

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4523

Appeal MA20-00450

Toronto Police Services Board

May 21, 2024

Summary: The Toronto Police Services Board (the police) received a request under the *Act* for access to records related to a specific incident on a Toronto Transit Commission (TTC) streetcar. The police granted 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 IPC and raised reasonable search as an issue. In this order, the adjudicator finds the police conducted a reasonable search, and partially upholds the police's decision to withhold some of the information. However, she orders the police to disclose additional information to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of *personal information*), 14(1), 14(3)(b), 17, and 38(b).

Orders Considered: Order MO-2318.

OVERVIEW:

[1] This order determines the issue of access to police records related to an incident on a Toronto Transit Commission (TTC) streetcar. The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the police's response to an incident involving the appellant on a TTC streetcar. The request specified a particular occurrence report and various records associated with the occurrence.

[2] The police granted partial access to the requested records, withholding information under section 38(b) (personal privacy) of the *Act* and information that was not responsive to the appellant's request.

[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 he does not seek access to the information withheld as non-responsive. Accordingly, this information is no longer at issue in this appeal. The appellant also raised the issue of reasonable search.

[5] The police conducted another search and issued a supplemental decision granting the appellant partial access to additional records. The police withheld information under section 38(a) (discretion to refuse requester's own information) read with section 8(1)(l) (facilitate commission of an unlawful act), and section 38(b). They also claimed that some withheld information was not responsive to the appellant's request.

[6] The appellant again confirmed that he does not seek access to the information withheld as non-responsive and the information withheld under section 38(a) read with and section 8(1)(l) of the *Act*. Accordingly, access to this information is no longer at issue. However, the appellant confirmed that he continues to seek access to the information withheld under section 38(b), and he continues to pursue the issue of reasonable search.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal commenced an inquiry, and sought and received representations from the police, the appellant, and an affected party.

[8] The affected party submitted a consent form for the disclosure of some of their information contained in the records. However, they did not consent to their personal information being shared with the appellant. The affected party's representations were withheld in accordance with the confidentiality criteria in the IPC's *Code of Procedure*. The appeal was then transferred to me. I reviewed the parties' representations and determined that I did not need to hear from them further before making my decision.

[9] For the reasons that follow, I uphold the police's search as reasonable and partially uphold their decision to withhold the information at issue under the discretionary personal privacy exemption at section 38(b). However, I find that a withheld address is not exempt from disclosure under section 38(b) and order the police to disclose it to the appellant.

RECORDS:

[10] The information remaining at issue in this appeal consists of the withheld portions of a Ticket Offence Hardcopy, a report for a specified occurrence number, and police

officers' handwritten notes.¹

ISSUES:

- A. Is the withheld information on page 10 of the records responsive to the appellant's request?
- B. Did the police conduct a reasonable search for responsive records?
- C. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- E. Is there a compelling public interest in disclosure of the information withheld under section 38(b) that clearly outweighs the purpose of the exemption?

DISCUSSION:

Issue A: Is the withheld information on page 10 of the records responsive to the appellant's request?

[11] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[12] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved

¹ There was another report at issue in this appeal, but the police indicated that only non-responsive information was withheld in this record. As the appellant removed non-responsive information from the scope of the appeal, this record is no longer at issue.

in the requester's favour.²

[13] To be considered responsive to the request, records must "reasonably relate" to the request.³

Representations, and analysis and findings

[14] After reviewing the representations and the record at issue, I find that the withheld information on page 10 of the records is not responsive to the appellant's request.

[15] Initially, the police erroneously claimed the section 38(b) personal privacy exemption over the withheld portions of a police officer's handwritten notes on page 10 of the records. During the inquiry, the police clarified that only non-responsive portions on page 10 of this record was withheld, and they are no longer claiming any exemptions over these portions.

[16] The police submit that police officers note all significant events which occur while they are on duty, so their notebooks contain information relating to several matters unrelated to the appellant's request.

[17] The appellant submits that he cannot know what the withheld information on page 10 of the records contains, so it is difficult for him to make compelling arguments as to why he should be given access to them. The appellant submits that the police ought to explain why the withheld portions are non-responsive.

[18] After reviewing the withheld portions of page 10 of the records, I find that the police have correctly identified them as non-responsive to the appellant's request. From my review of these specific portions of the records, I conclude that these withheld portions contain information about police matters unrelated to the appellant's request. I accept the police's argument that officers note all significant events which occur while they are on duty, and because of this, the records contain information from police matters unrelated to the appellant's request.

[19] For these reasons, I find the withheld portions of page 10 of the records that the police claim are not responsive to the appellant's request fall outside the scope of the appellant's request. Since I find that these portions of the records are not responsive to the appellant's request, they are no longer at issue in this appeal.

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

[20] The appellant claims that additional records responsive to his request should exist. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

search for records as required by section 17.⁴ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[21] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.⁵ A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.⁶

[22] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁷

Representations, and analysis and findings

[23] Based on the parties' representations, I am satisfied that the police conducted a reasonable search for responsive records.

[24] The appellant takes the position that additional records responsive to his request should exist. The appellant's representations do not specifically address the police's search for records. However, the appellant raised during mediation that he believes surveillance videos responsive to his request should exist.

[25] The police acknowledge that there was an error in their initial disclosure and some responsive records were not included, but once this was pointed out during mediation, the police submit that they conducted another search and issued a supplemental decision granting the appellant partial access to additional records.

[26] The police submit that the responsive records were clarified during mediation and the handwritten notes of the six officers involved and the photographs of the appellant were located. The police submit that they reached out to a detective about a specific matter but was told that his handwritten notes could not be located, and he had no digital or hard copy of records relating to the specific matter.

[27] The police submit that a specified police constable (PC) attended the TTC for copies of videos relating to the appellant's request. The police submit that the PC advised physical copies were received and reviewed and used to generate still images for a Service Wide Bulletin, and he believes the videos are with the Video Services Unit (VSU). The police submit that they corresponded with the VSU about the six TTC videos noted in the

⁴ Orders P-85, P-221 and PO-1954-I.

⁵ Orders P-624 and PO-2559.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2246.

police report but were told that the videos are not in the VSU's custody. The police submit that all paper records and photographs located were compiled and released to the appellant. The police submit that all records held by them have been located and provided to the appellant.

[28] The police have described the staff involved in the search, where they searched, and the results of the search. I am satisfied that the police carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.⁸ I am satisfied that the police have provided sufficient evidence to establish the reasonableness of their efforts.

[29] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁹ The appellant's representations do not address the police's search, but he believes that surveillance videos responsive to his request should exist. However, I find that the appellant has not established a reasonable basis for concluding that additional records responsive to his request may exist. During mediation, the police conducted another search for responsive records and found and disclosed additional records to the appellant. The police also explained their efforts to locate any videos responsive to the appellant's request and that they did not locate any. Therefore, I am not persuaded that ordering the police to conduct another search will locate further records responsive to the appellant's request.

[30] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that they have done so.¹⁰

[31] For the reasons above, I find that the police conducted a reasonable search for responsive records.

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

[32] 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

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2246.

¹⁰ Orders P-624 and PO-2559.

rights are greater than if it does not.¹¹ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.¹²

[33] Personal information is defined in section 2(1). The relevant portions are as follows:

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

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

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

[35] 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.¹⁴ 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 dwelling and the contact information for the individual relates to that dwelling.

[36] 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.¹⁵

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

¹² Sections 14(1) and 38(b), as discussed below.

¹³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

¹⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

Representations, and analysis and findings

[37] Based on my review of the records at issue, I find that they contain the personal information of the appellant and two affected parties. I confirm that the records contain the appellant's personal information and the police have disclosed most of it to him. I find that the records also contain information that qualifies as the personal information of the two affected parties, specifically their names and employee badge numbers, and that this information fits into paragraphs (c) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[38] The police submit that the information at issue contains the personal information of the two affected parties, and that they withheld the names of the affected parties but disclosed their badge numbers. The police submit that they disclosed the badge numbers as an identifier to assist the appellant if he wished to pursue accountability regarding the specified incident.

[39] The police submit that the position and workplace information of both affected parties and the route of one of the affected parties is already known to the appellant. The police submit that disclosure of the names of the affected parties along with the information already disclosed about them, would reveal something of a personal nature about them, and would therefore constitute an unjustified invasion of their personal privacy.

[40] The appellant submits that the names of the affected parties are not personal information. He references sections 2(2.1) and (2.2) and submits that in the records their information appears in a professional capacity, so it should not be considered personal information under the *Act*. The appellant also refers to Order MO-3238 in which the IPC held that the images of TTC personnel and police officers captured on a surveillance tape were not personal information because they appear in a professional capacity.

Address

[41] The police withheld the address of what appears to be a TTC bus stop on page two of the records. Since this is an address of a bus stop and the police have not established how the address qualifies as the personal information of either affected party, I find that this address does not constitute personal information under the *Act*, and therefore, cannot be withheld under section 38(b) of the *Act*. Since the police have not claimed any alternative exemptions over this address, I will order that the police disclose it to the appellant.

Names

[42] The only information that remains at issue in this appeal are the names of the two affected parties that the police withheld under section 38(b) of the *Act*.

[43] The appellant submits that the affected parties' names appear in a professional

capacity and therefore do not qualify as personal information, while the police argue that disclosure of their names would reveal something of a personal nature about them. Based on my review of the records, I find that the withheld names of the affected parties qualify as personal information under the *Act*. I agree with the appellant that generally, names that appear in a professional capacity do not qualify as personal information under the *Act*. However, in this appeal, I find that the disclosure of the names of the affected parties, along with the other information the police have already disclosed about them, including their employee badge numbers, would reveal something of a personal nature about them.

[44] I am not satisfied that Order MO-3238, cited by the appellant, is relevant to my determination. At issue in Order MO-3238 were the images of TTC personnel and not their names, and the adjudicator found that disclosing the images of the TTC personnel would not reveal something of a personal nature about them, while in this appeal, I find that disclosing the names of the affected parties would. Therefore, I am not persuaded that Order MO-3238 is relevant to my determination in this appeal.

[45] As noted above, 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.¹⁶ This is one of those situations. Typically, TTC personnel’s employee badge numbers are available to the public, but not their names. I find that disclosing their names together with their badge numbers, which have already been disclosed, would reveal something of a personal nature about them and could lead to the disclosure of other personal information. Therefore, despite that the information relates to TTC personnel in a professional capacity, I find that the records at issue contain the personal information of two affected parties.

[46] Having found that the records contain the personal information of both the appellant and the two affected parties, I will now determine whether the withheld personal information of the affected parties, specifically their names, are exempt from disclosure under section 38(b) of the *Act*.

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

[47] 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.

[48] 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

¹⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

would be an “unjustified invasion” of the other individual’s personal privacy.

[49] 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.

[50] 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).

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

[52] 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.

[53] 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.

[54] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹⁷

Representations, and analysis and findings

[55] The police submit that disclosure of the affected parties’ personal information, specifically their names, would be an unjustified invasion of their personal privacy. An affected party submits that they do not want their personal information disclosed to the appellant. The appellant submits that disclosure of the withheld information would not amount to an unjustified invasion of their personal privacy.

[56] The appellant cited specific paragraphs in Orders MO-3224 and MO-3238 in support of his position. However, not all the paragraphs the appellant cited were relevant to the issues in this appeal.¹⁸ I have reviewed all the appellant’s representations, but I will only refer to the most relevant portions in this order.

¹⁷ Order MO-2954.

¹⁸ For example, some of the paragraphs the appellant quoted refer to section 38(a) read with section 8(1)(b), which is no longer at issue in this appeal. Additionally, he references paragraphs that support disclosure of video surveillance. However, the records at issue do not include video surveillance.

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

[57] 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 an incident of disorderly conduct.

[58] The appellant's representations do not specifically address the section 14(3)(b) presumption, but he submits that there was not a criminal investigation into this incident, and the ticket was withdrawn.

[59] 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;

[60] 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 records. 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,¹⁹ and I am satisfied that there was one as documented by the police report. Therefore, I find that section 14(3)(b) applies to the withheld names of the affected parties at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the affected parties' personal privacy.

[61] 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, as well as the interests of the parties.

[62] 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. The police argue that the factor at section 14(2)(e)²⁰ (pecuniary or other harm) applies to the withheld personal information. This factor weighs against disclosure if it is found to apply.

[63] Sections 14(2)(d) and 14(2)(e) state:

¹⁹ Orders P-242 and MO-2235.

²⁰ The police referenced section 14(2)(f) (highly sensitive), but their arguments refer to the potential harm that the affected parties may be subjected to, so I will address their arguments under section 14(2)(e). Given my overall finding below, I will not address whether section 14(2)(f) may also apply.

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

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

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

[64] The appellant argues that the section 14(2)(d) factor applies to the withheld names of the affected parties because they are relevant to the fair determination of his rights. In support of this, he references paragraph 93 from Order MO-3238, which states:

[93] The right the appellant is seeking to enforce is a legal, as opposed to a moral, right and is related to a contemplated proceeding for damages suffered as a result of the alleged assault. In my view, the disclosure of the contents of the surveillance tape will assist the appellant in determining whether or not to proceed with these contemplated proceedings and may, ultimately, represent evidence of some significance in that litigation, should it be pursued. Accordingly, I find that section 14(2)(d) is a relevant consideration strongly favouring the disclosure of the personal information of the bus operator on the surveillance tape."

[65] The police submit that the section 14(2)(d) factor does not apply because there are alternative methods for the appellant to obtain access to the personal information of the affected parties. The police submit that the badge numbers provided are as relevant as the names of the affected parties and this unique identifier provides some anonymity for the employees and preserving privacy while allowing for accountability, if that is something the appellant wishes to pursue.

[66] 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.²¹

[67] The paragraph the appellant cited from Order MO-3238 above refers to a surveillance tape of a TTC bus operator. I note that the records at issue in this appeal do not include any surveillance videos.

[68] Although the appellant states that he seeks the withheld personal information of the affected parties to enforce a legal right, I am unsure how disclosure of the names of the affected parties would assist him in doing so. As stated above, the badge numbers of the TTC employees are unique identifiers attached to specific employees. Even without their names, the appellant could make a complaint or bring a legal action against them. Therefore, I am not satisfied that the withheld names of the affected parties are significant to or required for the determination of the appellant's legal rights. Accordingly, I find that the appellant has not established parts 3 and 4 of the test under section 14(2)(d).

[69] 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 names of the affected parties. I note that not having the affected parties' names does not prevent the appellant from pursuing other legal remedies.²²

Section 14(2)(e) (pecuniary or other harm)

[70] For section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[71] The police argue that the section 14(2)(e) factor applies to weigh against disclosure of the withheld personal information of the affected parties, because it could lead to them experiencing pecuniary or other harm. The police submit that taking into consideration the nature of the incident, there is nothing to dismiss the possibility that the affected parties may be exposed to unwanted contact by the appellant. The police submit that the personal safety of the affected parties should weigh heavily in favour of non-disclosure. The police submit that the affected parties' position and access to them, being public-facing employees, should be taken into consideration, particularly in light of the increased threats to TTC employees lately.

[72] As noted above, I have not shared the representations of one of the affected

²¹ 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.).

²² 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."

parties, but I have considered them.

[73] The appellant's representations did not specifically address the other section 14(2) factors.

[74] In Order MO-2318, former Commissioner Brian Beamish provided guidance on the "unfair harm" as contemplated by section 14(2)(e). He states:

Turning to the factor at section 14(2)(e), this office has held that although the disclosure of personal information may be uncomfortable for those involved in an already acrimonious matter, this does not mean that harm would result within the meaning of this section, or that any resulting harm would be unfair [Order PO-2230]. However, it has also been held that the unfair harm contemplated by section 14(2)(e) is foreseeable where disclosure of personal information is likely to expose individuals to unwanted contact with the requester [Order M-1147], or where such disclosure could expose the individuals concerned to repercussions as a result of their involvement in an investigation by the institution [Order PO-1659]. [Emphasis added].

[75] I agree with the analysis set out by former Commissioner Beamish and adopt it in this appeal. Based on the representation of the parties, including the affected party's confidential representations, I find that the unfair harm contemplated by section 14(2)(e) is foreseeable and that the factor at section 14(2)(e) applies to weigh against disclosure of the affected parties' names.

[76] I also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply. None were raised by the parties, and I also find that none apply in the circumstances of this appeal.

Summary

[77] Overall, I have found that no section 14(2) factors, listed or unlisted, weigh in favour of disclosure of the withheld personal information, and that the factor at section 14(2)(e) (pecuniary or other harm) weighs against its disclosure. I have also found that the section 14(3)(b) presumption applies to the withheld personal information. This presumption weighs against disclosure. Balancing these factors against the interests of the parties, I find that disclosure of the withheld names of the affected parties would constitute an unjustified invasion of their personal privacy. Therefore, I find that the withheld names of the affected parties are exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*.

Exercise of discretion

[78] The section 38(b) exemption is discretionary, meaning that the police can decide to disclose information even if the information qualifies for exemption. The police must

exercise their discretion. On appeal, I may determine whether the police failed to do so.

[79] The police state that they properly exercised their discretion under section 38(b) to withhold the names of the affected parties from the appellant. The police state that they took into consideration the nature of the circumstances of the incident, and exercised caution to maintain the privacy and confidentiality of all the parties involved. The police submit that they disclosed all the appellant's personal information to him and only withheld the names of the affected parties.

[80] The appellant's representations do not specifically address the police's exercise of discretion.

[81] After considering the parties' representations 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 names of the affected parties under section 38(b) of the *Act*. I am satisfied that the police considered relevant factors and did not consider irrelevant factors in their exercise of discretion. In particular, it is evident that the police considered the fact that the records contain the appellant's own personal information. I am satisfied that the police disclosed as much of the information contained in the records as they could to the appellant and only the affected parties' names remain at issue in this appeal.

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

Issue E: Is there a compelling public interest in disclosure of the information withheld under section 38(b) that clearly outweighs the purpose of the exemption?

[83] The appellant raised the application of the section 16²³ public interest override to the information at issue in this appeal in his representations.

[84] Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[85] Although section 16 does not explicitly list section 38(b), the IPC has read in section 38(b) as an extension of a requester's ability to raise the public interest override in cases where information is withheld under the mandatory personal privacy exemption at section 14.²⁴

²³ The appellant referenced section 23, which is the provincial equivalent of section 16.

²⁴ Orders P-54, MO-2395, MO-2701 and MO-3785-I.

[86] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government.²⁵ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.²⁶

[87] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Representations, and analysis and findings

[88] While the appellant argues that there is a compelling public interest in disclosure of the information the police have withheld under section 38(b), it is unclear from his representations what that compelling public interest is.

[89] The information that I have found exempt under section 38(b) are the names of the two affected parties. Given the amount of information already disclosed to the appellant and the actual content of the personal information withheld under section 38(b), I find that the appellant has not established that there is any public interest in disclosure of this information under section 16 of the *Act*. Furthermore, I am not persuaded that disclosure of the names of the two affected parties would increase public confidence in the operations of the police. I am also not persuaded that their disclosure would help members of the public to express opinions or to make political choices in a more meaningful manner.

[90] For these reasons, I find that there is not a compelling public interest in disclosure of the names of the affected parties withheld under section 38(b) that clearly outweighs the purpose of the exemption. Accordingly, I find that section 16 does not apply.

ORDER:

1. I uphold the police’s search as reasonable.
2. I order the police to disclose the address at the top of page two of the records that they withheld under section 38(b) to the appellant by **June 25, 2024**, but not before **June 20, 2024**.

²⁵ Orders P-984 and PO-2607.

²⁶ Orders P-984 and PO-2556.

3. I uphold the police's decision to withhold the remaining information under section 38(b).
4. In order to verify compliance with order provision 2, I reserve the right to require the police to provide me with a copy of the record disclosed to the appellant.

Original Signed by: _____
Anna Truong
Adjudicator

_____ May 21, 2024