a by-law complaint against someone).

[16] I reviewed the records at issue and find they contain personal information relating to the appellant. Specifically, I find they contain his phone number (considered to be *personal information* under paragraph (d) of the definition of that term in section 2(1)), the views of another individual about him (paragraph (g)), and his name (paragraph (h)). In addition, I find the records contain information that would serve to identify him as per the introductory wording of the definition of section 2(1) of the *Act*. While the property that is the subject of the request appears to be the appellant's commercial property, the fact that there is a complaint filed against the property and the appellant, as the owner, reveals something of a personal nature about the appellant. Therefore, I find the records that contain the appellant's name, specifically records 41, 43, 74, 78, 83, 91, 93, and 199, contain personal information relating to him.

[17] However, I find records 42, 71, 81, 82, 92, 197, 198, and 200 do not contain personal information relating to the appellant. Under section 2(2.1) of the *Act*, personal information does not include the contact information, such as the address, of an individual that identifies the individual in a business, professional or official capacity. Upon review of the records, it appears the appellant does not reside at this address and the property is used for commercial purposes. The appellant did not provide any submissions on this point. I find the address of the property, on its own, does not

constitute personal information within the meaning of section 2(1) of the *Act*. Therefore, I find the records that contain only the address of the property and no other information relating to the appellant do not contain personal information within the meaning of section 2(1) of the *Act*.

[18] In addition, I find the records contain personal information relating to other identifiable individuals including their contact information (paragraph (d)), their personal views or opinions (paragraph (e)), correspondence sent to the township that is implicitly of a private or confidential nature (paragraph (f)), and their names (paragraph (h)). Specifically, I find records 41, 42, 43, 71, 82, 83, 197 to 199, and 200 contain personal information relating to identifiable individuals other than the appellant. None of these individuals were contacted during the appeal process or during the inquiry. The township states that one of the individuals identified in the records does not consent to the disclosure of any of their personal information to the appellant.

[19] In conclusion, I find records 41, 43, 74, 78, 83, 91, 93, and 199 contain personal information relating to the appellant. Accordingly, I will consider access to these records under Part II of the *Act*. I will consider access to the remainder of the records under Part I of the *Act* because they do not contain personal information relating to the appellant.

Issue B: Does the discretionary exemption at section 38(b) (personal privacy) or the mandatory exemption at section 14(1) (personal privacy) apply to the information at issue?

[20] The township applied section 14(1) to withhold records 41, 42, 43, 71, 78, 82, 83, 197-199, and 200, in full or in part. However, as discussed above, records 41, 43, 78, 83, and 199 contain personal information relating to the appellant. Accordingly, I will consider access to records 41, 43, 78, 83, and 199 under Part II of the *Act*.

[21] 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.

[22] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an *unjustified invasion* of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[23] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy (the section 14(1)(f) exception).

[24] Under section 38(b), if any of the exceptions in sections 14(1)(a) to (e) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[25] None of the section 14(1)(a) to (e) exceptions is applicable here.

[26] In determining whether the disclosure of the personal information in the records *would not* be an unjustified invasion of personal privacy under section 14(1)(f) or *would* be an unjustified invasion of personal privacy under section 38(b), sections 14(2) to (4) offer guidance. The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Additionally, 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 either section 14(1) or section 38(b). None of the circumstances listed in section 14(4) are present here.

[27] The township submits the presumption in section 14(3)(b) applies to the information at issue. 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.

The township submits that section 14(3)(b) applies to the records at issue with respect to the by-law enforcement matters which resulted in the orders and notice of violation issued against the appellant. The appellant did not make submissions on the presumption in section 14(3)(b); he asserts he is entitled to the information at issue in the records.

[28] I reviewed the records and find the presumption in section 14(3)(b) applies to the personal information at issue. The IPC has established that the presumption in section 14(3)(b) can apply to a variety of investigations, including those relating to by-law enforcement.³ Based on my review, I agree with the township that the personal information in the records was compiled during law enforcement investigations. The personal information at issue was compiled by the by-law officers during their by-law enforcement investigations into possible violations of law on the property.

[29] The township also claims the factors favouring nondisclosure in sections 14(2)(f) and (h) apply to the personal information that remains at issue. These sections state,

³ Orders MO-2147 and MO-3337.

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,

(f) the information is highly sensitive

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

In the confidential portions of its representations, the township submits the personal information in the records is *highly sensitive* in that its disclosure could reasonably be expected to result in significant personal distress to identifiable individuals. The township also states these identifiable individuals did not consent to the disclosure of their personal information. The appellant did not address section 14(2) in his representations.

[30] The personal information that remains at issue relates to individuals who filed complaints in relation to the appellant's property or were interviewed in the course of an investigation on the property. Given these circumstances, I find that disclosing their names and the information they provided to the enforcement officers to the appellant could reasonably be expected to cause them significant personal distress. In addition, I find that these individuals provided their information to the enforcement officers in confidence. Therefore, I find the factors in sections 14(2)(f) and (h) apply in favour of nondisclosure of the personal information at issue.

[31] I note the appellant did not raise any of the section 14(2) factors weighing in favour of the disclosure of the personal information at issue and I find that none apply.

[32] Therefore, I find the personal information relating to individuals other than the appellant is exempt under section 14(1) or 38(b) of the *Act*. Specifically, I find the complainant's name and contact information in Record 41 is exempt under section 38(b), subject to my review of the township's exercise of discretion below. I find the complainant's name and contact information in Record 42 is exempt under section 14(1). I find the complainant's name and contact information in Record 43 qualifies for exemption under section 38(b). I find the complainant's name, contact information and the information they provided to the township regarding the property in question in Record 71 qualifies for exemption under section 38(b). I find the portions of the record relating to identifiable individuals other than the appellant in Record 78 qualify for exemption under section 38(b). I find the complainant's name and contact information in Record 82 is exempt under section 14(1) of the *Act*. I find the complainant's name and contact information in Record 83 qualifies for exemption under section 38(b) of the *Act*. I find the voicemail messages in records 197 and 198 are exempt under section 14(1) and the message in Record 199 qualifies for exemption under section 38(b). Finally, I find the complainant's name and contact information in Record 200 is exempt under section 14(1).

[33] I have considered whether the absurd result principle applies to the personal

information that qualifies for exemption under section 38(b). The absurd result principle considers whether the requester originally supplied the information at issue or is otherwise aware of it. Where circumstances are present, the information may not be exempt under section 38(b) because to withhold the information would be absurd and inconsistent with the purpose of the exemption.⁴ The absurd result principle has been applied where, for example: the requester sought access to his or her own witness statement;⁵ the requester was present when the information was provided to the institution;⁶ and the information is clearly within the requester's knowledge.⁷

[34] The township submits the absurd result principle has no application to the personal information that is subject to the personal privacy exemption. The township submits the complainant's communications and information is not within the appellant's knowledge nor was it provided to the appellant in any way.

[35] The appellant did not address the absurd result principle in his representations.

[36] I reviewed the personal information that qualifies for exemption under section 38(b) and find the absurd result principle does not apply to it. The appellant was present when some of the personal information in Record 78 was collected by the enforcement officer. However, it is not clear how much knowledge the appellant has regarding the information conveyed by that individual. The appellant did not provide any information to demonstrate that the information subject to the township's section 38(b) claim is clearly within his knowledge even though he was present when some of the information was provided. In light of the circumstances, I find it would not be absurd or inconsistent with the purpose of the exemption in section 38(b) to withhold the personal information at issue.

[37] In conclusion, I find the personal information at issue is exempt under section 14(1) for the records that do not contain the appellant's personal information. I find the personal information at issue in the records that also contain the appellant's personal information is exempt under section 38(b), subject to my review of the township's exercise of discretion, below. As I have found the personal information at issue is exempt under the personal privacy exemption, it is not necessary for me to consider whether the law enforcement exemption in section 8 or section 38(a) read with section 8 also applies to exempt these records from disclosure.

⁴ Orders M-444 and MO-1323.

⁵ Orders M-444 and M-451.

⁶ Orders M-444 and P-1414.

⁷ Orders MO-1196, PO-1679 and MO-1755.

Issue C: Does the discretionary exemption at section 8 (law enforcement) or section 38(a), read with the section 8, exemption apply to the information at issue?

[38] The township claims that portions of the records are exempt under sections 8(1)(a), (b), (c), and (d), as well as section 8(2)(a). Some of the records contain the appellant's personal information. Therefore, I will consider whether those records are exempt under section 38(a), read with sections 8(1)(a), (b), (c), and (d), and section 8(2)(a).

[39] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their own personal information.⁸

[40] In this case, the township relies on section 38(a) in conjunction with sections 8(1)(a), (b), (c) and (d) as well as section 8(2)(a). These sections read:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source

(2) A head may refuse to disclose a record,

⁸ Order M-352.

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcement and regulating compliance with a law;

[41] Previous orders have found that the term *law enforcement* can include a municipality's investigation into a possible violation of a municipal by-law.⁹

[42] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁰ However, it is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.¹¹ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of information at issue and the seriousness of the consequences.¹²

[43] Generally, the township submits the records concern correspondence, investigative information, notes and records with respect to various infractions of the township's zoning By-Law 40/2016 and infractions of the *Building Code Act*¹³ (the *Building Code*) with respect to the existence of illegal dwelling units on the appellant's property. The township submits the records relate to the following ongoing law enforcement matters:

- The township ultimately issued various orders to comply with under the *Building Code* against the appellant; the township states the appellant is in the process of appealing these orders
- The township ultimately issued a Notice of Zoning infraction against the appellant on December 19, 2019 and the matter is ongoing

Given these circumstances, the township submits the records meet the definition of an *ongoing law enforcement matter*. The township makes more specific representations in relation to some of the exemptions claimed and I will address them below.

⁹ Orders M-16 and MO-1245.

¹⁰ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹¹ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-54.

¹³ 1992, S.O. 1992, c. 23.

Section 8(1)(a): law enforcement matter

[44] The township withheld records 74, 81, 91, 92, and 93 from disclosure under section 8(1)(a). Records 74 and 91 contain personal information relating to the appellant; as such, I will consider the application of section 38(a) read with section 8(1)(a) to these records.

[45] Section 8(1)(a) exempts information that may reasonably be expected to interfere with a law enforcement matter. For section 8(1)(a) to apply, the matter in question must be ongoing or in existence. The exemption does not apply where the matter is completed, or where the alleged interference is with *potential* law enforcement matters.

[46] The township states that orders to comply and a notice of infraction were issued against the appellant under the township's zoning by-law and the *Building Code*. The township states that both matters are currently under appeal or unresolved. Given these circumstances, the township submits the records relate to on-going law enforcement matters and should be exempt under section 8(1)(a) or 38(a), read with section 8(1)(a).

[47] In his representations, the appellant asks the township to expand on how the disclosure of the records subject to the township's section 8(1)(a) claim would reasonably be expected to interfere with the law enforcement matter.

[48] The township was provided with an opportunity to respond to the appellant's submissions. However, the township stated it had nothing further to add to its arguments regarding section 8.

[49] I reviewed the records subject to the township's section 8(1)(a) claim, namely, records 74, 81, 91, 92, and 93. While I accept the records relate to a law enforcement matter concerning the appellant's property, the township did not provide any submissions to demonstrate how these records would, if disclosed, reasonably be expected to interfere with the law enforcement matter.

[50] Records 74 and 91 are email chains with overlapping emails relating to a meeting to discuss the property at issue. Record 93 is an email relating to the appellant's property and is part of the email chain in Record 74. These records contain personal information relating to the appellant and I will consider whether they are exempt under section 38(a) read with section 8(1)(a). The email chains include some information relating to the complaint and the investigation; however, I find the information general in nature. In any case, the township has not provided any evidence to demonstrate how the disclosure of records 74, 91 and 93 could reasonably be expected to result in interference with this law enforcement matter. Therefore, I find records 74, 91 and 93 are not exempt under section 38(a), read with section 8(1)(a). The township did not claim any other exemptions to withhold these records from disclosure and I find they would not qualify for exemption under any of the mandatory exemptions. Accordingly, I will order the township to disclose these records to the appellant.

[51] Record 81 is a handwritten notebook entry. It does not contain the appellant's personal information. Based on my review, I find it does not contain any information which would, if disclosed, reasonably be expected to interfere with a law enforcement matter. The township did not provide any evidence to support its section 8(1)(a) claim, other than to affirm the law enforcement matter is ongoing. Therefore, I find section 8(1)(a) does not apply to Record 81. I will consider whether this record is exempt under section 8(2)(a) below.

[52] Record 92 is a map of the appellant's property with handwritten officer's notes. It does not contain the appellant's personal information. Based on my review, I find it does not contain any information which would, if disclosed, reasonably be expected to interfere with a law enforcement matter. The township did not provide any evidence to support its section 8(1)(a) claim, other than to affirm the law enforcement matter is ongoing. Therefore, I find section 8(1)(a) does not apply to Record 92. I will consider whether this record is exempt under section 8(1)(c) below.

[53] In conclusion, I find section 8(1)(a) or section 38(a), read with section 8(1)(a), does not apply to the information subject to the township's exemption claim.

Section 8(1)(b): law enforcement investigation

[54] The township withheld records 41, 42, 43, 71, and 78 under section 8(1)(b) of the *Act*. I note records 41, 43, and 78 contain the appellant's personal information so I will consider whether they are exempt under section 38(a) read with section 8(1)(b).

[55] Section 8(1)(b) applies to records that could, if disclosed, reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. In order for section 8(1)(b) to apply, the law enforcement investigation in question must be a specific, ongoing investigation. It does not apply where the investigation is completed, or where the alleged interference is with *potential* law enforcement investigations.¹⁴ The investigation must be ongoing or in existence.¹⁵

[56] The township states that, at the time the appellant submitted his request, its by-law officers were conducting an investigation with respect to the township's zoning by-law and the *Building Code*. As such, the township takes the position that the records are exempt under section 8(1)(b) because their disclosure could interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

[57] In his representations, the appellant asks the township to explain how the disclosure of the records could reasonably be expected to interfere with an

¹⁴ Order PO-2085.

¹⁵ Order PO-2657.

investigation. The township did not elaborate on its original submissions when it was given an opportunity to do so.

[58] As stated above, it is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter. Further, it is not sufficient for an institution to repeat the words of the exemption to support its claim. In order to establish the application of an exemption, the township must provide detailed evidence about the potential for harm, which in this case, is the interference with an ongoing investigation of a law enforcement matter. The township did not provide any evidence regarding the interference that could reasonably be expected to result from the disclosure of the records. Furthermore, while the investigation may have been ongoing when the appellant filed his request, the township did not provide any evidence to demonstrate the investigation was ongoing when it submitted its representations.

[59] I reviewed records 41, 42, 43, 71, and 78 and find they do not qualify for exemption under section 8(1)(b), or section 38(a) read with section 8(1)(b). Records 41 and 42 are handwritten notes recording a call with the complainant regarding the appellant's property. Record 43 is an email chain regarding a message left by the complainant regarding the appellant's property. Record 71 is an email chain regarding the complainant's concerns about the appellant's property. Record 78 is a task memo summarizing the by-law enforcement officer's inspection of the appellant's property. I note all of these records contain personal information relating to other identifiable individuals that I found to be exempt under section 14(1) or 38(b) of the *Act*.

[60] Based on my review of the records subject to the township's section 8(1)(b) claim and the absence of detailed evidence supporting this claim, I find these records are not exempt under section 8(1)(b) or 38(a), read with section 8(1)(b). The township has not provided me with any evidence to demonstrate how the disclosure of these records could reasonably be expected to result in interference with an ongoing investigation. Therefore, I find section 8(1)(b) or 38(a), read with section 8(1)(b), does not apply to records 41, 42, 43, 71, and 78. I will consider whether these records are exempt under section 8(1)(d) or 38(a), read with section 8(1)(d), below.

Section 8(1)(c): investigative techniques and procedures

[61] The township claims section 8(1)(c) applies to withhold Record 92 from disclosure. Record 92 is a map of the appellant's property with handwritten officer's notes. The township did not make any submissions regarding the application of section 8(1)(c) to withhold Record 92 from disclosure.

[62] In order for section 8(1)(c) to apply, the township must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The township did not provide me with any information regarding the investigative technique or procedure that could be revealed if Record 92 were to be disclosed. In the absence of any submissions from the township,

despite an additional opportunity to do so at reply, I find section 8(1)(c) does not apply to Record 92. I will consider whether it is exempt under section 8(2)(a) below.

Section 8(1)(d): confidential source

[63] The township claims the application of section 8(1)(d) to withhold records 41, 42, 43, 71, 78, and 82 from disclosure. Records 41, 43, and 78 contain the appellant's personal information so I will consider whether they are exempt under section 38(a) read with section 8(1)(d).

[64] Section 8(1)(d) provides an institution with the discretion to withhold a record from disclosure if the disclosure could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

[65] The township states its by-law complaint process has always guaranteed the confidentiality of complainants' identities to ensure that members of the public will continue to report by-law infractions. The township states it expressly guaranteed confidentiality to a complainant in Record 78.

[66] I have already found the personal information relating to other identifiable individuals, including complainants, to be exempt from disclosure under the personal privacy exemption. This personal information includes these individuals' names, contact information, personal views and opinions, and correspondence provided to the township in confidence. I have reviewed the remainder of the information at issue in records 41, 42, 43, 71, 78, and 82 and find the majority of it does not contain any information which would, if disclosed, reasonably be expected to result in the disclosure of the identity of the source of information or the information provided by the source.

[67] However, there are two exceptions to this general finding. The first is in page 2 of Record 82, which is transposed into page 3 of Record 78, which contains the details of the alleged violation regarding the appellant's property. The second exception is the map that is attached to the complaint form in Record 82, which appears to have been drawn by the complainant and provided to the township. The complainant provided these portions of records 78 and 82 to the township in confidence. I find disclosure of this information would reveal the information the complainant provided to the township as part of their complaint. Given these circumstances, I find the information in pages 2 and 3 of Record 82 is exempt from disclosure under section 8(1)(d) and the duplicate information in page 3 of Record 78 is exempt under section 38(a), read with section 8(1)(d). Both of these findings are subject to my review of the township's exercise of discretion below.

[68] Therefore, I uphold the township's application of section 8(1)(d) or 38(a), read with section 8(1)(d), to a portion of page 2 and page 3 in its entirety of Record 82 and a portion of page 3 of Record 78. I find the remainder of the information at issue in records 41, 42, 43, 71, 78, and 82 do not qualify for exemption under section 8(1)(d) or section 38(a), read with section 8(1)(d). I will order the township to disclose portions of

records 41, 42, 43, 71, and 78 that do not contain personal information to the appellant as the township did not claim any other discretionary exemptions and I find no other mandatory exemptions apply to the information that remains at issue in these records. I will consider whether Record 82 qualifies for exemption under section 8(2)(a) below.

Section 8(2)(a): law enforcement report

[69] The township claims the application of section 8(2)(a) to withhold records 81, 82 and 92 from disclosure. In order to qualify for exemption under section 8(2)(a) of the *Act*, the township must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.¹⁶

The word *report* means "a formal statement or account of the results of the collation and consideration of information." Generally, results would not include mere observations or recordings of fact.¹⁷ The title of a document does not determine whether it is a report, although it may be relevant to the issue.¹⁸

[70] The township did not make any submissions regarding the application of section 8(2)(a) to the records. In his representations, the appellant asked the township to support its section 8(2)(a) claim, but the township did not provide any further submissions on section 8.

[71] Record 81 is an officer's notebook entry, Record 82 is a by-law complaint form, and Record 92 is a map of the appellant's property with handwritten officer's notes. Based on my review, none of these records can be considered a *report* within the meaning of section 8(2)(a). None of these records contain a formal statement of account and do not contain any consideration or collation of information. Upon review, and in the absence of any evidence from the township regarding section 8(2)(a), I find section 8(2)(a) does not apply to exempt records 81, 82, and 92 from disclosure. I will order the township to disclose these records, with the exception of the information I found exempt under sections 8(1)(d) and 14(1) in Record 82, to the appellant.

¹⁶ Orders P-200 and P-324.

¹⁷ Orders P-200, MO-1238 and MO-1337-I.

¹⁸ Order MO-1337-I.

Summary of findings under section 8

[72] In conclusion, I find that some of the information in the second page and the entire third page of Record 82 are exempt from disclosure under section 8(1)(d). I also find a portion of page 3 of Record 78 is exempt under section 38(a), read with section 8(1)(d). I will review the township's exercise of discretion below.

[73] I find the remainder of the information at issue is not exempt under sections 8(1)(a), (b), (c) or (d) or section 8(2)(a). I will order the township to disclose this information to the appellant.

Issue D: Did the township exercise its discretion under sections 8(1)(d), 38(a), read with section 8(1)(d), or 38(b)? If so, should this office uphold the exercise of discretion?

[74] The exemptions in sections 8(1)(d) and 38 are discretionary and permit an institution to disclose the information subject to these exemptions despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. The IPC may find the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose; it takes into account irrelevant considerations or fails to take into account relevant considerations. In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁹ However, the IPC may not substitute its own discretion for that of the institution.²⁰

[75] The township claims it exercised its discretion appropriately and only withheld access to those parts of the records that contain information or correspondence provided in confidence by identifiable individuals or which relate to a law enforcement matter. The township states it considered the general principles of the *Act* and was mindful to not act in bad faith, withhold information for an improper purpose or in a manner that would contravene the *Act*.

[76] In particular, the township submits there does not appear to be a compelling or sympathetic reason as to why the records should be disclosed to the appellant. The township also considered whether the information should be made public in the interests of transparency and accountability, weighed against the wording of the exemptions in sections 38 and 8(1)(d) and the interests those exemptions seek to protect. Finally, the township states it considered the principle that information should be accessible to the public and exemptions from the right of access should be limited and specific, which in this case were limited to communications from a complainant and in the context of ongoing law enforcement matters.

¹⁹ Order MO-1573.

²⁰ Section 43(2) of the *Act*.

[77] The appellant did not address the township's exercise of discretion in his representations.

[78] I reviewed the parties' representations and the information that I have found to be exempt under sections 8(1)(d), 38(a), read with section 8(1)(d), and 38(b). Based on this review, I am satisfied the township considered relevant factors in exercising its discretion and did not take into account irrelevant factors.

[79] Specifically, I am satisfied that in exercising its discretion under sections 8(1)(d), 38(a), read with section 8(1)(d), and 38(b), the township considered the sensitivity of the personal information at issue, the importance of the law enforcement exemption, the circumstances surrounding the filing of by-law complaints by the public, and balanced the appellant's right of access to his personal information with the privacy interests of other identifiable individuals. There is no evidence before me to suggest the township took into account irrelevant considerations or that it exercised its discretion in bad faith or for an improper purpose.

[80] Accordingly, I am satisfied the township did not err in exercising its discretion to withhold information exempt under sections 8(1)(d), 38(a), read with section 8(1)(d), and 38(b), and I will not interfere with it on appeal.

Issue E: Should the fee be upheld?

[81] Under section 45(1) of the *Act*, the township is required to charge fees for processing access requests according to the following framework:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

[82] Other specific and relevant provisions regarding fees are found in sections 6 and 6.1 of Regulation 823:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing the personal information from machine readable record, \$15 for each 15 minutes spent by any person.
4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received.

[83] The difference between parts 6 and 6.1 of the regulation is that an institution is not permitted to charge search and preparation fees for access to personal information about the appellant.

[84] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823.

[85] The township's final fee was set out in its access decision as follows:

Search Time: 7 hours at \$30/hour	\$210
Preparation time: 3 hours at \$30/hour	\$90

Copies: 500 pages at \$0.25/page	\$125
USB (for voicemail) 1 @ \$10	\$10
Total	\$435

During mediation, the township refunded \$25 to the appellant due to incorrectly charging 25 cents per page rather than 20 cents per page, as per Regulation 823. Therefore, the fee was reduced to \$410.

[86] In its representations, the township states it calculated its fee based on the actual search, preparation and copying completed in response to the request. The township states there is nothing to indicate that the work was not undertaken and its revised fee of \$410 should be upheld.

[87] The appellant takes the position that the township charged him too high a fee for search and preparation time. The appellant submits the township should refund him \$200 for fees that were "overpaid to the Township."

[88] In its reply representations, the township refers to subsection 45(1) of the *Act* and section 6 of Regulation 823. The township reiterates the fee it charged the appellant complies with the *Act* and Regulation 823. Finally, the township submits the appellant provided no evidence to support his claim that the township was overpaid and is therefore not entitled to a further refund.

[89] I have reviewed the records before me, the parties' representations and the fee charged to the appellant to process his request. Upon this review, I am prepared to uphold part of it.

[90] The appellant did not take issue with the photocopying fee of \$100, which was reduced from \$125 due to the township's error in charging 25 cents per page rather than the appropriate 20 cents per page. On my review, I am satisfied the photocopying fee has been calculated in accordance with the *Act* and I uphold it.

[91] The appellant did not take issue with the township's \$10 charge for the USB. The IPC has allowed institutions to charge \$10 for records on a USB as it is akin to putting records onto a CD-ROM,²¹ which is charged at a rate of \$10 per CD-ROM in Regulation 823. I uphold the township's fee of \$10 for one USB stick.

[92] Under section 6 of Regulation 823, the township is required under section 45(1)(a) to charge the appellant a fee for "the costs of every hour of manual search required to locate a record" at a rate of \$7.50 for each 15 minutes spent and without

²¹ See Order PO-3818, for example.

regard for whether or not access is to be granted. The costs of preparing the record for disclosure contemplated by section 45(1)(b) comes into play only with records that are to be disclosed in part and at the same rate as search.

[93] However, I have found that some of the records contain personal information relating to the appellant. The township itself acknowledges that portions of the records contain the appellant's personal information. Where a record contains personal information relating to the requester, in this case, the appellant, the township is not permitted to charge the requester for search and preparation of that record under section 6.1 of Regulation 823. The township did not adjust its fee to reflect the records that contain the appellant's personal information.

[94] The appellant seeks access to records relating to his commercial property. While a number of the records relate to the appellant in a professional or business capacity, as discussed above, given the nature of the by-law complaint and enforcement actions, I found that a number of the records contain personal information relating to the appellant. Where some of the records contain personal information relating to the request, the IPC has adopted an approach to assess the fee on a record-by-record basis to determine whether the records contain personal information and then calculate the permissible search and preparation fees accordingly.²² This is the approach I will take in this appeal. Therefore, if a record contains the personal information of the appellant, the city cannot charge the appellant a fee for searching for, or preparing, those particular records for disclosure.

[95] I do not have a complete copy of the 204 records responsive to the appellant's request before me. I only have a copy of the sixteen records at issue before me. Of those sixteen records, seven (records 41, 43, 74, 78, 83, 91, 93, and 199) contain the appellant's personal information. Therefore, approximately 45% of the records contain the appellant's personal information. The township is not permitted to charge the appellant search or preparation fees for any records that contain the appellant's personal information. Without a complete copy of the 204 records responsive to the appellant's request, I will reduce the \$210 search fee by 45%, which is proportionate to the number of records at issue that do not contain the appellant's personal information. Accordingly, I permit the township to charge the appellant a revised search fee of \$115.50 under section 45(1)(a) for the records that do not contain the appellant's personal information.

[96] As with the search fee, I will reduce the township's \$90 preparation fee by 45%, to a revised preparation fee of \$49.50 under section 45(1)(b) for the records that do not contain the appellant's personal information.

[97] In sum, I permit the township to charge the appellant the photocopying fee of

²² See Orders MO-1285, MO-2527, and MO-3313.

\$100, a fee of \$10 for the USB, a search fee of \$115.50, and a preparation fee of \$49.50 for a total final fee of \$275. The appellant has paid the township the full amount of the \$410 fee. Accordingly, the township must reimburse the \$135 difference to the appellant.

ORDER:

1. I uphold the township's decision to withhold the personal information relating to individuals other than the appellant under section 14(1) or 38(b) from records 41, 42, 43, 71, 78, 82, 83, 197-199, and 200.
2. I uphold the township's decision to withhold a portion of page 2 and all of page 3 of Record 82 and a portion of page 3 of Record 78 under section 8(1)(d) or 38(a), read with section 8(1)(d).
3. I order the township to disclose the remainder of the records at issue to the appellant by **July 28, 2021** but not before **July 23, 2021**. For clarity, I will provide the township with a highlighted copy of the records at issue with the exempt information highlighted. To be clear, the township is not to disclose the highlighted information to the appellant. Further, the township is not to disclose any part of the audio recordings that are records 197 to 199 to the appellant.
4. I partly uphold the township's fee decision, but order a reduction in the total fee from \$410 to \$275. Since the appellant paid the fee in full, I order the township to refund the appellant the \$135 difference.
5. To verify compliance with Order Provision 3, I reserve the right to require the township to provide me with a copy of the records ordered to be disclosed.

Original Signed by: _____
Justine Wai
Adjudicator

_____ June 23, 2021