

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4233

Appeal MA19-00393

Toronto Police Services Board

July 28, 2022

Summary: The Toronto Police Services Board (the police) received a request from the appellant under the *Municipal Freedom of Information and Protection of Privacy Act* for access to a police occurrence report about an investigation in which the appellant was a suspect. The police located the occurrence report and issued a decision denying access to it, claiming that it was exempt under section 38(a) (discretion to refuse requester's own information), read with the law enforcement exemptions in sections 8(1)(a) (law enforcement matter) and 8(1)(b) (law enforcement investigation), and also exempt under the personal privacy exemption in section 38(b). The appellant appealed the access decision and also raised the issue of reasonable search. In this order, the adjudicator finds that the appellant's own personal information is not exempt under section 38(a) read with section 8(1). She upholds the police's decision to withhold the personal information of identifiable individuals other than the appellant on the basis that disclosure of it would be an unjustified invasion of their personal privacy under section 38(b). She also upholds the police's search for responsive records as reasonable. As a result of her findings, the adjudicator orders the police to disclose the appellant's own personal information, as well as information that is not anyone's personal information, to him.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 8(1)(a), 8(1)(b), 17, 38(a) and 38(b).

OVERVIEW:

[1] This appeal is about access to a police occurrence report of an investigation in

which the appellant was a suspect. The appellant made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the specific occurrence report relating to a complaint against him made by a university. The appellant's request was for access to:

[named institution] v [requester's name]

Badge #[officer's badge number]

[occurrence report #]

Request Full Disclosure

[2] The police located the occurrence report and issued a decision denying access in full. The police denied access on the basis that their investigation was still ongoing. They relied on the discretionary exemption in section 38(a) (discretion to refuse requester's own information), read with the law enforcement exemptions in sections 8(1)(a) (law enforcement matter) and 8(1)(b) (law enforcement investigation), because the investigation had not concluded. The police also cited the discretionary personal privacy exemption in section 38(b).¹

[3] The police invited the appellant to re-submit his request at the conclusion of the investigation. The appellant instead appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] The parties participated in mediation to explore the possibility of resolution. During mediation, the police issued a revised decision in which they denied access to the entire record based on the exclusion in section 52(2.1) (ongoing prosecution) because the matter was, by then, the subject of a prosecution before the court.

[5] Also during mediation, the appellant identified additional records that he believes exist and are responsive to the request, but which he said the police did not disclose. The issue of whether the police conducted a reasonable search for responsive records was therefore added to the appeal.

[6] Because the police raised the application of the exclusion in section 52(2.1), I sought representations from the parties on its application as a preliminary issue. Both the police and the appellant submitted representations. When I sought an update on the status of the prosecution before issuing a decision, the police and appellant informed me that the prosecution had concluded and the charges against the appellant stayed.²

¹ In support, the police referenced the presumption against disclosure in section 14(3)(b).

² Section 52(2.1) of the *Act* excludes records relating to an ongoing prosecution from the *Act*. It states that the *Act* "does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed."

[7] The appellant confirmed that he wished to proceed with his appeal of the police's initial decision and the exemptions the police originally claimed to deny access to the record. The police submitted that their revised decision (relying on the section 52(2.1) ongoing prosecution exclusion and issued during mediation of the appellant's appeal of the police's initial decision) "negated" their earlier decision. They say it was open to the appellant to submit a fresh request once the prosecution concluded. However, because there was already an appeal before the IPC of an existing decision, I proceeded with an inquiry into the application of the exemptions claimed by the police to deny access, as well as into the reasonableness of their search for responsive records discussed at mediation.³

[8] As part of my inquiry, I received representations from the police and the appellant that were shared among them in accordance with the IPC's *Practice Direction 7* on the sharing of representations. After reviewing their representations and the record at issue, I invited an individual whose interests may be affected by disclosure of the record (the risk assessment specialist or the affected party), to submit representations.

[9] In this order, I find that that the record contains the appellant's personal information, and information that is not anyone's personal information, that is not exempt under sections 38(a) or (b). I also find that there is personal information of other individuals in the record that is exempt under section 38(b). I order the police to disclose a version of the record with the personal information of other identifiable individuals withheld.

[10] Finally, I uphold the police's search for responsive records as reasonable.

RECORD:

[11] The record is a 10-page police occurrence report (the report).

ISSUES:

- A. Does the report contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary exemption in section 38(a), read with the law enforcement exemptions in section 8(1)(a) or 8(1)(b) apply to the report?

³ Section 52(2.1), or the ongoing prosecution exclusion, is no longer an issue given that the charges were stayed.

- C. Would disclosure of the personal information other than the appellant's personal information constitute an unjustified invasion of personal privacy under section 38(b)?
- D. Should the police's exercise of discretion under section 38(b) be upheld?
- E. Should the police's search for responsive records be upheld?

DISCUSSION:

The appellant's and the affected party's representations

[12] The appellant's representations focus on what he characterizes as his predictions to the police of mass casualty events, both locally and globally. The appellant's representations emphasize the police's alleged failure to act on his predictions or to share them with other law enforcement agencies in whose jurisdictions those events occurred. With his representations, the appellant has included correspondence with various offices and law enforcement agencies regarding his predictions, and complaints about the police's treatment of his predictions.

[13] I have read the appellant's entire representations. The appellant has not addressed the specific exemptions on which the police rely (and which were set out in Notices of Inquiry sent to the parties). The appellant's representations instead address the police's lack of response to his predictions and his correspondence with other institutions and agencies. I have only considered those portions of his representations that relate to the issues in this appeal.

[14] The affected party in this appeal is a risk assessment specialist employed by the university that the appellant at one time attended. He is the person who contacted the police, and the information he conveyed to the police about staff at the university and the appellant gave rise to an investigation and the record at issue. I invited the affected party to submit representations in response to a Notice of Inquiry, which was forwarded to the university to respond on the affected party's behalf. In its representations, the university writes that the police did not provide it with a copy of the record, or describe the record's particulars with enough detail for the university to be able to respond.⁴

[15] In my view, the affected party has sufficient information about the report to provide me with representations relating to the issues before me.⁵

[16] However, except as otherwise noted, the affected party has not provided representations about the exemptions claimed by the police in their decision, although

⁴ Because the IPC does not disclose records, I referred the university to the police for information about the record.

⁵ The affected party made the complaint and call to the police for assistance regarding the appellant.

he and the university do not consent to disclosure of the report to the appellant.

Issue A: Does the report contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[17] The police withheld the entire report on the basis that it was exempt from disclosure under section 38(a) read with the law enforcement exemptions in section 8(1)(a) and (b), and on the basis of the personal privacy exemption in section 38(b) of the *Act*. In order to decide which section of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom this personal information relates. In this case, I need to decide whether the report contains the appellant’s own personal information, and whether it also contains the personal information of other individuals.

[18] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Recorded information is information recorded in any format, including paper and electronic records.⁶

[19] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them.⁷

[20] 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.⁸

[21] Section 2(1) of the *Act* gives a list of examples of personal information. The examples relevant to this appeal are the following:

“personal information” means recorded information about an identifiable individual, including,

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

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or

⁶ The definition of “records” in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The record before me is a paper record located by searching a police database.

⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information relating to financial transactions in which the individual has been involved,

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

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

(e) the personal opinions or views of the individual except if they relate to another individual,

...

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[22] Sections 2(2.1) and (2.2) distinguish personal information from information about an individual in a business or professional capacity. Section 2(2.1) states that:

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

[23] To qualify as personal information, the information must be about the individual in a personal capacity. In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.⁹

[24] 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."¹⁰

[25] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.¹¹ Also, if the record contains the personal information of other individuals,

⁹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁰ Order 11.

¹¹ Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

one of the personal privacy exemptions might apply.¹²

Representations

[26] The police submit that the report contains the personal information of the appellant as well as that of other individuals and university staff who were involved in their investigation. They submit that, although university staff received unsolicited communications from the appellant via their work emails, the fact that they received such at their workplace does not make their information in the record business or professional information. The police say that the individuals identified in the record “are not acting in any type of business capacity – they are simply recipients of uninvited” contact from the appellant. The police say that “[t]he information of these individuals is therefore personal, as these individuals can be identified, and the information reveals something of a personal nature and should be protected.”

[27] Regarding the university staff, the police deny that the report contains information about them in a business or professional capacity. They argue that the “context of the interactions needs to be taken into consideration and a business relationship/acting in a business capacity be established.” The police say that “receiving” the unwanted type of attention that gave rise to the complaint “should not immediately place the recipient in a business/professional capacity, nor create a business relationship with the perpetrator and negate privacy protection” under the *Act*.

[28] Neither the appellant nor the affected party have made representations about whether the report contains personal information, or whose it may be, or whether the report contains information about an individual acting in a business or professional capacity.

Analysis and findings

[29] I have reviewed the report and find that it contains the appellant’s personal information as well as the personal information of other identifiable individuals. However, I also find that some of the information pertaining to one university staff member, the risk assessment specialist, is not personal information but rather is information about the specialist acting in a business or professional capacity.

Personal information of the appellant, university staff and witnesses

[30] To begin, I find that the report contains the appellant’s personal information. The report is about the appellant and his alleged conduct at the university in relation to other individuals. The report contains the appellant’s name, date of birth, sex, race, home address, email address, telephone number and drivers license number. In addition to these details about him, the report contains information about correspondence he allegedly sent to university staff, and statements about the

¹² See sections 14(1) and 38(b).

appellant, such as the risk assessment officer's comments about him to the police. Collectively, I find that this is the appellant's personal information within the meaning of paragraphs (a), (b), (c), (d), (e) and (g) of section 2(1) of the *Act*.

[31] The report also contains information about other identifiable individuals, including their names, dates of birth, sex, race, occupations, home addresses, telephone numbers and a drivers licence number, which I find to be their personal information within the meaning of paragraphs (a), (b), (c), (d), (e) and (g) of section 2(1) of the *Act*. In addition, the report contains these individuals' work email addresses which, in the circumstances, I find to be their personal information within the meaning of paragraph (h) of section 2(1). These emails were used by the appellant to make contact that, based on the record, does not appear related to their employment, and I find that disclosure of this information would reveal other information about them, such as the nature of their involvement with the appellant and their involvement in a complaint made by the university's risk assessment specialist to the police.

[32] I find that there are several portions of the record that contain only the personal information of the appellant, and that these portions can reasonably be severed from the personal information of other individuals and disclosed to him. I will discuss this information further at Issue C.

The risk assessment specialist

[33] The report contains information pertaining to the university's risk assessment specialist (the affected party) who made the complaint about the appellant to the police that gave rise to the report.

[34] It is clear from my review of the record that the risk assessment specialist interacted with the police in his business or professional capacity as a risk assessment specialist or security officer for the university. Other than the risk assessment specialist's home telephone and address, the report contains information about him that I find is not personal information because it describes his contact with the police in his capacity as a security officer for the university. This also includes the risk assessment specialist's comments to the police about the appellant and his alleged conduct that I have found to be the appellant's personal information. Since this is only the personal information of the appellant, the section 38(b) personal privacy exemption cannot apply to it. I will address under Issue B whether it is exempt under section 38(a).

[35] To be clear, however, the risk assessment specialist's home telephone number and address is his personal information. I will consider under Issue C whether that personal information is exempt under section 38(b).

Summary

[36] Because I have found that the record contains the personal information of the appellant mixed with the personal information of other individuals, I must consider

whether the personal privacy exemption at section 38(b) applies to the personal information of individuals other than the appellant, which I will do under Issue C, below.

[37] The remaining information is either the appellant's personal information alone, or information about the risk assessment specialist acting in his professional capacity and therefore not personal information. This information cannot be exempt under section 38(b). I will order it disclosed, unless it is exempt under section 38(a), which I discuss at Issue B, next.

Issue B: Does the discretionary exemption at section 38(a), read with the law enforcement exemptions in section 8(1)(a) or (b), apply to the report?

[38] The police claim that the section 38(a) exemption, read with sections 8(1)(a) or (b), applies to exempt the report in its entirety. I must therefore consider the application of section 38(a) because I have concluded that the report contains the appellant's personal information, and section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 sets out some exemptions from this general right of access to one's own personal information.

[39] Section 38(a) of the *Act* states that an institution may refuse to disclose personal information if section 8 would apply to the disclosure of that information.¹³ Section 38(a) is discretionary and recognizes the special nature of requests for one's own personal information, and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.¹⁴

[40] In this case, the police rely on the law enforcement exemptions in section 8(1)(a) and 8(1)(b) to deny access to the report. These provisions state:

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

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Representations

[41] The police say that section 8(1)(a) applies to exempt the report because it was

¹³ Section 38(a) states reads: "A head may refuse to disclose to the individual to whom the information relates personal information, if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information."

¹⁴ Order M-352.

directly related to an active criminal investigation into possible violations of law in which the appellant was a suspect. They say that the appellant was being investigated over the course of an extended period of time and was subsequently charged with an offence under the *Criminal Code of Canada*.

[42] The police submit that disclosure of the report “was reasonably expected to interfere with a law enforcement matter” because it would disclose information that may have been susceptible to broadcast publication before the investigation was concluded and an arrest made, thereby impeding the integrity of the investigation and the court process (since the appellant may have discussed the matter online).

[43] The police submit that section 8(1)(b) applies because, at the time of their initial decision, the appellant was the subject of an active criminal investigation in which the appellant’s arrest was imminent. The police rely on the definition of “law enforcement” in section 2(1) of the *Act*.

[44] Neither the appellant nor the affected party made representations on the exemption in section 38(a), read with sections 8(1)(a) or 8(1)(b).

Analysis and findings

[45] “Law enforcement” is defined in section 2(1) as:

(a) Policing

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

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

Section 8(1)(a): law enforcement matter

[46] The IPC has found that, for section 8(1)(a) to apply, the matter in question must be ongoing or in existence.¹⁵ The exemption does not apply where the matter is completed.¹⁶

Section 8(1)(b): law enforcement investigation

[47] For section 8(1)(b) to apply, the law enforcement investigation in question must be a specific, ongoing investigation. The IPC has found that the exemption does not apply where the investigation is completed;¹⁷ the investigation in question must be

¹⁵ Order PO-2657.

¹⁶ Orders PO-2085 and MO-1578.

¹⁷ Order PO-2085.

ongoing or in existence.¹⁸

[48] In the circumstances of this appeal, there is no evidence that there is an ongoing law enforcement matter or investigation with which disclosure of the record could reasonably interfere. On the contrary, although the appellant was charged, both the appellant and the police have since confirmed that the related prosecution ended with a stay.

[49] Accordingly, because there is no ongoing law enforcement matter or investigation relating to the record, I find that the record is not exempt under section 38(a) read with the law enforcement exemptions in sections 8(1)(a) or (b).

[50] Subject to my findings on the application of the personal privacy exemption in section 38(b) to the information of individuals other than the appellant, below, I will order the police to disclose the report to the appellant.

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

[51] At Issue A, I found that the report contains personal information of both the appellant and of other individuals. I will therefore address whether the section 38(b) exemption for personal privacy applies to the information of the other individuals. This includes the information of other individuals where it is mixed with that of the appellant.

[52] However, the appellant's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.¹⁹

[53] In addition, as noted above, the information provided by the risk assessment specialist in his professional capacity cannot be exempt under section 38(b). I will order that information disclosed to the appellant.

[54] Having also concluded that the police's alternative claim that section 38(a), read with section 8(1), does not apply to the appellant's own personal information or the risk assessment specialist's professional information, there are no remaining exemption claims for this information and I will order it disclosed. I will now address whether the personal information of the individuals other than the appellant is exempt under section 38(b).

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

¹⁸ Order PO-2657.

¹⁹ Order PO-2560. Although the police have denied access to the entire record, it appears from their representations that they do not oppose, expressly or implicitly, disclosure of the appellant's personal information to him.

other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[56] The section 38(b) exemption is also discretionary, meaning 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.

[57] 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).

[58] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). In the circumstances, none of the section 14(1) exceptions apply, and are not addressed further in this order.

[59] 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. The parties do not rely on section 14(4), and I find that it does not apply in this appeal.

[60] In deciding whether the disclosure of personal information in the record would be an unjustified invasion of personal privacy under section 38(b), the IPC will consider and weigh the factors and presumptions in section 14(2) and (3) and balance the interests of the parties.²⁰

Representations

[61] The police submit that the report is exempt under section 38(b), with reference to the presumption against disclosure in section 14(3)(b), because the information in the record was compiled during the course of a police investigation into a possible violation of law. They submit that "information related to any of the other individuals should not be provided" to the appellant because it would be a breach of their privacy.

[62] Neither the appellant nor the affected party made any representations regarding the application of the section 38(b) exemption. The appellant maintains the report should be disclosed, while the affected party does not consent to its disclosure.

²⁰ Order MO-2954.

Analysis and findings

[63] Section 14(3)(b) states that:

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

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[64] The presumption only requires that there be an investigation into a possible violation of law,²¹ and charges do not need to be laid for the presumption to apply. According to the report, the police responded to a call from the university's risk assessment specialist seeking advice regarding alleged criminal conduct. The police investigated. Their investigation concluded with charges laid, followed by a prosecution. Because it is apparent in the circumstances that the information in the report was compiled as part of an investigation into a possible violation of law, I find that the presumption against disclosure in section 14(3)(b) applies, and that disclosure of the personal information in the report would result in a presumed unjustified invasion of personal privacy under section 14(3)(b) of individuals other than the appellant.

[65] Under section 38(b), the presumption in section 14(3)(b) must be weighed and balanced with any factors in section 14(2) that are relevant. The parties have not submitted that any factors in section 14(2) are relevant and apply. However, although the police have not specifically identified any of the factors listed in section 14(2), it appears that they are implicitly arguing that the factors at section 14(2)(f) and (h) apply to weigh against disclosure.

Section 14(2)(f): highly sensitive

[66] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether 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.²²

[67] The police submit that releasing personal information belonging to anyone other than the appellant would potentially cause the individuals distress or harm. As I understand this argument, the police appear to be arguing that the factor at section 14(2)(f) applies to weigh against disclosure.

[68] The record contains information about the appellant's contact with certain

²¹ Orders P-242 and MO-2235.

²² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

individuals at the university. Based on the type of contact, and its unsolicited and apparently unwelcome nature, I find that disclosure of the personal information of individuals other than the appellant could reasonably be expected to cause them significant personal distress. I find this to be especially so given the nature of the allegations against the appellant, and considering that most of the personal information of individuals other than the appellant contained in the record is their contact information. I accept the police's submission and find that the factor in section 14(2)(f) applies to weigh against disclosure.

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

[69] For the factor at section 14(2)(h) to apply, I must be satisfied that the individual supplying the information and the recipient had an expectation that the information would be treated confidentially and that this expectation is reasonable in the circumstances. As such, section 14(2)(h) requires an objective assessment of the reasonableness of the expectation of confidentiality.²³

[70] The police submit that disclosure of personal information belonging to anyone other than the appellant would interfere with future law enforcement investigations as the individuals may be hesitant to provide information due to fear of reprisal and/or a lack of faith in the police's protection of their privacy interests.

[71] Although there is insufficient evidence before me to conclude that the investigating officers gave express assurances of confidentiality, based on my review of the record I find that it was reasonable for the witnesses and individuals identified in it to expect that they provided their personal information to the police in confidence. I therefore find that this factor applies in the circumstances and weighs against disclosure to the appellant of the personal information of identifiable individuals other than the appellant. This includes the risk assessment officer's personal information.

[72] I have also considered whether there are any unlisted factors that apply to weigh in favour of or against disclosure, and I find that none do.

[73] For the reasons set out above, I find that the presumption in section 14(3)(b) applies and weighs in favour of a finding that disclosure of the personal information of individuals other than the appellant contained in the record constitutes an unjustified invasion of their personal privacy. I also find that the factors at sections 14(2)(f) and (h) apply and weigh in favour of non-disclosure, and that no factors, listed or unlisted, apply to favour disclosure of their personal information to the appellant. In weighing these presumptions and factors, I find that disclosure of the personal information of individuals other than the appellant would constitute an unjustified invasion of their personal privacy under section 38(b), and will uphold the police's decision to apply this exemption, subject to my discussion of their exercise of discretion, below.

²³ Order PO-1670.

Issue D: Should the institution's exercise of discretion be upheld?

[74] The section 38(b) exemption is discretionary,²⁴ meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[75] The IPC may also find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[76] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁵ The IPC cannot, however, substitute its own discretion for that of the institution.²⁶

[77] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:²⁷

- the purposes of the *Act*, including the principles that:
 - information should be available to the public,
 - individuals should have a right of access to their own personal information,
 - exemptions from the right of access should be limited and specific, and
 - the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,

²⁴ These sections state that the institution "may" refuse to disclose information.

²⁵ Order MO-1573.

²⁶ Section 43(2).

²⁷ Orders P-344 and MO-1573.

- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

Representations

[78] The police submit that, in considering whether the record should be disclosed, notwithstanding that the section 38(b) applies, they balanced “the interests of an individual’s right for access, an individual’s privacy” and that their responsibility to protect “the process of an unbiased law enforcement investigation was of paramount importance.”

[79] The police also say they considered the potential distress to affected parties and interference with future law enforcement investigations that could result from disclosure.

[80] Finally, the police submit that, since the appellant was the suspect in their investigation, disclosure of the record would have allowed him to evade arrest and continue having contact with affected parties.

[81] Neither the appellant nor the affected party made representations about the police’s exercise of discretion.

Analysis and findings

[82] Because I found that the personal information of other individuals is exempt under section 38(b), I have considered the police’s exercise of discretion in their decision to deny the appellant access to that information.

[83] In this regard, I find that the police properly exercised their discretion under section 38(b) to withhold personal information of identifiable individuals other than the appellant. In withholding this personal information, I find that the police considered that, if disclosed, the record would identify them, reveal other personal information about them, and describe both the nature of their involvement with the appellant and in a police investigation. The police also considered the sensitive nature of the affected parties’ personal information in denying access to it, including that the information includes contact information that was collected during an investigation into unsolicited communications.

[84] I am satisfied that the police considered relevant factors in denying access to the affected parties' personal information, and there is no evidence before me that the police acted in bad faith or took into account irrelevant considerations. I therefore uphold the polices exercise of discretion to withhold the other individuals' personal information under section 38(b) of the *Act*.

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

[85] The appellant believes that additional records beyond the occurrence report at issue exist that are responsive to his request.

[86] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.²⁸ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[87] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.²⁹

[88] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³⁰ that is, records that are "reasonably related" to the request.³¹

[89] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.³² The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.³³

Representations

[90] The police submit that the appellant's request was unambiguous and was for access to a single, specific record. They say that no records other than the occurrence report were sought. They submit that they searched their database for the occurrence report described in the request, located the specific record the appellant identified, and issued a decision about access to it.

²⁸ Orders P-85, P-221 and PO-19544-I.

²⁹ Order MO-2246.

³⁰ Orders P-624 and PO-2559.

³¹ Order PO-2554.

³² Orders M-909, PO-2469 and PO-2592.

³³ Order MO-2185.

[91] The appellant did not make any representations about the reasonableness of the police's search for the occurrence report identified in his request and did not identify what other types of records he believes might exist that are responsive to his request.

Analysis and findings

[92] I accept the police's representations that the appellant's request was clear and unambiguous. I find that the request identified a specific occurrence report to which access was sought. The request described the occurrence report specifically, using the occurrence report number and related particulars, including his and the university's names.

[93] The appellant was asked to provide support in his representations for his belief that additional responsive records exist. The appellant did not address the reasonableness of the police's search for the record identified in the request and has not provided any reasonable basis on which I could conclude that additional records responsive to this access request exist.

[94] In the circumstances, I am satisfied that another search would not yield more responsive records.

[95] For the above reasons, I uphold the police's search for responsive records as reasonable.

ORDER:

1. I uphold the police's application of section 38(b) to the record, in part.
2. I order the police to disclose to the appellant a severed version of the record, in accordance with the copy of the record being provided with the police's copy of this order. The police shall disclose a copy of the severed record to the appellant by **September 5, 2022** but not before **August 29, 2022**.
3. I uphold the police's search as reasonable.
4. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the record disclosed to the appellant.

Original Signed By: _____
Jessica Kowalski
Adjudicator

July 28, 2022 _____