

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4234

Appeal MA19-00004

Halton Regional Police Services Board

July 29, 2022

**Summary:** The Halton Regional Police Services (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified police report. The police issued a decision granting partial access to the responsive records withholding information under the discretionary personal privacy exemption at section 38(b) of the *Act*. The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario. In this order, the adjudicator upholds the police's decision, and dismisses the appeal.

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

### OVERVIEW:

[1] This order determines the issue of access to a specified police report. The Halton Regional Police Services (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified report.

[2] The police granted partial access to an Occurrence Report, a General Report and a Supplementary Occurrence Report, relying on the exemptions at section 38(a) (discretion to refuse requester's own personal information), read with sections 8(1)(e) (endanger life or safety) and 8(1)(l) (facilitate commission of an unlawful act), and section 38(b) (personal privacy) of the *Act* to withhold the remaining information.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the appellant confirmed that he is not pursuing access to police codes, information that the police withheld under section 38(a), read with sections 8(1)(e) and (l). Therefore, this information and sections 38(a), 8(1)(e), and 8(1)(l) of the *Act* are no longer at issue in this appeal.

[5] The appellant also indicated he is not pursuing access to any contact information for any individuals identified in the report (the affected parties). Accordingly, based on my review of the information, page 1 of the Occurrence Report and part of page 1 of the General Report and part of page 1 of the Supplementary Occurrence Report are no longer at issue in this appeal.

[6] The appellant advised that he continues to pursue access to any information pertaining to the incident, including any information provided by affected parties as well as their names.

[7] During mediation, the IPC attempted to obtain consent from the affected parties to release additional information to the appellant but the affected parties did not consent to disclosure of their personal information to the appellant.

[8] As a mediated resolution was not possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal commenced an inquiry by inviting representations from the police and the affected parties, initially. She received representations from some of the affected parties, which she kept confidential from the appellant after considering the criteria in section 5(c) of the IPC's Code of Procedure and *Practice Direction Number 7*. She also received representations from the police, which she shared with the appellant, and invited representations from the appellant. She received and shared the appellant's non-confidential representations with the police. She then invited and received reply representations from the police. The appeal was then transferred to me.

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

## **RECORDS:**

[10] The information remaining at issue in this appeal is the withheld information on pages 1-3 of the General Report and page 1 of the Supplementary Occurrence Report. These reports contain police notes and statement summaries relating to an investigation into an alleged assault.

## **ISSUES:**

- A. Do the reports contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the personal 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: Do the reports contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[11] In order to decide which sections 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 the personal information relates. 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.<sup>1</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>2</sup>

[12] The term is defined in section 2(1). The relevant portions are as follows:

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

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

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

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

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<sup>1</sup> 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.

<sup>2</sup> Sections 14(1) and 38(b), as discussed below.

(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.

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

### ***Representations of the parties***

[14] The police submit that the records contain personal information of several identifiable individuals (i.e. the affected parties) and the appellant, and this information includes their name, address, age, telephone numbers, employment information, sex, driver's licence, and their views or opinions.

[15] The appellant states that the withheld information does not contain personal information of the affected parties because the information at issue is not about those individuals nor is it about them in a personal capacity. The appellant further states that he already knows the identity of the affected parties, and he is requesting the withheld information to know the claims made against him with the "intent of damaging" his reputation.

### ***Analysis and findings***

[16] Based on my review of the reports and the representations of the parties, I find that the reports contain the personal information of the appellant and the affected parties. Specifically, I find that the reports contain personal information about them, such as their name, address, sex, age, telephone numbers, employment information, driver's licence, their views or opinions, views or opinions about them, and their name along with other information, which fits within paragraphs (a)-(e), (g), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[17] I considered whether the appellant's personal information could be severed from the reports. However, based on my review of the records, I find that the appellant's personal information is inextricably intertwined with that of the affected parties' and

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<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

cannot be reasonably severed.

[18] Having found that the reports contain the personal information of both the appellant and the affected parties, I will now determine whether the withheld personal information is exempt from disclosure under section 38(b) of the *Act*.

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

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

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

[21] 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.

[22] 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).

[23] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). In this appeal, none of the section 14(1) exceptions apply to the circumstances before me and I will not discuss them further in this order.

[24] 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 the present appeal.

[25] 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), the decision-maker<sup>4</sup> must consider and weigh the factors and presumptions in sections

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<sup>4</sup> The institution or, on appeal, the IPC.

14(2) and (3) and balance the interests of the parties.<sup>5</sup>

***Representations, analysis and findings***

[26] The police submit that disclosure of the affected parties' personal information would be an unjustified invasion of their personal privacy.

[27] The appellant submits that the section 38(b) exemption does not apply.

[28] The affected parties do not consent to disclosure of their personal information.

*Section 14(3)(b) presumption: investigation into a possible violation of law*

[29] The police argue that the section 14(3)(b) presumption applies to the withheld personal information because it was compiled and is identifiable as part of an investigation into a possible violation of law, specifically allegations of assault. The police state, however, they determined the allegations to be unfounded.

[30] The appellant states that section 14(3)(b) does not apply to the withheld personal information.

[31] Section 14(3)(b) states:

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

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

[32] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. The personal information at issue appears in police reports about an investigation into an alleged assault. As noted above, after the investigation was completed, the police determined the allegations were unfounded. However, even if no criminal proceedings were commenced against an individual, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>6</sup> Therefore, I find that section 14(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the individuals to whom the information relates – here the affected parties.

[33] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant.

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<sup>5</sup> Order MO-2954.

<sup>6</sup> Orders P-242 and MO-2235.

[34] The appellant argues that the factor at section 14(2)(d) (fair determination of rights) applies to the withheld personal information. This factor weighs in favour of disclosure, if it is found to apply.

[35] The police argue that the factor at section 14(2)(i) (unfair damage to reputation) applies to the withheld personal information. This factor weighs against disclosure, if it is found to apply. The appellant also argues that section 14(2)(i) applies to weigh in favour of disclosure.

[36] Sections 14(2)(d), and (i) state:

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

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

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

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

[37] The appellant submits that the factor at section 14(2)(d) applies and weighs in favour of disclosure of the affected parties' personal information. He states that there is a very important common law principle of fundamental justice: an accused person has the right to know his accuser and what he is accused of. He argues that in this case that principle of common law must supersede the *Act*. He states that the common law principle is also expressed in section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) and the Sixth Amendment to the United States Constitution.

[38] The appellant states that the police have used the *Act* to prevent him from verifying who his accusers are and what evidence they gave to the police. He states that he identified three people, who he thought are the accusers, to the police, and after speaking to him, the police dismissed the claim as unfounded. He states that he does not know what these three people said, but it damaged his reputation.

[39] The appellant states that allegations made against him in the police reports led to rumours circulating about him. He states that he is a former candidate for elected office and that he lost campaign volunteers due to these rumours. He states that more rumours were spread about him and collectively all the rumours diminished his reputation, which is very important in politics. The appellant states that he cannot say if he lost a particular election due to the "character assassination" but he says that his reputation was seriously and permanently harmed.

[40] The appellant states that the situation in the current appeal is much different

from others that the *Act* deals with, where someone may be victimized in some way for agreeing to be a witness to assist the police and deserves protection. The appellant submits that in this appeal, this was a false claim against him made by three conspirators. He claims that these individuals each had a vested interest in seeing him investigated for breaking the law because they wished to see him disqualified as a candidate.

[41] The appellant submits that the *Act* was not created to allow persons to claim false charges to damage someone's reputation for political purposes and remain anonymous. The appellant states that the fraudulent claims made against him may violate slander laws, and the only way he can defend his reputation and obtain fundamental justice is to know what was claimed about him.

[42] The police submit that the section 14(2)(d) factor does not apply because the appellant does not require the personal information of the affected parties to pursue a civil action for the damage of his reputation.

[43] In order for the section 14(2)(d) factor to apply, the appellant must establish all four parts of the following test:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>7</sup>

[44] From the appellant's representations, it appears that he wants the withheld personal information of the affected parties to confirm who his accusers are and the allegations they made against him. He has also raised the denial of fundamental justice of an accused individual's right to know his accuser and what he is accused of.

[45] Although the appellant refers to his right to fundamental justice, he has not explained how he would enforce this right or how disclosure of the affected parties' personal information would assist with his enforcement of this right for the purposes of parts three and four of the section 14(2)(d) test. The appellant has also not provided

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<sup>7</sup> 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.).



evidence of an existing proceeding, or one that he is contemplating for the purpose of part two of the section 14(2)(d) test. In order for section 14(2)(d) to apply, all four parts of the test must be established. Since the appellant has not persuaded me that all four parts of the section 14(2)(d) test have been met, I find that section 14(2)(d) does not apply to weigh in favour of the disclosure of the affected parties' personal information. I therefore find that the appellant has not established that the withheld personal information is required for the fair determination of his rights. I note that the appellant is not prevented from pursuing other legal remedies by not having the affected parties' personal information.<sup>8</sup>

[46] While I do not find that section 14(2)(d) applies to the withheld personal information, I recognize that the appellant's arguments can be characterized as raising "inherent fairness issues" as an unlisted factor that should apply to weigh in favour of disclosure and I will address this below.

*Section 14(2)(i) – unfair damage to reputation*

[47] The police submit that the factor at section 14(2)(i) applies to the circumstances of this appeal and weighs against disclosure of the withheld personal information. The police argue that disclosure of the affected parties' personal information may unfairly damage their reputations. The police submit that it is possible that the appellant wants to use the information to retaliate and embarrass the affected parties.

[48] The appellant argues that the section 14(2)(i) factor applies to circumstances and weighs in favour of disclosure of the withheld personal information. He states that this factor applies because there has been unfair damage to his reputation, and there is no reason he should not be given the facts of who said what on the record to clear his reputation.

[49] Section 14(2)(i) weighs against disclosure if disclosure of (in this case) the affected parties' personal information might create damage or harm to these individuals' reputations that would be considered "unfair" to these individuals.<sup>9</sup>

[50] I will deal first with the appellant's arguments.

[51] In this appeal, I understand the appellant to argue that disclosure of the withheld personal information of the affected parties is required or it will result in unfair damage to his reputation. Generally speaking, section 14(2)(i) is a factor that, if it applies, weighs against disclosure, and the analysis focuses on whether damage to reputation could arise from disclosure that would result in an unjustified invasion of the personal privacy of individuals other than the appellant. The appellant's arguments about section 14(2)(i) are somewhat novel; however, it is not necessary for me to

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<sup>8</sup> Section 51(1) of the *Act* provides that "This Act does not impose any limitation on the information otherwise available by law to a party to litigation."

<sup>9</sup> Order P-256.

address them in the context of section 14(2)(i). When I view the appellant's argument as a whole, I understand him to be raising "inherent fairness issues", which is an unlisted factor that I will address below.

[52] I have also considered the arguments of the police that section 14(2)(i) ought to apply to weigh in favour of privacy protection; however, I do not agree. While the police argue that disclosure of the withheld personal information may unfairly damage the reputation of the affected parties, the police have not explained why this damage would be unfair. The applicability of section 14(2)(i) is not dependent solely on whether the damage or harm envisioned by this clause is present or foreseeable. This consideration is only relevant in circumstances where the damage or harm would be "unfair" to the individual involved.<sup>10</sup> Therefore, I find that the section 14(2)(i) factor does not apply, and I give it no weight in my consideration of whether disclosure of the withheld information would be an unjustified invasion of the affected parties' personal privacy.

#### *Unlisted factors*

[53] As referenced above, there is a consistent thread in the appellant's arguments – that there is an inherent fairness principle at stake that ought to weigh in favour of disclosure. It is the appellant's position that he requires the withheld personal information to understand the allegations made against him. After reviewing the withheld personal information and considering the circumstances of this appeal, I accept the appellant's submission in this regard and conclude that it raises inherent fairness issues, which is an unlisted factor that has been found to weigh in favour of disclosure. Previous IPC orders have held that individuals who face accusations are entitled to know the case which has been made against them.<sup>11</sup> In this appeal, while the allegations did not result in charges being brought against the appellant, it resulted in a police investigation being conducted. Therefore, there is reason to conclude that the appellant is entitled to know the allegations made against him, and I find that inherent fairness is an unlisted factor that applies to weigh in favour of disclosure.

#### *Summary*

[54] In the discussion above, I have found that none of the listed section 14(2) factors are relevant and need to be considered in the weighing of interests. However, I have found that inherent fairness is an unlisted factor weighing in favour of disclosure. I have also found that the section 14(3)(b) presumption applies to the personal information at issue.

[55] Considering the personal information at issue, weighing the relevant factors and balancing the interests of the parties, I am not persuaded that the appellant's desire to access the withheld personal information to understand the allegations made against

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<sup>10</sup> Order M-608.

<sup>11</sup> Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

him outweighs the privacy interests of the affected parties, whose personal information is contained in the reports. I find that disclosing the personal information at issue would result in an unjustified invasion of the personal privacy of the affected parties, and I find therefore that it is exempt under section 38(b).

[56] Before leaving this issue, I will consider whether my finding leads to an absurd result.

*Absurd result*

[57] The absurd result principle may apply where the appellant originally supplied the information at issue or is otherwise aware of it. Where circumstances are present, the information may not be exempt under section 38(b) because withholding the information might be absurd and inconsistent with the purpose of the exemption.<sup>12</sup>

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

- the requester sought access to their own witness statement,<sup>13</sup>
- the requester was present when the information was provided to the institution,<sup>14</sup> and
- the information was or is clearly within the requester’s knowledge.<sup>15</sup>

[59] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.<sup>16</sup>

[60] The appellant did not argue that the absurd result principle applies to the withheld personal information. However, the police withheld portions of their summary of the appellant’s statement, and the appellant claims that he knows the names of his accusers. As a matter of fairness, I have therefore considered whether the absurd result principle applies to these portions of the withheld personal information.

[61] The police submit that the absurd result principle does not apply.

[62] Based on my review of the specific portions of the withheld personal information, I find that the absurd result principle does not apply. While the appellant claims he knows who his accusers are, he also states that he wants access to the withheld names to confirm who they are. As such, it is not clear that the withheld names in the reports are within his knowledge even though he provided the names of people he believes may be his accusers.

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<sup>12</sup> Orders M-444 and MO-1323.

<sup>13</sup> Orders M-444 and M-451.

<sup>14</sup> Orders M-444 and P-1414.

<sup>15</sup> Orders MO-1196, PO-1679 and MO-1755.

<sup>16</sup> Orders M-757, MO-1323 and MO-1378.

[63] Some of the withheld personal information is also from the police's summary of the appellant's statement so I considered whether more of it should be disclosed under the absurd result principle. However, from the manner in which the police have summarized his statement, if the entire summary were disclosed, it would reveal information that is clearly not within the appellant's knowledge.

[64] Therefore, based on the circumstances of this appeal, I find it would not be absurd or inconsistent with the purpose of the section 38(b) exemption to withhold these portions of the personal information at issue.

*Section 38(b) conclusion*

[65] Since withholding the personal information at issue in this appeal would not be absurd, I find that the withheld personal information is exempt from disclosure pursuant to the discretionary exemption at section 38(b) of the *Act*, subject to my findings on the police's exercise of discretion below.

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

[66] The section 38(b) exemption is discretionary (the institution "may" refuse to disclose), 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.

[67] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

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

[68] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>17</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>18</sup>

[69] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:<sup>19</sup>

- the purposes of the *Act*, including the principles that:

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<sup>17</sup> Order MO-1573.

<sup>18</sup> Section 43(2).

<sup>19</sup> Orders P-344 and MO-1573.

- 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,
  - 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 of the police***

[70] The police state that they exercised their discretion under section 38(b) taking into account the following considerations:

- the appellant has a right to access his own personal information,
- the exemptions from the right of access are limited and specific,
- the privacy of individuals should be protected,
- the appellant is seeking his own personal information,
- the relationship between the appellant and the affected parties,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the appellant, or the affected parties, and

- the age of the information.

[71] The police state that they have met their obligation to the appellant and complied with his request. The police state that they have exercised their discretion after carefully considering and reviewing all relevant factors, and without prejudice.

***Representations of the appellant***

[72] The appellant submits that the police did not exercise their discretion to prevent an unjust result by applying the section 38(b) exemption to withhold the personal information at issue.

***Analysis and findings***

[73] After considering the representations of the parties and the circumstances of this appeal, I find that the police did not err in their exercise of discretion with respect to their decision to deny access to the withheld personal information under section 38(b) of the *Act*. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose.

[74] I am also satisfied that the police considered relevant factors, and did not consider irrelevant factors in the exercise of discretion. In particular, it is evident that the police considered the fact that the reports contain the appellant's own personal information, and I am satisfied that the police provided him with access to as much information as possible by applying section 38(b) in a limited and specific manner.

[75] Accordingly, I find that the police exercised their discretion in an appropriate manner in this appeal, and I uphold it.

**ORDER:**

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

Original Signed By: \_\_\_\_\_

Anna Truong  
Adjudicator

July 29, 2022