

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4422

Appeal MA22-00416

Ottawa Community Housing Corporation

August 15, 2023

Summary: The appellant seeks access to security camera footage at her residential building from the Ottawa Community Housing Corporation (the OCH). The OCH denied the appellant access to the videos she requested on the basis that disclosure would be an unjustified invasion of personal privacy of the other people who appear in the videos. The OCH relied on sections 14(1) and 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act*, which relate to personal privacy.

In this decision, the adjudicator orders the OCH to provide the appellant with a copy of a portion of a video that she appears in, as well as one other complete video where no other people appear. The adjudicator upholds the OCH's decision to deny the appellant access to the remaining videos.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 10(2), 14(1), 38(b).

OVERVIEW:

[1] A tenant made a request to the Ottawa Community Housing Corporation (the OCH) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of CCTV video surveillance footage of the lobby of her residential building and the 20th floor, where her apartment is located. The tenant also asked the OCH to answer various questions and provide additional information.

[2] The OCH denied the tenant access to the videos. It said that the videos contained other people's personal information and that it could not give that information to the tenant because of section 14(1) of the *Act*. Section 14(1) of the *Act* protects individual personal privacy in certain situations, which will be discussed further in this decision.

[3] The OCH provided some information in response to the tenant's request for additional information. It withheld other information and said that it could not locate responsive records for some parts of the tenant's request.

[4] The tenant (now called the appellant) appealed the OCH's decision to the office of the Information and Privacy Commissioner/Ontario (the IPC).

[5] An IPC mediator was assigned to the appeal and they spoke with the appellant and the OCH to try to resolve some of the issues. The appellant told the mediator that she wanted to move the appeal to the adjudication stage of the appeals process because she wanted the IPC to order the OCH to provide her with copies of the videos.¹

[6] I am the adjudicator assigned to this appeal. I started a written inquiry, as set out in the *Act*. I sent a Notice of Inquiry to the OCH. In the Notice of Inquiry, I added section 38(b) of the *Act* as an issue. I did this because the appellant appeared in one of the videos and as a result, her own personal information might also be at issue. I asked the OCH to provide its reasons for denying the appellant access to the videos. The IPC calls these reasons "representations."

[7] I received representations from the OCH. I sent them to the appellant with a Notice of Inquiry that explained the issues in the inquiry and I asked that the appellant submit representations in response, which she did.

[8] In this decision, I uphold the OCH's decision to withhold the majority of the videos. I find that one of the videos does not contain anyone's personal information and I order the OCH to disclose it to the appellant. I uphold the OCH's decision that the remaining videos contain other people's personal information and that disclosure would be an unreasonable invasion of their personal privacy. However, I find that some portions of the video that the appellant appears in can be severed and disclosed to the appellant pursuant to section 10(2) of the *Act*.

RECORDS:

[9] There are 65 separate video recordings of CCTV security footage at issue in this inquiry. In this decision, I refer to them as "the videos." The videos include the following:

¹ The appellant confirmed with the mediator that she did not wish to pursue access to any of the other information she requested.

- one video recording of partial hallway of a 20th floor of the residential complex on March 26, 2022;
- 30 video recordings of the lobby of the residential complex on April 7, 2022; and
- 34 video recordings of the lobby of the residential complex on April 25, 2022.

ISSUES:

- A. Do the videos contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- B. If the videos contain other people’s personal information, does the mandatory personal privacy exemption at section 14(1) or the discretionary exemption at section 38(b) of the *Act* apply to the videos?

DISCUSSION:

[10] Both the appellant and the OCH made representations about why the videos should or should not be disclosed. I will provide an overview of each party’s representations now.

The OCH’s representations

[11] The OCH provided some background information about the videos. It says that the recording technology at the residential building is motion sensitive and starts recording when movement is detected and stops after there is no motion for some time. The OCH says that it collects the recordings temporarily for the safety of tenants and the security of the residential building. It says that it does not otherwise permanently keep the video footage.

[12] The OCH says that recordings will be kept if an access to information request is made before the footage is recorded over, or if there is an incident that requires investigation.

[13] The OCH told the IPC that although signs indicate that some of the common areas of the residential building are recorded, it does not have consent from the people entering the building to disclose the videos.

[14] The OCH says that the videos from April 7, 2022 and April 25, 2022 show tenants and/or guests entering or leaving the residential building or waiting in the lobby. The OCH says that the appellant is not in any of these videos. The OCH says that the appellant would be able to identify the tenants and their activities at the residential building in the videos and that this would constitute an unjustified breach of their

personal privacy, as set out in section 14(1) of the *Act*.

[15] The OCH denies that the videos show any significant information affecting the health or safety of the appellant that would allow the release of the information pursuant to section 14(1)(b) of the *Act*.

The appellant's representations

[16] The appellant denies that there is personal information in the videos. Specifically, she says that there are no names or addresses included. She says that the videos are related to discriminatory acts that were committed against herself and possibly others.

[17] She says that some of the videos contain her own personal information as there is a security camera by her front door.

[18] The appellant says that there is elder abuse and discrimination against herself and other seniors and those with disabilities taking place at the residential building. She says that she provided additional information about these issues to the IPC mediator previously assigned to this appeal. She also says that she has filed police reports regarding incidents of harassment and discrimination, including theft by her landlord, and that the police are investigating these matters. The appellant submits that she requires the videos to further substantiate her claims.

[19] In support of her representations, the appellant refers me to a CBC news article from 2022 about the OCH called "Living in Fear."² The appellant says that since the CBC's article was published, matters have become even worse and that tenants have started a petition against the OCH in regards to the ongoing issues.

[20] The appellant says that the videos will provide the opportunity for public scrutiny of the OCH and assist with a complaint she may make to the Ontario Human Rights Tribunal to address ongoing discrimination against the elderly, people with disabilities, and minorities at the residential building.

[21] The appellant says her health, safety and mental well-being, and that of other seniors and minorities in her building, will be jeopardized if the videos are not disclosed. Additionally, she says that the videos will assist in holding the people in them "to account."

[22] Finally, the appellant says that the videos should be provided to her as an accommodation for her disability and that not being provided access to the videos will greatly exacerbate her disability related symptoms.

² I located the following article, which I understand is the one the appellant referred to: <https://www.cbc.ca/newsinteractives/features/ottawa-community-housing-safety>

The appellant says that the videos relate to a fair determination of her rights, and that because she is a person with a disability, the IPC has a duty to accommodate her under the Ontario Human Rights Tribunal Code.

ISSUE A: Does the video footage at issue contain “personal information” and, if so, whose personal information is it?

Background information about the Act

[23] In order to decide which sections of the *Act* apply in this case, I must first decide whether the videos contain “personal information” and if they do, I must determine who that personal information belongs to.

[24] 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.³

[25] Information is “about” an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

[26] Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁴

[27] Information is about an “identifiable individual” if it is reasonable to expect that they can be identified from the information either by itself or if combined with other information.⁵

[28] It is important to know whose personal information is in the record. If the record contains the appellant’s own personal information, her access rights are greater than if it does not.⁶ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁷

Analysis and findings

[29] I have reviewed all of the videos and I find that with the exception of one video, all of the videos from the lobby of the building contain other people’s “personal

³ See the definition of “record” in section 2(1).

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁶ 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.

⁷ See sections 14(1) and 38(b).

information,” as defined in section 2(1) of the *Act*. I find that the video of the appellant’s hallway contains the mixed personal information of the appellant and another individual. Below, I explain why I make these findings and what it means.

[30] The videos are surveillance tapes from the appellant’s apartment building and contain images of people entering and leaving the lobby of the building, or passing a video camera in the hallway on the appellant’s floor. Consistent with past orders of this office, I find that the images contained in the videos fit within paragraph (h) of the definition of personal information in section 2(1) of the *Act*.⁸

[31] Paragraph 2(1)(h) says that recorded information fits within the definition if it reveals other “personal information” about an individual. In this case, the videos show people entering or exiting the apartment building, or a specific floor, at a particular date and time. The videos capture the individuals, who they were accompanied by, what they were wearing (for example, protective face masks), and whether they used mobility aids. In many cases, the images of the individuals are clear. Their faces are visible, as well as their clothes, any items they are carrying, or animals they may be accompanied by. All of this information is information that is personal to those individuals.

[32] The images captured on the video also reveal various information under paragraph (b) of the section 2(1) definition of personal information, including some individual’s age, colour, ethnicity, race, age and/or their sex.

[33] Some of the videos show people who appear to be working in the building. For example, they may bring in tools or are shown mopping a floor. Above I noted that recorded information about people doing their jobs is not typically considered personal information. In this case, I find that this is personal information for a number of reasons.

[34] First, I note that in some cases it is not possible to tell whether the individuals are working in the building or if they live in the building and are leaving for the day or arriving home. Furthermore, in many cases, the individuals are not actively working, but instead are waiting in the lobby for the elevator, looking at their phone, or talking to others. In my view, the images captured on the videos are personal to those people.

[35] However, one of the videos does not contain any personal information because no one appears in the recording. It seems that the surveillance camera was set off by movement other than by a person. As this specific video does not contain any personal information, the OCH must provide a copy to the appellant.⁹

[36] The OCH stated, and I accept, that the appellant does not appear in any of the videos in the lobby. As such, I find that the lobby videos contain only the personal

⁸ Orders MO-3155, HO-005 and PO-2477.

⁹ This video is labelled: Lobby_2022-04-07_7-58-38 AM.

information or other individuals.

[37] However, the video taken on the 20th floor of the residential building includes the appellant's image. It also includes footage of another individual walking down the hallway and entering and exiting a staircase. The person's face is visible and as such, they can be identified. For the reasons set out above, I find that this information is the individual's personal information. As a result, the video of the 20th floor contains the mixed personal information of the appellant and another individual and I will consider whether the discretionary exemption at section 38(b) of the *Act* applies.

[38] For the remaining videos, those that do not include the appellant's personal information, I will consider whether the information is exempt from disclosure under the mandatory exemption at section 14(1) of the *Act*.

ISSUE B: Does the mandatory personal privacy exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

Background information about the Act

[39] The personal privacy exemptions under the *Act* are *mandatory* under section 14(1) and *discretionary* under section 38(b). This means that if a record contains the personal information of both the appellant and another individual, section 38(b) allows an institution to disclose information that it could not disclose if the exemption at section 14(1) applied.¹⁰

[40] The mandatory personal privacy exemption at section 14(1) of the *Act* says the following:

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

If the disclosure does not constitute an unjustified invasion of personal privacy.

[41] This means that where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure *does not* constitute an "unjustified invasion of personal privacy."

[42] However, under section 38(b), where a record contains personal information of both the requester and another individual, and if disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution *may* refuse to disclose that information to the requester. This means the

¹⁰ See Orders MO-1757-I and MO-2800.

institution can decide to exercise its discretion to disclose the information to the requester. This decision involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy. For section 38(b) to apply, on appeal I must be satisfied that disclosure of the information *would* constitute an unjustified invasion of another individual's personal privacy.

[43] In determining whether the exemptions in sections 14(1) or 38(b) apply, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the OCH to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under sections 14(1) or 38(b).

Do any of paragraphs (a) to (e) of section 14(1) apply to the videos at issue in this appeal?

[44] As explained above, if the personal information at issue fits within any of paragraphs (a) to (e) of section 14(1) of the *Act*, it is not exempt from disclosure.

[45] The appellant suggests that 14(1)(b) applies. She argues that the videos would allow for individuals to be "held account" and that it is an urgent public safety concern. She referred me to the CBC news article about safety concerns in OCH properties and says that there is elder abuse taking place in the building she lives in.

[46] The purpose of section 14(1)(b) is to permit the disclosure of potentially significant information affecting the health or safety of an individual.¹¹ In order to find that there are "compelling circumstances affecting the health or safety of an individual," it must either be self-evident, or evidence must be provided, to demonstrate that the release of the information could reasonably be expected to assist in resolving, or provide critical information regarding, any health or safety issues.¹²

[47] In this case I find that section 14(1)(b) does not apply because the appellant has not provided an explanation about *how* the release of the video footage would allow for anyone to be held account for the health and safety issues she has raised. I have reviewed all of the videos and am unable to see how any of the images captured would be helpful in that regard. As a result, I find that section 14(1)(b) does not apply.

¹¹ Order PO-2541.

¹² Order MO-3247 at para. 62.

Section 14(1)(f)

[48] This exception to the section 14(1) exemption applies “if the disclosure does not constitute an unjustified invasion of personal privacy.” The factors and presumptions in sections 14(2) and (3) help in making this determination.

[49] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14 and the information cannot be disclosed. Section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies.¹³ I have considered the presumptions against disclosure under section 14(3) and I find that none apply.

[50] Since none of the presumptions in section 14(3) apply, the next step is to move to section 14(2). Section 14(2) lists various factors that could be relevant in determining whether the disclosure of the videos would constitute an unjustified invasion of personal privacy.¹⁴

[51] Some of the 14(2) factors weigh in favour of disclosure and some weigh against disclosure. In order to find that disclosure does not constitute an unjustified invasion of personal privacy, factors or circumstances favouring disclosure under section 14(2) must apply. If none of the factors favouring disclosure apply, the exception in section 14(1)(f) is not established, the mandatory section 14(1) exemption applies, and the videos cannot be disclosed.¹⁵

[52] The appellant says the following factors are relevant:

- 14(2)(a): disclosure is desirable for public scrutiny;
- 14(2)(b): disclosure may promote public health and safety; and
- 14(2)(d): the personal information is relevant to the fair determination of requester’s rights.

[53] I find that neither 14(2)(a) or (b) apply. As I stated above for section 14(1)(b), the appellant has not explained *how* the content in the videos would have the effect she claims. I have reviewed each video and I see nothing in the recordings that, on the face of it, would either subject the OCH to scrutiny or promote public health and safety. The footage is comprised of people entering and/or leaving the building. Some people are waiting inside, and some come and go from other doors in the lobby. Without any additional context about why the appellant believes any of this footage would assist with the purposes of sections 14(2)(a) or (b), I am not satisfied that it would. As a

¹³ Section 14(4) lists situations that would not be an unjustified invasion of personal privacy. However, I confirm that based on my review none of these situations apply. I will consider the public interest override at section 16 of the *Act* later in this decision.

¹⁴ Order P-239.

¹⁵ Orders PO-2267 and PO-2733.

result, I find that neither of the factors in 14(2)(a) or (b) apply.

[54] With regard to section 14(2)(d), 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. In order for this section to apply, there must be a legal proceeding ongoing and the personal information at issue must be significant to that proceeding.

[55] In this case, the appellant says that a complaint might be filed with the Ontario Human Rights Tribunal. She also refers to a form that can be filled out with the Landlord Tenant Board and says that police reports that have been filed and investigations are taking place. However, the appellant has not provided any evidence or indication that there are any active or ongoing proceedings. As a result, I find that section 14(2)(d) does not apply.

[56] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors favouring disclosure in section 14(2) must be established. In the absence of factors favouring disclosure, the exception in section 14(1)(f) is not established, and the mandatory section 14(1) exemption applies. Since I have found that there are no factors favouring disclosure of the information at issue, I find that the exception in section 14(1)(f) does not apply and the mandatory section 14(1) exemption applies to the information at issue.

Video footage from the 20th Floor

[57] As noted above, the video of the 20th floor contains the mixed personal information of the appellant and another individual. Because the video includes the appellant, a different analysis is required under the *Act*.

[58] Section 36(1) of the Act gives individuals a general right of access to their own personal information held by an institution. However, section 38(b) says that where a record contains personal information of both a requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.¹⁶

[59] The 20th floor video is the only record that section 38(b) applies to. The video is 14 minutes and 43 seconds long. During the first minute, a person enters the 20th floor through a stairway entrance and walks down the hallway and exits the camera's view. After the individual exits the video, the appellant opens the door to her apartment and enters the hallway at 1:04. The appellant re-enters her apartment and closes the door at 1:37. At 1:38, the other individual enters the hallway again and exits through the

¹⁶ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

stairway at 1:42. The other individual does not return to the hallway again and the remaining video footage includes only the appellant. No one else appears in the remainder of the footage.

[60] There is nothing in the video out of the ordinary. The individual does not stop or linger at the appellant's door. They simply enter and exit the door to the stairs. I see nothing in the video that would meet the criteria in sections 14(2)(a) or (b). As such, I find that these sections do not apply.

I find that no other factors in favour of disclosure apply and I agree with the OCH that disclosing the entire video would reveal personal information about an identifiable individual.

[61] Based on the OCH's representations, I accept that it considered whether it could disclose the 20th floor video footage to the appellant pursuant to section 38(b). The OCH said that it considered section 38(b) but ultimately determined that disclosing the video would constitute an unjustified breach of the other individual's privacy. The OCH stated that in its view, the video in question did not show any significant information affecting the health or safety of the appellant that would weigh in favour of releasing the footage.

[62] After considering the OCH's representations and the circumstances of this appeal, I find that the OCH has not erred in its exercise of discretion with respect to its application of section 38(b) of the *Act*. I am satisfied that it did not exercise its discretion in bad faith or for an improper purpose. I am also satisfied that it did not take into account irrelevant factors in the exercise of its discretion. Accordingly, I find that the OCH exercised its discretion in an appropriate manner, and I uphold its exercise of discretion in this appeal.

[63] However, as explained in the Notice of Inquiries sent to the parties at the beginning of this inquiry, section 10(2) of the *Act* requires that the OCH consider whether the record could be severed such that it could be disclosed without revealing personal information. An institution has a duty to disclose as much of a record as can reasonably be severed without disclosing exempt information.¹⁷

[64] Given that the appellant and the other individual do not appear in the video at the same time, I find that the OCH can sever the portions of the video where the other individual appears and provide the appellant with a copy of the remaining footage and I will order it to do so below.¹⁸

¹⁷ Section 10(2) of the *Act*.

¹⁸ See paragraphs 39 to 40 in Order PO-3476 for additional discussion of the application of section 10(2) to video footage.

Additional matters

[65] I note that the appellant says that the release of the video footage is a matter of urgent public interest concern. Section 16 of the *Act* states that section 14(1) does not apply if there is a compelling public interest in the disclosure of the record that clearly outweighs the purpose of the exemption. As such, if section 16 applies, the OCH would be required to disclose the video footage to the appellant.

[66] Having considered all of the information before me, I find that section 16 of the *Act* does not apply. I agree that the matters the appellant has raised in her representations, and in the news article she referenced, are a matter of public interest. However, it is not clear to me how the video footage the appellant seeks is connected to those matters. As noted earlier, I have reviewed all of the video footage and did not identify portions that would lend any evidence or information towards the matters raised by the appellant in her representations.

[67] I also note that during the inquiry stage, prior to submitting her representations, the appellant asked the Adjudication Review Officer assigned to this matter if IPC Order PO-3476 was relevant to her appeal and pointed out that an IPC adjudicator ordered the Landlord Tenant Board to provide an appellant with copies of video footage in that order.

[68] I have reviewed that order and while the circumstances are somewhat similar in that the appellant in that matter was also seeking access to security camera footage, there is a significant difference. In PO-3476, the appellant sought access to security camera footage from the waiting room of a Landlord Tenant Board Office and said that the footage would show a landlord's representative touching them in an inappropriate manner. After reviewing the video and the parties' representations, the adjudicator concluded that the image of the landlord's representative in the footage was "professional information," because that person was recorded in the course of their employments. The adjudicator concluded that the video was poorly lit and difficult to see, but was satisfied that it did not reveal anything of a personal nature about the landlord's representative. As a result, the adjudicator ordered the institution to provide the appellant with a copy of the footage.¹⁹

[69] In my view, the current scenario is different. As noted above, the appellant does not appear in the majority of the videos at issue and I found that those videos include other people's personal information. As for the one video of the hallway where the appellant does appear, I have found that video also contains another individual's personal information. There is no basis for me to conclude that the other person that appears in the video was working, or that the image constituted professional

¹⁹ I note that while the adjudicator ordered the institution to provide a copy of the footage with the appellant and the affected party, the adjudicator determined that the video also included other people's personal information and ordered that information to be obscured in the copy provided to the appellant to view.

information. As such, Order PO-3476 is not helpful in the determination of this appeal.

[70] In conclusion, I have determined that one of the videos from the lobby does not contain anyone's personal information and must be disclosed to the appellant. I find that the section 14(1) exemption for personal privacy applies to all of the remaining videos from the lobby and I uphold the OCH's decision to withhold them from the appellant. I find that the OCH properly exercised its discretion pursuant to section 38(b) to withhold the 20th floor hallway video from the appellant. However, I find that some portions of the video can be severed and disclosed to the appellant without revealing any information that is exempt pursuant to section 38(b) and I order the OCH to disclose those portions in Order Provision 1 below.

ORDER:

1. I order the OCH to provide the appellant copies of the following:
 - a. Lobby_2022-04-07_7-58-38 AM; and
 - b. The following portions of the video taken on the 20th floor of the residential building on March 26, 2022:
 - i. 1:04 to 1:36, and
 - ii. 1:43 to 14:43.
2. I uphold the OCH's decision to deny access to the remaining videos pursuant to section 14(1) of the *Act*.
3. In order to verify compliance with order provision 1, I reserve the right to require the OCH to provide me with a copy of the videos sent to the appellant.

Original signed by
Meganne Cameron
Adjudicator

August 15, 2023