

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-4274

Appeal MA20-00555

Ottawa Police Service

November 17, 2022

**Summary:** The appellant sought access under the *Municipal Freedom of Information and Protection of Privacy Act* for Ottawa Police Service records created in response to complaints she filed with the police or were filed against her. The police granted the appellant partial access to responsive records, withholding some information on the basis that disclosure would constitute an unjustified invasion of personal privacy under section 38(b) of the *Act*. The police also claimed that a small portion of the records qualify for exemption under various law enforcement exemptions under section 38(a) in conjunction with 8(1) of the *Act*. Finally, the police claimed that certain records were excluded from the scope of the *Act* under section 52(2.1). The appellant appealed the police's access decision and claimed that additional records responsive to the request should exist.

In this order, the adjudicator upholds the police's decision to withhold the portions of the records under the personal privacy and law enforcement exemptions. She also finds that certain records are excluded from the *Act* under section 52(2.1) and that the police conducted a reasonable search for responsive records. The appeal is dismissed.

**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), 14(2)(d), 14(3)(b), 38(a), 38(b) and 52(2.1).

### OVERVIEW:

[1] This order addresses a decision of the Ottawa Police Service (the police) in response to a request under the *Municipal Freedom of Information and Protection of*

*Privacy Act (Act)* for records which relate to the appellant. In the request, the appellant stated:

I request a full disclosure of any reports, calls, records, correction, entry by police under my name. I request 911 calls record (audio) and the level of sharing fraudulent information about me as [a] dangerous person in country wide police services.

I request disclosure of any alleged investigation or meeting with any civilians or police officer or employees with regard to my name.

I request disclosure of any "mental status" comments made about me.

I request disclosure of interactions made with victims of crime units, both by me and police services.

Note – level of sharing means the jurisdictions the police shared with information (by fraud) about me.

[2] The police issued an interim fee decision requesting a fee of \$300 before they would proceed with the request. The appellant appealed the police's decision to the IPC and a mediator was assigned to explore settlement with the parties.

[3] During the mediation, the police decided to waive their fee and issued an access decision granting the appellant partial access to the responsive records.

[4] The records which respond to the request relate to two matters involving a dispute between the appellant and her former landlord<sup>1</sup>, including a complaint from a realtor who was involved in the lease arrangement between the landlord and appellant.

### **Records related to the ongoing dispute (records 2 to 13)**

[5] Initially, the police was called to a residence in which the appellant resided on March 26, 2019. No criminal charges were laid in response to the police's attendance to the residence on that date. The police were called on subsequent occasions by the appellant or landlord. No charges resulting from these calls were laid though several occurrence reports and other police records were created, which comprise of records 3 to 13. Also included in this batch of records is a complaint the police received from the realtor who was involved in facilitating the lease arrangement between the parties (record 2). The portions of record 2 disclosed to the appellant indicate that the police identified the realtor by name to the appellant and discussed the realtor's allegations with the appellant. No charges were laid in connection with the realtor's complaint.

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<sup>1</sup> The term landlord in this order refers to three individuals. The residence the appellant rented is owned by the mother and father of an adult child. Most of the police's interaction with the landlord is which the adult child. However, in some cases the police was provided information from the parents.

[6] The police disclosed most of the information in records 2 to 13 to the appellant. For the remainder of this order, I will refer to these records as the ongoing dispute records. The police claim that most of the withheld portions of these records qualify for the personal privacy exemption under section 38(b).

[7] The police also claim that a small portion of the withheld portions of these records qualify for exemption under section 8(1)(law enforcement information). There are two types information the police identified in the severed copy of the records provided to the IPC. The first type of information identified are ten-codes and/or other numerical codes (police code information). The IPC has consistently found this type of information exempt under section 8(1)(l)(facilitate commission of an unlawful act). I have reviewed the file contents, along with the appellant's representations and am satisfied that the appellant did not specifically request access to the police code information. In any event, I am satisfied that this information qualifies for exemption under section 8(1)(l). The police also identified a small portion of record 9 as not responsive to the request. I have reviewed this information and am satisfied that it does not respond to the appellant's request. Accordingly, I have removed this information along with the police code information from the scope of the appeal.

[8] The second type of information, the police claim qualifies for exemption under section 8(1) are notations made by officers contained in records 6, 7, 8, 10, 11, 12 and 13. The police provided confidential representations to support their position that these portions of the records qualify for exemption under sections 8(1)(a), (b), (g) and/or (i). Based on my review of the appellant's representations, I am satisfied she wishes to pursue access to this information.

### **The court house incident records**

[9] Record 1 relates to an incident between the appellant and the landlord at a courthouse on April 23, 2019. This incident resulted in charges being laid against the appellant. For the remainder of this order, I will refer to this incident as the courthouse incident. The police take the position that the *Act* does not apply to these records under section 52(2.1) by reason that the prosecution related to the charge has not been completed.

### **Further searches conducted during mediation**

[10] Also during mediation, the police agreed to conduct a further search for an audio recording of a 911 call the complainant made to the police. In a supplementary access decision to the appellant, the police confirmed that their further search for this audio recording did not locate any records.

[11] At the end of mediation, the appellant confirmed that she remained unsatisfied with the police's search efforts as she believed that additional records should exist. The appellant also took the position that she is entitled to access all information the police

withheld under an exemption or exclusion under the *Act*.

### **File transferred to adjudication**

[12] The file was subsequently transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry. An inquiry proceeded and the parties were invited to provide written representations in support of their position, which they did. The non-confidential portions of the police's representations were shared with the appellant in accordance with the confidentiality criteria set out in the IPC's *Practice Direction 7 on the sharing of representations*. The appellant requested that her written representations not be shared with the ministry. In addition to her 2-page written representations, the appellant submitted emails and attachments which she also asked to be considered as her submission.<sup>2</sup>

[13] The file was subsequently assigned to me to continue the adjudication of the appeal. Upon my assignment, I reviewed the representations submitted by the parties to the previous adjudicator. I also accepted further submissions from the appellant.<sup>3</sup> In addition, I wrote to the police to inquiry about the status of the prosecution matter.

[14] In this order, I uphold the police's access decision and find that the withheld portions are either subject to the personal privacy exemption under section 38(b) or law enforcement exemption under section 38(a) in conjunction with section 8(1)(a). I also find that the exclusion at section 52(2.1) applies to the courthouse incident records and find that the police conducted a reasonable search for responsive records.

### **RECORDS:**

[15] The records at issue are described in the following chart

Number	General description of record	Exclusion or exemption claim	Number of pages	Information withheld
1	General occurrence report relating to courthouse incident on April 23,	52(2.1)	37 pages	Entire record

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<sup>2</sup> The appellant's 2-page representations were sent to the IPC on August 26, 2021 and were accompanied by an email which attached several documents including a court document, dated August 17, 2021.

<sup>3</sup> The appellant's further submissions were sent by email on October 16, 2022 and included attachments.

	2019.			
2	General occurrence report relating to realtor's complaint to police on January 7, 2019.	38(b) (Personal privacy exemption)	8 pages	Name, contact information of complainant along with information complainant told the police.
3	General occurrence report relating to appellant's complaint to police reported on March 29, 2019.	Personal privacy exemption	9 pages	Name, contact information of landlord along with information the landlord told the police.
4	General occurrence report related to landlord's complaint about appellant reported on May 30, 2019.	Personal privacy exemption	13 pages	Name, contact information of complainant and other individuals along with information they told police.

5	General occurrence report related to appellant's complaint to police about landlord reported on April 19, 2019.	Personal privacy exemption	9 pages	Name and contact information of landlord withheld.
6	General occurrence report related to appellant's complaint about landlord reported, September 5, 2019.	38(a) in conjunction with sections 8(1)(a), (b), (g), and/or (i) (Law enforcement exemption)	13 pages	Notations made by the police.
7	General occurrence report related to complaint appellant filed with the police on December 17, 2019.	Law enforcement exemption	7 pages	Notations made by the police.

8	General occurrence report, handwritten officer's notes and other documents provided to police related to their attendance to the residence on March 26, 2019.	Personal privacy and law enforcement exemptions	55 pages	Names and contact information of complainants along with information they provided the police including documents related to tenancy (pages 20-32, 37, 38 and removal sent to the complainant (pages 12-19, 33-34 along with "law enforcement" notations made by police.
9	General occurrence report and handwritten notes relating to police response to disturbance reported at a bank involving the appellant and landlord on May 6, 2019	Personal privacy and law enforcement exemptions	13 pages	Name, contact information of landlord along with information the landlord and a bank employee told the police along with "law enforcement" notations made by police.

10	General occurrence report related to appellant's complaint to police reported on December 12, 2019 about landlord.	Personal privacy and law enforcement exemptions	8 pages	Name and contact information of landlord and "law enforcement" notations made by the police.
11	General occurrence report and handwritten officer's notes related to appellant's complaint about landlord reported on March 27, 2019.	Personal privacy and law enforcement exemptions	17 pages	Name and contact information of the landlord and information he provided to police when questioned along with "law enforcement" notations made by the police.
12	General occurrence report related to appellant's complaint about landlord reported on July 2, 2019.	Personal privacy and law enforcement exemptions	7 pages	Name and contact information of landlord along with "law enforcement" notations made by the police.



13	General occurrence report related to appellant's complaint about landlord reported on November 22, 2019.	Personal privacy and law enforcement exemptions	7 pages	Name and contact information of landlord along with "law enforcement" notations made by the police.
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**ISSUES:**

- A. Does the section 52(2.1) exclusion for records relating to a prosecution apply to the courthouse records?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary personal privacy exemption at section 38(b) apply to the personal information of other individuals in the records?
- D. Does the discretionary exemption at section 38(a) in conjunction section 8(1)(a) apply to the records?
- E. Did the police properly exercise their discretion under sections 38(a) and (b)?
- F. Did the police conduct a reasonable search for records?

**DISCUSSION:**

**Issue A: Does the section 52(2.1) exclusion for records relating to a prosecution apply to the courthouse records?**

[16] The police take the position that the courthouse records are excluded from the application of the *Act* under the ongoing prosecution exclusion in section 52(2.1). As such, the records may not be obtained through an access request made under the *Act*. Section 52(2.1) states:

This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[17] In order for the exclusion in section 52(2.1) to apply, the party relying on section 52(2.1) must establish that:

1. there is a prosecution;
2. there is "some connection" between the record and a prosecution; and,
3. all of the proceedings with respect to the prosecution have not been completed.<sup>7</sup>

[18] The purposes of section 52(2.1) include maintaining the integrity of the criminal justice system, ensuring that the accused and the Crown's right to a fair trial is not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the sharing and publication of records relating to an ongoing prosecution.<sup>4</sup>

[19] The section 52(2.1) exclusion is generally claimed by an institution that is the prosecuting authority. The exclusion has not been limited to the Crown/prosecution brief, and has been found to apply to records in the control of investigating authorities and third parties.

[20] For the exclusion to apply, there must be "some connection" between the records and the case to be made by the prosecuting authority.<sup>5</sup>

[21] The police take the position that section 52(2.1) applies to these records because they relate to their investigation of the appellant concerning charges laid under the *Criminal Code*. The police submits that at the time of the request, proceedings related to the prosecution of the criminal matter had not concluded and that there is some connection between the records and the prosecution. In the non-confidential portions of the police's representations, they state that the "laying of the Criminal Code Charges and the ensuing Prosecution are all connected, as one event led to the other."

[22] I recently inquired with the police about the status of the prosecution matter. The police confirmed in writing that the prosecution related to the criminal charges laid was still pending.

[23] The appellant maintains that there is no prosecution or arrest warrant against her. In support of her position, the appellant provided the IPC with a copy of a police reference check form. I note that the date on the form is over a year after the courthouse incident is alleged to have taken. The appellant argues that the form is a "level 3 police check" which proves that there is no ongoing prosecution. I have reviewed the form the appellant provided and note that it is an application form in her own handwriting authorizing an educational agency to conduct a reference check. I also

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<sup>4</sup> *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991, March 26, 2010, Tor. Doc. 34/91 (Div. Ct.).

<sup>5</sup> *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25, and Order MO-3919-I.

note that the form is not from the police but another police agency in Ontario.

[24] The remainder of the appellant's representations on this issue focusses on her assertion that the police cannot claim that section 52(2.1) applies to her request for an audio call or other records related to the ongoing dispute. However, the police does not take the position that the ongoing dispute records (records 2 to 13) are the subject of a pending prosecution. Instead, the police claim that the withheld portions of the ongoing dispute records qualify for exemption under the *Act*.

[25] Turning back to the courthouse records (record 1), the police bears the burden of proof to establish that the exclusion in section 52(2.1) applies.<sup>6</sup> Specifically, the police must establish that: there is a prosecution; there is some connection between the records and the prosecution; and the prosecution is ongoing.

[26] Having regard to the representations of the parties and the records themselves, I am satisfied that the exclusion in section 52(2.1) applies to the courthouse records.

[27] First, I accept the police's evidence, that charges under the *Criminal Code* were laid against the appellant relating to the courthouse incident and as a result, a prosecution against her was commenced. In arriving at my decision, I reviewed the records, along with the appellant's evidence and find that the records themselves contradict the appellant's position that no charges were laid. The term "prosecution" in section 52(2.1) means proceedings in respect of a criminal or quasi-criminal charge brought under an Act of Ontario or Canada. A "prosecution" may include prosecuting a regulatory offence that carries "true penal consequences" such as imprisonment or a significant fine.<sup>7</sup>

[28] Second, for the exclusion to apply, there must be "some connection" between the records and the case to be made by the prosecuting authority.<sup>8</sup> Based on the police's evidence along with my review of the records I am satisfied that a connection exists between the courthouse records and a prosecution. The subject-matter of the records in question consist of the police's investigation of a *Criminal Code* complaint against the appellant including the gathering of evidence that may be used in the prosecution.

[29] Third, the phrase "in respect of" requires some connection between "a proceeding" and "a prosecution."<sup>9</sup> All proceedings in respect of the prosecution have been completed only after any relevant appeal periods have expired. Whether a

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<sup>6</sup> Orders MO-3316, MO-2439, and MO-3294-I.

<sup>7</sup> Order PO-2703.

<sup>8</sup> *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25, and Order MO-3919-I.

<sup>9</sup> *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25.

prosecution has been “completed” depends on the facts of each specific case.<sup>10</sup> As noted above, the police confirmed that a prosecution has not yet been completed. The appellant did not specifically address this issue in her representations. Instead, she argued that no charges were laid in relation to the incidents investigated by the police in the ongoing dispute records. In the absence of contrary evidence from the appellant, I am satisfied that the prosecution related to the courthouse incident is ongoing.

[30] I find that the exclusion in section 52(2.1) applies to the courthouse records. However, the exclusion only applies to these records only as long as proceedings in respect of the prosecution are ongoing. Accordingly, once the criminal trial has concluded and any appeal period related to it has expired, these records will be subject to the *Act*.<sup>11</sup> The appellant will then be able to make a new request for access to these specific records.

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

[31] Since the police have claimed the sections 38(a)/8(1) (law enforcement) and 38(b)/14(1) (personal privacy) apply, I must first decide whether the records contain “personal information,” and if so, to whom the personal information relates.

[32] 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.<sup>12</sup> Section 2(1) gives a list of examples of personal information. 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.”<sup>13</sup>

[33] 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 capacity is not considered to be “about” the individual.<sup>14</sup> See also sections 2(2.1) and (2.2), which state:

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

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

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<sup>10</sup> Order PO-2703.

<sup>11</sup> Order MO-3818.

<sup>12</sup> See the definition of “record” in section 2(1).

<sup>13</sup> Order 11.

<sup>14</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

dwelling and the contact information for the individual relates to that dwelling.

[34] 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.<sup>15</sup>

[35] 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.<sup>16</sup>

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

[36] The police take the position that the records contain personal information and that it is reasonable to expect that individuals can be identified if their personal information is disclosed. In the non-confidential portions of their representations, the police state:

The information is the mixed personal information of the Appellant, and multiple third parties. The personal information of these third parties contains their names, date of birth, sexes, addresses, contact information and their views and statements with respect to the law enforcement investigations. The third party information relates to individuals acting in a personal and business capacity. However, we would argue that although some of the affected parties initially acted in a business capacity, the context and details of these investigations were personal in nature.

[37] The police also confirmed that it disclosed to the appellant information she provided them about other individuals. For instance, in records 6 and 7 which relate to complaints the appellant filed with the police about the landlord, the police disclosed to the appellant the name and contact information of the landlord in instances where she provided this information to the police.

[38] The appellant’s representations do not specifically address this issue. Instead, her representations focus on her arguments in support of her position that the withheld information should be disclosed to her.

### ***Decision and analysis***

[39] As noted above, section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual,” and gives a list of examples. The examples provided in paragraphs (a), (d), (e) and (h) appear to describe the types of

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<sup>15</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>16</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

personal information at issue in this appeal.<sup>17</sup>

[40] I have reviewed the records along with the representations of the parties, and find that they contain the personal information of the appellant. Namely, information relating to her ethnic origin, age, sex (paragraph (a)) of the definition of "personal information" in section 2(1) along with information about her address and telephone number (paragraph (d)) along with her views of certain events involving other individuals (paragraph (e)) and her name appearing with other personal information (paragraph (h)).

[41] I am also satisfied that most of the withheld portions of the records which relate to other individuals constitute their personal information. Their information was provided to the police during the course of their investigation into complaints. Most of the withheld information relates to information the landlord or realtor provided the police when they filed complaints against the appellant. Though these individuals had a business relationship with the appellant, I am satisfied that the records themselves indicate that the nature of the complaints these individuals made to the police reveals something of a personal nature about them. Accordingly, I am satisfied that the withheld portions of the records relating to the landlord and realtor contain their personal information, including their age (paragraph (a)), address and telephone number (paragraph (d)), their views of certain events involving other individuals (paragraph (e)) and their name appearing with other personal information about them (paragraph (h)).

[42] The only instance I questioned whether an individual's name withheld in the record constituted their personal information is in record 9 which contains the full name of a bank employee. Record 9 relates to a complaint the police received about a disturbance at a bank involving the appellant and landlord. I am satisfied that information revealing the bank employee's age and sex constitutes their "personal information". However, it may be the case that the employee's full name does not constitute "personal information" as it appears in a business capacity. Unlike the withheld information relating to the landlord and realtor, the records themselves do not reveal whether disclosing the bank employee's name would reveal information of a personal nature. In addition, the representations of the parties did not specifically address this issue. Accordingly, before I consider ordering the police to disclose the bank employee's full name to the appellant, fairness dictates that I notify this individual

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<sup>17</sup> "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,  
(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,  
(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.

about the appeal and give them an opportunity to raise an objection regarding the potential disclosure of their name. However, before I notify this individual, the appellant is asked to confirm within 30 days of her receipt of this order if she even wants access to the bank employee's name in record 9.

[43] I will go on to determine whether the personal privacy exemption at section 38(b) applies to the withheld personal information relating to the landlord, realtor and bank employee.

**Issue C: Does the discretionary personal privacy exemption at section 38(b) apply to the personal information of other individuals in the records?**

[44] 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.

[45] 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.<sup>18</sup>

[46] 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 other individual's personal privacy.<sup>19</sup>

[47] Sections 14(1) to (4) provide guidance in deciding whether the information is exempt under section 38(b). If the information at issue fits within any of the paragraphs (a) to (f) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The parties have not claimed that any of the exceptions in paragraphs (a) to (e) apply, and I am satisfied that none apply in the circumstances of this appeal.

[48] Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. If any of the section 14(4) situations are present, then sections 14(2) and (3) need not be considered. The parties have not claimed that any of the situations in section 14(4) apply in the circumstances of this appeal and I am satisfied that none apply.

[49] In deciding whether either of the section 38(b) exemption or the section 14(1)(f) exception to the section 14(1) exemption applies, sections 14(2), (3) and (4) help in

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<sup>18</sup> However, the requester'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; Order PO-2560.

<sup>19</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

determining whether disclosure would or would not be an unjustified invasion of personal privacy.

[50] If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists other factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy.

[51] For records claimed to be exempt under section 38(b), the decision-maker must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in deciding whether the disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.<sup>20</sup> In this case, the police claim that the presumption at section 14(3)(b) and factor favouring privacy protection at section 14(2)(h) apply.

[52] As noted above, the appellant requested that her representations be withheld from the police. Accordingly, while I have taken her representations into account, I summarize below her position and argument only at a high level. The appellant's representations did not specifically refer to any of the factors favouring disclosure at section 14(2). The bulk of the appellant's representations address concerns related to police conduct. The IPC does not have the authority to review the conduct of the police in the discharge of police duties.

[53] The issue I am to determine is whether the police's access decision under the *Act* should be upheld. In support of her position that the withheld personal information should be disclosed to her, the appellant attached documents that do not appear to directly relate to the police's decision to withhold the information at issue under the *Act*. The documents appear to provide background information. One of the documents the appellant provided the IPC is a copy of a court document which says that the appellant sued both the landlord and police in separate civil proceedings. Accordingly, I am satisfied that the appellant's representations give rise to the possible application of the factor favouring disclosure at section 14(2)(d).

[54] Accordingly, I will go on to determine whether the presumption at section 14(3)(b) or the factors at sections 14(2)(d) or (h) apply in the circumstances of this appeal.

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

[55] The police take the position that the presumption at section 14(3)(b) applies because the records were created during the course of their investigation into a possible violation of law. Section 14(3)(b) states:

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<sup>20</sup> Order MO-2954.



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;

[56] Having regard to the records along with the representations of the parties, I am satisfied that the records were created as part of the police's investigation into a possible violations of law, namely *Criminal Code* offences. This presumption requires only that there be an investigation into a *possible* violation of law.<sup>21</sup> So, even if criminal proceedings were never started against the individual, section 14(3)(b) can still apply.<sup>22</sup>

[57] Accordingly, I find that the presumption at section 14(3)(b) applies to the withheld personal information.

***Do any of the section 14(2) factors apply?***

*14(2)(d): the personal information is relevant to the fair determination of requester's rights*

[58] This section weighs in favour of allowing requesters to obtain someone else's personal information where the information is needed to allow them to participate in a court or tribunal process.

[59] As noted above, the appellant's representations refer to civil proceedings she has commenced against the landlord and police. In addition, I note that in her communications with the IPC, the appellant references ongoing matters in the civil court. The appellant in these communications implies that disclosure of the withheld personal information to her would assist her in these proceedings.

[60] The IPC uses a four-part test to decide whether the factor at section 14(2)(d) applies. For the factor 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?

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<sup>21</sup> Orders P-242 and MO-2235.

<sup>22</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?<sup>23</sup>

[61] For section 14(2)(d) to be found a relevant consideration, the appellant's evidence must establish that all four parts of the test have been met.

[62] I have reviewed the records along with the representations of the parties and am not satisfied that the personal information at issue is significant to the determination of the right in question. I find that disclosure of the personal information at issue, such as the names and contact information of individuals filing complaints against the appellant along with any information they provided the police is not significant to the determination of the right in question.

[63] In addition, I am not satisfied that the withheld personal information at issue is required for the appellant to prepare for the civil proceedings or to ensure an impartial hearing. Accordingly, I find that parts 3 and 4 of the test have not been met.

[64] Even if I found that parts 1 and 2 of the test were met, the factor at section 14(2)(d) could not apply because all four parts of the test must be met. As a result, I find that the factor at section 14(2)(d) has no application in the circumstances of the appeal.

[65] Given my finding that the presumption at section 14(3)(b) applies but the factor favouring disclosure at section 14(2)(d) does not, it is not necessary that I also consider the factor favouring privacy protection at section 14(2)(h) (personal information supplied in confidence) claimed by the police.

[66] However, I considered the possible application of the absurd result principle and find that it does not apply in the circumstances. The "absurd result" principle has been applied when:

- the requester sought access to their own witness statement,<sup>24</sup>
- the requester was present when the information was provided to the institution,<sup>25</sup> or
- the information was or is clearly within the requester's knowledge.<sup>26</sup>

[67] Accordingly, the police might not be able to rely on the section 38(b) exemption if the appellant originally supplied the withheld personal information, or is otherwise

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<sup>23</sup> 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.).

<sup>24</sup> Orders M-444 and M-451.

<sup>25</sup> Orders M-444 and P-1414.

<sup>26</sup> Orders MO-1196, PO-1679 and MO-1755.

aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.<sup>27</sup> However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.<sup>28</sup>

[68] I find that there is insufficient evidence that the appellant is aware of the exact nature of the personal information at issue, other than the names and phone numbers of some individuals identified in the records. As noted above, the appellant had a business relationship with the landlord and realtor before the police became involved. Based on my review of the records the appellant is aware of the names of these individuals and may still have their phone numbers. However, the records do not suggest that the appellant was physically present when these individuals provided information to the police. Accordingly, there is insufficient evidence to establish that the withheld personal information is clearly within the appellant's knowledge.

[69] Furthermore, I find that no useful purpose would be served by me ordering the police to disclose the names of the landlord or the realtor where they appear in the records. Previous IPC decisions have consistently held that an institution is not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets," or "worthless" or "meaningless" information.<sup>29</sup> Having regard to the above, I find that the absurd result principle does not apply in the circumstances of this appeal.

[70] Accordingly, I find that the personal privacy exemption at section 38(b) applies to the personal information at issue and uphold the police's decision to withhold this information from the appellant.

**Issue D: Does the discretionary exemption at section 38(a) in conjunction section 8(1)(a) apply to the records?**

[71] The only information remaining at issue in this appeal, are the notations made by officers the police claim qualify for various law enforcement exemptions under section 8(1) in records 6, 7, 8, 10, 11, 12 and 13. As this information also constitutes the personal information of the appellant, I must determine the police's claim under section 38(a)<sup>30</sup>, which 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

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<sup>27</sup> Orders M-444 and MO-1323.

<sup>28</sup> Orders M-757, MO-1323 and MO-1378.

<sup>29</sup> See Order PO-1663, Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner), (1997), 2004 CanLII 39011 (ON CA), 192 O.A.C. 71 (Div Ct.)

<sup>30</sup> Section 38(a) of the *Act* 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, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

requesters access to their own personal information.<sup>31</sup>

[72] If the institution refuses to give an individual access to their own personal information under section 38(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[73] In this case, the police rely on section 38(a) in conjunction with section 8(1)(a)<sup>32</sup>, which states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to interfere with a law enforcement matter;

[74] The term "law enforcement"<sup>33</sup> is defined in section 2(1):

"law enforcement" means,

(a) policing,

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

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

***Sections 8(1)(a): interfere with a law enforcement matter***

[75] The IPC has found that "law enforcement" can include a police investigation into a possible violation of the *Criminal Code*.<sup>34</sup> Given the subject matter of the records, namely the police's investigation and responses to possible violations of law, I am satisfied that the records relate to law enforcement.

[76] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.<sup>35</sup> This exemption does not apply once the matter is completed, nor where the alleged interference is with "potential" law enforcement matters.<sup>36</sup>

[77] "Matter" has a broader meaning than "investigation" and does not always have to mean a specific investigation or proceeding.<sup>37</sup>

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<sup>31</sup> Order M-352.

<sup>32</sup> As I have found that section 8(1)(a) applies, it is not necessary that I also determine whether sections 8(1)(b), (g) and/or (i) apply, which were also claimed by the police.

<sup>33</sup> The term "law enforcement" appears in many, but not all, parts of section 8.

<sup>34</sup> Orders M-202 and PO-2085.

<sup>35</sup> Order PO-2657.

<sup>36</sup> Orders PO-2085 and MO-1578.

<sup>37</sup> *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC)

[78] The exemption does not apply just because a continuing law enforcement matter exists,<sup>38</sup> and parties resisting disclosure of a record cannot simply assert that the harms under section 8 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>39</sup>

[79] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>40</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>41</sup>

[80] As noted above, the police submitted confidential representations in support of their position that the withheld notations made by police officers qualified for exemption under section 8(1)(a). The portions of the police's representations shared with the appellant describe the withheld information as "sensitive information" if disclosed that "would compromise and interfere" with ongoing law enforcement matters and impede on the police's ability to conclude a matter.

[81] The appellant's representations do not specifically address the possible application of section 8(1)(a). However, as mentioned earlier in this order, the appellant takes the position that no ongoing prosecution could relate to records 2 to 13 (ongoing dispute records). The appellant asserts that no charges were laid against her as a direct result of the incidents reported in records 2 to 13. I have reviewed these records and confirm the appellant's assertion. However, the ongoing dispute between the landlord and appellant is the backdrop for the courthouse incident which resulted in charges being laid against the appellant. That matter is still ongoing and the police's efforts to bring that matter to prosecution is detailed in the withheld notations in records 6, 7, 8, 10, 11, 12 and 13.

[82] Having regard to the records themselves along with the confidential representations of the police, I am satisfied that the police has demonstrated that the risk of harm is real and that disclosure of the withheld information could reasonably be expected to interfere with an ongoing law enforcement matter.

[83] Given the confidential nature of the police's representations, I appreciate that my finding will frustrate the appellant. However, the law enforcement exemption must be

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<sup>38</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>39</sup> Orders MO-2363 and PO-2435.

<sup>40</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>41</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

approached in a sensitive manner, because it is hard to predict future events in the law enforcement context.<sup>42</sup>

[84] I uphold the police's decision to withhold this information from the appellant.

**Issue E: Did the police exercise their discretion under sections 38(a) and (b)? If so, should the IPC uphold the exercise of discretion?**

[85] The exemptions at sections 38(a) and (b) are discretionary (the institution "may" refuse to disclose), meaning that the police 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.

[86] 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.

[87] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>43</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>44</sup>

[88] The information I found exempt in the records relate to the appellant and other individuals or the law enforcement exemption applies to it.

[89] The appellant did not submit representations specifically addressing this issue though it is clear that she takes the position that she should have access to any and all information which pertains to her contained in the records.

[90] The police take the position that they properly exercised their discretion and in doing so took into consideration relevant factors. The police also submit that they exercised their discretion in good faith and did not take into account irrelevant factors. In support of this position, the police indicate that they took into account the following factors in the circumstances of this appeal:

- individuals should have a right of access to their own personal information,
- the relationship between the requester and any affected persons, and

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<sup>42</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>43</sup> Order MO-1573.

<sup>44</sup> Section 43(2).

- the privacy of individuals should be protected.

[91] Also based on my review of the police's representations and manner the records were severed, I am satisfied that the police considered the principle that exemptions from the right of access should be limited and specific when applying the law enforcement exemption. I am also satisfied that the police balanced the nature of the information at issue and the extent to which it is significant and/or sensitive to the police and other parties.

[92] Having regard to the above, I find there is insufficient evidence to demonstrate that the police exercised their discretion to withhold the personal information at issue in bad faith or for an improper purpose. Accordingly, I find that the police properly exercised their discretion to withhold the information I found exempt under sections 38(a) and (b).

[93] As a result, I uphold the police's decision to deny the appellant access to the withheld personal information at issue.

#### **Issue F: Did the police conduct a reasonable search for records?**

[94] 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;<sup>45</sup> that is, records that are "reasonably related" to the request.<sup>46</sup>

[95] The appellant takes the position that the police's search failed to locate responsive records. During mediation, the appellant said that additional records should exist and the police agreed to conduct a further search for the audio recording of the 911 call the appellant said she made on March 26, 2019.

[96] The police subsequently issued a supplemental decision<sup>47</sup> to the appellant confirming that the requested audio recording does not exist.

[97] In her representations, the appellant takes the position that the requested audio recording should exist. The appellant also submits that the police should have located records which identify her as "dangerous" along with video records which would prove that she was "tortured."

[98] 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*.<sup>48</sup> If the IPC is satisfied that the search

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<sup>45</sup> Orders P-624 and PO-2559.

<sup>46</sup> Order PO-2554.

<sup>47</sup> Dated, March 26, 2021.

<sup>48</sup> Orders P-85, P-221 and PO-1954-I.

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.

[99] The appellant's request sought access to "full disclosure any reports, calls, records, correction, [entry by the] police under [her] name". In her request, the appellant also referenced the audio 911 call<sup>49</sup> and any records containing comments that she was "dangerous" or discussed her "mental status". She also requested records relating to any meetings or investigations with "civilians or police officers or employees with regard to [her] name. Finally, the appellant asked for records related to any contact she had with the police's victim of crime unit.

[100] During the inquiry, the police was asked to provide a written explanation of all the steps they took in response to the request. The police submitted an affidavit to the IPC with their representations in support of their position that their searches for records which would respond to the request were reasonable.

[101] The police's affidavit says that the searches were conducted by a senior analyst in their records department. The police indicate that electronic queries were made to their computer database system and the Records Management System (RMS). In addition, the analyst reported that he contacted several police officers to inquire about any additional records that may exist. The analyst states that "[a]fter searching our database, reviewing the records, and contacting several involved officers, it was determined that no additional records existed."

### ***Decision and analysis***

[102] 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.<sup>50</sup> 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.<sup>51</sup>

[103] 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.<sup>52</sup> I have reviewed the appellant's confidential evidence and am not satisfied that she has provided a reasonable basis for concluding that additional records exist. The wording of the request itself reveals that the appellant takes the position that certain meetings or related investigations took place which she thinks should have resulted in additional records. The appellant also alleges in the

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<sup>49</sup> At times, in her representations, the appellant refers to her request for the 911 audio call in the plural. However, the appellant's own evidence suggests that she called 911 on more than one occasion on March 26, 2019.

<sup>50</sup> Orders M-909, PO-2469 and PO-2592.

<sup>51</sup> Order MO-2185.

<sup>52</sup> Order MO-2246.



request that certain police officers labelled her as "dangerous" and suggests that records relating to this characterization should exist.

[104] Conversely, the police provided an explanation of the steps it took to locate responsive electronic and paper records. I find that the police's searches were coordinated and completed by an experienced individual, who was knowledgeable in the subject matter of the request and the police's record management systems. I acknowledge that in this case it would have been helpful if the police provided a more fulsome explanation as to why it could not locate the requested 911 audio recording. However, I note that the appellant's request for this record was submitted to the police approximately 15 months after the call was made to the police.<sup>53</sup> In any event, the police agreed to conduct a further search for this record during mediation and they concluded that this record does not exist in their record holdings. Accordingly, I find that the police's explanations satisfactory and find that there is sufficient evidence before me to conclude that the police demonstrated that it expended a reasonable effort to locate records that would be responsive to the request.

[105] As stated above, the *Act* does not require the police to prove with certainty that further records do not exist. Instead, the police must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>54</sup> Having regard to the representations of the parties and the police's second search for the audio recording, I am satisfied that the police conducted a reasonable search for responsive records.

### ***Summary***

[106] I uphold the police's decision to deny the appellant access to the records and find that the police's search for responsive records was reasonable. If the appellant wants to pursue access to the bank employee's name in Record 9, she must provide written notice of same to the IPC within 30 days of her receipt of this order.

### **ORDER:**

The appeal is dismissed.

Original Signed by: \_\_\_\_\_

Jennifer James  
Adjudicator

November 17, 2022  
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<sup>53</sup> The records themselves evidence that the appellant called 911 on the day in question and the police responded to the call.

<sup>54</sup> Orders P-624 and PO-2559.