

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4226

Appeal MA19-00279

Conseil scolaire Viamonde

July 25, 2022

Summary: The appellant made a request to the Conseil scolaire Viamonde (the school board) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an unaltered copy of her son's class photograph. The school board denied access to the photograph under the discretionary personal privacy exemption at section 38(b) of the *Act*.

In this order the adjudicator finds that the disclosure of the unaltered version of the class photograph would not be an unjustified invasion of the personal privacy of the other individuals in the photograph and therefore, that its disclosure is not exempt under section 38(b). She orders that the unaltered version of the class photograph be disclosed to the appellant.

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

OVERVIEW:

[1] This appeal determines the issues raised by an access request made to the Conseil Scolaire Viamonde (the school board) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) by the appellant, a parent of a minor son who was a student with the school board, for an unaltered version of her son's class photograph. For reasons that will be explained below, the appellant currently only has a copy of the class photograph with her son's image blurred.

[2] The circumstances that gave rise to the access request are as follows.¹ In early September of 2018, guardians were advised that for students to be included in their class photograph, they must sign a standardized general consent form authorizing the school board's handling of any information that might identify the student. The appellant signed the form to ensure that her son would be included in his class photograph.

[3] On picture day, which took place at the end of September, the appellant's son posed with his classmates for their class photograph. Following picture day, the appellant completed a new consent form, this time checking the box that indicated that she did not give her consent for the school board to handle any information that might identify her son. On the form, the appellant specifically noted that her consent was rescinded "going forward" and that she consented only to her son's inclusion in his class photograph, which had already taken place.

[4] When the class photograph was distributed to students and their families several weeks later, it had been altered; the appellant's son's face had been blurred.

[5] The appellant was advised by the principal that her son's face had been blurred because she had rescinded her consent for the school board to handle information that would identify her son. The principal advised that such consent was required in order to include her son's image in the photograph, because once it was distributed, the school board could not dictate how the individuals in possession of that photograph could use it.²

[6] The appellant wanted an unaltered copy of the class photograph in which the image of her son had not been blurred. She made a request under the *Act* for access to:

[The] class (group) photo for [specified class] including [the appellant's son's] face in the front row. I understand from [the named principal] that he ... instructed [the named photo studio] to remove/blur [the appellant's son's face] in the group class photo, Job# [specified number]. I am entitled to access this class photo per the normal course and for the class photo to be corrected, given my/our consent to [the appellant's son] being in the class photo.

[7] The school board issued a decision, denying access to the photograph pursuant to

¹ In their representations, both the school board and the parent (the appellant in this appeal) describe the background to the request. My summary here is a collation of the information that was provided by the parties in their respective representations.

² In the middle of May 2019, the appellant's son's class photograph was re-taken. As the appellant had rescinded her consent after the original class photograph, the appellant's son did not have his picture taken with the class. When the re-taken photograph was distributed, the appellant's son was provided with a copy that had the images of all of the other students in his class, despite the fact that he was not in the photograph.

the mandatory personal privacy exemption set out in section 14(1) of the *Act*.³

[8] The appellant appealed the school board's 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.

[9] During mediation, the appellant confirmed that she seeks access to a copy of the unaltered class photo in which her son's image is not blurred.

[10] Also during mediation, the mediator raised the application of the discretionary personal privacy exemption at section 38(b) of the *Act*. She advised both parties that because the photograph contains information relating to the appellant's son, as well as that of other identifiable individuals, the appropriate personal privacy exemption to consider is the discretionary personal privacy exemption at section 38(b).

[11] As the parties could not reach a mediated resolution, the file was transferred to the adjudication stage of the appeal process. As the adjudicator assigned to the file, I began my inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the school board who provided representations in response. I then sent the Notice of Inquiry to the appellant, seeking representations. The school board's representations were shared with the appellant in accordance with the IPC's *Code of Procedure and Practice Direction Number 7*. The appellant provided representations in response, which I provided to the school board with an opportunity to reply. Following receipt of the school board's reply representations, I provided the appellant with an opportunity to provide a sur-reply. I did not find it necessary to share the appellant's sur-reply representations with the school board.

[12] Until the date of this order, the appellant continued to submit documents to me. These documents are copies of materials filed with the Superior Court of Justice by the appellant or the school board in relation to an ongoing legal dispute between the parties, related to the photograph. These materials were received well past the appellant's deadlines for submitting representations and, generally speaking, are not relevant to the issues before me. I have not considered them, except to the extent that they show there is a legal dispute between the parties relating to the board's actions surrounding the blurring of the appellant's son's face in the class photograph and his exclusion from the re-taken class photograph.

[13] In this order, I find that the record at issue, the unaltered version of the class photograph contains the personal information of both the appellant's son, as well as that of other identifiable individuals. In the circumstances, including the fact that the appellant already has a copy of the photograph with the other individuals' images, I find that disclosure of the unaltered photograph would not consist of an unjustified invasion of the

³ The school board also cited sections 31(a) and (b) (use of personal information), 32(a), (b) and (c) (permitted disclosure) and 33 (consistent purpose) of the *Act*. These sections are not relevant in the context of an access request and the board did not rely on them in its arguments during my inquiry.

personal privacy of the other individuals. I order the board to disclose a copy of the unaltered photograph to the appellant.

RECORD:

[14] The record at issue in this appeal is an unaltered version of the appellant's son's class photo. The photograph contains the images of two teachers and the students, including a blurred image of the appellant's son, but does not identify the school, the calendar year or the grade.

ISSUES:

- A. Does the photograph contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the photograph?

DISCUSSION:

[15] The issue that is before me in this appeal is whether, under the *Act*, the appellant has a right of access to the unaltered class photograph that includes the image of her son. This order will not consider any issues related to the appellant's consent such as whether she was entitled to place terms on her consent for the school board to handle identifying information relating to her son or whether that consent could subsequently be rescinded. Other than the question of whether the appellant has a right of access to the unaltered photo, the issues of the board's collection, use and disclosure of the son's personal information are not before me.

[16] The appellant is seeking to exercise a right of access to information on behalf of her minor son. Under section 54(c) of the *Act*, a parent may exercise a minor son's right of access to information, on their behalf. Section 54(c) reads:

Any right or power conferred on an individual by this Act may be exercised,

...

(c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

[17] In this case, there is no dispute between the parties that the appellant has the right to exercise her son's right of access to his own personal information under the *Act*. Therefore, in this appeal, the appellant stands in the shoes of her son with respect to the right of access to her son's personal information.

Issue A: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[18] In order to decide whether the discretionary exemption at section 38(b) of the *Act* applies in a specific case, I 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 photograph. If the photograph contains (in this case) the appellant’s son’s personal information, the appellant’s access rights may be greater than if it does not.⁴

[19] 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.⁵ 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.⁶

[20] Section 2(1) of the *Act* gives a list of examples of personal information. That section states, in part:

“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,

...

[21] 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.”⁷

[22] Because the photograph contains images of teachers, it may also be relevant that 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. Generally, information about an individual in their professional, official or business

⁴ 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), 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.

⁵ See the definition of “record” in section 2(1).

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁷ Order 11.

capacity is not considered to be “about” the individual.⁸

Representations, analysis and finding

[23] Both the school board and the appellant acknowledge that the class photo contains personal information within the meaning of the definition of that term in section 2(1) of the *Act*.

[24] The school board submits that the photo contains the personal information of the other students in the class. The appellant does not dispute that the photo contains the personal information of the other students in the class but submits that it also contains the personal information of her son.

[25] Having considered the unaltered photograph, which contains the images of the students and the teacher but does not identify the school, the calendar year or the grade of the students depicted, I accept that it contains the personal information of the appellant’s son, as well as the other students in the class. Because the photograph contains the students’ images I find that it is “recorded information about an identifiable individual” as set out in the introductory wording and also find that meets the requirements of paragraph (a) of the definition as disclosure of the images of the identifiable individuals could reveal their race or national or ethnic origin and would reveal their colour and sex.

[26] Although neither party submits that the information contains the personal information of the two teachers whose images appear in the record, it is my view that their images do not consist of their personal information as they relate to these individuals in their professional capacity and do not reveal anything of a personal nature about them.

[27] Accordingly, I find that the photograph contains personal information within the meaning of the definition in section 2(1) of the *Act* and that personal information belongs to the appellant’s son, as well as the other students in the class.

PERSONAL PRIVACY

Issue B: Does the the discretionary exemption at section 38(b) apply to the record?

[28] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution.⁹ Section 38 provides a number of exemptions

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also section 2(2.1), which reads:

Personal information a does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

⁹ As discussed above, in this appeal, under section 54(c), the appellant is exercising the right of access to personal information on behalf of her son, who is less than sixteen years of age.

from this right.

[29] Relevant to this appeal, under the section 38(b) exemption, since the record contains the personal information of both the appellant's son and other individuals, the institution may refuse to disclose the other individuals' personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individuals' personal privacy. Section 38(b) reads:

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

...

(b) if the disclosure would constitute an unjustified invasion of another individuals' personal privacy [...]

[30] The section 38(b) exemption is discretionary. This means that the institution can 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.

[31] However, 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) and must be disclosed

[32] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

Exception at section 14(1)(a): prior written consent of the individual

[33] 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).

[34] Only section 14(1)(a) might be relevant in this appeal. It reads:

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

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access[.]

[35] Although the school board references section 14(1)(a) in its representations, it does not provide any specific representations on why this exception might or might not apply. However, at another part of its representations, the school board explains why it believes that the consent form completed by the guardians of the other students does not qualify as consent for the purposes of disclosure of the photograph through an access

request. It also explains why it did not, on receipt of the access request, seek the written consent of the guardians of the other children in the photograph to disclose it to the appellant in this context.

[36] To summarize, the school board submits that to disclose the photograph in the context of an access request, rather than in the school context (which is the way that such photographs are normally distributed), is an unjustified invasion of the personal privacy of the children in the photograph; the guardians of the children did not provide their consent to have the photograph disclosed in this context.¹⁰

[37] The appellant submits that because the guardians of the children in the class signed the consent with the intention and expectation that the other students in the class would receive a copy of the class photo, it would not be an unjustified invasion of personal privacy of the children in the photograph to disclose the photograph to her. She says that in the context of this access request, where she, a guardian of one of the other children in the class, is requesting access, the result is the same as the scenario contemplated by the consent form; if the class photograph is disclosed in this case, it is being disclosed to a student in the class.

[38] The appellant also submits that the school board's argument that it cannot disclose the photograph containing her own son's personal information due to the personal information of the other students in the photograph is insincere and inconsistent. She submits that her son was provided copies of both the original class photograph (in which only his image is blurred), as well the re-taken class photograph (in which he has not included) when they were distributed to the class;¹¹ as a result, she submits that the other children's personal information is already in her possession. She provided me a copy of that photograph as evidence.

[39] Previous IPC decisions have found that, for the exception at section 14(1)(a) to apply, the individual whose personal information is in the record must have consented to the release of their personal information. This consent must be in writing. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.¹²

[40] I agree with the board that, according to IPC jurisprudence, it would appear that the consent provided by the guardians for the disclosure of their children's personal information in the class photograph to the other children in the class, does not constitute

¹⁰ The school board submits that it decided not to notify and seek the consent of the guardians of the children because to do so might result in the appellant's son feeling further ostracized and also because it no longer has contact information for many of the children, who have changed schools or have moved away.

¹¹ It is only the original class photograph that is at issue in this appeal. The re-taken class photograph that does not include her son is not at issue.

¹² Order PO-1723.

consent for the purposes of section 14(1)(a). Although I accept that the consent provided by way of the consent form was in writing, I agree with the school board that it was not provided in the specific context of an access request. For the purposes of this appeal I will assume without deciding that the exception at section 14(1)(a) does not apply.¹³

[41] However, below I will also consider some of the parties' same arguments with respect to the consent provided by the guardians of the other students and the school's prior disclosure of the class photograph to the appellant's son, in my discussion on whether disclosure of the unaltered photograph consists an unjustified invasion of personal privacy of these other individuals.

Sections 14(2), (3) and (4): unjustified invasion of personal privacy

[42] 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. In this appeal, none of the situations listed in section 14(4) are present.

[43] Otherwise, 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.¹⁴

Section 14(2)

[44] Section 14(2) lists a number of factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹⁵ Some of the listed factors weigh in favour of disclosure, while others weigh against disclosure. Other factors (besides the ones listed in sections 14(2)) must also be considered if they are relevant. These factors are referred to as "unlisted factors."

[45] In this appeal, none of the parties have specifically claimed that any of the factors in section 14(2) or any unlisted factors apply. However, the representations submitted by the appellant indicate that she believes that the disclosure of the personal information is

¹³ The consent provided by the guardians of the appellant's son's classmates through the standardized consent form, which allowed for their children's images in their class photograph to be distributed to other students in the class, effectively encompasses consent to the disclosure their children's images to the appellant, the guardian of another child in the class. However, the IPC has generally held that for section 14(1)(a) to apply, consent must be given in the specific context of an access request. In light of my findings below on the appellant's right of access to the photograph, it is not necessary for me to give a more nuanced consideration of the issue of consent under section 14(1)(a). As noted, I have assumed without deciding that there is no consent within the meaning of section 14(1)(a).

¹⁴ Order MO-2954.

¹⁵ Order P-239.

relevant to the fair determination of rights (section 14(2)(a)). Also, the school board's representations indicate that it is of the view that the personal information is highly sensitive. Those sections read:

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

...

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

...

(f) the personal information is highly sensitive;

....

[46] Additionally, it is clear from the parties' representations that the appellant has been provided with a copy of the class photograph containing the images of the individuals other than her son. In my view, this is a relevant unlisted factor favouring disclosure.

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

[47] Section 14(2)(d) supports disclosure of someone else's personal information where the information is needed to allow them to participate in a court or tribunal process. If it is established that this section applies it is a factor that weighs in favour of disclosure of the information.

[48] The IPC uses a four-part test to decide whether the factor at section 14(2)(d) applies. For it to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?¹⁶

[49] From information submitted by the appellant it is clear that she is involved in a legal dispute with the school board that is currently before the Superior Court of Justice. This dispute relates, in part, to the school board's blurring of the appellant's son's face in the original class photograph and the exclusion of the appellant's son from the subsequent class photograph that was re-taken in May of 2019.¹⁷ Despite this, the appellant did not specifically submit that section 14(2)(d) is relevant. Nevertheless, I will consider it briefly below.

[50] Based on the evidence provided to me by the appellant which consists of materials filed with the court, either by the appellant or by the school board, which addresses a dispute between those parties, I find that I have sufficient evidence to determine that the first three parts of the test for section 14(2)(d) are established. Specifically, I find that:

1. the issue of the disclosure of the class photograph relates to a right ... which is drawn from the concepts of common law or statute law;
2. this right is related to an existing proceeding between the school board and the appellant; and
3. the personal information in the class photograph that the appellant is seeking access to has some bearing on the determination in the appellant's civil suit.

[51] Although I have found that the first three parts of the section 14(2)(d) test have been met, I find that part four has not been established. To meet part four of the test, I must be satisfied that the photograph is *required* prepare for the hearing or ensure an impartial hearing.

[52] In Order MO-4122, the adjudicator considered the types of information in prior IPC orders that have been determined to be required for the purposes of part four of the section 14(2)(d) test. She stated:

The preponderance of IPC orders involving section 14(2)(d) involve information that is required to commence litigation – such as the identity of

¹⁶ See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

¹⁷ In the Statement of Claim that she filed with the court, the appellant alleges that by excluding her son from the class photograph the school board violated her son's rights under sections 2(a) and (b) and 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982* (UK), 1982 c 11. She also alleges that the school boards actions in this respect amount to a number of torts including misfeasance in a public office, intentional infliction of mental and emotional suffering, and intrusion upon seclusion.

a potential defendant.¹⁸ The other common thread that emerges from the IPC's consideration of section 14(2)(d) is that the factor may only be said to be relevant only to the parts of the personal information at issue that are *required*. For instance, the factor may be relevant to a party's name and address but not to other personal information.¹⁹

[53] While the unaltered class photograph itself might (or might not) be relevant to the legal dispute between the parties, I find that I have insufficient evidence to support a conclusion that the appellant *requires* it in order to prepare for the proceeding or to ensure an impartial hearing, as required by part four of the section 14(2)(d) test.

[54] As all four parts of the test must be established for section 14(2)(d) to apply and the fourth part has not been established, I find that section 14(2)(d) is not relevant factor in this appeal.

Section 14(2)(f): highly sensitive

[55] The factor at section 14(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁰ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²¹

[56] The school board's submissions suggest that it believes that the personal information of the other students is highly sensitive. As mentioned above, it submits that the guardians of the other students have not consented to the disclosure of their personal information in the context of an access request and that were it disclosed, it could be uploaded to social media and thereby made available in the public realm. It submits that without knowledge of what use the appellant will make of the photograph, there is nothing to guarantee that the personal information of the other students will be protected.

[57] The school board explains that this is why its consent form addressing the disclosure of students' personal information does not allow for any exceptions; guardians are asked to identify whether they consent to the disclosure of their child's personal information or whether they do not. It submits that, considering the reality of the modern age, the school board has no means of ensuring that images, including the class photograph, are not disseminated on a large scale, such as through social media.

[58] I acknowledge the school board's concerns are well meaning; however, in the context of this appeal, I find that there is no basis to conclude that the personal

¹⁸ See Order M-1146.

¹⁹ Order M-1146 and for example, Order MO-4049 and MO-4041.

²⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²¹ Order MO-2980.

information that the photograph contains is highly sensitive.

[59] An altered version of the class photograph, in which the image of the appellant's son was blurred, was distributed to everyone in the class. As a member of that class, the appellant's son was also provided with a copy of the photograph. That distribution was with the explicit knowledge and consent of the guardians of the students who appear in the photograph. I do not accept that, in this particular context, it can be said that there exists "a reasonable expectation" that other individuals depicted in the photograph would experience "significant personal distress" if the unaltered photograph were disclosed to the appellant. The school board has not made any submission to the effect that it is the unaltered image of the appellant's son, appearing together with the other individuals' images, that would cause the other individuals distress if disclosed. As a result, I do not accept that the other students' personal information in the class photograph is highly sensitive. Therefore, I find that section 14(2)(f) is not a relevant factor in the determination of whether disclosure of the photograph would consist of an unjustified invasion of the personal privacy of the individuals whose personal information it contains.

Unlisted factor: appellant has an altered copy of the photograph

[60] As mentioned above, the appellant has a copy of the class photograph in which only her son's image has been blurred and that this photograph was provided to the appellant's son when it was distributed to the rest of the class. Therefore, the images of the other students have already been provided to her. I find that this is a relevant unlisted factor that weighs in favour of the disclosure of the unaltered class photograph in the context of this appeal.

Section 14(3)(d): employment or educational history

[61] The only presumption against disclosure listed in section 14(3) that might be relevant is section 14(3)(d) which relates to employment or educational history. This section reads:

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

relates to employment or educational history[.]

[62] Neither party has made any specific representations that address this presumption and, in my view, this presumption does not apply in the context of this appeal. As indicated above, the class photograph contains only the images of the students in the class, including the appellant's son, and their teacher. The photograph does not identify the school, the calendar year in which the photograph was taken or the grade that the students were in. In the absence of this type of information, I find that the presumption against disclosure at section 14(3)(d) does not apply as disclosure of the photograph would not disclose personal information that relates to employment, for the teacher, or to educational history, for the students in the class.

Summary conclusion regarding the factors at section 14(2) and presumptions at section 14(3)

[63] Above, I have found that none of the presumptions against disclosure in section 14(3) apply. I have also found that, in the circumstances, none of the listed factors in section 14(2) weighing for or against disclosure apply. However, I have found that the fact that the school board has provided the appellant with an altered copy of the photograph that reveals the images of all individuals other than her son, is an unlisted factor, weighing in favour of disclosure.

[64] Considering there is an unlisted factor that weighs in favour of disclosure and there are no factors or presumptions in sections 14(2) and (3) that weigh against disclosure, balancing the interests of the parties I find that the disclosure of the class photograph would not be an unjustified invasion of personal privacy of the individuals whose images appear in that photograph. As a result, I find that the class photograph is not exempt under section 38(b) and I will order the school board to disclose it.

Absurd result

[65] Even if I had found that the class photograph is exempt under section 38(b), in this case, the absurd result principle applies to require disclosure of the photograph.

[66] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.²²

[67] For example, the “absurd result” principle has been applied when:

- the requester sought access to their own witness statement,²³
- the requester was present when the information was provided to the institution,²⁴ and
- the information was or is clearly within the requester’s knowledge.²⁵

[68] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.²⁶

[69] I find that the absurd result principle applies in the particular circumstances of this

²² Orders M-444 and MO-1323.

²³ Orders M-444 and M-451.

²⁴ Orders M-444 and P-1414.

²⁵ Orders MO-1196, PO-1679 and MO-1755.

²⁶ Orders M-757, MO-1323 and MO-1378.

appeal.

[70] As previously noted, the appellant's son was provided with a copy of the class photograph in which his own image has been blurred but the images of the other students were not. Therefore, the images of the other students have already been provided to the appellant. The remaining information that is not already in the appellant's possession, the unaltered image of the appellant's son, consists of her son's own personal information. I find that applying section 38(b) as a basis for denying the appellant access to her son's class photograph, in which the only information that has not already been disclosed to her is her own son's image, would produce a manifestly absurd result.

[71] Accordingly, I find that the absurd result principle applies. As a result, the unaltered version of the class photograph is not exempt from disclosure to the appellant under the discretionary exemption at section 38(b). As no mandatory exemptions apply to the photograph and no other discretionary exemptions have been claimed, I will order it disclosed.

[72] The appellant raised some *Charter* arguments²⁷ and the public interest override at section 16. In light of my conclusions, it is not necessary for me to address these matters.

ORDER:

1. I order the school board to disclose the class photograph to the appellant by August 23, 2022.
2. To verify compliance with order provision 1, I order the school board to provide me with copies of its communications to appellant regarding disclosure.

Original Signed by: _____
Catherine Corban
Adjudicator

July 25, 2022 _____

²⁷ Raised for the first time in her reply representations.