

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4213

Appeal MA20-00490

Toronto Police Services Board

June 17, 2022

Summary: The Toronto Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records pertaining to a specified incident attended by the police involving a cyclist (the appellant) and the driver of a motor vehicle. The police granted the appellant partial access to an occurrence report, withholding some information, including the driver's name and address, on the basis that its disclosure would be an unjustified invasion of the personal privacy of the driver pursuant to the discretionary personal privacy exemption in section 38(b). The appellant appealed the police's decision to the IPC.

In this order, the adjudicator finds that the discretionary personal privacy exemption in section 38(b) does not apply to the driver's name and address and orders that information to be disclosed by the police. She upholds the balance of the police's decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. c. M.56, sections 2(1) (definition of "personal information"), 14(2)(b), 14(2)(d), 14(2)(e), 14(2)(f), 14(2)(h), 14(3)(b) and 38(b); *Highway Traffic Act*, R.S.O. 1990 c.H.8, section 200.

Orders Considered: Orders MO-2980 and MO-4041.

OVERVIEW:

[1] This order determines the issues arising from the appellant's request for records pertaining to a specific incident involving the appellant and a motorist in June 2020. There were no charges laid following the incident. The appellant, a cyclist who claims they sustained injuries in the incident, wishes to commence a civil action for damages

against the driver but does not know the driver's identity.

[2] The appellant made the request for records relating to the incident to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The police attempted to notify the motorist (the affected party) of the request and to provide an opportunity for them to make representations. This correspondence was returned to the police undelivered.

[3] In their interim access decision, the police had indicated that following notification of the affected party, the requester would be granted access to the affected party's name and address. When the notification was returned undelivered and in the absence of any representations from the affected party, the police issued a revised decision granting partial access to a police occurrence report. The police withheld portions of the record, including the affected party's name and address and information relating to their vehicle and auto insurance pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] During mediation, the appellant advised that they were seeking access to the affected party's name and address, the name of their auto insurance provider and the policy number contained in the occurrence report.

[6] The IPC mediator wrote to the affected party but the letter was returned undelivered. The mediator then contacted the affected party by telephone. The affected party advised that they had reported the incident to their insurance company and that they consented to the insurance agent disclosing their information to the appellant. However, the affected party did not provide a written consent for the police to disclose this information.¹

[7] As a mediated resolution was not achieved, the appeal was moved to the adjudication stage. The adjudicator initially assigned to this appeal decided to conduct an inquiry and began by seeking and receiving representations from the police. The affected party was contacted by telephone, provided an email address and agreed to be sent inquiry documents by email. The affected party confirmed that they had moved to a new address.

[8] The appeal was then transferred to me to continue the adjudication. I invited and received representations from the affected party and the appellant and, subsequently, reply representations from the police. Representations were shared between the parties in accordance with the IPC *Code of Procedure and Practice Direction 7*.

¹ This appeal is brought under Part III of the *Act* in respect of the police's decision to deny the appellant access to personal information in its custody or control. The IPC has no jurisdiction to order the insurer to disclose information.

[9] For the reasons that follow, I find that the section 38(b) discretionary personal privacy exemption does not apply to the affected party's name and address and I order the police to disclose this information to the appellant. I uphold the balance of the police's decision.

RECORDS:

[10] The information at issue is the affected party's name and address, motor vehicle insurance company and policy number, contained in the portions severed from a four-page police occurrence report.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?

[11] The police have withheld information from the occurrence report on the basis of the discretionary personal privacy exemption in section 38(b). This exemption can only apply to personal information and so I must first decide whether the records contain "personal information."

[12] "Personal information" is defined in section 2(1) of the *Act* as recorded information about an identifiable individual and includes:

(a) Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(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.

[13] 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.²

[14] The parties agree that the record contains the personal information of the appellant and the affected party.

[15] I have reviewed the record and I find that it contains the personal information of the appellant and the affected party. With respect to the appellant, I find that the record contains their name and address, date of birth, telephone number, ethnicity and sex and that this information qualifies as their personal information within the meaning of paragraphs (a), (c), (d) and (h) of the definition in section 2(1).

[16] With respect to the affected party, I find that the record contains their name and address, date of birth, telephone number, ethnicity, sex, vehicle license plate and their auto insurance provider and policy number. I find that the affected party's name, address, telephone number, date of birth, ethnicity and sex qualify as personal information within the meaning of paragraphs (a), (c), (d) and (h) of the definition in section 2(1).

[17] Previous orders of the IPC have held³ and I find in this appeal, that a vehicle license plate number that belongs to an identifiable individual qualifies as the personal information of that individual because it constitutes an "identifying number" that is assigned to them within the meaning of paragraph (c) of the definition in section 2(1). Regarding the affected party's vehicle license plate, and insurance policy number, I find that this information also qualifies as their personal information within the meaning of paragraphs (c) and (h) of the definition in section 2(1).

[18] In my view and considering the record as a whole, the name of the affected party's insurance provider, as it appears in the occurrence report with the affected party's other personal information, also qualifies as recorded information about them as an identifiable individual and is therefore their personal information within the definition in section 2(1).

[19] I must now consider the application of the discretionary personal privacy

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

³ See for example Orders MO-1863 and MO-3327.

exemption in section 38(b) to the affected party's personal information at issue that was withheld from the occurrence report.

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

[20] Section 38 provides for a number of exemptions from an individual's general right under section 36(1) to access their own personal information held by an institution.

[21] Under section 38(b), where a record contains personal information of both the appellant 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 appellant. This involves a weighing of the appellant's right of access to their own personal information against the other individual's right to protection of their privacy.

[22] Since the section 38(b) exemption is discretionary, once the police formed the view that the record was exempt under section 38(b), they were required to exercise their discretion to decide whether to nonetheless disclose the police report to the requester in full or to claim the application of the exemption in relation to all or part of it.

[23] 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).

[24] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[25] The police submit that none of the exceptions to the personal privacy exemption in section 14(1)(a) to (e) apply in this appeal. Neither the affected party nor the appellant address the application of the exceptions. I have reviewed the information in issue in the occurrence report. I agree with the police, and I find, that none of the exceptions listed in section 14(1)(a) to (e) apply.⁴

[26] Section 14(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. The police submit that the information at issue is not one of the types listed in section 14(4). I agree and I find that none of the situations described in section 14(4) are applicable in this appeal.

[27] As I have found that sections 14(1)(a) to (e) and 14(4) do not apply in this

⁴ As noted in the Overview, the affected party provided verbal consent to the IPC mediator for disclosure of their personal information. However, for the exception to the personal privacy exemption in section 14(1)(a) of the *Act* to apply, consent must be provided in writing. See Order PO-1723.

appeal, I will consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties to determine whether the disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy under section 38(b).⁵

Representations

[28] In the course of my inquiry, the affected party was contacted by telephone and they provided an email address for receipt of the Notice of Inquiry, which was sent and receipt of which was confirmed. In an email response, the affected party stated that they wished for their personal information not to be disclosed because of "safety concerns." The affected party forwarded the Notice of Inquiry to their insurance company and stated that as the appellant already has their policy number, they have all the information that they need. They expressed a willingness for the appellant to deal with the insurance company.

[29] I have treated the affected party's email as their representations and understand their position to be that the factor in section 14(2)(e) (exposure to pecuniary or other harm) applies in this appeal and weighs against disclosure of their personal information. The affected party was asked to explain their safety concerns but has not done so.

Section 14(3)(b) and section 14(2)(d)

[30] The balance of the police and the appellant's representations address the weighing of the presumption in section 14(3)(b) (investigation into violation of law) with the factor in section 14(2)(d), under which I must assess the relevance of the affected party's personal information to a fair determination of the appellant's rights. As already noted, the appellant wishes to bring a civil suit for damages for injuries they claim were caused in the incident giving rise to the occurrence report. The incident in question concerned a collision between the door of the affected party's motor vehicle and the appellant cyclist, an incident known as "dooring."

[31] The police state that they are generally inclined to provide access to information in requests relating to the dooring of cyclists. However, this is subject to the police being able to notify an affected party and provide an opportunity for them to make representations.

[32] The police submit that their decision to deny access in this case was not based on a refusal or an absence of consent but the lack of confirmation that the notification correspondence had been received by the affected party. Without the affected party's representations, the police state that they could not ascertain whether or not any compelling factors existed that would negate their initial decision to disclose the affected party's name and address. The police explain that by "compelling factors" they mean considerations relating to the affected party's personal safety. In addition, the police state that they have "liability concerns" if they disclose the information without

⁵ Order MO-2954.

the affected party's knowledge.

[33] The police submit that in previous orders the IPC has held that an unidentified motorist claim against the affected party's insurer is a viable option, notwithstanding that the identity of the affected party is known to an institution.⁶ The police distinguish dog bite incidents and argue that the context of disclosure in those cases is different to this appeal as "dog bite incidents pose risks to public health and safety." The police also make submissions about the change in the law relating to dooring incidents, which I explore in more detail in my analysis of section 14(2)(d).

[34] The appellant agrees that the section 14(3)(b) presumption applies in this appeal and that the affected party's personal information was compiled as part of an investigation into a possible violation of the law. However, the appellant's position is that the presumption that the disclosure constitutes an unjustified invasion of personal privacy is rebutted by the factors in section 14(2) that apply in favour of disclosure.

[35] The appellant submits that the factor in section 14(2)(d), the relevance of the affected party's personal information to the fair determination of the appellant's rights, weighs in favour of disclosure. The appellant cites the legislative framework governing the determination of their rights as a cyclist following the dooring incident and refers to the common law, the legal requirement for the affected party to have motor vehicle insurance⁷ and their reporting obligations upon being involved in a motor vehicle accident.⁸

[36] The appellant states that the police's decision not to grant access to the affected party's personal information has prevented the appellant from notifying the affected party's insurer of their intention to bring an action for damages and from commencing the action in the civil courts. As the identity of the motorist involved in the incident is known to the police, the appellant submits that this is not a case in which it is appropriate for them to commence an unidentified motorist claim against their insurer.

[37] Similarly, the appellant argues that commencing a civil suit against a "John Doe" defendant and then bringing a motion for disclosure, has practical implications that make it an inefficient and costly option. The appellant submits that pursuing this alternative litigation route is inconsistent with the legislative intent of the *Act*.

Section 14(2)(e), (f) and (h) and unlisted factors

[38] The police submit that there are factors weighing against disclosure in this appeal: disclosure unfairly exposing the affected party to harm [section 14(2)(e)]; the personal information is highly sensitive [section 14(2)(f)]; and the information was supplied by the affected party in confidence [section 14(2)(h)]. In respect to each of these factors, the police point to the fact that they were unable to confirm that the

⁶ The police cite Orders M-1146, P-447 and PO-1728.

⁷ *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25.

⁸ *Highway Traffic Act*, R.S.O. 1990, c. H.8.

affected party would have knowledge of the disclosure, placing the affected party in a vulnerable and unfair position as to any repercussions. Although there was no explicit assurance of confidentiality when the affected party's information was compiled for the occurrence report, the police state that in such circumstances there is always a tacit understanding that the information is protected from "unauthorised disclosure."

[39] The police also submit that disclosing the affected party's personal information in the circumstances of this appeal would undermine public confidence in the police, who rely on communication and the cooperation of the communities they serve.

[40] The appellant submits that there is no evidence that the affected party will suffer harm upon disclosure of their personal information. The appellant argues that a lawsuit arising out of allegedly negligent actions does not constitute an unfair exposure to pecuniary or other harm. The appellant submits that in the absence of any evidence that the affected party could reasonably expect to experience significant distress upon disclosure, the information at issue should not be considered highly sensitive.

[41] Regarding the affected party having supplied their information to the police in confidence, the appellant submits that there was no explicit assurance of confidentiality and it would be unreasonable for the affected party to hold such an expectation, in the circumstances of the dooring incident.

[42] Finally, the appellant submits that, as the IPC has previously held,⁹ the *Act* should not be used in a way that prevents individuals from exercising their legal rights and that this is an unlisted factor favouring disclosure.

Analysis of relevant presumptions and factors

[43] For the reasons that follow, I find that the disclosure of the affected party's name and address would not constitute an unjustified invasion of their personal privacy. Accordingly, I find that the discretionary exemption in section 38(b) does not apply to this information but does apply to the remaining information at issue withheld from the copy of the occurrence report that the police provided to the appellant.

[44] As I will explain below, I find the following factors relevant to the determination of whether disclosure of the affected party's personal information at issue in this appeal would constitute an unjustified invasion of their privacy and have considered them, together with the parties' interests, in reaching my decision: the presumption in section 14(3)(b) (information compiled as part of an investigation into a possible violation of the law), the relevance of the affected party's personal information to the fair determination of the appellant's rights in section 14(2)(d), and two unlisted factors, being the risk of disclosure undermining public confidence in the police and the use of the *Act* to prevent an individual from exercising their legal rights.

⁹ Order MO-2954.

Section 14(3)(b) – investigation into a possible violation of the law

[45] Section 14(3)(b) states,

A disclosure of 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;

[46] Under section 38(b), a finding that the section 14(3)(b) presumption is present will weigh in favour of withholding the personal information at issue.

[47] The police and the appellant are agreed that the presumption in section 14(3)(b) applies to the information withheld from the record. For the presumption to apply, there is no need for charges to be laid against any individuals, section 14(3)(b) only requires that the personal information was compiled as part of an investigation into a possible violation of law.¹⁰

[48] Based on my review of the record and the police's representations, I find that the occurrence report was created as part of an investigation into a possible violation of law and the presumption in section 14(3)(b) applies to the information at issue and weighs against disclosure.

[49] In the circumstances of this appeal, where I have found that the record contains the personal information of both the appellant and the affected party, section 14(3)(b) applies to create a rebuttable presumption against disclosure of the affected party's personal information.¹¹ In other words, the presumption does not determine the application of the section 38(b) exemption and I will weigh the fact that the information at issue was compiled as part of an investigation into a possible violation of law together with any relevant factors in section 14(2) and applicable unlisted factors and balance the parties' interests.

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

[50] Section 14(2)(d) states,

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,

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

¹⁰ Orders P-242 and MO-2225.

¹¹ Order MO-2954.

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

1. The right in question is a legal right which is drawn from the concepts of the common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
2. The right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
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.¹²

[52] The police agree that the affected party's name and address are significant to the determination of the appellant's rights. As already noted, the police submit that they are generally inclined to provide access to this information to the requester in cases concerning the dooring of a cyclist, subject to the motorist being made aware of the intended disclosure, being given an opportunity to respond and being advised of the final access decision.

[53] The appellant refers to the common law and the statutory framework of auto insurance and reporting obligations for drivers involved in motor vehicle accidents as the source of their legal rights to be determined in the claim for damages, which they intend to pursue. The appellant submits that the affected party's name and address and insurance information is needed for them to provide the requisite notification to the insurance provider of the appellant's intended claim.

[54] In their reply representations, the police elaborate on their position regarding the application of section 14(2)(d) and make three main submissions against the determination of the appellant's rights weighing in favour of disclosure in the circumstances before me: first, the exclusion of dooring incidents from the legal framework for motor vehicle accidents at the time of the appellant's request; second, the availability of an alternative route for the appellant to pursue a claim; and third, the precedent that disclosure would set for future requests in similar circumstances.

[55] The police submit that the appellant's reference to orders of the IPC in which the fair determination of rights in motor vehicle accidents has weighed in favour of disclosing a motorist's personal information are not relevant in this appeal because the dooring of a cyclist did not fall within the definition of a motor vehicle accident at the relevant time. The police state that at the time of the appellant's access request and when making their access decision, section 200(1)(c) of the *Highway Traffic Act*, which provides the reporting obligations of drivers involved in motor vehicle accidents, did not apply to the dooring of cyclists.

¹² Order PO-1764.

[56] I note that since July 2021, the relevant provisions of the *Highway Traffic Act* have been amended so that a motor vehicle is now considered to be involved in an accident if an open door of a vehicle comes into contact with a cyclist, even if the vehicle is stationary.

[57] Order MO-4041 is the previous order of the IPC cited by the appellant in support of their representations on the factor in section 14(2)(d) and that the police seek to distinguish. In that order, Adjudicator Valerie Jepson found that a motorist's name and address contained in an occurrence report relating to an incident involving a cyclist was not exempt under section 38(b) and ordered their disclosure. In that appeal, the police relied upon similar arguments as those being made here with regard to the incident between the cyclist and the motorist not falling within the definition of a motor vehicle accident at the relevant time. As the appeal in Order MO-4041 and this appeal both concern incidents that occurred prior to the change in the law, I do not agree with the police that the earlier order can be distinguished on this basis.

[58] In any event, in my view, the rules concerning motorists' reporting duties and any change in those rules are not relevant to my findings on the application of the section 14(2)(d) factor. The appellant states that their intended claim for damages is based in negligence pursuant to the common law and under the *Insurance Act*,¹³ and I find that the rights to be determined in the appellant's contemplated action are legal rights for the purposes of section 14(2)(d).

[59] Regarding alternative claims available to the appellant, the parties refer to an unidentified motorist claim against the appellant's own insurer and an action against a "John Doe" defendant. The appellant submits that the first of these routes is not appropriate in the circumstances of this case, where the identity of the motorist is known to the police. The police submit that past orders of the IPC have deemed this alternative claim appropriate notwithstanding that the identity of the affected party is known to the police.¹⁴

[60] In my view, an alternative route available to the appellant to seek legal redress against the affected party is not determinative to my consideration of the application of the factor in section 14(2)(d). I also note that the "alternative route" considered in the past orders of the IPC¹⁵ is the availability to the appellant of alternative means of obtaining the information to which access is being sought in their request made under the *Act*. To the extent that alternative routes of legal redress may be available to the appellant, including routes that do not require the appellant to have the affected party's information, I give that consideration little weight.

[61] The availability of an alternative procedure that enables a party to obtain disclosure of the information in issue is, however, relevant to the weight given to the section 14(2)(d) factor. As the parties both submit in this case, it may be possible for

¹³ R.S.O. 1990, c.I.8.

¹⁴ The police cite orders M-1146, P-689, P-447 and PO-1728.

¹⁵ See for example, Orders MO-2980 and MO-4041.

the appellant to commence an action against “John Doe” and then seek a court order for disclosure of the police occurrence report using the *Rules of Civil Procedure*.

[62] The appellant relies on Order MO-2980 in which Adjudicator Colin Bhattacharjee held that an appellant has a right to seek access to relevant information in the most efficient, cost-effective manner that they see fit.

[63] I agree with and adopt Adjudicator Bhattacharjee’s reasoning in this appeal. The appellant is not precluded from exercising their rights under the *Act* to seek access to the affected party’s personal information before filing a civil claim and, in my view, they have the right to seek that information in the most efficient, cost-effective manner they see fit.

[64] Finally, the police submit that disclosing the affected party’s personal information in circumstances where they have refused to provide consent, and where an alternate route for access is clearly available, would set a precedent for future requests and would “pose grave outcomes for the protection of personal privacy and therefore cannot be justified.”

[65] I disagree with the police. The absence of consent and the availability of an alternate route to access the affected party’s information are not unique features of this appeal. Both scenarios are contemplated within the access regime of the *Act*. Consent to disclosure is dealt with under section 14(1)(a) and neither the absence of consent nor, as I have already noted, the availability of an alternative route to access the information preclude a requester from exercising their rights under the *Act*. Rather, these are factors to be taken into account in the analysis to determine the application of the personal privacy exemption.

[66] In each case, protection of personal privacy is balanced together with other factors favouring a requester’s right to access in reviewing the application of the discretionary personal privacy exemption in section 38(b), including the factors and presumptions in sections 14(1), (2) and (3) of the *Act*.

[67] I find that the appellant has identified the legal right to be determined for the purposes of the factor in section 14(2)(d) to apply. I also find that the appellant’s right relates to contemplated proceedings to recover damages for injuries they claim were suffered in the dooring incident.

[68] As noted above, for the factor in section 14(2)(d) to apply, the appellant must also establish that the personal information that they are seeking access to is significant to the determination of their rights and that it is required to prepare for the proceeding.

[69] When considering the application of section 14(2)(d), previous orders of the IPC have held that an affected party’s name is significant to the determination of a party’s rights.¹⁶ In this appeal, the appellant is pursuing access to the affected party’s name

¹⁶ See Orders MO-2980, MO-3088, MO-4041

and address, auto insurance provider and policy number and I must therefore determine whether this information is significant to the determination of the appellant's rights and required for the preparation of the proceedings.

[70] I note that correspondence that the police and the IPC have sent to the affected party's address has been returned undelivered and the affected party has advised that they have moved. I also note that the affected party has sought to communicate via their insurance provider. In my view, the fact that the affected party no longer resides at the address listed in the occurrence report lends significance to the affected party's other personal information found in the occurrence report, in the context of the fair determination of the appellant's rights. However, I am not persuaded that the affected party's insurance details are *required* for the commencement of the civil action for damages.

[71] I acknowledge the appellant's submission that their lack of access to the insurance information has prevented them from providing notification of their intention to commence an action for damages, as required under the *Insurance Act*. However, the appellant's submission is that the notification of the insurance provider may impact the quantification of pre-judgment interest on damages that may be awarded by the court. I find that the insurance information is not required for the appellant *to commence proceedings*.

[72] Accordingly, I find that the factor in section 14(2)(d) applies and weighs in favour of disclosure of the affected party's name and address. While I acknowledge that the appellant can bring an action against John Doe and seek the name and address information from the courts, I am of the view that they are entitled to obtain access in the most efficient and cost-effective manner. I therefore place considerable weight on the section 14(2)(d) factor.

[73] As I have noted, the affected party no longer resides at the address listed in the occurrence report. However, in the circumstances of this appeal, I find that the affected party's address, as it appears in the report, is relevant to the fair determination of the appellant's rights. The dooring incident occurred on the side of the road in Toronto and there is no way for the appellant to know if the affected party resides in Toronto, Ontario or beyond. The affected party's address at the time of the incident, as it appears in the police occurrence report, will therefore assist the appellant in determining the appropriate forum for their claim and locate the affected party for the purpose of effecting service of proceedings.

[74] As I have found that only the affected party's name and address is required for the appellant to commence proceedings, I am not satisfied that the balance of the information at issue in this appeal, the affected party's insurance information, is significant to the appellant's contemplated proceedings. I find that the factor in section 14(2)(d) therefore does not apply to weigh in favour of disclosure of the name of the affected party's insurance company or their policy number.

Section 14(2)(e) – exposure to harm

[75] The police submit that the factor in section 14(2)(e) is relevant in this appeal and weighs against disclosing the affected party's personal information. Section 14(2)(e) states,

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,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

[76] The IPC has previously held that when determining whether disclosure of information would constitute an unjustified invasion of privacy, the harm factor weighing against disclosure in section 14(2)(e) is not a relevant consideration in the absence of evidence showing how and in what manner the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.¹⁷

[77] I agree with and adopt this approach in this appeal. While I acknowledge the police's submission that before disclosing an individual's personal information, notification of a risk of harm to the individual is a factor that may compel them to decide not to disclose the information, there is no persuasive evidence of a risk of harm in this case.

[78] The only relevant evidence on this point is from the affected party who has asked that their personal information be withheld from the appellant due to "safety concerns". However, the affected party has not provided any explanation of those concerns, despite being invited to do so.

[79] I also note that the affected party has expressed a willingness for the appellant to communicate with their insurance provider and stated that they believe the appellant has their policy number. In these circumstances, it appears that the disclosure of the affected party's insurance details is not a safety concern for them.

[80] As the appellant submits and past IPC orders have held,¹⁸ the possibility of civil proceedings against an individual does not of itself mean that the disclosure of an individual's personal information would expose them to pecuniary or other harm. Even if it could be construed as such, the determination of personal liability in civil proceedings would be based on the findings of the court and, in my view, could not be described as "unfair" according to section 14(2)(e).

[81] In the absence of sufficient evidence as to how the affected party will be exposed unfairly to harm, I find that the factor in section 14(2)(e) does not apply to weigh against disclosure of the information at issue.

¹⁷ Order M-347.

¹⁸ See Orders PO-1912 and MO-3875.

Section 14(2)(f) – highly sensitive information

[82] The police submit that the affected party's information is highly sensitive and that the factor in section 14(2)(f) applies weighing against disclosure. Section 14(2)(f) states,

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

(f) the personal information is highly sensitive.

[83] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the personal information at issue is disclosed.¹⁹ If the personal information in issue is highly sensitive, then the factor in section 14(2)(f) weighs against disclosing it.

[84] The police submit that taking into account the nature of this incident giving rise to their report, there is the possibility that the affected party may be exposed to unwanted contact by the appellant and place them in a vulnerable position regarding any repercussions. As previous orders of the IPC have held, whether the disclosure of an individual's name and address is highly sensitive should be assessed on the facts of the particular case.²⁰

[85] The only evidence before me that the affected party may be exposed to unwanted contact by the appellant in this case is in relation to the commencement of a civil claim for damages. I acknowledge that the affected party may not wish to be contacted by the appellant in these circumstances. However, I am not satisfied that it would be reasonable to expect that disclosure of the affected party's name and address for this purpose would cause *significant* personal distress to the affected party so that this personal information can be considered highly sensitive under section 14(2)(f).

[86] The police also cite the nature of the incident as grounds for their submission that the information at issue in this case is highly sensitive. I am not persuaded that a dooring incident between a motorist and a cyclist, of itself, renders a driver's information highly sensitive.

[87] I also note that when dealing with the IPC, the affected party forwarded IPC correspondence to their insurance provider and consented for their insurer to disclose their information. I find that this effort by the affected party to engage their insurance provider is inconsistent with the police's submission that disclosure of their name and address would cause significant personal distress. Notwithstanding that the affected party has not provided written consent to the disclosure of their personal information, as the police state in their representations, there is evidence that the affected party has

¹⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁰ See for example Order MO-2980.

provided verbal consent to their insurer being contacted.

[88] In the circumstances of this case, I find that the affected party's name, address and insurance details are not highly sensitive information. Accordingly, the factor in section 14(2)(f) does not apply to weigh against disclosure of the information at issue in this appeal.

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

[89] Section 14(2)(h) states,

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,

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

[90] This factor weighs against disclosure of the personal information if both the affected party and the police had an expectation that the information would be treated confidentially and that the expectation is reasonable in the circumstances.²¹

[91] The police submit that while there were no explicit assurances of confidentiality when the affected party provided their information to them, this is not exceptional. The police state that individuals commonly do not seek assurances from the police prior to relaying their information because of their faith in the police when entrusting them with their personal information. The police submit that there is always a tacit understanding that personal information relayed to police is protected from "unauthorised disclosure" and while they are willing to make "concessions" to this point in support of the appellant's right to seek civil action, this disclosure should only occur with the affected party's knowledge.

[92] The appellant submits that it is unreasonable for a person who causes injury to another person on a public highway to have a reasonable expectation of confidentiality in the ensuing police investigation.

[93] I agree with the police that when an individual provides their personal information to them, they do so in good faith and on the assumption that the police will not make an unauthorised disclosure. I understand the police's reference to "unauthorised disclosure", in cases of dooring, to mean the disclosure of a driver's information without their knowledge and an opportunity to respond.

[94] The evidence before me is that the implied assurance provided by police to drivers in dooring incidents is not one of absolute confidentiality with regards to their personal information. The police state that their usual practice in relation to cyclist dooring incidents is to grant access to the driver's name and address once the driver

²¹ Order PO-1670.

has knowledge of the disclosure and has had an opportunity to make representations and there are no concerns raised. I note that this was the police's position in their initial decision in response to the appellant's request in this appeal.

[95] As noted above, the affected party has stated that they believe that the appellant has the affected party's insurance policy number and has asked that the appellant deal with the insurance company. In light of the affected party's statement of their belief that their insurance policy number has already been disclosed to the appellant and their willingness to engage the insurance company with the appellant, I am not satisfied that the affected party provided their insurance information to the police with a reasonable expectation of confidentiality.

[96] I find that, in the absence of any express assurance of confidentiality, the implied undertaking by the police is not to make an unauthorised disclosure, as the police describe. I am not persuaded that the parties held a reasonable expectation of absolute confidentiality concerning the information gathered in the course of the police investigation.

[97] The appellant refers to the statutory reporting duties of motorists involved in dooring incidents in section 200 of the *Highway Traffic Act*. However, as the police state, these rules did not extend to dooring incidents at the relevant time. In any event, in the absence of any evidence that the affected party was aware of or relied upon the absence of reporting duties in dooring incidents, I find that these rules are of little relevance to the affected party's expectations when they provided their information to the police.

[98] Based on the totality of the evidence before me, I find that the affected party's name and address and insurance details were not supplied in confidence for the factor in section 14(2)(h) to apply to weigh against disclosure of the information at issue in this appeal.

Unlisted factors

[99] The parties raise two unlisted section 14(2) factors that they argue are relevant to the determination of whether disclosure of the affected party's personal information at issue in this appeal constitutes an unjustified invasion of their privacy: (i) the police submit that the risk of disclosure undermining public confidence in the police is a relevant factor weighing against disclosure and (ii) the appellant submits that preventing the misuse of the *Act* to preclude an individual from exercising their legal rights is a relevant factor weighing in favour of disclosure.

Public confidence in the police

[100] The police submit that disclosing the affected party's personal information would undermine public confidence in the police as an institution, which is vital to their ability to fulfil their duty to protect public safety. The police submit that unauthorised disclosure could jeopardise the safety of the communities they work to protect.

[101] As already noted above, I agree with the police that individuals provide information to the police in good faith and with an understanding that the police will not make an unauthorised disclosure.

[102] I find that public confidence in the police is a relevant factor to be balanced against the requester's interest in accessing the information at issue. In cases where the information was provided in confidence and the police have not been able to notify an affected party of a request for their information nor provided them with an opportunity to respond, public confidence in the police is a factor that will weigh heavily against disclosure. However, in the circumstances of this appeal, where the affected party has knowledge of the request and the possibility of disclosure as a result of the appeal process and has been provided with an opportunity to make representations, I find that public confidence in the police is a factor with minimal weight against disclosure of the affected party's name and address.

[103] I have already noted that the affected party has expressed a willingness for the appellant to engage with their insurance provider and has forwarded to their insurer inquiry documents that have been sent from the IPC. In these circumstances, I find that public confidence in the police is not a factor weighing against disclosure of the affected party's insurance details.

Preventing misuse of the *Act* to preclude the exercise of legal rights

[104] The appellant submits that the affected party is attempting to use the *Act* as a "shield to protect themselves against the consequences of their actions", which the appellant claims resulted in their injuries. Previous orders of the IPC have held that the *Act* should not be used in a way that prevents individuals from exercising their legal rights.²² In this context, it is the police's action by withholding the affected party's personal information, rather than the absence of the affected party's consent to its disclosure, that is relevant. I will therefore consider the effect of the police's decision to withhold the affected party's personal information. If this factor applies, it weighs in favour of disclosure.

[105] I have found that the disclosure of the affected party's name and address are relevant to the fair determination of the appellant's rights. I also accept the appellant's evidence that the non-disclosure of this information is preventing the appellant from commencing the contemplated action for damages against the affected party in the most convenient and cost-effective way.

[106] On balance, I find that the effect of the police's access decision is to prevent the appellant's exercise of their legal rights in the most cost effective and convenient manner. In these circumstances, I find that this unlisted factor applies and weighs in favour of disclosure of the affected party's name and address.

[107] However, I find that this factor does not apply in relation to the affected party's

²² See Orders MO-2954 and Order MO-3911.

insurance information. There is no evidence before me that the withholding of the name of the affected party's insurance company and their policy number is preventing, or would prevent, the appellant from exercising their legal rights.

Findings on section 38(b)

[108] I have considered and weighed the presumption in section 14(3)(b) and the factor in section 14(2)(d), together with the applicable unlisted factors. In the circumstances, I give considerable weight to the presumption that disclosure of the affected party's personal information would constitute an unjustified invasion of their personal privacy because the information was compiled as part of an investigation into a possible violation of law. In addition, I have given some weight to the public confidence in the police related to information they gather not being subject to unauthorised disclosure.

[109] However, I find that this presumption and factor are outweighed by the relevance of the affected party's name and address to the determination of the appellant's rights and the importance of not using the *Act* to prevent the appellant's exercise of their legal rights.

[110] I have not discounted the fact that the affected party has stated that they have "safety concerns." However, in the absence of any further explanation or evidence of risk to the affected party's safety that might result from disclosure, I have considered the affected party's safety concern in the broader context of this appeal and have weighed their concern for safety with the appellant's safety as a cyclist and a fellow road user.

[111] In balancing the parties' interests, I have considered that the appellant's request for the affected party's personal information arises from their involvement in an incident on the side of the road, which the appellant claims has caused them injury. I agree with the appellant's submission that the provisions of the *Act* that serve to protect personal privacy should not be used for the affected party to avoid the consequences of their actions. I find that the fair determination of both parties' rights as a result of the incident weighs heavily in favour of disclosure of the affected party's personal information, specifically their name and address.

[112] In balancing the parties' interests, I have also taken into account the police's usual practice in cases where personal information is sought by cyclists involved in dooring incidents. Although the affected party has asked that their personal information remain withheld, I have taken into account the fact that they have consented to its disclosure by their insurance company. As already noted, the IPC has no jurisdiction to order disclosure by a third party, however I find that the affected party's position weighs in favour of the appellant's interest in accessing the affected party's name and address.

[113] In contrast, regarding the affected party's insurance information, I have found that disclosure of the insurance company and policy number is not relevant to the fair

determination of the appellant's rights nor is the withholding of this information by the police precluding the appellant from exercising their legal rights, so that the factor in section 14(2)(d) and the relevant unlisted factor do not apply. I have therefore considered the presumption in section 14(3)(b) that disclosure of the insurance information would constitute an unjustified invasion of the affected party's privacy and balanced the parties' interests. In the circumstances of this appeal, there are no factors weighing in favour of the disclosure of the affected party's insurance details and I therefore find that the protection of their personal privacy outweighs the appellant's interest in seeking access to the insurance information.

[114] Accordingly, I find that the discretionary personal privacy exemption in section 38(b) does not apply to the affected party's name and address and will order that the police disclose this information to the appellant. Otherwise, I find that section 38(b) applies to the remaining information at issue, namely the affected party's insurance details.

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

[115] As I have upheld the police's decision to deny access to the affected party's insurance information, I must review their exercise of discretion. The reason for this is that the section 38(b) exemption is discretionary and permits the police to disclose information, even if it qualifies for exemption. The police must exercise their discretion. On appeal, I may determine whether the police failed to do so when it decided to withhold the information at issue.

[116] In addition, I may find that the police erred in exercising its discretion where, for example, it did so in bad faith or for an improper purpose; it took into account irrelevant considerations or failed to take into account relevant considerations.²³ In either case, I may send the matter back to the police for an exercise of discretion based on proper considerations but cannot substitute my own discretion.²⁴

[117] The police state that, when determining whether or not to release the affected party's personal information, the overriding factor leading to their decision to withhold the information was the alternative method of obtaining access to the personal information available to the appellant. The police considered that without the affected party's name, it was open to the appellant to bring a motion in the civil courts for the production of the information at issue. Although not an effective option, the police considered it the most "sound and prudent" as it avoided the "risks of unauthorised disclosure."

[118] I note that at the time when the police exercised their discretion to withhold the affected party's personal information, the affected party had not been successfully notified of the appellant's request nor provided an opportunity to make representations.

²³ Order MO-1573.

²⁴ Section 43(2) of the *Act*.

[119] In their reply representations, after notification of the appeal had reached the affected party, the police stated that they also took into account the risk of undermining public confidence in the police if they made an unauthorised disclosure of the affected party's personal information.

[120] The appellant submits that the police erred in the exercise of their discretion as they did not attach proper weight to the relevant factors favouring disclosure in section 14(2).

Analysis and finding

[121] I have reviewed the considerations relied upon by the police and find that they properly exercised their discretion in withholding the affected party's personal information under section 38(b). While I have reached a different conclusion from the police on the application of section 38(b) to the affected party's name and address, I am satisfied that, in withholding the remaining information at issue, the affected party's insurance details, the police exercised their discretion appropriately.

[122] I find that the police did not exercise their discretion to withhold the affected party's personal information for any improper purpose or in bad faith. On the contrary, I am of the view that the police took into account relevant factors, including their usual practice when information about drivers is requested following dooring incidents, the parties' competing interests and risks associated with disclosure in the particular circumstances of this case.

[123] As there is no evidence that the police failed to take relevant factors into account or that they considered irrelevant factors, I uphold the police's exercise of discretion under section 38(b) in denying access to the affected party's insurance details that I found exempt above.

ORDER:

1. By **July 25, 2022**, but not before **July 19, 2022**, I order the police to disclose the affected party's name and address as they appear in the occurrence report to the appellant.
2. In order to verify compliance with this order, I reserve the right to require the police to provide me with the information they provide to the appellant.

Original Signed by: _____
Katherine Ball
Adjudicator

_____ June 17, 2022