Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4134

Appeal MA19-00811

Ottawa Police Service

December 9, 2021

Summary: The appellants made identical requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to them. After notifying an individual whose interests may be affected by disclosure, the police issued a decision partly disclosing responsive information. The police relied on section 38(b) of the *Act* (personal privacy) to deny access to the portion they withheld. During the course of mediation and adjudication, additional information was disclosed to the appellants. Also during adjudication the appellants made an allegation of bias against the adjudicator and/or the IPC. In this order the adjudicator upholds the police's decision to withhold some information but orders other information to be disclosed to the appellants. The adjudicator also finds that the appellants have failed to lead sufficient evidence to support an allegation of bias against himself or the IPC.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, as amended, sections 2(1) (definition of personal information), 14(2)(a), 14(2)(d), 14(3)(b) and 38(b); *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Order Considered: Orders MO-2227 and PO-2225.

OVERVIEW:

[1] One of the appellants in this appeal sent a facsimile for the other appellant using a fax machine at an organization where she worked. The content of the facsimile drew the attention of the organization. The organization contacted the Ottawa Police Service

(the police or OPS) to report the facsimile and its contents. The police generated a general occurrence number for the matter. Communication then took place between the police and the organization's Departmental Security Officer.

[2] The police subsequently received identical requests from each of two appellants[1] under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to the following information:

> all types of communications between the Ottawa Police and [named organisation] employees who worked on the occurrence file [specified occurrence number] concerning myself - I would like all forwards, replies, and reply-alls (including dates of February 14, 2019 to July 19, 2019). I would like all memos, notes, documents, emails, texts, voicemails, transcripts, or
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> Any other information leading to or pertaining to the following:
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> > Filing of occurrence [specified occurrence number],
> >
> > All communications surrounding the investigation surrounding firearm related fax, their communications to the RCMP concerning this matter.
> >
> > All notes, records of documented conversations between [named officers], Freedom of Information Supervisor [named individual], [named officer] advising [named organisation] to file suspicious occurrence.
>
> …
>
> I would also like a confirmation of email properties of each those emails to confirm information sent, received and modified.

[3] After notifying an individual whose interests may be affected by the disclosure of the requested information (the affected party), and receiving their position on disclosure, the police issued an access decision. In their decision, the police granted partial access to the requested information, relying on section 38(b) (personal privacy) of the *Act* to deny access to the portion they withheld.

[4] The appellants appealed the police's decision.

[5] At mediation, the police issued a supplementary decision letter disclosing some

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[1] The appellants are known to one another and the police combined the two requests for processing purposes. The appellants submitted joint representations in the appeal.

additional information to the appellants, but maintained their reliance on section 38(b) of the *Act* to deny access to the portions they withheld.

[6] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[7] I decided to conduct an inquiry and representations were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction Number 7*.

[8] During the course of the inquiry, the notified affected party consented to the disclosure of additional information to the appellants. The police ultimately issued a supplementary decision letter and disclosed this information, which included the affected party's name and title, to the appellants. Also in the course of the adjudication, the appellants raised allegations of bias against me and/or the IPC. Accordingly, I added bias as an issue to be addressed by the appellants in the appeal.

[9] In this order, I uphold the police's decision to withhold some information but order other information to be disclosed to the appellants. I also find that the appellants have failed to lead sufficient evidence to support an allegation of bias against myself or the IPC.

RECORDS:

[10] The records at issue consist of emails and a General Occurrence Hardcopy.

ISSUES:

A. Have the appellants established a reasonable apprehension of bias on the part of myself, or on the part of the IPC, or both?

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 exemption at section 38(b) apply to the withheld information remaining at issue?

DISCUSSION:

Issue A: Have the appellants established a reasonable apprehension of bias on the part of myself, or on the part of this office, or both?

[11] The Ontario Court of Appeal noted that "there is a presumption of impartiality

and the threshold for establishing a reasonable apprehension of bias is a high one."[2] The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.

[12] However, actual bias need not be proven. The test is whether there exists a "reasonable apprehension of bias."

[13] Bias, or any reasonable apprehension of bias, if established, would be a ground for my recusing myself from this appeal and it being assigned to another adjudicator.

[14] In Order MO-2227, Senior Adjudicator John Higgins, in addressing an allegation of bias against the IPC, explained the applicable test as follows:

> A recent statement of the law by the Supreme Court of Canada concerning allegations of bias against an adjudicator is found in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259. In that decision, the court stated:
>
> > In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpre J. in *Committee for Justice and Liberty v. National Energy Board, supra*, at p. 394, is the reasonable apprehension of bias:
> >
> > > …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.
> > >
> > > …
> > >
> > > *The grounds for this apprehension must, however, be substantial*, and I … refuse to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added.]

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[2] *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2017 ONSC 4090 (Div. Ct.) at paragraph 40, citing *Martin v. Martin* (2015), 2015 ONCA 596 (CanLII) at paragraph 71.

[15] Throughout the course of this appeal the appellants made bald assertions of bias which coincided with procedural rulings or their receipt of information about the appeal that they found disagreeable. I pause to note that the fact that the appellants disagree with my determinations in the course of the appeal is not evidence of a reasonable apprehension of bias on my part. Furthermore, neither procedural rulings "against" a party, nor an order dismissing an appeal, are, in and of themselves, evidence of bias.[3]

[16] Based on the frequency with which the allegations were made, I decided to add bias or a reasonable apprehension of bias as an issue in the appeal and invited their submissions on the issue in the Notice of Inquiry that they received.

[17] In response they simply submitted the following:

> We will preserve our right to highlight these issues in a separate proceeding upon the completion of the substantive aspects of this matter. Therefore, we will not be making any representations on this issue in this appeal.

[18] The time to raise an allegation of bias is at the earliest possible instance. It is at that time the allegation can be properly addressed and determined. Bias is a serious allegation that goes to the impartiality of the decision-maker and is not one to be raised without serious consideration. It is not the type of allegation to be made and then held in abeyance. If there is evidence in support of the allegation it should be provided. The appellants have not done so. As no evidence has been led, I find that the allegations of bias, or reasonable apprehension of bias, are unsupported.

[19] I find, therefore, that the appellants have fallen well short of demonstrating bias or a reasonable apprehension of bias.

[20] I will now address the police's decisions to rely on section 38(b) of the *Act* to deny access to the information they withheld.

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

[21] The appellants assert that all communications with the police occurred in the affected party's employment and accordingly, is not his personal information. If that is the case, they submit that the only information at issue is the appellants' personal information which should be disclosed to them.

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[3] *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at paragraph 164, affirmed 2018 BCCA 264.

[22] In response to certain materials the appellants provided after the exchange of representations, the affected party submitted that "any communication communicated and documented between the parties was done in a professional capacity." The police maintained their position that although reported to the police by an employee of the organization, it was done in the employee's personal capacity for reasons of public safety.

[23] 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,
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> (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;

[24] 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.[4]

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

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[26] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed[5] and 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] 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.[7] Order PO-2225 sets out the two-part test used by this office to assist in determining whether information is about an individual acting in a business capacity as opposed to a personal capacity:

> … the first question to ask in a case such as this is: *"in what context do the names of the individuals appear"*? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ....
>
> The analysis does not end here. I must go on to ask: *"is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?[8]

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[4] Order 11.
[5] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[6] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[7] Orders P-1409, R-980015, PO-2225 and MO-2344.
[8] See also: Orders MO-2342 and PO-2934.

The appellants' representations

[27] The appellants submit that the information the affected party provided in his role as Departmental Security Officer was done in his business or professional, rather than personal capacity. Accordingly, the appellants take the position that any views or opinions about the appellants that he shared in the normal course of his business day are not his personal opinions or views, but rather their personal information, in accordance with paragraphs (e) and (g) of the definition of "personal information"[9].

[28] They also submit that the affected party has already notified them of the existence of the information by voluntarily identifying himself as the individual who supplied their confidential and sensitive information to the police.

[29] After the exchange of representations the appellants provided various materials to the IPC in support of their position that the affected party was at all times acting in his business or professional capacity.

The police's representations

[30] The police take the position that the records contain the personal information of the appellants as well as the personal information of the affected party. The police submit that the affected party's personal information includes his date of birth, personal address, phone numbers as well as his statements and his personal views. The police also submit that that the withheld information the affected party did not consent to disclose includes the mixed personal information of both the appellants and the affected party.

[31] The police submit that:

> … although reported to [the police] by an employee of the [organization], it was done so in a personal capacity. This occurrence was reported to [the police] for public safety reasons, about a possible firearms violation regarding an individual who was not an employee of the [organization]. [The police] would argue that this incident was reported to the [police] by a concerned citizen, with their own personal views and opinions, completely in their personal capacity.

The affected party's representations

[32] As set out above, in response to certain materials the appellants provided after

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[9] Relying on Order P-427, the appellants submit that paragraph (e) has been held in several orders to exclude opinions or views expressed by government officials in their professional capacities.

the exchange of representations the affected party submitted that "any communication communicated and documented between the parties was done in a professional capacity." The affected party initially submitted that even though the information at issue was provided while he was an employee of the named organization, it qualifies as his personal information because disclosing it would reveal something of a personal nature about him.

Analysis and finding

[33] I have considered the representations of the parties and reviewed the records at issue.

[34] The communications occurred in the affected party's employment or business capacity and relates to the appellants and their actions. In particular, the conduct of the appellant who was an employee of the organization. In my view, and considering all the circumstances, including that it is contained in police records and is related to an investigation, I am satisfied that any remaining withheld information that does not fall within the exceptions I discuss below, is, according to the definition in section 2(1), the personal information of the appellants only, and not the personal information of the affected party. This is because, in my view, disclosing the information would not reveal anything of a personal nature about him. I will order that this information be disclosed to the appellants.

[35] That said, I am satisfied that the records contain the personal information of the affected party as well as another identifiable individual that falls within the scope of the definition of personal information at section 2(1) of the *Act*. Since section 38(b) can only apply to the personal information of an individual other than the appellants, I will address access to this information in my section 38(b) analysis below.

Issue C: Does the discretionary exemption at section 38(b) apply to the withheld information remaining at issue?

[36] 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.

[37] 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.

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

[39] 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) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[40] 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).

[41] 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.[10] Some of the listed factors, if present, weigh in favour of disclosure, while others, if present, weigh in favour of non-disclosure. 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).[11]

[42] 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.

[43] The police submit that the occurrence report was created in the course of a law enforcement investigation and specifically rely on the factors favouring non-disclosure at sections 14(2)(f) and 14(2)(h) and the presumption at section 14(3)(b). Their representations also appear to address the possible application of the factor favouring non-disclosure at sections 14(2)(e). The affected party adopts and agrees with the police's position. The appellants specifically rely on the factors favouring disclosure at sections 14(2)(a) and 14(2)(d).

[44] Sections 14(2)(a),(d), (e), (f) and (h) 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,
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> > (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

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[10] Order P-239.
[11] Order P-99.

> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
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> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

[45] Section 14(3)(b) provides that:

> 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;

Section 14(2)(a)

[46] The appellants submit that disclosing the withheld information remaining at issue will increase public confidence concerning the government's handling of personal information and the protection of associated *Charter* rights[12]. They assert that this especially important in high stakes security situations as well as administrative investigations. They submit that transparency in how information is being acquired and handled in these processes is needed in order to ensure duty of care is being fulfilled in terms of government collection and disclosure of people's personal information.

[47] The objective of section 14(2)(a) of the *Act* is to ensure an appropriate degree of scrutiny of government and its agencies by the public. After reviewing the representations and the records, I conclude that disclosing the content of the remaining withheld personal information, would not result in greater scrutiny of the police, which is the subject of the 14(2)(a) analysis, not the organization. The appellant's submissions challenging the basis for the police investigation or their conduct are not sufficient to displace my determination in this regard. Additionally, in my view, the content of the information sought does not suggest a public scrutiny interest.[13]

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[12] The *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[13] See Order PO-2905 where the adjudicator found that the subject matter of a record need not have been publicly called into question as a condition precedent for the factor in section 21(2)(a) of *FIPPA* (the provincial equivalent of section 14(2)(a) of *MFIPPA*) to apply, but rather that this fact would be one of

[48] Accordingly, in the circumstances, I find that the factor at section 14(2)(a) is not a relevant consideration.

Section 14(2)(d)

[49] The appellants submit that they are seeking the information to assist them in pursuing legal proceedings, and provided copies of a statement of claim and excerpts of a civil discovery in the materials provided to the IPC after the exchange of representations.

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

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[14]

[51] I am not satisfied that the factor at section 14(2)(d) applies. The appellants have established that there is an existing proceeding. However, the appellant's were provided with the affected party's name and title and in my view, the remaining withheld personal information is not required in order to prepare for the proceeding or to ensure an impartial hearing. Accordingly, I am not satisfied that the factor at section 14(2)(d) applies.

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several considerations leading to its application. Although the appellants cite the *Charter* they did not allege that any relevant *MFIPPA* provisions violate the *Charter*, did not provide a Notice of Constitutional Question nor provide the requisite factual or legal foundation for an allegation of a *Charter* breach or that *Charter* values did not inform administrative discretionary decision making in the circumstances of this appeal. Accordingly, I am not satisfied that the appellants have established a *Charter* breach, nor am I satisfied that they have established that *Charter* values did not inform administrative discretionary decision making in the circumstances of this appeal. I address this argument no further in the appeal.

[14] 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.).

Section 14(3)(b)

[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.[15] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[16]

[53] The police submit that the information supplied by the affected party was collected and compiled and is identifiable as part of an investigation for the purpose of a possible violation of the law.

[54] The police submit that the partly disclosed occurrence report clearly indicates that information was received about the possibility of an unlawful act, that the information was reviewed and investigated but that the case was closed as being "non-criminal".

[55] The appellants assert that the police previously denied that there has ever been a police investigation of the appellant who sent the fax.

[56] I have reviewed the records at issue and it is clear from the circumstances that the personal information in it was compiled and is identifiable as part of the police's investigation into a possible violation of law, namely the *Criminal Code* of Canada.

[57] Accordingly, I find that the remaining personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, and falls within the presumption in section 14(3)(b).

[58] Given the application of the presumption in section 14(3)(b), and the fact that no factors favouring disclosure were established, and balancing all the interests, I am satisfied that the disclosure of the remaining withheld personal information at issue would constitute an unjustified invasion of another individual's personal privacy. Accordingly, I find that this personal information, which I have highlighted in green on a copy of the records that I have provided to the police along with a copy of this order, is exempt from disclosure under section 38(b) of the Act.[17]

Absurd result

[59] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because

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[15] Orders P-242 and MO-2235.
[16] Orders MO-2213 and PO-1849.
[17] As I have found that section 14(3)(b) applies and there are no factors favouring disclosure, it is not necessary for me to also consider whether sections 14(2)(e), (f) and/or (h) might also apply.

to withhold the information would be absurd and inconsistent with the purpose of the exemption.[18]

[60] The police submit that the appellants did not provide the withheld information, and were not present when it was provided to police. The police add that the appellants were not contacted during the course of the investigation, and only spoke to police after the initial investigation was concluded. The police take the position that the appellants would not be aware of the information provided and that the absurd result principle does not apply.

[61] This appellants take the position that the withheld information "is clearly within our knowledge" They submit that:

> With all the information we continue to gather from third parties in relation to this event, which has been shared in facts and evidence with the IPC, it would lead to an absurd result to continue to deny us access when we simply wish to commence legal proceedings as is our legal right.

[62] I am not satisfied that the appellant is aware of the personal information that I have found to qualify for exemption under section 38(b) and I find that the absurd result principle does not apply to it.

Issue D: Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[63] 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.

[64] 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.

[65] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[19] This office may not, however,

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[18] Orders M-444 and MO-1323.
[19] Order MO-1573.

substitute its own discretion for that of the institution.[20]

The appellants' representations

[66] The appellants submit that the police committed an error in not properly weighing their rights of access to their own personal information and not taking into account relevant information before issuing their decision.

[67] They submit that the police did not exercise their discretion in a manner that adheres to the mandate and the spirit of the *Act* and did not treat the affected party and the appellants equally. They submit that the police protected the privacy interest of the individual who supplied them information rather than the appellants' right of access to this information.

[68] The appellants submit that there is a compelling public interest in disclosing what happened in the handling of the appellants' information by major public sector institutions wielding a great amount of power in our society. The appellants submit that there is a need for public accountability at all times, not just in this particular matter, in these types of roles in a democratic society to maintain the public's trust.

[69] The appellants submits that:

> To date, the flimsy excuses employed by the Ottawa Police to repeatedly deny access to the key emails and incident report in this "investigation" and, denials that a police investigation is even taking place, is not consistent with their claims to be "transparent and accountable."

The police's representations

[70] The police submit that they properly exercised their discretion not to disclose the withheld information. They submit that in doing so they balanced the appellants' right of access to the information with any other individual's right to privacy.

[71] They submit that although the appellants may have the right to information that has been supplied by another individual and is about them, the individual who supplied the information also has the right to privacy. They add:

> After fully reviewing the information we determined that the privacy rights of the individual who supplied information and did not provide consent, overrides the appellants' right to this information. We therefore exercised our discretion to deny them access to the information.

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[20] Section 43(2).

> Lastly, the [police] maintains their position where it relates to the protection of privacy for the information at issue. This institution has weighed-in several factors before making this decision; namely the requestors' right to this information, and the other individual's privacy rights and their refusal to consent. Therefore, we stand by our decision, and are of the opinion that the individual's rights to privacy outweighs any claims made to the information at issue.

[72] Finally, the police disagree that in relation to public scrutiny there is a compelling public interest[21] to have this information disclosed, submitting that:

> On the contrary, it would demonstrate a complete disregard for personal privacy and would create public distrust with the [police] with regards to the collection and use of their personal information. This institution has remained transparent and accountable throughout the process, with regards to the collection and use of the information collected and used during the course of the police investigation and subsequent information request and appeal.

Analysis and finding

[73] In light of the extent of information that has already been disclosed to the appellants by the police and through this order, and all the circumstances of the appeal, I am satisfied that the police properly exercised their discretion to withhold the personal information that I found above to qualify for exemption under section 38(b) of the *Act*.

ORDER:

1. I uphold the police's decision to withhold the personal information that I have highlighted in green on a copy of the records that are provided to the police along with a copy of this order.

2. I order the police to disclose to the appellants the balance of the remaining withheld information in the records at issue in this appeal by **January 14, 2022**, but not before **January 10, 2022.**

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[21] Section 16 of the *Act* provides that an exemption from disclosure of a record under sections 7, 9, 9.1, 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. In my view there is no compelling public interest in the disclosure of the information that I have found to be subject to section 38(b) of the *Act*.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the police to provide me with a copy of the records as disclosed to the appellants.

Original signed by: December 9, 2021

Steven Faughnan
Adjudicator