

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4182

Appeal MA19-00486

London Police Services Board

March 31, 2022

Summary: The London Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the requester. The police issued a decision granting partial access to the responsive records with severances under section 38(b) (personal privacy) and section 38(a) (discretion to refuse access to a requester's own personal information), in conjunction with sections 8(1)(c), (d) and (l) (law enforcement), of the *Act*. In this order, the adjudicator upholds the police's access decision and finds that the exemptions in section 38(b) and section 38(a), in conjunction with section 8(1)(c) and (l), apply to the portions of records for which they were claimed. The appeal is dismissed.

Statutes Considered: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 8(1)(c), (d) and (l), 14(2)(b) and (h), 14(3)(b), 38(a), and 38(b).

Orders and Investigation Reports Considered: Orders M-352, MO-2199, MO-3418.

OVERVIEW:

[1] This appeal determines the issues raised by a request for records created by the London Police in response to a number of incidents involving the appellant. The majority of the incidents resulted from disputes between the appellant and his former roommates and landlord.

[2] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the London Police Services Board (the police) for

access to records identifying him by name and birthdate, including records:

1. ... received, consulted or shared between the London Police Service and other police agencies from October 2014 to present,
2. ... where a person such as a civilian or a member of the public made a statement or a complaint to the London Police Service from January 2015 to present, and
3. ... for any interaction between September 2017 to present where a police officer wrote a police report.

[3] The police located responsive records and sent a decision letter to the appellant advising that they were providing him with partial access to them. The police denied access to some information in the records under the discretionary exemptions in section 38(a), in conjunction with the exemptions at sections 8(1)(c), (d) and (l) (law enforcement), and in section 38(b) (personal privacy), having considered sections 14(2)(h) (supplied in confidence) and 14(3)(b) (investigation into a possible violation of law). The police advised that it also withheld some information because it is not responsive to the appellant's request.

[4] The appellant appealed the police's access decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to assist the parties in attempting to reach a mediated resolution.

[5] During mediation, the appellant confirmed that he is not seeking access to the withheld information that was identified by the police as not responsive to his request. The appellant also confirmed that he seeks access to the remaining information that was withheld by the police and, with respect to the exemption at section 38(b), raised the application of the factor at section 14(2)(b) (public safety).

[6] During mediation, the mediator attempted to contact several affected parties whose information appears in the records but was unable to obtain their consent to disclose their information to the appellant.

[7] As a mediated resolution could not be reached, the appeal was moved to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry under the *Act*.

[8] The adjudicator assigned to the appeal started his inquiry by sending a Notice of Inquiry to the police, who submitted representations. The adjudicator then invited representations from the appellant, providing him with the Notice of Inquiry and a copy of the police's non-confidential representations. The police's representations were shared with the appellant in accordance with section 7 of the IPC's *Code of Procedure*. The appellant provided representations in response.

[9] The appeal was transferred to me to continue the inquiry. Upon review of the file and the parties' representations, I decided that I did not need any further information

from the parties.

[10] In this order, I uphold the police's access decision and dismiss the appeal.

RECORDS:

[11] The records at issue in this appeal include call hardcopy reports, general occurrence hardcopy reports and police officers' notes. The information that remains at issue is that which has been severed under one or both of section 38(a) and 38(b), from pages: 3, 5, 7-8, 10-21, 24, 26, 28-31, 35, 37, 39-41, 45-46, 48, 50-52, 56, 58, 60-62, 67, 69, 71-74, 78-79, 81, 83-85, 89-91, 94, 99, 101, 103-105, 109, 111, 113-115, 119, 121, 123-125, 129, 131, 133-136, 140, 142, 144-146, 149-152, 154-156, 159-160, 162, 164, 166-169, 171-172, 175, 177.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information for which it has been claimed?
- C. Does the discretionary exemption at section 38(a), in conjunction with any of the law enforcement exemptions at section 8(1)(c), (d) and (l), apply to the information for which it has been claimed?
- D. Did the police exercise their discretion in denying access to the information withheld pursuant to sections 38(a) and (b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[12] In order to decide whether either of the discretionary exemptions at section 38(a) or section 38(b) of the *Act* applies in a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the appellant's own personal information, their access rights are greater than if it does not.¹

¹ Under sections 36(1) and 38 of the *Act*, an appellant has a right of access to their own personal information. Any exemptions from that right, including the personal privacy exemption at section 38(b),

[13] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.² Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. See also section 2(2.1) which states:

(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.

[14] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.³

[15] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁴

[16] Section 2(1) of the *Act* gives a list of examples of personal information:

"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,

are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies. If the records do not contain the personal information of the appellant but that of other individuals, the relevant personal privacy exemption is the mandatory exemption at section 14(1), meaning that the institution must not disclose the personal information if the exemption applies.

² See the definition of "record" in section 2(1).

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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.

[17] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁵

Representations

[18] The police submit that the responsive records are largely reports relating to a number of specific interactions between the police and the appellant. They submit that the reports contain the personal information of the appellant as well as that of a number of affected parties that the police spoke to about the interactions. They submit that this personal information includes addresses, telephone numbers, dates of birth, gender, places of employment and statements taken by the police from these individuals. They submit that it is reasonable to expect that the individuals to whom the personal information relates would be identified if the information is disclosed.

[19] The appellant does not make any representations that specifically address whether the information at issue contains his own personal information or that of other identifiable individuals. He does, however, state that he believes that the majority of the affected parties who spoke to the police, whose information might be contained in the records, are his former roommates and landlord.

Analysis and finding

[20] I have considered the parties representations and have reviewed the records that are responsive to the request, including the information that has not been disclosed and remains at issue. I find that the records, which are police reports and officer notes documenting interactions with the appellant, contain the personal information of the appellant, as well as that of a number of affected parties who spoke with the police as a result of the interactions between the police and the appellant.

[21] The records contain personal information about both the appellant and the affected parties, including: information relating to their age, sex, marital or family

⁵ Order 11.

status (paragraph (a) of the definition of “personal information” at section 2(1) of the *Act*); their addresses and telephone numbers (paragraph (d)), their views or opinions (e) and, particularly in the case of the appellant, views or opinions about them (paragraph (g)), as well as their names, along with other personal information about them (paragraph (h)). I find that it is reasonable to expect that the affected parties could be identified from the information that has been withheld from the records, even if their names were severed.

[22] I am also satisfied that the personal information in the record is about the appellant and the affected parties, including the landlord, in a personal capacity.

[23] I have reviewed the withheld information, together with the information that was disclosed to the appellant. I confirm that the police have only severed the portions of the records that contain the personal information of affected parties or the mixed personal information of both the appellant and the affected parties, such as the personal views or opinions or the affected parties where, in some parts, those view and opinions are about the appellant (paragraphs (e) and (g) of the definition of “personal information” at section 2(1)).

[24] Because all of the records contain the personal information of the appellant, any right of access that he might have to the withheld information, including the personal information that belongs to the affected parties, must be considered under the discretionary exemptions at sections 38 of the *Act*. Order M-352 established that I need to determine whether each record, as a whole, contains the appellant’s personal information using a “record-by-record approach” where “the unit of analysis is the record, rather than the individual paragraphs, sentences or words contained in a record.”⁶

[25] Having found that the responsive records contain the personal information of both the appellant and other affected parties, I must now determine whether the information that has been withheld and that remains at issue, is exempt from disclosure under either section 38(a) or (b) of the *Act*. I will begin by considering section 38(b).

Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to information for which it has been claimed?

[26] 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 some exemptions from this right.

[27] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the

⁶ In the Index of Records, the police have claimed that portions of some pages are exempt under the mandatory personal privacy exemption at section 14(1). However, as I have found that all of the records contain the personal information of the appellant, due to the record-by-record approach used by the IPC, the exemptions that must be applied to the withheld personal information is the discretionary exemption at section 38(b).

other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy. Only the personal information of individuals other than the requester can be exempt from disclosure under section 38(b).⁷

[28] The section 38(b) exemption is discretionary. This means that the institution can also decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[29] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[30] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

[31] In this case, none of the parties claim, nor do I find, that any of the exceptions at sections 14(1)(a) to (e) apply.

[32] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply. None of the situations listed in section 14(4) are present in this case.

[33] If section 14(4) does not apply, as in this case, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁸

[34] If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). 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.⁹ The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under

⁷ See Order PO-3672 at para 58, which addresses the equivalent provision in section 49(b) of the *Freedom of Information and Protection of Privacy Act*. See also Order PO-2560, which found that a requester's personal information cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.

⁸ Order MO-2954.

⁹ Order P-239.

section 14(2).¹⁰

[35] In this case, the police submit that disclosure of portions of the following pages would be an unjustified invasion of the personal privacy of identifiable individuals other than the appellant: pages 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 35, 40, 41, 45, 50, 51, 52, 56, 61, 62, 67, 71, 72, 73, 74, 84, 85, 89, 90, 91, 94, 99, 103, 104, 105, 109, 113, 114, 115, 119, 123, 124, 125, 129, 133, 134, 135, 136, 140, 145, 146, 149, 150, 151, 154, 155, 156, 159, 160, 164, 166, 167, 168, 171 and 172.

[36] The police argue that the presumption against disclosure at section 14(3)(b) applies. That section states:

14(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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[.]

[37] The appellant argues that the factor at section 14(2)(b) (public scrutiny) applies to the withheld information. This factor weighs in favour of its disclosure, if it is found to apply. The police argue that the factor at section 14(2)(h) (supplied in confidence) applies to the withheld information. This factor weighs against disclosure, if it is found to apply. Those sections state:

14(2) A head in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

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

...

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

Section 14(3)(b): presumption against disclosure

Police's representations

[38] The police submit that the presumption against disclosure at section 14(3)(b) applies to the information that it has withheld under that section because it is personal information that was compiled and is identifiable as part of an investigation into a possible violation of law.

¹⁰ Order P-99.

[39] The police explain that they are a law enforcement agency mandated under the *Police Services Act* with the responsibility of investigating offences, including offences under the *Criminal Code*. The police submit that in each of the relevant incidents involving the appellant, the police responded to calls for service and conducted investigations. They submit that “these types of investigations can lead to a number of different offences contrary to the *Criminal Code*.” The police note that even if no criminal proceeding is commenced against an individual, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.¹¹

[40] In their representations, the police summarize the nature of each of the 17 occurrences that are documented in the responsive records and identify the types of *Criminal Code* offence or offences that could have resulted from each specific incident.

Appellant’s representations

[41] The appellant does not dispute the police’s position that the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[42] He explains that allegations that he has resorted to hostile or subversive activities have been brought against him for at least a dozen years. He believes that these allegations have been recorded in a national database maintained by the Federal Government of Canada and have resulted in long-term, clandestine surveillance of him by federal agents.

[43] The appellant also states that these allegations, which he refers to as unfounded, have resulted in the police employing “powers of disruption” against him, which he submits are exercised within the framework of investigations that could result in charges being laid under the *Criminal Code*.

Findings on section 14(3)(b) investigation into a possible violation of law

[44] I find that the presumption against disclosure at section 14(3)(b) is a relevant consideration in this appeal because the personal information at issue was compiled as part of investigations into possible violations of law relating to the various incidents involving the appellant.

[45] Based on my review of the personal information at issue, all of which is contained in occurrence reports or police officer notes detailing investigations into incidents involving the appellant, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. Given the natures of the various incidents, I accept the police’s evidence that the investigations into those incidents could have resulted in charges under the *Criminal Code*.

¹¹ Orders P-242, MO-2785 and MO-2235.

[46] As noted by the police, the fact that no charges were laid has no bearing on the application of this presumption. Even if no criminal proceedings were commenced against any individual in relation to these incidents, or if they were later withdrawn, section 14(3)(b) may still apply; the presumption only requires that there be an investigation into a possible violation of law.¹²

[47] In this case, I find that section 14(3)(b) applies to the personal information that is at issue, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the individuals to whom that personal information relates. Section 14(3)(b) weighs against the disclosure of the information.

[48] Under section 38(b), the presumptions in section 14(3) must be weighed with any factors in section 14(2) that are relevant, and those presumptions and factors must be balanced against the interests of the parties. As no other presumptions in section 14(3) have been claimed or are relevant in this appeal, I will now consider the relevant factors in section 14(2).

Sections 14(2)(b) and (h): factors weighing for or against disclosure

[49] As indicated above, section 14(2) sets out a non-exhaustive list of factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹³ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

Section 14(2)(b): public health and safety

[50] During mediation, the appellant raised the possible application of the factor at section 14(2)(b) which applies in circumstances where the disclosure of the withheld personal information would promote public health and safety.

[51] Although the appellant does not specifically reference the factor at section 14(2)(b) in his representations, his submissions suggest that he believes that disclosure of the personal information that has been withheld would promote public health and safety. He submits that he is being targeted by the police as a result of false allegations of him having resorted to hostile or subversive activities. He submits that he has been victimized by the police in his day-to-day life as they repeatedly open investigations that could lead to him being charged. He submits that the strategies that the police have employed include falsifying information, intercepting communications, making mental health diagnoses, creating an unhealthy climate among roommates sharing the same accommodation and colleagues working at the same workplace, and engaging in psychological harassment. He also submits that the police asked former roommates and landlords to make false declarations about his behaviour and encouraged a former landlord to commit public mischief by accusing the appellant of having threatened him with an object resembling a weapon.

¹² Orders P-242 and MO-2235.

¹³ Order P-239.

[52] The appellant submits that he believes that the disclosure of the information at issue would prevent the perpetuation of discrimination and hatred against him by the police.

[53] I have reviewed the appellant's representations, the personal information that has been withheld and the other evidence before me. Although I acknowledge that the appellant believes that he is being unfairly targeted by the police, I am not persuaded that disclosure of the specific personal information that has been withheld would promote public health or safety. As previously noted, much of the responsive records have been disclosed to the appellant and the information that has been withheld is either the personal information of affected parties, either alone or intertwined with that of the appellant. From my review, none of the withheld personal information relates to the health or safety of the public and therefore, its disclosure would not serve to promote it.

[54] As a result, I find that the factor at section 14(2)(b) is not relevant and does not apply here to weigh in favour of disclosure of the withheld personal information.

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

[55] The police take the position that section 14(2)(h) is a relevant factor weighing against disclosure of the withheld personal information because, they submit, when personal information is collected by the police in the course of a law enforcement matter, there is an expectation of confidentiality.

[56] As past orders have established, section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹⁴

[57] In my view, whether an individual supplied his or her personal information to the police in confidence during an investigation is contingent on the particular facts, and such a determination must be made on a case-by-case basis.

[58] In Order MO-3418, the adjudicator considered police records arising from a dispute between neighbours and stated:

I accept the police's submission that section 14(2)(h) is a factor that weighs in favour of withholding the information at issue in this appeal. Particularly in the context of a dispute between neighboring landowners as is in issue here, I am satisfied that information provided to police by an individual is given with an expectation that the police will generally keep at least the source of the information in confidence. Here, where disclosing information would generally also disclose its source, it follows

¹⁴ Order PO-1670.

that the information supplied to police was supplied in confidence, even though there is no evidence that any explicit confidentiality assurance was provided by police.

[59] I agree with this analysis and find it relevant to my consideration of the facts before me. In the particular circumstances of this appeal, the personal information at issue includes statements made to the police by a number of affected parties in relation to incidents involving the appellant. In my view, given the nature of these incidents and the relationship between the involved parties, I accept that the affected parties whose information is at issue had a reasonable expectation that the personal information that they provided to the police in the context of these incidents would be treated confidentially. I also accept that this expectation of confidentiality was reasonable in the circumstances. I find, therefore, that the factor at section 14(2)(h), weighing against the disclosure of the personal information that has been withheld, is a relevant consideration in this appeal.

Summary of finding on the application of section 38(b)

[60] In sum, I have found that no section 14(2) factors, listed or unlisted, apply and weigh in favour of disclosure of the withheld personal information, but I have found that the factor at section 14(2)(h) (supplied in confidence) applies and weighs against its disclosure. I have also found that the presumption against disclosure at section 14(3)(b) applies. Having considered the nature of the personal information at issue and having balanced the interests of both parties, the facts of this appeal weigh against the disclosure of the information that the police have withheld under section 38(b). Subject to my consideration of the police's exercise of discretion, I find that its disclosure would constitute an unjustified invasion of the personal privacy of the affected parties and that section 38(b) applies.

Section 4(2): Severability

[61] As noted above, the police have disclosed much of responsive information to the appellant and have only withheld his personal information where it is inextricably intertwined with the personal information of other identifiable individuals.

[62] Section 4(2) of the *Act* requires the police to disclose as much of the record as can be reasonably severed without disclosing information that falls under one of the exemptions.¹⁵ Consequently, if the information is found to fall under the section 38(b) exemption and the police's exercise of discretion is appropriate, the appellant's personal information can only be disclosed to him if the record can reasonably be severed without disclosing the personal information of other identifiable individuals.

¹⁵ Section 4(2) states:

If an institution receives a request for access to a record that contains information that falls within one of the exemptions under section 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

[63] From my review, I accept that the records cannot be further severed to disclose additional personal information belonging to the appellant, without disclosing the personal information of the affected parties, disclosure of which I have found would be an unjustified invasion of their personal privacy under section 38(b).

Issue C: Does the discretionary exemption at section 38(a), in conjunction with any of the law enforcement exemptions at section 8(1)(c), (d) and (l), apply to the information for which it has been claimed?

[64] The police have withheld portions of the reports and officers' notes under section 38(a) of the *Act*, which reads:

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

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

[65] The discretionary nature of section 38(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.¹⁶

[66] If the institution refuses to give an individual access to their own personal information under section 38(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information. The institution is asked to address this under "Exercise of Discretion," below.

[67] In this case, the police rely on section 38(a), in conjunction with section 8(1)(c), (d) and (l), to withhold portions of the responsive records. These sections read:

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

...

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

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

...

¹⁶ Order M-352.

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

[68] The term “law enforcement” is used in section 8(c) and (d), and is defined in section 2(1) as follows:

“law enforcement” means,

(a) policing,

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

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

[69] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁷

[70] 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.¹⁸ 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.¹⁹

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

[71] In order to meet the “investigative technique or procedure” test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.²⁰

[72] The techniques or procedures must be “investigative”. The exemption will not apply to “enforcement” techniques or procedures.²¹

Representations

[73] The police submit the information that has been withheld under section 38(a), in conjunction with section 8(1)(c), on pages 35, 62, 89, 90, 105, 115, 125, 129, 135,

¹⁷ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹⁸ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²⁰ Orders P-170, P-1487, MO-2347-I and PO-2751.

²¹ Orders PO-2034 and P-1340.

140, 159 and 164, would reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. They submit that the specific investigative techniques that would be revealed by the disclosure of this information are not presently known to the public.

[74] The police explain that investigating officers access information provided from various sources, including the London Police records management system (RMS), Canadian Police Information Centre (CPIC) and Law Enforcement Information Portal (LEIP), to assist their investigations by ensuring consolidated and timely information both locally and across police services nationally. The police submit that disclosure of the investigative techniques used by officers in accessing information from the sources identified above would reasonably hinder or compromise their effective utilization and potentially place investigating officers at risk.

[75] The police also submit that some of the information withheld under section 8(1)(c) would reveal police coding information which includes numerical codes used to classify police responses within the RMS as well as communication codes that officers use to communicate with the dispatch centre. The police submit that access to these records systems are limited to law enforcement and the content and structure of such systems are not publicly known.

[76] The police submit that past orders, in particular Orders PO-2582 and MO-3662, have upheld the application of section 38(a), in conjunction with section 8(1)(c), to deny access to similar information.

[77] The appellant's representations do not address the police's claim that section 38(a), in conjunction with 8(1)(c), applies in this case.

Analysis and finding on the application of section 38(a), in conjunction with 8(1)(c)

[78] In this appeal, I find that the portions of the pages that the police withheld under section 38(a), in conjunction with section 8(1)(c), contain information that relates to investigative and communication techniques used by the police during the course of their investigations. Specifically, I accept that the withheld portions reveal communication and procedural techniques followed by officers when responding to complaints and engaging in investigations of the types documented in the records at issue.

[79] I find that disclosure of this information would reveal investigative and communication techniques currently used by the police that are not generally known by the public. Therefore, I find that disclosure of the information withheld under this section could reasonably be expected to compromise the effective use of these techniques or procedures within the meaning of section 8(1)(c). This type of analysis has been applied in other orders issued by the IPC for similar types of information.²²

²² See, for example, Orders MO-1786, MO-2424, MO-3662 and MO-4067-I.

[80] Therefore, I find that section 38(a), in conjunction with section 8(1)(c), applies to the information for which it has been claimed, subject to my findings on the police's exercise of discretion below.

Section 8(1)(d): confidential source

[81] The police submit the information that it has withheld under section 8(1)(d) on pages 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 35, 40, 41, 45, 50, 51, 52, 61, 62, 67, 71, 72, 73, 84, 85, 99, 103, 104, 105, 109, 113, 114, 115, 119, 123, 124, 125, 129, 133, 134, 135, 145, 149, 150, 151, 154, 155, 156, 159, 160, 166, 167, 168, 171 and 172 would identify a confidential source of information as contemplated by section 8(1)(d). The police have also claimed that this same information is exempt under section 38(b).

[82] As I have already considered the application of section 38(b) to this information and found that, subject to my consideration of the police's exercise of discretion below, that it is exempt on that basis, it is not necessary for me to consider whether the information is also exempt under section 38(a), in conjunction with section 8(1)(d).

Section 8(1)(l): commission of an unlawful act or control of crime

[83] To establish that section 8(1)(l) applies, the police must demonstrate that the disclosure of the information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

Representations

[84] The police submit that on pages 3, 5, 7, 12, 16, 17, 20, 24, 26, 28, 35, 37, 39, 45, 46, 48, 50, 56, 58, 60, 67, 69, 71, 72, 78, 79, 81, 83, 89, 99, 101, 103, 109, 111, 113, 119, 121, 123, 129, 131, 133, 140, 142, 144, 150, 152, 154, 155, 156, 159, 160, 162, 164, 167 and 169, they have withheld police operational codes under section 38(a), in conjunction with section 8(1)(l). They submit that these codes include geographical patrol zones, response codes, procedural codes and unit identification numbers and that previous orders, such as Orders MO-2898 and M-757, have established that that this type of information falls within the scope of section 8(1)(l) on the grounds that disclosure of code information could reasonably be expected to facilitate the commission of an unlawful act.

[85] The appellant's representations do not address the police's claim that section 38(a), in conjunction with 8(1)(l), applies in this appeal.

Analysis and finding on the application of section 38(a), in conjunction with section 8(1)(l)

[86] Previous orders of this office have found that section 8(1)(l) applies to police codes and internal communications because of the reasonable expectation of harm to

law enforcement interests that may result from their release.²³

[87] In Order MO-2199, former Commissioner Brian Beamish wrote:

A number of decisions of this office have consistently found that Police ten codes or "900" codes, and zone and sector codes qualify for exemption under section 8(1)(l) of the *Act* (see for example Orders M-393, M-757 and PO-1665). These codes have been found to be exempt because of the existence of a reasonable expectation of harm to an individual or individuals and a risk of harm to the ability of the police to carry out effective policing in the event that this information is disclosed.

[88] I find no reason to depart from the approach taken in previous IPC orders. Subject to my consideration of the police's exercise of discretion, I find that the operational codes that the police have withheld from the records are exempt from disclosure under section 38(a), in conjunction with section 8(1)(l).

Summary of findings: Section 38(a), in conjunction with sections 8(1)(c), (d) and/or (l)

[89] As previously stated, because the records contain the personal information of the appellant, as well as that of other identifiable individuals, disclosure of the withheld information must be considered under section 38(a). For the reasons set out above, and subject to my findings regarding the police's exercise of discretion below, I find that the police have established that section 38(a), in conjunction with sections 8(1)(c), and (l), applies to exempt the information for which those exemptions have been claimed from disclosure. As all of the information for which section 38(a), in conjunction with section 8(1)(d), was claimed has already been found to be exempt under section 38(b) in my analysis of that section above, it is not necessary for me to review its application.

Issue D: Did the police exercise their discretion in denying access to the information withheld pursuant to sections 38(a) and 38(b)? If so, should the IPC uphold the exercise of discretion?

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

[91] 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; or it fails to take into account relevant considerations.

²³ See, for example, Orders M-393, M-757, M-781, MO-1428, MO-1715, MO-2014, PO-1665, PO-1877, PO-2209, and PO-2339.

[92] While the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations,²⁴ it may not, however, substitute its own discretion for that of the institution.²⁵

[93] Relevant considerations may include, but are not limited to, those listed below:²⁶

- the purposes of the *Act*, including that information should be available to the public
- exemptions from the right of access should be limited and specific
- the wording of the exemption and the interests it seeks to protect
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- 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.

[94] I find that the police properly exercised their discretion in deciding to withhold the information at issue pursuant to sections 38(a) and (b).

[95] The police submit that in exercising their discretion under sections 38(a) and (b), they took into consideration that the records contain the personal information of both the appellant and other identifiable individuals. They submit that they considered the nature of the specific information that was withheld and determined that the protection of the personal privacy of the affected parties and the confidentiality of operational codes and investigative techniques outweighed the appellant's right of access to that information. They submit that they considered the fact that disclosure of the law enforcement information could hinder police operations and that disclosure of the personal information of the affected parties which was supplied in confidence would decrease public confidence and assistance in police investigations.

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

[97] I have considered the police's representations, the information that was disclosed to the appellant and the information that was withheld. I am satisfied that the police considered relevant factors when exercising their discretion, including the

²⁴ Order MO-1573.

²⁵ Section 43(2) of the *Act*.

²⁶ Orders P-244 and MO-1573.

purposes of the *Act*, the exemptions in sections 38(a) and 38(b), as well as the relevant law enforcement exemptions, the nature of the information and the specific circumstances of this appeal. I am also satisfied that after weighing relevant factors, the police provided the appellant with as much access as possible to his own personal information, while applying the exemptions in a limited and specific manner to protect the confidentiality of operational codes and investigative techniques as well as the personal privacy of the affected parties whose personal information appears in the records.

[98] I am satisfied that the police did not take into account irrelevant factors in exercising their discretion. There is also no evidence before me that the police acted in bad faith.

[99] For these reasons, I find that the police properly exercised their discretion in applying the exemptions at section 38(a), in conjunction with sections 8(1)(c) and (l), and section 38(b) to the withheld information. I uphold it.

ORDER:

I uphold the police's access decision and I dismiss the appeal.

Original Signed by: _____
Catherine Corban
Adjudicator

_____ March 31, 2022