Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4118

Appeal MA19-00173

Ottawa Police Service

October 27, 2021

Summary: The appellant made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ottawa Police Service (the police) for records about complaints made to the police that she initiated or were initiated by others against her.

The police denied access to the responsive police reports in part, citing the application of the discretionary exemptions in section 38(a) (discretion to refuse requester's own information) with section 8(1) (law enforcement), and section 38(b) (personal privacy).

In this order, the adjudicator upholds the police's decision that certain information in the records is not responsive to the appellant's request. She also upholds the police's decision under section 38(b) in part. She does not uphold the police's decision under section 38(a) with section 8(1). She upholds the police's search for responsive records as reasonable. Finally, she does not uphold the police's $5 request fee for the appellant's correction request.

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)(i), 14(3)(b), 14(2)(a), 14(2)(d), 24, 36(2)(a), 37(1)(c), 38(a), 38(b), 45(1), and 45(4)(d); R.R.O. 1990, Regulation 823, sections 5.2, 6.1, and 8.2.

Cases Considered: Order M-1077.

OVERVIEW:

[1] This order addresses the application of the personal privacy and the law

enforcement exemptions to police 911 records related to the requester.

[2] The requester made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) to the Ottawa Police Service (the police) for records about complaints made to the police that she initiated or were initiated by others against her.

[3] Specifically, the requester asked for:

> All my 911 records (calls, letters, emails, reports, etc.) and any other information in possession of the 911 team related to me, my son or our [address], which relates or shows our names. My son's name is [name].[1] He is a minor and I am his sole guardian.

[4] The police issued a decision to deny access to the responsive records under section 38(a) (discretion to refuse requester's own information) in conjunction with section 15(a) (currently available to the public) of the *Act*. The police asked the requester to purchase each individual responsive occurrence report from them and provided her with a copy of her Person Hardcopy report, which summarizes her interactions with the police and lists these reports.

[5] The requester responded to the decision letter in an email requesting the following:

1. Reconsider its decision and grant me access to the information requested.

2. Grant me with a waiver of the fees associated to my request. I am a recipient of social assistance and cannot afford to pay that money. Please see here attached my last Ontario Works statement.

3. Remove my personal hardcopy (page 1 of 2 - section "Person Particulars") the [derogatory], subjective and unsupported comments entered in the line "Remarks" just below my email address.

[6] The police responded by email advising the following:

> First and foremost, I want to assure you that a request will be made by myself to have the comments found within the "Remarks" area of your

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[1] I accept that the appellant is entitled to request her minor son's personal information under section 54(c) of the *Act*, which reads:

> Any right or power conferred on an individual by this Act may be exercised,
>
> if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

> Person Hardcopy removed. Once this action has been completed a written notice will be sent to you with the modified version for your review.
>
> Although I can understand your circumstances, the [police] provided you with 16 reports as a consideration following your 2016 request when fees could have been obtained under Section 15 of the *MFIPPA*. I have attached highlighted versions of the Person and Address Hardcopies in an effort to indicate the exact number of reports that remain available for disclosure and purchase through our regularized process.

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

[8] During mediation, the police issued a revised decision to the appellant to disclose general occurrence reports, notebook entries and completed call reports that are responsive to the request in part, citing the discretionary law enforcement exemption in section 8(1) and the discretionary personal privacy exemption in section 38(b) of the *Act* to deny access to the remaining information. The police also identified severed information in some of the records as being not responsive to the request.

[9] In the revised decision, full access was granted to six 911 recordings the police identified as responsive to the request. The police waived all fees to process the request, except related to the appellant's correction request. The police stated the following in its decision letter:

> After reviewing the information and consulting with our Business Information Solutions Service centre, three emails were located and are being enclosed relating to records held by the 911/Alternate Response Unit. Our Business Information Solutions Service Centre further advises that no calls, letters or other records could be located or retrieved relating to the 911 team.
>
> After reviewing your email request received March 4, 2019 to remove the comments entered in the 'Remarks' field on your Person Hardcopy [Report], a request was sent to our Management team for review. It has been decided that a new $5.00 request for correction to your own personal information will be required as this is considered a new request.

[10] The police advised that access was being denied to the Canadian Police Information Centre (CPIC) information found on pages 1, and 3 to 5 of this record[2]

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[2] See index of records below, record 10.

under sections 8(1)(i) and (l) of the *Act*.

[11] The appellant then confirmed that she took issue with all of the severances applied to the records. The police subsequently followed up with another revised decision to the appellant regarding 11 pages of the previously identified responsive records, advising that additional information was being disclosed. The police advised that the remaining severed information continued to be denied under section 38(b) of the *Act* and as not responsive to the request.

[12] The police confirmed they continue to rely on sections 8(1)(i) and (l) of the *Act* for information in the records such as police codes and CPIC information. The appellant confirmed she takes issue with the severances based on the exemptions and these severances remain at issue.

[13] The appellant also advised the mediator that she takes issue with the severances of information identified by the police as not responsive to the request. The police confirmed their position that the information they severed as not responsive to the request does not relate to the information the requester is seeking. Accordingly, the responsiveness of this information also remains at issue in this appeal.

[14] The appellant advised the mediator that she believes additional records responsive to her request should exist. The police confirmed their position that they have no further records responsive to the request. Accordingly, reasonable search remains at issue in this appeal.

[15] No further mediation could be conducted and therefore the file proceeded to adjudication, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought and received the representations of the police and the appellant.

[16] In this order, I uphold the police's decision that certain information in the records is not responsive to the appellant's request. I also uphold the police's decision under section 38(b) in part. I do not uphold the police's decision under section 38(a) with sections 8(1)(g), (i) and (l).[3] I uphold the police's search for responsive records as reasonable. Finally, I do not uphold the police's $5 request fee for the appellant's correction request.

RECORDS:

[17] The records at issue are police case notebook entries, general occurrence

[3] The police provided copies of the records at issue, whereon they marked the claimed exemptions. These exemptions included section 8(1)(g), which was not identified in their decision letters.

reports, and completed call reports, more particularly described in the following table:

INDEX OF RECORDS AT ISSUE:[4]			
Record #	**Description of Record**	**Page(s) at Issue**	**Exemptions/ Non-responsive**
1	Case notebook entries [7076]	page 21 (handwritten page 9)	Non-responsive (NR) 38(b)[5]
2	Case notebook entries [4491]	pages 14-15	Non-responsive and section 38(a) with 8(1)(l)
3	General Occurrence No. [7724]	pages 3-4	38(b)[6] 38(a) with 8(1)(i)
4	General Occurrence No. [2452]	page 4	38(b) 38(a) with 8(1)(i)
5	General Occurrence No. [2465]	page 5	38(b) 38(a) with 8(1)(i)
6	General Occurrence No. [1104]	page 4	38(b) 38(a) with 8(1)(i)
7	Completed Call Report [8634]	pages 1, 3, 4	38(a) with 8(1)(i)
8	Completed Call Report [3229]	page 1	38(a) with 8(1)(l)
9	Completed Call Report [6807]	pages 3-4	38(a) with 8(1)(i)
10	Completed Call Report [1087]	page 1, 3-5	38(a) with 8(1)(i)

[4] The police provided a copy of the records remaining at issue and an index of records at issue to the IPC in January 2021. I have revised this index to reflect the exemptions marked on the records provided in January 2021.

[5] In the police's index of records, record 1 was listed as NR. However, this record is actually marked as NR and section 38(b).

[6] In the police's index of records, records 3 to 6 were listed as sections 38(a) with section 8(1)(i) and/or (l). However, these records are actually marked as sections 8(1)(i) and 38(b) and/or 14(1) and 14(3)(b).

11	General Occurrence No. [9365]	page 3	38(a) with 8(1)(g)
12	General Occurrence No. [7616]	page 8	38(b)
14	General Occurrence No. [4491]	page 5	38(b)[7]
15	General Occurrence No. [7724]	pages 3-4	38(b) 38(a) with 8(1)(i)[8]
16	General Occurrence No. [7076]	pages 4, 7	38(b)
17	Case notebook entries [7076]	pages 13 and 20 (handwritten pages 1 and 8)	38(b)
18	General Occurrence No. [2452]	page 4	38(b) 38(a) with 8(1)(i)
19	General Occurrence No. [2465]	page 5	38(b) 38(a) with 8(1)(i)
20	General Occurrence No. [1104]	page 4	38(b) 38(a) with 8(1)(i)
21	General Occurrence No. [6961]	pages 3-4	38(b)
22	General Occurrence No. [4365]	page 3	38(b)
23	General Occurrence No. [9365]	page 3	38(a) with 8(1)(g)[9]

[7] In the index of records, the police have claimed that section 38(b) applies to record 14, but they did not mark any exemptions on this record.
[8] Records 15, 18 to 20, and 25 to 27 were listed as section 38(b) and/or 14(1) and 14(3)(b) in the index of records, however records 15 and 18 to 20 were also marked with section 8(1)(i). Records 25 to 27 were only marked as section 8(1)(i).
[9] The police's index said section 38(b), but the record was marked as section 8(1)(g).

24	Completed Call Report [4020]	page with Table of Contents and page 2	38(b)
25	Completed Call Report [8634]	pages 1, 2-3	38(a) with 8(1)(i)[10]
26	Completed Call Report [8634]	pages 2-3	38(a) with 8(1)(i)[11]
27	Completed Call Report [6807]	pages 3-4	38(a) with 8(1)(i)[12]
28	Completed Call Report [0921]	page 2	38(b)
29	Completed Call Report [0708]	page 2	38(b)

ISSUES:

A. What is the scope of the request? Is the information at issue in record 1 (second severance) and record 2 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 in records 1, 16, 17, and 21?

D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1) law enforcement exemption apply to the information at issue in records 7 to 11, 23, and 25 to 27?

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

F. Did the police conduct a reasonable search for records?

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[10] The police's index said section 38(b), but the record was marked as section 8(1)(i).
[11] The police's index said section 38(b), but the record was marked as section 8(1)(i). Records 25 and 26 are duplicates.
[12] The police's index said section 38(b), but the record was marked as section 8(1)(i).

G. Is the appellant required to pay a $5 request fee in order for the police to process her correction request?

DISCUSSION:

Issue A: What is the scope of the request? Is the information at issue in record 1 (second severance) and record 2 responsive to the request?

[18] 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).

[19] 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.[13]

[20] To be considered responsive to the request, records must "reasonably relate" to the request.[14]

Representations

[21] The police submit that the information at issue in record 1, a case notebook entry, is partially responsive to the request. They state:

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[13] Orders P-134 and P-880.
[14] Orders P-880 and PO-2661.

> This page consists of two redacted portions. The redacted portion on the bottom of the page is not responsive to the request as this refers to a separate occurrence, which does not involve the appellant or this occurrence. The officer "scratched-out" this portion of the notes. This non-responsive portion contains third party personal information not relevant to the appellant or her request.

[22] The police submit that the information at issue in record 2, also a case notebook entry, is partially responsive to the request. They state:

> The entirety of the redactions on both pages [of record 2] are not responsive to the request. These redactions are notes the officer took in relation to separate occurrences which do not involve the appellant or this occurrence. These non-responsive redactions contain third party personal information not relevant to the appellant or her request. Police codes relating to the separate occurrences are also redacted, as part of the non-responsive occurrences.

[23] The appellant has left it up to me to decide the responsiveness of this information.

Analysis/Findings

[24] I have reviewed the redactions to the case notebook entries in records 1 and 2 referred to by the police and I agree with them that they contain non-responsive information. This is information about separate occurrences that do not involve the appellant. This particular severed information is not about the appellant, her son or their address, and is not reasonably related to her request.

[25] Therefore, I uphold the police's decision to withhold the information marked as non-responsive in record 1 (second severance) and the entirety of the information at issue in record 2 on this basis.

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

[26] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "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;

[27] 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.[15]

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

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

[15] Order 11.

> dwelling and the contact information for the individual relates to that dwelling.

[29] 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.[16]

[30] 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.[17]

[31] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[18]

Representations

[32] The police state that the records contain the mixed personal information of the appellant and other third parties. They state:

> The personal information consists of the name, sex, date of birth, personal address, phone numbers and statements of the appellant and third parties. The information at issue consists of third party personal information, namely names, dates of birth, contact information and statements/personal views, Police Codes, CPIC (Canadian Police Information Centre) information relating to the appellant and some third parties.
>
> The individual who did not consent to the release of their information could easily be identified should their information be released. It is reasonable to expect that multiple individuals may be identified if the information is disclosed, as the combined information clearly identifies them with their names, dates of birth, and contact details such as addresses, phone numbers and licence plate information.

[33] The appellant has left it up to me to decide whether the records contain personal information.

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[16] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[17] Orders P-1409, R-980015, PO-2225 and MO-2344.
[18] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Analysis/Findings

[34] The appellant has sought 911-related records that are about herself, her minor son and her home address. The police have relied on both section 38(b) and section 38(a), in conjunction with section 8(1), to portions of the records.

[35] In order for the discretionary personal privacy exemption in section 38(b) to apply, the records must contain the personal information of the appellant (or her minor son) and other individuals. The appellant states that she is not requesting the personal information of the individuals she filed reports against or of those who filed reports against her in the records. She states that the information that she is requesting is that related to the actions of the officers in charge of investigating the reports she and her son were involved in.

[36] Therefore, the only records withheld under section 38(b) that the appellant is interested in pursuing are the records that contain the personal information of the appellant and other individuals, other than the individuals she filed reports against or filed reports against her. This information is found in records 1 (first severance), 16, 17, and 21. These records contain the personal information of the appellant and these other individuals in their personal capacity. As well, record 21 contains the personal information of the appellant's minor son. This personal information includes their home address and phone number, their views and their names that appear with other personal information about them, under paragraphs (d), (e), (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*. I will consider whether section 38(b) applies to this information.

[37] I find that the information at issue in record 14 for which section 38(b) has been claimed in the police's index of records is not personal information but is information about individuals in their professional capacity. This record is an email from a school official to the police. The email is written by the school official in the course of her professional duties. The individuals identified in this record are acting in their official or professional capacity. Based on my review of this information, I find that disclosure of the information at issue in record 14 would not reveal something of a personal nature about them.[19]

[38] As the withheld information in record 14 is not personal information, the personal privacy exemption at section 38(b) cannot apply. No mandatory exemptions apply and no other discretionary exemptions have been claimed for this information. Therefore, I will order the information at issue in record 14 disclosed.

[39] The remaining personal information at issue in the records at issue for which

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[19] Order PO-2225.

section 38(b) has been claimed, records 3 to 6, 12, 15, 18 to 20, 22, 24, 28 and 29, is the personal information of the individuals who filed reports against the appellant or who she filed reports against. This personal information includes these individuals' dates of birth, personal addresses and telephone numbers, other identifying numbers, as well as their names that appear with other personal information about them in accordance with paragraphs (a), (c), (d) and (h) of the definition of personal information in section 2(1). The appellant does not want access to this personal information and as it has been removed from the scope of the appeal, I will uphold the police's decision to withhold it.

[40] The police have also withheld records 7 to 11, 23, and 25 to 27 under section 38(a), in conjunction with section 8(1). I find that these records contain the personal information of the appellant only, in particular views or opinions about her under paragraph (g) of the definition in section 2(1). I will consider whether section 38(a) with section 8(1) applies to the withheld portions of these records.

Issue C: Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue in records 1, 16, 17, and 21?

[41] 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.

[42] 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.

[43] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[44] If the information fits within any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of section 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The information does not fit within these paragraphs.

[45] 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).

[46] In determining whether the disclosure of the personal information in the records

would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[20]

Section 14(3)

[47] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). The police rely on the presumption in section 14(3)(b), which reads:

> 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;

[48] The police state that the personal information at issue was collected from other individuals in the course of law enforcement investigations.

[49] The appellant did not address whether section 14(3)(b) applies to the records.

Analysis/Findings re section 14(3)(b)

[50] At issue is the information severed from records 1 (first severance), 16, 17 and 21. Records 1 (first severance), 16 and 17 concern the same incident where the police investigated a complaint made by the appellant. Record 21 concerns a separate incident and is about a complaint made against the appellant. The appellant received partial disclosure of these records.

[51] Based on my review of the records at issue, records 1, 16, 17 and 21, I find that the personal information in them was all compiled and is identifiable as part of investigations into possible violations of law. No criminal proceedings were commenced as a result of these investigations.

[52] 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.[21] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[22]

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[20] Order MO-2954.
[21] Orders P-242 and MO-2235.
[22] Orders MO-2213, PO-1849 and PO-2608.

[53] Therefore, I find that the presumption against disclosure in section 14(3)(b) applies.

Section 14(2)

[54] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[23]

[55] 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).[24]

[56] The police did not raise the application of the factors in section 14(2).

[57] The appellant did raise the application of the factors in sections 14(2)(a) and (d) that favour disclosure. These sections read:

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

[58] The appellant states that:

> I rely on sections 14(2)(a) and 14(2)(d) and request that the IPC determine if the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny and if the disclosure is relevant to a fair determination of my rights as a victim of crime. I also submit that if the disclosure is made complying with the conditions relating to security and confidentiality prescribed by the regulations, the disclosure will not constitute an unjustified invasion of personal privacy (Section 14(1)(f)).

[59] In reply, the police disagree that these section 14(2) factors apply. They state that the withheld information relates to law enforcement and is information supplied by

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[23] Order P-239.
[24] Order P-99.

or is about third parties, from whom consent was not obtained. They submit that disclosure of the withheld information would not be relevant in subjecting the activities of the institution to public scrutiny, as the information relates only to sensitive law enforcement matters, third parties and the appellant.

[60] In sur-reply, the appellant states that she should receive access to the information at issue since she is a victim of crime who has been denied assistance by this institution and defamed by one of its representatives. She states that access may allow her to "prosecute the culprits."

Section 14(2)(a) public scrutiny

[61] 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.[25]

[62] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.[26]

[63] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 14(2)(a).[27]

[64] The information at issue in records 1, 16, 17 and 21 is about complaints made by or against the appellant by private individuals. I do not accept the appellant's position that these records related to circumstances in which she was a victim of a crime. From my review of the information at issue in these records, I find that this specific information relates to the views or actions of private individuals, and does not relate to the activities of government.

[65] I find that the factor in section 14(2)(a) does not apply as, in my view, disclosure of the information at issue would not expose the activities of the government to public scrutiny.

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

[66] For section 14(2)(d) to apply, the appellant must establish that:

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[25] Order P-1134.
[26] Order PO-2905.
[27] Order P-256.

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[28]

[67] The appellant submits that she is entitled to receive access to the withheld portions of the records because she is a victim of crime. I concluded above that the records at issue do not reveal that she is a victim of crime. Nevertheless, I find that the appellant has not established any of the four parts of the test under section 14(2)(d).

[68] In particular, the appellant has not provided evidence that, as an alleged victim of crime she meets the four parts of the test under section 14(2)(d). Specifically, the appellant has not established, as an alleged victim of crime, that there is a particular legal right or that if there was, that it is relevant to any existing or contemplated proceeding.

[69] I find that the factor in section 14(2)(d) does not apply as, in my view, disclosure is not relevant to a fair determination of the appellant's rights.

Conclusion

[70] As noted above, in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.

[71] I have found that the presumption against disclosure in section 14(3)(b) applies and none of the factors favouring disclosure raised by the appellant in sections 14(2)(a) and (d) apply. I also considered whether any unlisted factor favouring disclosure may apply in the circumstances, and I find that none does. Therefore, on balance, I find that disclosure of the information at issue in records 1 (first severance), 16, 17 and 21 would be an unjustified invasion of the personal privacy of the individuals other than

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[28] 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.).

the appellant and her son in these records. Accordingly, subject to my review of the police's exercise of discretion, the information at issue in records 1 (first severance), 16, 17 and 21 is exempt under section 38(b).

Issue D: Does the discretionary exemption at section 38(a) in conjunction with the section 8(1) law enforcement exemption apply to the information at issue in records 7 to 11, 23, and 25 to 27?

[72] As I stated above, 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.

[73] 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.

[74] 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.[29]

[75] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.[30]

[76] In this case, in their index of records and on the records themselves, the police rely on sections 8(1)(g), (i), and (l), which read:

> 8(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
> >
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

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[29] Order M-352.

[30] As all of the records contain the appellant's personal information, section 38(a) is applicable here with respect to the application of the claimed section 8(1) exemptions.

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

[77] The police only provided representations on section 38(a) in conjunction with section 8(1)(i).

[78] As set out in the Notice of Inquiry sent to the police, under section 42 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution.

[79] By not providing representations, the police have not met the burden of proof that the exemptions in sections 38(a) in conjunction with 8(1)(g) and (l) apply to the information for which it has been claimed. Therefore, these discretionary exemptions do not apply to the information for which they have been claimed.

[80] As well, as no mandatory exemptions apply and no other discretionary exemptions have been claimed for the information for which section 38(a) in conjunction with sections 8(1)(g) and (l) has been claimed, I will order this information, which is found in records 8, 11, and 23, disclosed.

[81] Concerning section 38(a) in conjunction with 8(1)(i), the information at issue is found in records 7, 9, 10, and 25 to 27.[31] The police state that the information for which this exemption has been claimed relates to law enforcement information contained within the CPIC system. They submit that release of the information could reasonably be expected to endanger the security of a system or procedure established for the protection of items, for which protection is reasonably required. The police state:

> The CPIC computer system provides a national repository into which the various police jurisdictions within Canada enter electronic representations of information they collect and maintain.

[82] The appellant did not provide representations addressing section 8(1) specifically.

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[31] For records 3 to 6, 15, and 18 to 20, there is one severance on each page at issue for these records. I found above under the personal information issue that the information at issue in records 3 to 6, 15, and 18 to 20 is not at issue in this appeal, as the appellant does not want to receive this information. It is, therefore, unnecessary for me to determine whether it is also exempt under section 38(a), in conjunction with section 8(1)(i), and I decline to do so.

Analysis/Findings

[83] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[32]

[84] 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]

[85] For section 8(1)(i), although this provision is found in a section of the *Act* dealing specifically with law enforcement matters, it is not restricted to law enforcement situations and can cover any building, vehicle or system which requires protection.[35]

[86] In their representations, the police have merely recited section 8(1)(i) and indicated that that the information at issue relates to law enforcement information contained within the CPIC system.

[87] Other than some additional information about the appellant on page 1 of record 10, the identical information is at issue in records 7, 9, 10, and 25 to 27. All of these severances concern the appellant only. None of the information at issue in records 7, 9, 10, and 25 to 27 is about a building, a vehicle, or a system or procedure established for the protection of items. The information at issue in these records is solely about the appellant.

[88] Although the information at issue in records 7, 9, 10, and 25 to 27 may have been derived from the CPIC system, the police have not provided me with evidence as to how disclosure of the information at issue could reasonably be expected to endanger the security of the CPIC system. Nor has it provided me with evidence as to how the CPIC system has been established for the protection of items.

[89] I find that the police have not provided sufficient evidence to establish that disclosure of the information at issue in records 7, 9, 10, and 25 to 27 could reasonably be expected to endanger the security of a building or a vehicle carrying items, or a

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[32] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[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-900 and PO-2461.

system or procedure established for the protection of items.

[90] Therefore, I find that section 38(a), in conjunction with section 8(1)(i), does not apply to exempt the information at issue in records 7, 9, 10, and 25 to 27, and I will order it disclosed.

Conclusion

[91] Accordingly, for information that is subject to the police's claim for exemption under section 38(a), in conjunction with section 8(1), I have found that the information at issue in:

- records 3 to 6, 15, and 18 to 20 consists of the personal information of other individuals that is not at issue in this appeal (as the appellant does not want to receive this information). This information will be ordered withheld.
- records 8, 11, and 23 is not subject to sections 38(a) with 8(1)(g) and (l), as the police did not provide representations on this information. I will order this information disclosed.
- records 7, 9, 10, and 25 to 27 is not subject to sections 38(a) with 8(1)(i), as I have found that this information is not subject to the exemption in section 8(1)(i). I will order this information disclosed.

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

[92] The section 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[93] 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.

[94] In either case, this office may send the matter back to the institution for an

exercise of discretion based on proper considerations.[36] This office may not, however, substitute its own discretion for that of the institution.[37]

[95] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[38]

- 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

[96] The police state that the following circumstances were considered prior to

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[36] Order MO-1573.
[37] Section 43(2).
[38] Orders P-344 and MO-1573.

making the decision under section 38(b), where these two factors were balanced:

- The appellant's right of access to the information; and,
- Any other individual's right to privacy.

[97] They submit that although the appellant may have the right to information that has been supplied by other individuals and is about her, the individuals who supplied the information have the right to privacy. They state that:

> After fully reviewing the information we determined that the privacy rights of the individuals who supplied the information, overrides the appellant's right to said information. We therefore exercised our discretion to deny them access to the information.

[98] The appellant submits that:

> …if the disclosure is made complying with the conditions relating to security and confidentiality prescribed by the regulations, the disclosure will not constitute an unjustified invasion of the privacy rights of the information providers.

Analysis/Findings

[99] The appellant submits that disclosure can be made "relating to security and confidentiality prescribed by the regulations." However, she has not indicated which regulation under *MFIPPA* applies, nor can I ascertain any such regulation that would provide disclosure of the information for which I have found section 38(b) of *MFIPPA* applies.

[100] Based on my review of the information at issue in records 1 (first severance), 16, 17 and 21, I find that the police exercised their discretion under section 38(b) to withhold it in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[101] I find that the police properly considered whether disclosure would constitute an unjustified invasion of personal privacy of the other individuals in the records at issue under section 38(b).

[102] Accordingly, I am upholding the police's exercise of discretion and find that the information at issue in records 1 (first severance), 16, 17, and 21 is exempt under section 38(b).

Issue F: Did the police conduct a reasonable search for records?

[103] Where a requester claims that additional records exist beyond those identified by

the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[39] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[104] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[40] To be responsive, a record must be "reasonably related" to the request.[41]

[105] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[42]

[106] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[43]

[107] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[44]

Representations

[108] The police state that the freedom of information analyst (the analyst) who performed the queries is no longer available to provide information about the search. They state that the analyst was an experienced and knowledgeable employee when it came to performing queries on their database records management system (the RMS) and was very capable and competent in retrieving and reviewing the information.

[109] They state that from their review of the file, the analyst performed three queries on the RMS and these queries searched for records that contained:

- the appellant's name and date of birth,
- the appellant's son's name and date of birth, and

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[39] Orders P-85, P-221 and PO-1954-I.
[40] Orders P-624 and PO-2559.
[41] Order PO-2554.
[42] Orders M-909, PO-2469 and PO-2592.
[43] Order MO-2185.
[44] Order MO-2246.

- the appellant's address.

[110] The police state that it is not clear from a review of the file if any other person or member of the police service was contacted by the analyst in order to identify any additional records during the course of this request.

[111] The police further state that there is a possibility that some records may have reached the end of the retention period at some point and were purged, and they note that any records that may have been purged will no longer appear on a query on the RMS system.

[112] The appellant submits that a further search must be ordered since the police have not provided sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate all of the responsive records within its custody or control.

Analysis/Findings

[113] The police have provided details of the searches they have conducted for responsive records. The appellant received disclosure of numerous responsive records. She has not identified any particular records that she believes have not been located yet by the police through the searches conducted.

[114] I find that the police have provided sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate all of the responsive records within its custody or control. Further, I also find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[115] Therefore, I uphold the police's search for responsive records.

Issue G: Is the appellant required to pay a $5 request fee in order for the police to process her correction request?

[116] In response to the police's decision letter, the appellant asked the police to remove the comments entered in the 'Remarks' field on a Person Hardcopy Report. The police responded that this is a new request for correction by the appellant to correct her own personal information and that a $5 request fee will be required to process the correction request.

[117] The police were asked to address this additional $5 request fee in their representations and to address whether the fee waiver provision in section 45(4)(d) of *MFIPPA* and/or section 8.2 of Regulation 823 apply to this $5 request fee. These sections read:

> 45(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

> (d) any other matter prescribed in the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> > 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[118] In response, the police maintained that they would not waive this $5 request fee, as they consider the correction request to be a new request.

[119] The appellant submits that no fee is chargeable to her as neither the *Act* nor the Regulations mandate the payment of a fee at the time of making a request for correction of one's personal information. As such, she submits that there is no need to request a waiver of fees for correction of records under section 45(4) of the *Act* or section 8.2 of Regulation 823 since there is no such payment required to be made under the *Act*.

Analysis/Findings

[120] The appellant made her access request under section 36(1)[45] of *MFFIPA* and sought:

> All my 911 records (calls, letters, emails, reports, etc.) and any other information in possession of the 911 team related to me, my son or our [address], which relates or shows our names. My son's name is [name]. He is a minor and I am his sole guardian.

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[45] Section 36 reads:

(1) Every individual has a right of access to,

(a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and

(b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

(a) request correction of the personal information if the individual believes there is an error or omission;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and

(c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

[121] The appellant paid a $5 request fee for her access request.

[122] As noted above, the police issued a decision to deny access to the responsive records, but did provide her with a Person Hardcopy report in response to her access request.

[123] The appellant then responded to the decision letter in which she asked the police to reconsider their access decision and also to correct her personal information in the Person Hardcopy report, as follows:

> Remove my personal hardcopy (page 1 of 2 - section "Person Particulars") the [derogatory], subjective and unsupported comments entered in the line "Remarks" just below my email address.

[124] Section 36(2)(a) provides for a request for correction of personal information, as follows:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> > request correction of the personal information if the individual believes there is an error or omission.

[125] The police say that the appellant must pay a $5 request fee before they will process the appellant's correction request. Their position is that this is a new request under the *Act* and, therefore, a new request fee is required.

[126] Under section 41 of *MFIPPA*, the IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823.

[127] Sections 37(1) of the *Act* requires a requester to pay a request fee for making a request for access to their personal information. This section reads:

> An individual seeking access to personal information about the individual shall,
>
> > (a) make a request in writing to the institution that the individual believes has custody or control of the personal information, and specify that the request is being made under this Act;
> >
> > (b) identify the personal information bank or otherwise identify the location of the personal information; and
> >
> > (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. [Emphasis added by me].

[128] Section 5.2 of Regulation 823 under the *Act* provides that this request fee for

access to personal information is $5. This section reads:

> The fee that shall be charged for the purposes of clause 17(1)(c)[46] or 37(1)(c) of the Act shall be $5. [Emphasis added by me].

[129] Section 45(1) requires an institution to charge fees for processing access requests under the *Act*. That section reads:

> 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.

[130] More specific provisions regarding these fees for processing access requests are found in Regulation 823. Section 6.1 of Regulation 823 concerns fees for access to personal information and provides that:

> 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.

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[46] Sections 17(1) of the *Act* requires a requester to pay a request fee for making an access request for access to non-personal information. It reads:

(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, and specify that the request is being made under this Act;
(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
(c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

> 3. 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.
>
> 4. 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.

[131] Neither *MFIPPA* nor Regulation 823 explicitly permit an institution to charge any fee for a request for correction of an individual's personal information.[47]

[132] In my view, it is significant that the right of an individual to make an access request for their personal information and to request the correction of their personal information are treated distinctly at sections 36(1) and 36(2) of *MFIPPA*, respectively. If the legislature had intended that section 37(1), which allows a request fee to be charged for access to personal information, should also apply to a correction request, it could have said so explicitly. It did not do so.

[133] The appellant's correction request was made to the police after she received access to her personal information under section 36(1). She is entitled to request correction of this personal information under section 36(2)(a) of *MFIPPA*. I find that the police cannot properly charge the appellant $5 as a request fee under section 37(1)(c) of the *Act* and section 5.2 of Regulation 823. Therefore, no fee is chargeable to the appellant for her correction request under section 36(2)(a).

[134] The only request fee that may be charged is that provided for in section 37(1) of *MFIPPA* and section 5.2 of Regulation 823. That is, a $5 request fee may only be charged for an access request, not a correction request - i.e., the fee is charged "for [the] purpose" of a request "seeking access to personal information" and not for any other purpose.

[135] This view is also supported by Order M-1077, where the adjudicator stated:

> The appellant then made **a further request to the Police to have the records she received corrected**. The appellant did not provide a fee of $5 with the request for correction. It is not clear whether the Police responded to the appellant's request for the correction of her personal information.
>
> The appellant appealed the denial of access and the fact that the information she did receive is incorrect and has not been corrected.

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[47] See paragraphs 2 to 6 of Order M-1077.

> During mediation, the Police advised this Office in a letter that it is their position that the appeal in regard to the severances made to the records should be decided by this Office before the Police make any decision with regard to corrections, and that a $5 request fee for correction is required. The Police did not provide a copy of this letter to the appellant.
>
> The questions of whether a $5 request fee for correction is required and whether the Police may delay making a decision on a request for correction are also at issue in this appeal. During the mediation of this appeal, the appellant stated that she believed additional records should exist. The issue of whether additional records exist (reasonable search) is, therefore, also the subject of this appeal.
>
> This office provided a Notice of Inquiry to the Police and the appellant. Representations were received from both parties. In their representations, the Police indicated that upon further consideration of the wording of the Act and Regulation 823 made thereunder, **they were of the view that no fee is required for the correction of an individual's personal information. I agree.** Therefore, as the Police do not intend to charge the appellant a fee for the correction of her personal information, this question is no longer at issue. [Emphasis added by me].

[136] I agree with this comment in Order MO-1077. I also find that that no fee is required for the correction of an individual's personal information.

[137] As no fee is chargeable to the appellant for her correction request, I do not need to consider whether the fee waiver provisions in sections 45(4) of *MFFIPA* and section 8.2 of Regulation 823 have any application to a request fee.

[138] Accordingly, I will not uphold the $5 request fee sought to be charged by the police to process the appellant's correction request. I will order the police to process the appellant's correction request without the payment of this fee.

ORDER:

1. I uphold the police's decision to withhold the information at issue in records 1 to 6, 12, 15 to 22, 24, 28 and 29.

2. I order the police to disclose to the appellant the information at issue in records 7 to 11, 14, 23 and 25 to 27 by **November 26, 2021**.

3. I order the police to process the appellant's correction request without requiring her to pay a request fee.

4. I uphold the police's search for responsive records.

Original Signed by: October 27, 2021

Diane Smith
Adjudicator