Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3029

Appeal MA11-372

Waterloo Regional Police Services Board

March 31, 2014

Summary: The appellant sought access to records relating to himself. After clarifying the request, the police identified numerous records relating to various incidents, and granted access to portions of them. Access to certain records or portions of the records was denied on the basis of the exemptions in section 38(a) (discretion to deny access to requester's own information), 8(1)(c) and (l) (law enforcement), and 14(1) and 38(b) (personal privacy). This order determines that, with two exceptions, the decision by the police to deny access to the withheld portions of the records is upheld. In addition, the scope of the request is confirmed, and police's search for records is found to be reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 8(1)(c), 8(1)(l), 14(2)(a), 14(3)(b), 17, and 38(b).

OVERVIEW:

[1] The Waterloo Regional Police Services Board (the police) initially received a request under the *Municipal Freedom of Information and Protection of Privacy* (the *Act*) for records which contain the appellant's name or which relate to him.

[2] The police asked the appellant to clarify the request, and the appellant then provided additional information regarding the records he was requesting (his clarified request). The police responded to the clarification by stating that, based on the

information provided by the appellant, a search would be conducted for records responsive to the following requests:

> *Request 1:* Records/correspondence between Waterloo Regional Police Service [WRPS] and [an identified agency], that make reference to [the appellant] and/or [a named organization] from 2005 to present.
>
> *Request 2:* Records/correspondence between WRPS and [a named shelter] that make reference to [the appellant] and/or [the above-stated agency] and [three named staff members].
>
> *Request 3:* All notes/written communication/courthouse logbook entries by WRPS Special Constables that reference [the appellant], beginning on [twelve specified dates and dates ranges between July, 2006 and April, 2009].
>
> *Request 4:* Notes of [a named Superintendent] and [first named Staff Sergeant] from [the appellant's] meeting at WRPS Headquarters on January 31, 2009.
>
> *Request 5:* Notes pertaining to the Trespass Notice [the appellant was] served in March of 2009, as well as records relating to [the appellant's] protest at the Ontario Court of Justice on [a specified date].
>
> *Request 6:* Officers' notes and courthouse logbook entries from July 16 to September 8, 2010.
>
> *Request 7:* Notes/records relating to [the appellant's] removal from Court proceedings on [a specified date], specifically notes of [first above-named Staff Sergeant] and [second named Sergeant].
>
> *Request 8:* Notes/records/courthouse logbook entries relating to [the appellant's] detention at [a named city] Courts on [two specified dates (approximately)].
>
> *Request 9:* Information regarding [a named individual's] case.

[3] After issuing an interim decision letter and resolving certain issues regarding fees, the police issued a final access decision in which they advised the appellant that partial access was granted to the records. The police also stated that access to some information was denied on the basis of the exemptions in sections 14(1) and 38(b) (personal privacy), and 38(a) (discretion to refuse requester's own information) in conjunction with sections 8(1)(c), (d) and (l) (law enforcement).

[4] The appellant appealed the police's decision.

[5] During mediation, the appellant questioned the reasonableness of the police's search, and maintained that other records pertaining to his request ought to exist. In discussions with the mediator, the appellant indicated that information pertaining to the following incidents ought to exist:

1. Investigation notes of two named officers relating to the defacing of the appellant's Facebook page in June, 2008.
2. Video recording of the appellant taken by a named agency Supervisor on [a specific date], which was seized by a named police officer. Video recordings from specified court house cameras.
3. Communications between an identified female intake worker and the police about custody of the appellant's children in 2006.
4. Information relating to the appellant's removal from a supervised area, by the police, on [a specified date].
5. Information regarding a police internet search of the appellant's name, on [a specified date].
6. Notes of a named officer from the Major Crime Unit pertaining to the investigation of an identified claim made by the appellant's son.
7. Records pertaining to certain identified allegations made by a named individual.

[6] In support of his position that additional records exist, the appellant provided email chains relating to some of the incidents listed in these seven items.

[7] During mediation and in response to the references to these seven additional incidents, the police indicated that records relating to some of these incidents (1, 6, and the first part of 2) fell outside the scope of the clarified request, that the police did not have custody or control of any records responsive to one of the incidents (the second part of 2) and that, after consulting with the officers identified in these incidents, no additional records exist with respect to certain listed incidents (3, 4, 5 and 7), as the initial exhaustive search of police records for information relating to the appellant's name had located all the responsive records.

[8] Also during mediation, the police advised that, with respect to the partially disclosed records, some information had been removed from these records as it was deemed not responsive to the request. The police also advised that information pertaining to the police codes had been severed pursuant to section 8(1)(l) (law enforcement) of the *Act.* The police further advised that the removal of the non-responsive information and the police codes is clearly marked throughout the released records even though no reference to them was made in the final decision letter.

[9] The appellant indicated that he wished to pursue access to the severed portions of the records including the police codes and the non-responsive information, and that the scope of the request and the reasonableness of the search continue to be at issue in this appeal. The appellant stated, however, that issues relating to access to the specified court camera recordings were no longer at issue in this appeal.

[10] Mediation did not resolve this appeal, and a Mediator's Report summarizing the facts and issues in this appeal was sent to the parties.

[11] The appellant subsequently provided this office with additional information about an additional incident which occurred in 2008, and indicated that he wished to have any records responsive to this incident included in this appeal.

[12] This file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the police, initially. However, I did not invite the police to address the additional issue raised by the appellant regarding the additional incident in 2008.

[13] The police provided representations in response to the Notice of Inquiry.

[14] In addition, the police identified that they had located records which they believe are responsive to initial request #4 (notes of a meeting between the appellant and two identified police officers) notwithstanding that the date identified in request #4 is not the same as the date on the records. The police provided a further decision letter to the appellant, indicating that partial access to these additional records was granted. Small portions of these records were severed on the basis that these portions qualify for exemption under section 8(1)(l), or relate to other investigations and are not responsive to the request.

[15] I then sent the Notice of Inquiry, along with the non-confidential portions of the representations of the police, to the appellant. The appellant was asked to address the issues, including issues regarding access to the newly-located records.

[16] The appellant provided representations in response to the Notice of Inquiry. A number of months later, the appellant provided additional supplementary representations on the issues. I have considered all of the appellant's representations in this order.

[17] In this order, I confirm the scope of the request. I also find that, with two exceptions, the decision of the police to deny access to the records on the basis of the identified exemptions is upheld. I also find that the searches conducted by the police for responsive records are reasonable.

RECORDS:

[18] The police initially identified a total of 132 pages of responsive records.[1] An additional 11 pages of records were later identified by the police as responsive to initial request #4. I refer to these pages as page numbers 134 to 144 in this order.

[19] The police disclosed a number of the responsive pages in full to the requester. In addition, I find below that portions of certain pages are not responsive to the request. As a result, pages 9, 35, 38-41, 44, 47, 48, 50, 51, 55, 57, 59-61, 66, 70, 71, 73, 76-82, 84-89, 92, 93, 97, 101, 103, 110, 110-115, 118-128, 130-134 and 136-144 are not at issue in this appeal, as all responsive portions of these records have been disclosed to the appellant.

[20] The remaining pages or portions of pages include the withheld portions of occurrence reports, witness statements, case file synopsis, officers' investigation record book notes, a Court Bureau Security Register and other records.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

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 exemption at section 38(b) apply to the information at issue?

D. Does the discretionary exemption at section 38(a) in conjunction with the sections 8(1)(c) and 8(1)(l) exemption apply to certain portions of the information at issue?

E. Did the police exercise their discretion under sections 8(1), 38(a) and/or (b)? If so, should this office uphold the exercise of discretion?

F. Did the police conduct a reasonable search for responsive records?

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[1] Although the pages initially identified as responsive to the request are numbered up to page number 133, there is no page 114.

Scope of the request

[21] The scope of a request is an important issue in determining what records are responsive to the request and whether a reasonable search has been conducted, as the scope determines the parameters of the search and, accordingly, the types of searches that ought to be conducted.

[22] 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; and …
>
> (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).

[23] 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 in the requester's favour.[2]

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

Representations

[25] The police provide representations in support of their position that they appropriately identified the scope of the request. In doing so, the police note that the appellant's clarified request totalled nine pages, and was comprised of nine distinct requests. In addition, the police submit that the clarified request was unclear as it also contained the appellant's opinions, links to various websites and was "peppered" with comments that were unrelated to his request.

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[2] Orders P-134, P-880.
[3] Order P-880.

[26] The police provide examples of the broad nature of portions of the request, and state:

> Because the request was difficult to interpret and because the [appellant] elected to communicate only through email, the [police] clarified the request in an email letter of March 29, 2011. The [appellant] was advised of the records the [police] would search for, based on the information provided. The letter stated that questions should be directed to the Access to Information Unit. When no further email was received from the [appellant], [the police] deemed this acceptance of the search parameters.

[27] The police indicate that they located the records identified above and submit that the request, clarified by them in their March 29, 2011 e-mail, should be considered as the "reasonable and ascertainable scope of the request."

[28] The appellant does not provide representations on the issue of the scope of the request.

Analysis and Finding

[29] It is apparent that there has been considerable communication among the police, the appellant and this office in attempting to understand and respond to the appellant's multipart access request.

[30] I find that the appellant's original request was very vague and broad; however, it did provide the framework for the subsequent clarifications that took place, as the appellant clearly identified that he was seeking records which name or relate to him.

[31] The police sought clarification from the appellant, which he provided. However, I agree with the police that the appellant's clarified response confused the matter to such a degree that the police were not able to fully respond to the request without further clarification. The appellant's refusal to communicate verbally with the police left them with no other reasonable option than to attempt to identify the records the appellant was seeking. They did so in their written communication to the appellant of March 29, 2011, in which they listed the nine categories of requested records they believed the appellant was seeking.

[32] The appellant did not respond to the e-mail that the police sent him and it was reasonable, in these circumstances, for the police to interpret the lack of response as acquiescence to their interpretation of the scope of the request.

[33] Accordingly, for the purposes of this appeal, I find that the original request, in conjunction with the clarified request in the police's email of March 29, 2011 defines the

scope of the request, and as such, delineates the parameters of the responsive records and the nature of the searches to be conducted. In particular, I find that the appellant's original request clearly identified that he was seeking information about himself. I find further that the March 29, 2011 e-mail that the police sent to the appellant elaborates on the specific information he was seeking.

[34] In addition, I find that even though the police undertook to conduct a further search for records identified by the appellant during mediation, items 1, 2, 4, 5, 6 and 7 fall outside the scope of the request as identified in the March 29, 2011 e-mail. I am satisfied that "Request 1" is sufficiently broad to encompass item 3.

[35] The police have advised the appellant that following a search for records responsive to item 3, no records could be located. This item is included in my review of the reasonable search issue, below.

[36] I also find that the additional incident which occurred in 2008, which the appellant referred to for the first time in his representations, also falls outside the scope of the request as identified in the March 29, 2011 e-mail.

Responsiveness of records

[37] With respect to whether certain portions of the records are responsive to the appellant's request, neither the police nor the appellant specifically address this issue. I have, therefore, reviewed certain withheld portions of the records to determine whether they are responsive to the request as identified in the March 29, 2011 e-mail.

[38] The following pages or parts of pages comprise portions of police officer notebooks and/or handwritten entries that deal with other incidents and/or events recorded by the police officers as part of their tour of duty or pertain specifically to the individual officer, and are not responsive to the appellant's request:

> Portions of pages 38-40, 42-50, 52, 54-58, 60, 61, 71-73, 75, 77-78, 83, 86-90, 92, 94, 96, 98, 103, 104, 110, 111, 112, 113, 115, 116, 117, 119, 122, 124, 125, 127, 128, 135, 137, 139 and 144.

[39] With respect to page 133, the withheld portions of this page identify other named individuals listed in the Court Bureau Security Register. Keeping in mind that the appellant's request is restricted to information that relates to him, I find that the remaining portions of this page do not fall within the parameters of his request as set out above.

[40] As identified above, where the only withheld portions of pages are the non-responsive portions, and the appellant was provided with the other parts of those pages, those pages are no longer at issue and I do not review them further in this

order. Some of the pages which contain non-responsive information also contain information that was not disclosed on the basis of one of the identified exemptions, and I review the remaining information on those pages, below.

Issue B: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[41] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (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,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and

> (h) the individual's name where 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;

[42] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[4]

[43] Sections (2.1) and (2.2) also relate to the definition of personal information. These sections 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 (3) 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.

[44] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[5]

[45] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[6]

[46] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[7]

[47] The police state that the records contain the personal information of numerous individuals including their names, dates of birth, addresses and other demographic information and statements that they gave to the police regarding the incidents in which they were involved.

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[4] Order 11.
[5] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[6] Orders P-1409, R-980015, PO-2225 and MO-2344.
[7] Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

[48] The appellant does not specifically address this issue; however, he states that he is not interested in obtaining the addresses or telephone numbers of any staff of the named organization.

[49] Having reviewed the records at issue, I am satisfied that they all contain the appellant's personal information, including his name and address and other similar types of information, as well as information about him contained in the narrative portions of the various records and officers' notes.

[50] Furthermore, I am satisfied that the pages of the records which the police claim qualify for exemption on the basis that disclosure would constitute an unjustified invasion of privacy of other individuals contain the personal information of identifiable individuals other than the appellant (the affected parties), as they include references to their names as well as information about their involvement in the incidents identified in the records (paragraph (h) of the definition). These are pages 1-8, 10-30, 33, 34, 36, 37, 43, 45, 52-54, 58, 62-65, 67-69, 72, 98, 100 and 102-109.

[51] The police have provided the appellant with the portions of the records that pertain primarily to him. I find that the appellant's personal information in the remaining records, which also contain the personal information of the affected parties, is so intertwined with that of the affected parties in the withheld portions of the records that it is not severable.

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

[52] As I indicated above, all the records contain the appellant's personal information. The withheld portions of pages 1-8, 10-30, 33, 34, 36, 37, 43, 45, 52-54, 58, 62-65, 67-69, 72, 98, 100 and 102-109 also contain the personal information of the affected parties.

[53] 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 a number of exemptions from this right.

[54] Under section 38(b), where a record contains personal information of both the 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.[8]

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

[55] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[56] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Similarly, if any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The appellant does not address either of these issues. On review of the withheld portions of the records, I find that neither section 14(1) or (4) applies in the circumstances of this appeal.

[57] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[9]

[58] 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 38(b).

[59] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[10]

[60] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[11]

[61] The police take the position that the presumption at section 14(3)(b) applies.

[62] Although the appellant's representations do not directly address the personal privacy provisions of the *Act*, he seems to be raising the application of the factor in section 14(2)(a).

[63] Accordingly, I will review the application of these two sections to the records for which section 38(b) is claimed.

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[9] Order MO-2954.
[10] Order P-239.
[11] Order P-99.

14(3)(b): investigation into violation of law

[64] Section 14(3)(b) reads:

> 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;

[65] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[12] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[13]

[66] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[14]

[67] The presumption can apply to a variety of investigations, including those relating to by-law enforcement[15] and violations of environmental laws or occupational health and safety laws.[16]

[68] The police note that the appellant requested records relating to investigations about himself and/or other individuals. The police submit that regardless of whether the appellant or another individual was the subject of an investigation, or whether charges were laid, "the information was compiled and is identifiable as part of police investigations."

[69] The appellant does not directly address this issue.

[70] Having reviewed the records at issue, I am satisfied that the personal information contained in them was compiled and is identifiable as part of an investigation into a possible violation of law. The records include portions of police occurrence reports, police notebook entries and statements made to the police by certain affected parties. In the circumstances and based on the evidence in the records

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[12] Orders P-242 and MO-2235.
[13] Orders MO-2213, PO-1849 and PO-2608.
[14] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.
[15] Order MO-2147.
[16] Orders PO-1706 and PO-2716.

and the representations of the police, I find that the presumption at section 14(3)(b) applies to the information withheld under section 38(b).

14(2)(a): public scrutiny

[71] Section 14(2)(a) reads:

> 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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny,

[72] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[17]

[73] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.[18]

[74] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 14(2)(a).[19]

[75] As noted above, the appellant appears to be raising the application of the factor in section 14(2)(a). He expresses his views about the police and a particular children's aid society (CAS) and the CAS generally, and describes his involvement with the police (as reflected in some of the records) as arising from the concerns he has about both the CAS and the police. The appellant states that he is an advocate for "families in regards to their efforts to rescue, save and protect their children" from being placed in foster care or becoming wards of the state, and refers to instances where the work of the CAS has been criticized. It is apparent that the appellant sees himself as a victim of unfair treatment in the contacts he has had with both the police and the CAS.

[76] In my view, apart from the appellant's own dissatisfaction with his own circumstances, I am not persuaded that disclosing the personal information in the records at issue would subject the activities of the police to public scrutiny in the circumstances of this appeal. I note that the CAS is not a government body, but even

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[17] Order P-1134.
[18] Order PO-2905.
[19] Order P-256.

so, I am not persuaded that disclosure of the information would subject the activities of this organization to public scrutiny. The withheld information is very specific to the circumstances involving the appellant. Although the appellant believes that he has every right to pursue his advocacy objectives, the first paragraph of a trespass order (referred to by the appellant in his representations), reinforces my view that disclosing the personal information of the affected parties would not subject the police to public scrutiny.[20]

[77] Accordingly, I find that the factor at section 14(2)(a) does not apply. Moreover, I am not persuaded by the appellant's submissions that any other factor or circumstance which would favour disclosure applies.

[78] Having found that the presumption at section 14(3)(b) applies, and that none of the factors favouring disclosure apply, I find that the personal information of the affected parties qualifies for exemption under section 38(b), subject to my review of the police's exercise of discretion, below.

[79] Having made this decision, it is not necessary for me to consider the application of section 8(1)(d), as this exemption claim is only made for information which I have found qualifies for exemption under section 38(b).

[80] The police have withheld four additional portions of the records under section 8(1)(c) and numerous small portions under section 8(1)(l) and I will consider these exemptions in the following discussion.

Issue D: Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(c) and 8(1)(l) exemptions apply to certain portions of the information at issue?

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

[82] Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

[83] The police take the position that portions of certain records qualify for exemption under sections 8(1)(c) and (l) which read:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

[20] Without going into detail, I note the trespass order refers unfavourably to the appellant's "disruptive" behavior in a public place.

> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[84] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

> "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)

[85] The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law.[21]
- a police investigation into a possible violation of the *Criminal Code.*[22]
- a children's aid society investigation under the *Child and Family Services Act.*[23]
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[24]

[86] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[25]

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[21] Orders M-16 and MO-1245.
[22] Orders M-202 and PO-2085.
[23] Order MO-1416.
[24] Order MO-1337-I.
[25] *Ontario (Attorney General) v. Fineberg (1994)*, 19 O.R. (3d) 197 (Div. Ct.).

[87] Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[26]

[88] It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[27]

Section 8(1)(c): investigative techniques and procedures

[89] The police take the position that portions of four records qualify for exemption under this section of the *Act* (portions of pages 74, 94, 99 and 129).

[90] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[28]

[91] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.[29]

[92] The police note that the records pertain to "numerous law enforcement matters involving investigations into possible contraventions of the *Criminal Code* of Canada … as well as an investigation(s) into the violation of provincial legislation including the *Courts of Justice Act*, and the *Trespass to Property Act*."

[93] The police submit that the techniques in question consist of "[m]onitoring interviews, processes used when arresting or searching individuals and two pages containing a Computer Aided Dispatch (CAD) log. These records contain police codes, response times, number of units dispatched, and other logistical information about responding to an investigation." The police claim that this information is not well-known to the public. Further, the police submit that disclosure of this information "would hamper, hinder or compromise future investigations by showing the steps the police take when investigating the applicable types of activities in the records."

[94] The police take the position that this information does not contain enforcement techniques, but rather, is investigative in nature, and is currently being used and will

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[26] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998)*, 41 O.R. (3d) 464 (C.A.).
[27] Order PO-2040; *Ontario (Attorney General) v. Fineberg.*
[28] Orders P-170, P-1487, MO-2347-I and PO-2751.
[29] Orders PO-2034 and P-1340.

continue to be used in the future. The police also provide confidential representations on the application of this exemption.

[95] Having reviewed these four severances, I am not persuaded that the withheld portions of pages 74 and 129 qualify as investigative techniques and procedures whose disclosure could reasonably be expected to hinder or compromise its effective utilization. Although the references on these two pages identify certain actions taken by the police, they are very general and/or are not secretive in any way. The police have failed to provide sufficient evidence to establish that the exemption applies to these severances. Accordingly, I find that section 8(1)(c) does not apply to the information withheld from pages 74 and 129.

[96] The information severed from pages 94 and 99 is somewhat different. These withheld portions also identify certain actions taken by the police and, although the information on page 94 is fairly general, and the information on page 99 is more detailed, I am satisfied that disclosure of the information in them would reveal investigative procedures used when arresting or searching individuals. Based on the representations of the police, I am also satisfied that disclosure could reasonably be expected to "hamper, hinder or compromise future investigations." Accordingly, I find that the relevant portions of pages 94 and 99 qualify for exemption under section 38(a) in conjunction with section 8(1)(c) of the *Act*, subject to my review of the police's exercise of discretion.

[97] As no other exemptions have been claimed for the severances made to pages 74 and 129, I will order that they be disclosed to the appellant.

Section 8(1)(l): commission of an unlawful act or control of crime

[98] The police have claimed the application of sections 38(a) and 8(1)(l) to withhold the police codes found interspersed throughout the records. Relying on previous orders of this office, the police state:

> In the records at question, these codes identify "900" codes, the geographical boundaries of patrol zones and codes required for reporting to Statistics Canada. It has been long recognized that Section 38(a) is used in conjunction with section 8(1)(l) as it relates to an internal system of communication procedures for mapping and defining boundaries, which, if released could hamper investigations.

[99] The appellant does not address this issue in his representations.

[100] As the police note, this office has issued many orders regarding the release of police codes, patrol zones and certain other types of internal communications and has

consistently found that section 8(1)(l) applies to this type of information.[30] The appellant has not provided evidence to persuade me that I should come to a different conclusion.

[101] Accordingly, I find that the police codes and patrol zones found in the records qualify for exemption under section 8(1)(l) and 38(a), subject to my review of the police's exercise of discretion.

Issue E: Did the police exercise their discretion under sections 8(1), 38(a) and/or 38(b)? If so, should this office uphold the exercise of discretion?

[102] The section 8(1)(c), 8(1)(l), 38(a) and 38(b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[103] In addition, the Commissioner 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
- it fails to take into account relevant considerations.

[104] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[31] This office may not, however, substitute its own discretion for that of the institution.[32]

Relevant considerations

[105] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[33]

- the purposes of the *Act*, including the principles that
    - Information should be available to the public

[30] For example, see: Orders M-93, M-757, MO-1715, PO-1665 and MO-2607.
[31] Order MO-1573.
[32] section 43(2).
[33] Orders P-344 and MO-1573.

  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
  - the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[106] The police submit that they exercised their discretion properly and in good faith in deciding to withhold portions of the records from disclosure. They note that the appellant was given access to as much of his own personal information as possible without disclosing that of other identifiable individuals.

[107] The police indicate that they considered the appellant's right to access his own information and the principal that exemptions from the right of access should be limited and specific. The police indicate further that they also took into consideration the interests that the exemptions claimed seek to protect. The police explain that the relationship between the appellant and the affected parties and the sensitivity of the information were significant considerations, as well as the relatively recent nature of the information.

[108] As noted above, the appellant states that he is a political activist, as well as an advocate for "families in regards to their efforts to rescue, save and protect their children" from being placed in foster care or becoming wards of the state, and refers to instances where the work of the CAS has been criticized. He refers to his work as an active member of an organization that is critical of the Ontario government's child protection system. He also identifies his concerns about the police's failure to investigate crimes committed by the CAS, and suggests that there is a bias on behalf of law enforcement agencies. The appellant also identifies certain additional concerns he has about the actions of the police and the veracity of certain information in the trespass order issued against him. It is apparent that the appellant sees himself as a victim of unfair treatment in the contacts he has had with both the police and the CAS.

[109] In addition, the appellant raises the concern that the withheld records contain information that would incriminate the police and the local CAS, and that the police and the CAS conspired to deny the appellant access to the records. He then reviews his concerns about the actions of the local CAS. In raising these issues, the appellant is claiming that the police exercised their discretion in bad faith or for an improper purpose.

[110] In his further representations, the appellant confirms that he ought to have access to the records because they contain his personal information, and because the actions of the local CAS have had a severe and negative impact on him and his family. He also states that the police were involved in these matters. In addition, he states that the decision by the police "to deny [him] those 130 pages of records is part of a pattern [the police] have perpetrated against [the appellant and his family]" and other families in similar situations.

Finding

[111] I have reviewed the circumstances surrounding this appeal and the police's representations on the manner in which they exercised their discretion. I have also considered the appellant's representations about this issue.

[112] To begin, although the appellant identifies his concerns about the police withholding "130 pages" from him, I note that much of the information in the 144 pages of records was disclosed to the appellant. The police carefully reviewed the records, disclosed considerable information relating to the appellant and his involvement with the police, and withheld only those pages or portions of pages which I have found qualify for exemption under the identified exemptions. This includes the personal information of certain affected parties and small portions of the records that contain law enforcement information.

[113] I have also considered the appellant's allegation that the police exercised their discretion in bad faith or for an improper purpose. Aside from this allegation, the only

other evidence provided by the appellant is references to various websites and other sources which identify concerns about the police and CAS. I am not satisfied that this information supports the suggestion that the police acted in bad faith in the appeal before me. I specifically find that the police did not act in bad faith or for an improper purpose in making their decisions in this appeal.

[114] On my review of the records and of the manner in which the police exercised their discretion to disclose portions of the records and deny those portions which qualify for exemption, I find that the police have taken into account relevant considerations and that they have not taken into account irrelevant ones. I am further satisfied that the police properly exercised their discretion to withhold the records at issue from the appellant. The appellant has been provided with significant portions of the records. Having found that the police properly exercised their discretion in the circumstances of this appeal, I find that the records remaining at issue are exempt pursuant to sections 38(a) and (b) of the *Act*.

Issue F: Did the institution conduct a reasonable search for records?

[115] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[34] If I am satisfied that 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.

[116] 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 that it has made a reasonable effort to identify and locate responsive records.[35] To be responsive, a record must be "reasonably related" to the request.[36]

[117] 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 to the request.[37]

[118] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[38]

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[34] Orders P-85, P-221 and PO-1954-I.
[35] Orders P-624 and PO-2559.
[36] Order PO-2554.
[37] Orders M-909, PO-2469 and PO-2592.
[38] Order MO-2185.

[119] 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 that such records exist.[39]

[120] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[40]

[121] The police provide representations identifying the manner in which they conducted searches for the records and the results of those searches. They state that after confirming the scope of the request, twenty-five individuals within the police service were asked to search for records responsive to one or more of the requests in the clarified request. The police also note that almost 11 hours were spent by the individuals searching for the requested records, and that the records were given to the Access to Information Unit for processing.

[122] The police then refer to the manner in which they searched for records responsive to request #3 as an example to illustrate the steps taken by them to identify and search for records:

> *Request 3:* All notes/written communication/courthouse logbook entries by WRPS Special Constables that reference [the appellant], beginning on [twelve specified dates and dates ranges between July, 2006 and April, 2009].
>
> 1. The Access to Information Analyst searched for occurrences during the date ranges indicated above, involving the Appellant, contained within the police records management system.
> 2. The Access to Information Analyst identified police service members who were involved in the occurrences found.
> 3. The Access to Information Analyst prepared and sent memorandums to members involved specifying the records to produce.
> 4. Members reviewed their notebooks and/or other materials to locate the requested records and forwarded these records to the Access to Information Unit for processing.
> 5. Where e-mail correspondence was requested the memo was sent to the Director of Information & Technology Branch.
> 6. The Court House logbook entries were requested directly from the Staff Sergeant of Court Services.

[39] Order MO-2246.
[40] Order MO-2213.

[123] The police also specifically identify the manner in which searches for emails where conducted, and provide information about the manner in which this information is stored and retained. In addition, the police provide information about how the additional 11 pages of records were identified as responsive, notwithstanding the incorrect date identified in the request. In addition, the police provide additional information detailing the nature of the searches conducted, and then state, based on the searches conducted and the results of the searches, that they "are confident the records produced are the complete records responsive to the original nine … requests clarified to the appellant." They also state:

> The search for records was undertaken and directed by an experienced, trained employee expending reasonable efforts in conducting a search to identify records that reasonably relate to the request. It is submitted that the information provided by [the police], especially given the nature of the request and all its inherent challenges, is more than sufficient to determine [the police] conducted a reasonable search for records as required by section 17.

[124] In the appellant's representations he indicates that he is:

> …an active member of [a named organization] [who is] a volunteer non-lawyer legal agent and activist in assisting families in regards to their efforts to rescue, same and protect their children from being foster cared and Crown warded by the gov't of Ont's child protection system.

[125] He discusses his views regarding the child protection system and refers to comments made by the Ombudsman to support his views. His criticisms encompass the Children's Aid Society, the Ontario Court of Justice, the offices of the Attorney General and the Children's Lawyer, the Ministry of Children and Youth Services and police services, including the police.

[126] The appellant refers to an incident where he believes the improper behaviour of a member of the police was not investigated following his complaint. The appellant also comments on matters he identified during mediation (which I have found not to fall within the scope of his request).

[127] The appellant provides website addresses for further information about the named organization and its efforts to confront government agencies and organizations, as well as the Ombudsman's remarks and links relating to a "No Trespass" order issued against him in 2009.

[128] The appellant's representations are somewhat convoluted and contain confusing references to some of the incidents he has been involved in; he also describes his family situation in some detail.

[129] After reviewing the appellant's representations, I find that they fail to provide a basis for believing that additional records exist relating to his request as identified above under the heading "Scope of the Request."

[130] I have considered all of the representations provided by the parties. I am satisfied that the searches undertaken by the police for responsive records were conducted by experienced individuals, and that the approach the police took to conduct the searches was comprehensive and reasonable.

[131] Accordingly, I find that the search conducted by the police for responsive records was reasonable and this part of the appeal is dismissed.

ORDER:

1. I order the police to disclose the withheld portions of pages 74 and 129 to the appellant by providing him with a copy of these pages by **May 2, 2014**.

2. I uphold the decision of the police regarding access to the remaining records at issue.

3. I find that the search for responsive records conducted by the police was reasonable and this part of the appeal is dismissed.

Original Signed By: March 31, 2014
Frank DeVries
Adjudicator