

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-4067-I

Appeal MA18-00863

Waterloo Regional Police Services Board

June 15, 2021

Summary: The Waterloo Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the requester. The police issued a decision granting partial access to the responsive records with severances under section 38(b) (personal privacy) and section 38(a) (discretion to refuse access to requester's own personal information) in conjunction with sections 8(1) (law enforcement), 9(1) (relations with other governments), and 12 (solicitor-client privilege) of the *Act*.

In this interim order, the adjudicator partially upholds the police's access decision and finds that the exemptions in section 38(b) and section 38(a), in conjunction with section 8(1)(c), apply to the portions of records for which it was claimed. She finds that the public interest override in section 16 does not apply. She defers her decision about the police's claim of section 38(a), in conjunction with section 12, pending receipt of additional evidence from the police.

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"), 8(1)(c), 12, 14(1)(b) and (e), 14(2)(a), (b), (d), (f) and (h), 14(3)(b), 16, 38(a), and 38(b).

Orders and Investigation Reports Considered: Orders MO-3418 and MO-2424.

OVERVIEW:

[1] This interim order addresses the issue of access to police records dealing with criminal harassment. The Waterloo Regional Police Services Board (the police) received the following request under the *Municipal Freedom of Information and Protection of*

Privacy Act (the Act):

Any and all records, notes, photographs, diagrams, correspondence, audio/visual recordings, documents and/or materials and information concerning me.

Any and all occurrence reports, investigation reports, witness statements, crown briefs, police briefs, records of arrest, officers notes, and police-related calls.

Any and all records of the nature stated.

[2] After receiving the request, the police notified a third party and requested their consent to disclose their information to the requester. The third party consented to disclosure of their information to the requester under the section 14(1)(a) consent exception to the personal privacy exemption.¹ The police then issued a decision to the requester granting partial access to the responsive records with severances under:

- Section 38(a) (discretion to refuse access to requester's own personal information) in conjunction with sections 8(1)(a) (law enforcement matter), 8(1)(c) (reveal investigative techniques and procedures), 8(1)(d) (confidential source of information), 8(1)(g) (intelligence information), 8(1)(l) (facilitate commission of an unlawful act), and 12 (solicitor-client privilege); and
- Section 38(b) (personal privacy) of the *Act*.

[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 police issued a revised decision adding the application of section 9(1)(a) (relations with other governments) to the withheld information, in addition to the previously claimed exemptions. The police also withheld certain information that they claim is non-responsive to the request. The appellant confirmed his intention to pursue access to the withheld information, including the information the police claim is non-responsive to his request.

[5] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I decided to commence the inquiry by inviting representations from the police, initially. I received representations from the police, which contained portions that I withheld due

¹ 14(1)(a) states: a head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access.

to confidentiality concerns.² I shared the non -confidential representations of the police with the appellant, and invited representations from the appellant, which I received.

[6] In this order, I partially uphold the police's access decision. I find that the exemptions in section 38(b) and section 38(a), in conjunction with section 8(1)(c), apply to the information for which those exemptions were claimed. Based on the information the police provided during the inquiry, I am unable to make a determination on the application of section 38(a), in conjunction with section 12, to the portions of record 3 that the police have withheld under this exemption. As such, I defer my decision on section 12 pending receipt of additional evidence from the police about the information withheld on that basis.

RECORDS:

[7] The information remaining at issue in this appeal is found in the withheld portions of the records noted below, as indicated in the police's index of records.

Record#	Description of Record	Pages	Access	Exemption(s) Claimed
1	Occurrence Details Report #1	1-11	Partial	38(b), 38(a) & 8(1)(a), (c), (d), (g), 38(a) & 9(1)(a)
2	Information for Show Cause Court	12-13	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), 38(a) & 9(1)(a)
3	Handwritten notes of Detective D.G.	14-28	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), (l), 38(a) & 9(1)(a), non-responsive (NR)
4	Handwritten notes of Constable J.B.	29-31	Partial	38(b) & NR
5	Handwritten notes of Detective A.O.	32-43	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), 38(a) & 9(1)(a), NR
6	Handwritten notes of	44-47	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), 38(a) &

² These portions were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the *IPC Code of Procedure*.

	Constable I.C.			9(1)(a), NR
7	Summary of video recorded interview of Witness #2	48-49	Partial	38(b), 38(a) & 8(1) (d)
8	Statement of a Witness #1	50-53	Partial	38(b), 38(a) & 8(1) (d)
9	Statement of a Witness #2	54-55	Partial	38(b), 38(a) & 8(1) (d)
10	Occurrence Details Report #2	56-62	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), 38(a) & 9(1)(a)
11	Handwritten notes of Constable C. L.	63-64	Partial	38(b), 38(a) & 8(1) (d), NR
12	Handwritten notes of Constable B.S.	65-84	Partial	38(b), 38(a) & 8(1) (a), (c), (d), (g), (l), 38(a) & 9(1)(a), 38(a) & 12, NR
13	Handwritten notes of Staff Sergeant C.T.	85-90	Partial	38(b), 38(a) & 8(1) (d), NR
14	Emails of V.M.	91-95	Partial	38(b), 38(a) & 8(1), (a), (c), (d), (g), NR
15	Emails of D.V.	96-100	Partial	38(b), 38(a) & 8(1) (a), (c), (g), 38(a) & 9(1)(a)
16	Email of S.B.	101	Partial	38(b), 38(a) & 8(1) (d)
17	Emails of T.K.	102-115	Partial	38(b), 38(a) & 8(1) (a), (c), (g), 38(a) & 9(1)(a)
18	Video recording of Witness #1	N/A	Withheld in full	38(b), 38(a) & 8(1)(d)
19	Video recording of Witness #2	N/A	Withheld in full	38(b) 38(a) & 8(1)(d)
20	Audio recording #1, the 911 call	N/A	Withheld in full	38(b) 38(a) & 8(1)(d)
21	Audio recording #2	N/A	Withheld	38(b)

			in full	
22	Audio recording #3	N/A	Partial access	38(b)
23	Audio recording #4	N/A	Partial access	38(b)
24	Audio recording #5	N/A	Partial access	38(b)
25	Audio recording #6	N/A	Partial access	38(b)
26	Audio recording #7	N/A	Partial access	NR

ISSUES:

- A. What is the scope of the request? What records are responsive to the request?
- B. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- D. Does the discretionary exemption at section 38(a) (discretion to refuse access to requester’s own personal information), in conjunction with the section 8(1) (law enforcement) exemption, apply to the information at issue?
- E. Does the discretionary exemption at section 38(a), in conjunction with section 12 (solicitor-client privilege), apply to the information at issue?
- F. Is there a compelling public interest in disclosure of the information withheld under section 38(b) that clearly outweighs the purpose of the exemption?
- G. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should the exercise of discretion be upheld?

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[8] The police withheld portions of records 3-6, 11-14, and 26 on the basis that they are not responsive to the appellant's request. The appellant disputes this.

[9] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[10] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.³

[11] To be considered responsive to the request, records must "reasonably relate" to the request.⁴

Representations of the parties

[12] The police submit that the request provided sufficient detail to identify the records responsive to the request and that the request relates to police involvement with the appellant.

[13] The police submit that due to the nature of police work, officers often work on several investigations at once, and because of this, the notebook records contain information relating to several matters unrelated to the appellant. The police submit

³ Orders P-134 and P-880.

⁴ Orders P-880 and PO-2661.

that these portions of the records are non-responsive, because they do not relate to the occurrences involving the appellant.

[14] The appellant does not specifically address the scope of the request or responsiveness in his representations. However, as noted above, the appellant confirmed he continues to seek access to the portions of the records that the police have withheld as non-responsive to his request.

Analysis and findings

[15] After reviewing the representations and the records at issue, I find that the police properly interpreted the scope of the appellant's request. The request was sufficiently clear and sought all records related to the appellant.

[16] As noted, the police withheld portions of records 3-6, 11-14, and 26 on the basis that they are non-responsive to the appellant's request. After reviewing these portions of the records, I find that the police have correctly claimed them as non-responsive to the appellant's request. From my review of the records, I conclude that these withheld portions contain information about other police matters unrelated to the appellant's involvement with the police. I accept the police's argument that officers often work on several investigations at once, and because of this, the records contain information relating to several unrelated matters.

[17] Based on all this, I find that those portions of records 3-6, 11-14, and 26, which the police withheld as non-responsive, fall outside the scope of the appellant's request. Since the police only withheld the portion of record 26 that I have found non-responsive to the appellant's request, record 26 is no longer at issue in this appeal. Additionally, there is information in two of the records that is about certain work scheduling matters related to several police officers/employees, and I also find this to be non-responsive, because it is not related to, or about the appellant. Accordingly, I uphold the police's decision to withhold the information they identified as non-responsive to the appellant's request, as well as brief portions of records 12 and 15 that I have marked on the copy of the records sent to the police with this order. Since I find that these portions of the records are not responsive to the appellant's request, they are no longer at issue in this appeal.

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

[18] 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;

[19] 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.⁵

[20] 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.⁶

[21] 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

⁵ Order 11.

⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

of a personal nature about the individual.⁷

[22] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

Representations

[23] The police submit that the records at issue contain the personal information of the individuals involved in the incident as that term is defined in section 2(1) of the *Act*. The police submit that the records contain the name, date of birth, address, and numerical identifiers of these individuals, as well as their statements describing their involvement in the incidents.

[24] The appellant's representations do not specifically address whether the records at issue contain personal information.

Analysis and findings

[25] After reviewing the records at issue and the representations of the police, I find that all of the records contain the personal information of the appellant combined with that of the other individuals involved in the incidents.

[26] Specifically, I find that the records contain personal information about the appellant, including his sex, race, age, address, phone number, his personal views and opinions, views or opinions about him, and his name along with other information, which fits within paragraphs (a)-(e) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[27] I also find that the records contain the same type of personal information about other identifiable individuals as well as their marital status, email address, their private correspondence, and other information, which fits within paragraphs (a)-(h) of the definition of "personal information" in section 2(1) of the *Act*.⁹

[28] The IPC applies the "record-by-record" method of analysis to records subject to an access-to-information request. Applied to requests for access to one's own personal information, the "record-by-record" approach gives requesters a right of access to entire records (or the withheld portions of records) that contain their own personal information, subject to any applicable exemptions. Under this method, the unit of analysis is the whole record, rather than individual pages, paragraphs, sentences or

⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁹ I note that the police failed to sever one instance of an individual's name in record 10. This appears to be an oversight as the police have severed all other instances of this individual's name in the record. Therefore, I will consider it under section 38(b).

words contained in a record. In addition, where the information at issue is the withheld portion of a record that has been partially released, the whole of the record (including released portions) is analyzed in determining a requester's right to access the withheld information.¹⁰ In this appeal, since the records contain the personal information of the appellant, the relevant personal privacy exemption is the discretionary one in section 38(b).¹¹

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

[29] The police withheld portions of records 1-25 under the section 38(b) exemption. The appellant argues that the exemption does not apply.

[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 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). 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).

[33] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the IPC will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹²

[34] 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

¹⁰ See Orders M-352 and PO-3642.

¹¹ When a record does not contain a requester's personal information, the applicable personal privacy exemption is the mandatory one in section 14(1).

¹² Order MO-2954.

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).¹³

Representations, analysis and findings

[35] I note that the appellant's representations, as a whole, list parts of the *Act* that are not relevant or at issue in this appeal, such as the section 7 (advice or recommendations) exemption. The appellant's representations also generally describe his allegations about the police's conduct, which are not before me and are also not relevant to my determination of the issues in dispute with respect to his access request under the *Act*. Therefore, I have set out below only those parts of the appellant's representations that are relevant to the exemptions at issue in this appeal.

[36] The police withheld portions of records 1-25 under the section 38(b) exemption. The police submit that section 38(b) applies to the withheld information, because the records contain the personal information of both the appellant and other individuals, and its disclosure would be an unjustified invasion of their personal privacy. The appellant argues that the section 38(b) exemption does not apply and that disclosure of the withheld personal information would not be an unjustified invasion of anyone's personal privacy.

Section 14(1) and 14(4) exceptions

[37] The appellant argues that the exception at section 14(1)(b) (health or safety) applies to the withheld personal information. For the section 14(1)(b) exception to apply, there must be compelling circumstances affecting the health or safety of an individual.¹⁴ The appellant argues that the exception at section 14(1)(b) applies to the withheld information, because these incidents have caused him emotional distress, exhaustion and lost earnings.

[38] Previous IPC orders have held that in order to meet the "compelling" circumstances threshold, the purpose of seeking the personal information at issue must be a matter of "immediate and essential health or safety".¹⁵ Given that the records are police records about two occurrences of criminal harassment that occurred in 2017, I am not satisfied based on the circumstances of this appeal that the personal information at issue is a matter of immediate and essential health or safety. Therefore, I find that the "compelling" threshold has not been met and the section 14(b) exception does not apply to the personal information at issue in this appeal.

¹³ Order P-99.

¹⁴ Order MO-3247.

¹⁵ Orders MO-3247, MO-2677, and PO-2541.

[39] The appellant also argues that the section 14(1)(e) (research) exception applies to the withheld personal information. Section 14(1)(e) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations;

[40] The appellant argues that the exception at section 14(1)(e) applies, because disclosure would be justified and consistent with what he says could reasonably be expected through a subpoena. He claims that certain documents have already been provided to his legal counsel, such as statements, which are currently being withheld from him in this appeal. The appellant further argues that the research purpose for which the disclosure is to be made cannot be accomplished unless the information is provided in individually identifiable form.

[41] The section 14(1)(e) exception only applies if the disclosure of the personal information is for a "research purpose". If that preliminary requirement is met, paragraphs (i), (ii), and (iii) must also be satisfied for section 14(1)(e) to apply.¹⁶ Previous IPC orders have adopted the definition of the term "research" from section 2 of the *Personal Health Information Protection Act (PHIPA)*, which states:

"research" means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.¹⁷

[42] Based on this definition, and the appellant's representations, I find that the appellant is not seeking the withheld information for a "research purpose", because he is not requesting disclosure of the withheld personal information to conduct a

¹⁶ Order MO-3050.

¹⁷ Orders PO-2693 and PO-2694.

systematic investigation of the nature defined in past IPC orders, but rather for a personal purpose. Accordingly, I find that the section 14(1)(e) exception does not apply to the personal information at issue in this appeal.

[43] Neither party has argued that any of the other exceptions in section 14(1) or in section 14(4) apply to the withheld information, and I find that none apply in the circumstances of this appeal. Since I have found that none of the exceptions at sections 14(1)(a) to (e) or 14(4) apply, I must consider and weigh any section 14(2) factors and section 14(3) presumptions that apply.

Section 14(3) presumptions

[44] The police argue that the section 14(3)(b) presumption applies to the withheld information, because the personal information was compiled for an investigation into criminal harassment. The police submit that while the presumption only requires that there be an investigation into a possible violation of law, charges were laid for the second occurrence.

[45] 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[.]

[46] Based on my review of the personal information at issue, which is contained in police records about a criminal harassment investigation, 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.¹⁸ In any event, as the police noted, charges were laid for the second occurrence contained in the records. Therefore, I find that section 14(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the individuals to whom the information relates.

[47] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant. The appellant argues that the factors at sections 14(2)(a) (public scrutiny), 14(2)(b) (public health and safety), 14(2)(c) (purchase of goods and services), and 14(2)(d) (fair determination of rights) apply to the withheld information. These factors weigh in favour of disclosure, if they

¹⁸ Orders P-242 and MO-2235.

are found to apply.

[48] The police argue that the factors at sections 14(2)(f), (highly sensitive) and 14(2)(h) (supplied in confidence) apply to the withheld information. These factors weigh against disclosure, if they are found to apply.

[49] Sections 14(2)(a), (b), (c), (d), (f), 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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

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

(f) the personal information is highly sensitive;

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

Section 14(2) factors favouring disclosure

[50] The appellant argues that sections 14(2)(a) (public scrutiny) and 14(2)(b) (public health and safety) apply, because holding the police accountable for their actions would promote public health and safety. The appellant further argues that the police are avoiding public scrutiny by withholding evidence. The appellant submits that he is pursuing the withheld personal information, because his concern over an individual's wellbeing has caused his health to decline.

[51] Based on the circumstances of this appeal, I find that these factors do not apply to weigh in favour of disclosure of the withheld personal information. Section 14(2)(a) contemplates disclosure in order to subject the activities of the government, as opposed to the views or actions of private individuals, to public scrutiny.¹⁹ The police granted the appellant partial access to the records and only withheld the personal information of

¹⁹ Order P-99.

other identifiable individuals involved in specific occurrences of criminal harassment. In the circumstances of this appeal, I am not persuaded that disclosure of this personal information would subject the activities of the police to greater public scrutiny under section 14(2)(a).

[52] Section 14(2)(b) is a factor favouring disclosure if access to the information may protect public health and safety. Previous IPC orders have held that this factor applies in favour of disclosure of personal information such as the name of a dog owner, whose dog bites or attacks another person, because it may promote public health and safety.²⁰ However, in the circumstances of this appeal, I find that disclosure of the withheld personal information would not promote public health and safety as contemplated by section 14(2)(b) of the *Act*.²¹ While the appellant argues that disclosure of the withheld information would promote public health and safety, he has not established how disclosure of the withheld personal information of other individuals specifically would do so. Furthermore, his arguments focus on disclosure for his own personal health, which is not contemplated by section 14(2)(b) of the *Act*, because it is a private, not public concern.

[53] Accordingly, I find that the factors at sections 14(2)(a) and (b) do not apply to weigh in favour of the disclosure of the withheld personal information.

[54] The appellant argues that section 14(2)(c) (purchase of goods and services) applies, because access to the withheld information is required in order to promote informed choice in the purchase of services, such as obtaining legal counsel. As the appellant's representations suggest, section 14(2)(c) is a factor favouring disclosure relating to the promotion of informed choice in the purchase of goods and services. In order for section 14(2)(c) to apply in this appeal, disclosure of the withheld personal information would have to somehow assist the appellant in making an informed choice about retaining legal counsel. Based on my review of the withheld information, which is the personal information of other individuals, I am not satisfied that its disclosure would assist the appellant in making an informed choice about retaining legal counsel. Furthermore, the appellant's representations note that he already has legal counsel. Therefore, I find that the section 14(2)(c) factor does not apply to weigh in favour of disclosure of the withheld personal information.

[55] The appellant argues that the factor in section 14(2)(d) applies, because the withheld personal information is relevant to the fair determination of his rights. The appellant argues that false police reports and statements were filed. The appellant further argues that multiple rights that he has under the *Canadian Charter of Rights and Freedoms* (the *Charter*) have been clearly violated, including but not limited to freedom of conscience, thought, belief, opinion, expression, communication, association, and

²⁰ Orders MO-2980, MO-3370, and MO-3383.

²¹ Order MO-1664.

peaceful assembly.

[56] The appellant was advised in the Notice of Inquiry that for the factor at section 14(2)(d) to apply in favour of disclosure, he must establish all four parts of the following test:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.²²

[57] The appellant has argued that the withheld personal information is required for the fair determination of his rights. From his representations, it appears that he is requesting the withheld personal information, because he believes that the police have violated his *Charter* rights, specifically his rights under section 2 of the *Charter*. I note that the appellant did not file a Notice of Constitutional Question with the IPC and the Attorneys General of Canada and Ontario; nor has he requested any specific remedy under the *Charter* in this appeal under the *Act*.

[58] Based on the evidence before me, I am not persuaded by the appellant's representations that section 14(2)(d) applies to the personal information at issue in this appeal. The withheld information is the personal information of the other individuals involved in the occurrences of criminal harassment detailed in the records, including the complainant and witnesses. Given this, it is unclear from the appellant's representations how disclosure of this information is significant to or required for the fair determination of his *Charter* rights for the purposes of parts 3 and 4 of the test in section 14(2)(d) of the *Act*. I note that the police's withholding of the personal information at issue in this appeal does not prevent the appellant from pursuing other legal remedies that might be available to him with respect to his allegations against the police.²³ Therefore, I find that the appellant has not provided sufficient evidence to establish the application of either the third or the fourth part of the test. In order for section 14(2)(d) to apply, all

²² Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

²³ Section 51(1) of the *Act* provides that "This Act does not impose any limitation on the information otherwise available by law to a party to litigation."

four parts of the test must be established. Since the appellant has not persuaded me that all four parts of the section 14(2)(d) test have been met, I find that section 14(2)(d) does not apply to weigh in favour of the disclosure of the withheld personal information in this appeal.

Section 14(2) factors weighing against disclosure

[59] The police argue that the section 14(2)(f) (highly sensitive) factor applies to weigh against disclosure of the withheld personal information in this appeal. The police argue that the personal information provided by the parties is highly sensitive and would cause extreme personal distress if it were disclosed to the appellant. The police further argue that one of the withheld audio recordings is a 911 call, which previous IPC orders have found to be highly sensitive. In support of this, the police rely on Order MO-3594, where the adjudicator found that section 14(2)(f) applied to the audio recording of a 911 call.

[60] The police submit that they have also withheld video recordings of testimony from the complainant and a witness in full, which they argue contain personal information they consider even more sensitive than that of the 911 call. The police further submit that the paper records also contain summaries of these withheld recordings, all of which they argue is highly sensitive.

[61] In order for section 14(2)(f) to apply, the withheld personal information must be considered to be highly sensitive, which means there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁴ Given that the withheld information is personal information of the complainant and witnesses to occurrences of criminal harassment, I find that its disclosure to the appellant could reasonably be expected to cause significant personal distress to the individuals to whom the information relates. Therefore, I find that section 14(2)(f) applies in this appeal and weighs against disclosure of the withheld personal information.

[62] The police argue that the section 14(2)(h) (supplied in confidence) factor applies to weigh against disclosure of the withheld information, because the personal information in the records was supplied in confidence. The police submit that it is essential to the operation of the police that the trust bestowed upon them be maintained by protecting the personal information obtained in the course of investigations. The police further submit that when victims, witnesses, and individuals under investigation provide information to police, there is an expectation that it will remain confidential, because otherwise members of the public would be wary of providing information to the police.

[63] As past orders have established, section 14(2)(h) applies if both the individual

²⁴ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

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.²⁵

[64] 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.

[65] I agree with this analysis and adopt it in this appeal. The records at issue are police records relating to criminal harassment occurrences that contain the personal information of the complainant and witnesses. These records include their statement and other confidential information they provided to the police about the criminal harassment. Based on my review of the records and the representations of the parties, I am satisfied that these individuals 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 personal information in this appeal and weighs against its disclosure.

Conclusion

[66] Overall, I have found that no section 14(2) factors weigh in favour of disclosure and that the factors at sections 14(2)(f) (highly sensitive) and 14(2)(h) (supplied in confidence) weigh against disclosure. I have also found that the section 14(3)(b) presumption applies to the withheld personal information. Balancing the interests of the parties, the facts of this appeal weigh against disclosure of the withheld personal information in the records. Therefore, I find that the withheld personal information in records 1-25 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.

²⁵ Order PO-1670.

D. Does the discretionary exemption at section 38(a) (discretion to refuse access to requester's own personal information), in conjunction with the section 8(1) (law enforcement) exemption, apply to the information at issue?

[67] Section 36(1) 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.

[68] The police have claimed section 38(a), which 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.

[69] 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 personal information.²⁶

[70] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be disclosed to the requester because the record contains his or her personal information.

[71] In this case, the police rely on section 38(a) in conjunction with sections 8(1)(a), 8(1)(c), 8(1)(d), 8(1)(g), and 8(1)(l). The police also rely on sections 9(1)(a) and 12, which I will address below.

[72] The relevant parts of section 8(1) state:

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

(a) interfere with a law enforcement matter;

(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;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

²⁶ Order M-352.

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[73] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

[74] The term "law enforcement" has covered the following situations:

- a municipality's investigation into a possible violation of a municipal by-law.²⁷
- a police investigation into a possible violation of the *Criminal Code*.²⁸
- a children's aid society investigation under the *Child and Family Services Act*.²⁹
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997*.³⁰

[75] The IPC has stated that "law enforcement" does not apply to the following situations:

- an internal investigation by the institution under the *Training Schools Act* where the institution lacked the authority to enforce or regulate compliance with any law.³¹
- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.³²

[76] Generally, the law enforcement exemption must be approached in a sensitive

²⁷ Orders M-16 and MO-1245.

²⁸ Orders M-202 and PO-2085.

²⁹ Order MO-1416.

³⁰ Order MO-1337-I.

³¹ Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.).

³² Order P-1117.

manner, recognizing the difficulty of predicting future events in a law enforcement context.

[77] 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.³³ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is 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 issue and seriousness of the consequences.³⁴

Representations, analysis and findings

[78] Based on my review of the records and the representations of the police, I find that section 38(a), in conjunction with section 8(1)(c), applies to exempt the withheld portions of records 1-3, 5, 6, 10, 12, 14, 15, and 17.

[79] As noted above, some of the police's representations were withheld as confidential. I have reviewed all of the police's representations, but will only outline the non-confidential portions below. The appellant's representations do not specifically address the section 8(1) exemptions.

[80] I note that the police withheld the same portions of records 1-3, 5-14, and 16 under the section 8(1)(d) (confidential source) exemption as they did under the section 38(b) exemption. Since I have previously found that the discretionary personal privacy exemption in section 38(b) applies to exempt these same portions of the records from disclosure, I do not need to make a determination as to whether section 38(a), in conjunction with section 8(1)(d), also applies.

Section 8(1)(c) (investigative techniques or procedures)

[81] The police withheld portions of records 1-3, 5, 6, 10, 12, 14, 15, 17 under the section 8(1)(c) exemption. In order for the section 8(1)(c) exemption to apply, the police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.³⁵

[82] The police submit that disclosure of the withheld information would reveal investigative techniques and procedures currently used by the police. The police further

³³ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

³⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

³⁵ Orders P-170 and P-1487.

submit that the technique is not generally known to the public, and disclosure of this technique would most certainly compromise its effective use. In support of their position, the police rely on Order MO-2424, wherein Adjudicator Catherine Corban stated:

Specifically, I find that disclosure of information relating to communication and surveillance techniques, information related to techniques used by officers to perform certain tasks during the course of the investigation, and procedures applied by officers at crime scenes or in relation to seized property in order to gather evidence to assist in the resolution of the investigation, would reveal investigative techniques or procedures within the meaning of section 8(1)(c).

[83] I agree with this analysis and adopt it in this appeal. Similar to Order MO-2424, I find that the portions of records 1-3, 5, 6, 10, 12, 14, 15, 17 withheld under section 8(1)(c) contain information that relates to communication and surveillance techniques used by the police to perform specific tasks during the course of their investigation, including procedures in evidence gathering and collaboration. I find that disclosure of this information would reveal investigative techniques or procedures currently used by the police. I accept the police's submission that these techniques are not generally known to the public and that disclosure of this particular withheld information could reasonably be expected to compromise their effective use. Therefore, I find that section 38(a), in conjunction with section 8(1)(c), applies to the withheld portions of records 1-3, 5, 6, 10, 12, 14, 15, 17, subject to my findings on the police's exercise of discretion below.

[84] The police also withheld portions of the records under sections 8(1)(a) (law enforcement matter), 8(1)(g) (law enforcement intelligence information) and 8(1)(l) (commission of an unlawful act or control of a crime). Since I have found that section 38(a), in conjunction with section 8(1)(c), applies to the same withheld portions of the records, I do not need to make a determination as to whether sections 8(1)(a), 8(1)(g) and 8(1)(l) also apply in conjunction with section 38(a).

Section 9(1)(a) (relations with other governments)

[85] The police also withheld portions of records 1-3, 5, 6, 10, 12, 15, 17 under the section 9(1)(a) exemption. The purpose of section 9(1) is to ensure that governments under the jurisdiction of the *Act* continue to obtain records which other governments might otherwise be unwilling to supply without having this protection from disclosure.³⁶ Section 9(1)(a), in particular, is intended to protect information received in confidence from the federal government. However, since I have found that section 38(b) and section 38(a), in conjunction with section 8(1)(c), applies to exempt the same portions

³⁶ Order M-912.

from disclosure, I do not need to make a determination on the application of section 9(1)(a) to the same portions of these records.

E. Does the discretionary exemption at section 38(a), in conjunction with section 12 (solicitor-client privilege), apply to the information at issue?

[86] Section 12 states as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[87] Section 12 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 ("prepared by or for counsel employed or retained by an institution...") is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Solicitor-client communication privilege

[88] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.³⁷ The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.³⁸ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.³⁹

[89] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.⁴⁰

[90] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.⁴¹ The privilege does not cover communications between a solicitor and a party on the other side of a transaction.⁴²

Representations, analysis and findings

[91] The appellant's representations do not specifically address section 38(a) in

³⁷ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

³⁸ Orders PO-2441, MO-2166 and MO-1925.

³⁹ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)

⁴⁰ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

⁴¹ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

⁴² *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

conjunction with section 12. Although the police made representations on this issue, I will not set them out in this order. For reasons explained below, I will defer my decision about the police's claim of the solicitor-client privilege exemption pending receipt of additional evidence from the police.

[92] The police did not provide an unredacted copy of record 3, which would show what information they withheld under section 38(a) in conjunction with section 12. I have reviewed the redacted copy of these withheld portions of record 3, and the representations of the police. Based on the information the police have provided to me during the inquiry, I am unable to make a determination on the application of section 38(a), in conjunction with section 12, to these withheld portions of record 3. As such, I will require additional information from the police about these portions in order to make this determination.

[93] The police should review their section 12 claim in relation to this record for the purpose of preparing additional evidence for my consideration, the particulars of which request I will convey to the police in correspondence to follow this interim order. The police may wish to refer to the IPC guidance document, the *IPC protocol for appeals involving solicitor-client privilege claims where the institution does not provide the records at issue to the IPC*, which will form the basis of my request for this additional evidence.

F. Is there a compelling public interest in disclosure of the information withheld under section 38(b) that clearly outweighs the purpose of the exemption?

[94] I note that the appellant raised the application of the section 16 public interest override in his representations. Section 16 states:

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

[95] Section 16 cannot override the exemption from disclosure under section 8, because it is not an exemption listed above. Therefore, I do not need to make a determination on the application of the section 16 public interest override to the portions of the records that I have found exempt under section 38(a) in conjunction with section 8(1)(c) of the *Act*.

[96] Although section 16 does not explicitly list section 38(b), the IPC has read in section 38(b) as an extension of a requester's ability to raise the public interest override in cases where information is withheld under the mandatory personal privacy exemption

at section 14.⁴³

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

[98] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.⁴⁴

[99] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government.⁴⁵ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.⁴⁶

[100] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.⁴⁷ The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[101] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.⁴⁸

Representations, analysis and findings

[102] As stated above, in order for section 16 to apply, there are two requirements that must be met: there must be a compelling public interest in disclosure of the personal information withheld under section 38(b), and this interest must clearly

⁴³ Orders P-54, MO-2395, MO-2701 and MO-3785-I.

⁴⁴ Order P-244.

⁴⁵ Orders P-984 and PO-2607.

⁴⁶ Orders P-984 and PO-2556.

⁴⁷ Order P-984.

⁴⁸ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

outweigh the purpose of the section 38(b) exemption.

[103] While the appellant argues that there is a compelling public interest in disclosure of the information the police have withheld under section 38(b), it is unclear from his representations what that compelling public interest is. The appellant's representations allege that the police are withholding evidence in order to obstruct justice, but he does not specify this further, including to connect the allegation to a compelling public interest.

[104] The information that I have found exempt under section 38(b) is the personal information of the complainant and witnesses to occurrences of criminal harassment. Given the amount of information already disclosed to the appellant and the actual content of the personal information exempt under section 38(b), I find that the appellant has not established that there is any public interest in disclosure of this information under section 16 of the *Act*. Furthermore, I am not persuaded that disclosure of the exempt information would increase public confidence in the operations of the police with its disclosure. I am also not persuaded that its disclosure would help members of the public to express opinions or to make political choices in a more meaningful manner.

[105] Based on all this, I find that there is not a compelling public interest in disclosure of the personal information withheld under section 38(b) that clearly outweighs the purpose of the exemption. Accordingly, I find that section 16 does not apply.

G. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should the exercise of discretion be upheld?

[106] The section 38(a), in conjunction with sections 8(1)(c) and 12, and section 38(b) exemptions are discretionary, and permit 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.

[107] 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.

[108] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.⁴⁹ The IPC may not, however,

⁴⁹ Order MO-1573.

substitute its own discretion for that of the institution.⁵⁰

[109] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:⁵¹

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

Representations

[110] The police submit that they exercised their discretion under sections 38(a) and 38(b) appropriately. The police further submit that they did not exercise their discretion in bad faith, and that all relevant factors, but no irrelevant factors, were taken into account in exercising their discretion.

⁵⁰ Section 43(2).

⁵¹ Orders P-344 and MO-1573.

[111] The police refer to most of the considerations listed above and emphasize three of them in particular. Specifically:

- The police sought to protect the privacy interests of the affected parties;
- The relationship between the appellant and the affected parties is very relevant in this case; and
- The nature of the information and the extent to which it is extremely sensitive to the affected parties.

[112] The appellant's representations did not specifically address the police's exercise of discretion.

Analysis and findings

[113] I find that the police did not err in their exercise of discretion with respect to their decision to deny access to the personal information in records 1-25 under section 38(b) and the withheld portions of records 1-3, 5, 6, 10, 12, 14, 15, 17 under section 38(a) in conjunction with section 8(1)(c) of the *Act*. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose.

[114] 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.

[115] Accordingly, I find that the police exercised their discretion in an appropriate manner in this appeal, and I uphold it. However, I defer my decision on the police's exercise of discretion under section 38(a), in conjunction with section 12, until I have made a determination on the application of that exemption.

ORDER:

1. I uphold the police's access decision with respect to the information that they have withheld under sections 38(b) and 38(a) in conjunction with section 8(1)(c).
2. I also uphold the police's decision with respect to the information withheld as non-responsive, and find additional portions of records 12 and 15 non-responsive. Those additional non-responsive portions are highlighted on the copy of the records provided to the police with this order, and I order the police to withhold them, along with the other non-responsive information.

3. I defer my findings on the application of section 38(a), in conjunction with section 12, to the portions of record 3 that the police have withheld under this exemption pending receipt of additional evidence from the police, which I will seek following the issuance of this order.

Original signed by _____
Anna Truong
Adjudicator

_____ June 15, 2021