Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3026

Appeal MA13-236

Halton Regional Police Services Board

March 31, 2014

Summary: The police received a request for copies of the occurrence reports relating to an alleged assault and copies of the video statements made to a named officer by the requester's children. The police granted the requester partial access to the responsive records. The police advised the requester that access to the DVD of the video statements and portions of the occurrence report was denied pursuant to the discretionary exemptions in sections 38(a), in conjunction with section 8(2)(a) (law enforcement report), and 38(b) (personal privacy) of the *Act*. The requester appealed that decision. During the inquiry, the appellant raised the application of the exception to the personal privacy exemption in section 14(1)(d), in conjunction with section 20(5) of the *Children's Law Reform Act*. This order finds that the records contain information relating to the health, education and welfare of the appellant's children, as contemplated by section 20(5) of the *CLRA*. As the appellant is an individual with a right to access to these children, this order finds that the disclosure of this information is expressly authorized by section 20(5) of the *CLRA* and that the exception provided by section 14(1)(d) of the *Act* applies. The police are ordered to disclose the records to the appellant, with exception of the information that relates exclusively to two affected parties and does not relate to the health, education and welfare of the appellant's children.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 8(2)(a), 14(1), 14(1)(d), 38(a) and 38(b). *Children's Law Reform Act*, R.S.O. 1990, c. C.12, section 20(5).

Orders and Investigation Reports Considered: Orders M-787, M-1109, MO-1238, MO-1480 and MO-1868-R.

OVERVIEW:

[1] The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Privacy Act* (the *Act*) for access to the following:

1. Copies of a police report taken by [named officer] on July 1, 2012 regarding a complaint made by [the requester's children] of an alleged assault by [named individual] on or around June 21, 2012.

2. Copies of video statements made to [second named officer] by [the requester's children] on July 4, 2012.

[2] The police issued a decision granting the requester partial access to an occurrence report. The police advised the requester that access to the DVD copy of the video statements (the DVD) and the undisclosed portions of the occurrence report was denied pursuant to the discretionary exemptions in sections 38(a), in conjunction with section 8(2)(a) (law enforcement report), and 38(b) (personal privacy). In support of their section 38(b) claim, the police raised the application of the presumption in section 14(3)(b) (investigation into violation of law).

[3] The police also advised the requester that they severed the 10-codes, patrol zone information and/or statistical codes from the records, claiming the application of section 38(a), in conjunction with sections 8(1)(e) (life or physical safety) and 8(1)(l) (commission of an unlawful act or control of crime) to withhold this information.

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

[5] During mediation, the appellant confirmed that he seeks access to the records, including the video statements made by his children. The appellant advised the mediator that, as the children's biological father, he has a right of access to information pertaining to his children's welfare.

[6] The appellant also advised the mediator that he does not seek access to the police codes, patrol zone information and/or statistical code information contained in the records. As a result, the exemption in section 38(a), in conjunction with sections 8(1)(e) and 8(1)(l), is no longer at issue in this appeal and the information contained on page 1 of the record relating to the involved officers' districts and duties have been removed from the scope of this appeal.

[7] In response, the police confirmed that they continued to rely on the exemptions in section 38(a), read with section 8(2)(a), and section 38(b) to withhold portions of the occurrence report and the entire DVD from disclosure.

[8] The appellant advised the mediator that he does not accept the police's decision and believes that he has a right to information relating to his children's welfare, in accordance with section 20(5) of the *Children's Law Reform Act*.

[9] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[10] Initially, I invited the police and two individuals identified in the records (the affected parties) to make representations in response to the issues raised in a Notice of Inquiry. Both the police and the affected parties submitted representations. I then invited the appellant to make submissions in response to the issues raised in the Notice of Inquiry and the police's arguments, which were shared in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction* number 7. Due to confidentiality concerns, the affected parties' representations were not shared with the appellant. The appellant submitted representations in response to the Notice of Inquiry. The appellant also made submissions on the possible application of section 20(5) of the *Children's Law Reform Act* (the *CLRA*). I then sought reply representations from the police and the affected parties and shared portions of the appellant's representations with them. Both the police and the affected parties submitted reply representations.

[11] In the discussion that follows, I find that the appellant is an individual who has access to his children and, therefore, is entitled to exercise certain access rights respecting the information specified in section 20(5) of the *CLRA*. I also find that the majority of the information at issue pertains to the health, education or welfare of his children. Accordingly, I find that the disclosure of this information is expressly authorized by section 20(5) of the *CLRA* and that the exception provided by section 14(1)(d) of the *Act* applies. I order the police to disclose the records to the appellant, with the exception of the information that relates exclusively to two affected parties and does not relate to the health, education and welfare of the appellant's children.

RECORDS:

[12] The records at issue consist of a DVD containing the appellant's children's statements to an officer and the severed portions of an occurrence report. I note that, in the highlighted copy of the records which I have provided to the police, I have numbered the pages in the top right-hand corner of each page.

ISSUES:

A. Can the appellant exercise a right of access on behalf of an individual less than sixteen years of age?

B. Does the record 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(a), in conjunction with section 8(2)(a), apply to the records?

D. Does the discretionary exemption at section 38(b) apply to the information at issue?

E. Did the police exercise their discretion under section 38(b) of the *Act*? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Can the appellant exercise a right of access on behalf of an individual less than sixteen years of age?

[13] Section 54(c) of the *Act* states:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > if the individual is less than sixteen years of age, by a person who has lawful custody of the individual

[14] Under this section, a requester can exercise another individual's right of access under the *Act* if he/she can demonstrate that

- the individual is less than sixteen years of age; and
- the requester has lawful custody of the individual.

[15] If the requester meets the requirements of this section, then he/she is entitled to have the same access to the personal information of the individual as the individual would have. The request for access to the personal information of the individual will be treated as though the request came from the individual him or herself.[1]

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[1] Order MO-1535.

[16] Based on my review of the records at issue, it is clear that the appellant's children are both less than sixteen years of age, thereby satisfying the first requirement.

[17] With regard to the second requirement, the appellant provided me with a copy of the Ontario Superior Court of Justice's order granting the appellant temporary joint custody of his children. Further, both the affected parties and the police confirm in their representations that the appellant has lawful custody of his children and is an access parent.

[18] Accordingly, as the appellant has joint custody of his children and his children are under sixteen years of age, I find that the appellant is entitled to exercise their access rights under section 54(c) of the *Act*.

B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[19] Under the *Act*, different exemptions may apply depending on whether a record at issue does or does not contain the personal information of the requester.[2] Where a record contains the requester's own information, or where the record contains information that the requester may exercise a right of access to under section 54(c), access is addressed under Part II of the *Act* and the exemptions at section 38 may apply. Where a record contains the personal information of other individuals but not the appellant, access is addressed under Part I of the *Act* and the exemptions found at sections 6 to 15 may apply.

[20] Therefore, in order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "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,
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> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> (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,

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[2] Order M-352.

(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 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;

[21] 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.[3]

[22] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[23] The police submit that the records contain the mixed personal information of various individuals, including the appellant and his children. The police submit that this "personal information" includes names, addresses, dates of birth, telephone numbers and statements contained in the police occurrence report and videos, as defined in section 2(1) of the *Act*.

[24] The appellant submits that the records contain personal information about himself and his children, as well as the two affected parties. The appellant submits that he already knows most or all of the personal information contained in the records, such as the name, date of birth, ethnicity, religion, home/work address, telephone numbers

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[3] Order 11.

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

and SIN numbers. The appellant also submits that the records may contain information relating to the criminal history of one of the affected parties.

[25] The affected parties submit that the records contain their personal information as well as the personal information of the children.

[26] Based on my review of the records at issue, I find that the withheld portions of the records and the DVD contain "personal information", as that term is defined in section 2(1) of the *Act*.

[27] Specifically, I find that the occurrence report contains the appellant's personal information, including his date of birth (paragraph (a)), his address and phone numbers (paragraph (d)), his personal opinions or views (paragraph (e)), the opinions or views of individuals as they relate to him (paragraph (g)) and his name, along with other personal information about him. As the occurrence report relates to an incident in which the appellant was the complainant, I find that it can be considered to contain his personal information, within the meaning of that term in section 2(1) of the *Act*.

[28] I also find that the records contain the personal information of other identifiable individuals involved in the incident. These identifiable individuals are the appellant's two children and the two affected parties. The personal information consists of their dates of birth (paragraph (a)), their addresses and telephone numbers (paragraph (d)), their personal opinions or views (paragraph (e)), the opinions or views of individuals as they relate to these individuals (paragraph (g)) and their names, along with other personal information about them (paragraph (h)).

[29] With regard to the DVD, I find that it contains the personal information of the appellant's children, the appellant and the two affected parties. Specifically, I find that the records contain the opinions or views of the appellant's children (paragraph (e)), the opinions or views of individuals as they relate to the appellant's children (paragraph (g)) and the opinions or views of individuals, the appellant's children, as they relate to the appellant and the two affected parties.

[30] I will now consider whether the severed portions of the occurrence report qualify for exemption under sections 38(a) and 38(b) of the *Act*.

C. Does the discretionary exemption at section 38(a) in conjunction with the section 8(2)(a) exemption apply to the information at issue?

[31] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Sections 38(a) and (b) of the *Act* provide a number of exemptions to this general right of access. Section 38(a) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, **8**, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information [emphasis added]

[32] The police relies on the exemption in section 8(2)(a) of the *Act* to withhold the information at issue. Section 8(2)(a) states:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

[33] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[5]

[34] In order for a record to fall within section 8(2)(a) of the *Act*, the police must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with the law.

[35] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.[6]

[36] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.[7]

[37] Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report". This

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[5] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[6] Orders P-200, MO-1238 and MO-1337-I.
[7] Orders MO-1238 and MO-1337-I.

wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.[8]

[38] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information," all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous.[9]

[39] The police submit that the occurrence report and the DVD qualify for exemption under section 8(2)(a). They submit that these records consist of the facts in the case and describe the way the officer concluded his investigation at the time, by making a report. They also submit that the officer investigated the situation and documented his findings in a report. The police then conclude that the records were prepared in the course of law enforcement and investigation by an agency with the function of enforcing the law.

[40] I have reviewed the occurrence report and the DVD and find that neither qualifies for exemption under section 8(2)(a) as they do not contain "a formal statement or account of the results of the collation and consideration of information". Generally, occurrence reports and supplementary reports and similar records of various police agencies have been found not to meet the definition of "report" under the *Act*, because they have been found to be more in the nature of recordings of fact than the required formal, evaluative accounts of investigations.[10] Reviewing the occurrence report, I find that it primarily consists of observations, recordings of fact and the collection of information rather than formal, evaluative account of investigations.[11] Further, I find that the DVD is simply a recording of two witnesses' statements and cannot be considered to contain a "formal statement or account of the results of the collation and consideration of information". As neither record contains the requisite formalization contemplated by section 8(2)(a), I find that the records are not exempt under section 38(a), in conjunction with section 8(2)(a).

D. Does the discretionary exemption at section 38(b) apply to the information at issue?

[41] Section 38(b) of the *Act* is the discretionary personal privacy exemption under Part II of the *Act*. Section 38(b) provides:

> A head may refuse to disclose to the individual to whom the information relates personal information

[8] Order PO-2751.
[9] Order MO-1238.
[10] See Orders M-1109, MO-2065 and PO-1845.
[11] *Ibid.*

> if the disclosure would constitute an unjustified invasion of personal privacy.

[42] Because of the wording in section 38(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in the records which also contain the requester's personal information.[12]

[43] In other words, where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[44] In the circumstances of this appeal, it must be determined whether disclosing the personal information of the appellant, his children and the affected parties would constitute an unjustified invasion of the affected parties' personal privacy under section 38(b).

[45] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her personal information against the other individual's right to protection of their privacy.

[46] Under section 14, where a record contains the personal information of other individuals but not the appellant, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion personal privacy".

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

[48] In his representations, the appellant submits that sections 14(1)(a), (d) and (e)(ii) apply to the information at issue. These sections state:

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[12] Order M-352.

> A head shall refuse to disclose personal information to any person other than the individual to whom the records relates, except,
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> (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure
>
> (e) for a research purpose if,
>
> (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form

[49] The appellant submits that section 14(1)(a) and (d) apply to the information at issue because he made a formal written request for these records and he is entitled to access them under section 20 of the *Children's Law Reform Act* (the *CLRA*).

[50] It should be noted that none of the affected parties has provided consent to the disclosure of their personal information. With respect to the appellant's right to access the information of his children, the issue is more appropriately analyzed under section 14(1)(d) of the *Act*, rather than section 14(1)(a).

Section 14(1)(d)

[51] Section 14(1)(d) of the *Act* provides an exception to the section 14(1) prohibition on access. Section 14(1)(d) provides that if disclosure of information is expressly authorized by a provincial or federal statute, the exemption in section 14(1) does not operate to prevent disclosure of that information.

[52] In his representations, the appellant refers to certain provisions of the *CLRA* in support of his position that the information at issue should be disclosed to him. The most relevant part of the *CLRA* is section 20(5), which states:

> The entitlement to access to a child includes the right to visit with and be visited by the child and the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child.

[53] In Order M-787, Adjudicator Holly Big Canoe considered the relationship between section 16(5) of the *Divorce Act* and section 14(1)(d), concluding that the reference in the *Divorce Act* to the provision of information "as to the health, education and welfare of the child" to an individual who has access rights falls within the exception contained in section 14(1)(d). In that order, Adjudicator Big Canoe also found that once section 14(1)(d) is found to apply, the mandatory prohibition against disclosure does not. Therefore, if section 14(1)(d) applies, it cannot be argued that disclosure should be prohibited because it may constitute an unjustified invasion of personal privacy.

[54] Adjudicator Big Canoe's reasoning was applied in Orders P-1246, P-1423, MO-1480 and PO-2407, in which adjudicators found that the right to information contained in section 20(5) of the *CLRA*, which is effectively the same as that contained in section 16(5) of the *Divorce Act*, falls within section 14(1)(d) of the *Act*. In Order MO-1480, Senior Adjudicator Sherry Liang considered the application of section 14(1)(d) and section 20(5) of the *CLRA* to an occurrence report relating to an alleged assault involving the appellant's daughter. In her decision, Senior Adjudicator Liang stated:

> The result of [Orders M-787, P-1246 and P-1423] is that individuals who are entitled to have access to a child, and therefore to the information described by the *CLRA*, cannot be prevented from having access to that information because of the provisions of section 14(1) of the *Act*. Together, the provisions of the *CLRA* and this *Act* express a policy that in these limited circumstances, the welfare of children overrides personal privacy rights.

[55] As discussed above, the appellant is a custodial parent of his children. Accordingly, the appellant is entitled to have access to the information specified in section 20(5) of the *CLRA*, as it relates to his children's health, education or welfare. Since the disclosure to the appellant of information which pertains to the health, education or welfare of his children is expressly authorized by section 20(5), the exception provided by section 14(1)(d) applies to that type of information.

[56] In their representations, the affected parties take the position that the records at issue do not contain information that falls within section 20(5) of the *CLRA*.

[57] The police do not make representations that specifically address the application of section 20(5) of the *CLRA* or the exception provided by section 14(1)(d) of the *Act*.

[58] Reviewing the records at issue and in light of the nature of the incident under investigation, I find that they do contain information that can reasonably be viewed to pertain to the "welfare" of the appellant's children. I find that the DVD, which contains the video statements of the children, also contains information relating to their welfare. Furthermore, I find that portions of the occurrence report, including the summary of the children's video statements on page 5 and the statements of others regarding the

alleged incident on pages 8 and 9, contain information relating to the welfare of the children. Since I have found that portions of the occurrence report and the entire DVD contains information pertaining to the health, education or welfare of the appellant's children, I find that the appellant is entitled to have access to this information pursuant to section 20(5) of the *CLRA* and that the exception provided by section 14(1)(d) of the *Act* applies. As I have already found that section 38(a) does not apply to this information and the police have not relied on any other exemptions in their decision to deny access, I conclude that the appellant is entitled to access to the DVD, in its entirety, and those portions of the occurrence report that pertain to the health, education and welfare of his children.

[59] I note that other portions of the record contain information that relates exclusively to other individuals, specifically the affected parties, and do not pertain to the health, education and welfare of the children. I will now consider whether the remaining personal information in the records is exempt from disclosure under section 38(b) of the *Act*.

Section 14(3)

[60] The police submit that the presumption listed in section 14(3)(b) of the *Act* applies to the personal information at issue in this appeal. Section 14(3)(b) states:

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

[61] The police submit that the records were compiled as part of a law enforcement investigation and that the disclosure of the personal information at issue would constitute a presumed unjustified invasion of the affected parties' personal privacy. The police refer to Order MO-1902, in which Adjudicator Laurel Cropley stated:

> I have reviewed the records and am satisfied that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly compiled and is identifiable as part of an investigation into a possible violation of law (the Criminal Code). Despite the fact that a determination was made that the allegation was unfounded, the investigation was conducted with a view towards determining whether or not this was the case, and this is sufficient to bring the records within the presumption.

[62] The police also submit that Order P-223 states that section 14(3)(b) does not specify whether the "investigation into a possible violation of law" must be one which examines the activities of the individuals subject to the investigation or more properly referable to those of the individuals interviewed in the course of such investigations. As either interpretation is offered in Order P-233, the police submit that the information provided by the affected parties is related to an investigation into a possible violation of law.

[63] In their confidential representations, the affected parties confirm that they do not consent to the disclosure of the information and submit that the disclosure of the information at issue would result in an unjustified invasion of their personal privacy.

[64] The appellant does not address whether the presumption in section 14(3)(b) of the *Act* applies to the information at issue.

[65] Based on my review of the records and the representations of the parties, I find that the presumption in section 14(3)(b) applies to the remaining information at issue. As the police submit, referring to Order MO-1902, the Commissioner's office has found that the presumption in section 14(3)(b) may apply even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into the possible violation of law.[13]

[66] I have reviewed the occurrence report and it is clear from the circumstances that the personal information contained therein was compiled and is identifiable as part of the police's investigation into a possible violation of law, namely the *Criminal Code of Canada*.

[67] Accordingly, I find that the personal information that remains at issue in the records was compiled and is identifiable as part of an investigation into a possible violation of law, and falls within the presumption in section 14(3)(b). Its disclosure is, accordingly, presumed to be an unjustified invasion of other individuals' personal privacy. Reviewing the factors favouring disclosure in section 14(2) of the *Act*, I find that none apply.

Absurd Result

[68] I note that portions of pages 2 and 3 of the records contain a summary of the appellant's witness statement. This office has found that where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under sections 14(1) or 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[14]

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[13] Orders P-242 and MO-2235.
[14] Orders M-444 and MO-1323.

[69] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement[15]
- the requester was present when the information was provided to the institution[16]
- the information is clearly within the requester's knowledge[17]

[70] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[18]

[71] The affected parties and the police did not make representations on the possible application of the absurd result principle to the information at issue. In his representations, the appellant submits that it would be absurd to not disclose the information at issue as he believes that there is "little to no invasion of privacy".

[72] Reviewing the records, I find that the absurd result principle applies to the summary of the appellant's statement located on pages 2 and 3 of the occurrence report that remains at issue. Although the police submit that the information withheld is exempt from disclosure under section 38(b), I find that the summary of the appellant's own statement should be disclosed to him under the absurd result principle. In Order MO-1868-R, former Assistant Commissioner Tom Mitchinson made the following comments with regard to an individual's right to access their own witness statements:

> Order M-444 and other subsequent similar orders have made it clear that if an individual makes a formal request for access under the *Act* to his or her statement made as a witness to a police investigation, that statement will be provided to the requester, regardless of the fact that it contains personal information of other individuals. These orders are saying, in effect, that denying a requester access to information that originated with that same person cannot be justified on the basis that some parts of the statement may relate to other individuals as well. This office has applied the absurd result principle to that set of circumstances, and institutions routinely disclose statements of this nature in response to requests under both the provincial and municipal statutes. This practice reflects a clear balancing of interests in favour of disclosing information that might otherwise be caught by a presumption in section 14(3)(b), on the basis of

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[15] Orders M-444 and M-451.
[16] Orders M-444 and P-1414.
[17] Orders MO-1196, PO-1679 and MO-1755.
[18] Orders M-757, MO-1323 and MO-1378.

what Adjudicator Cropley described as a "higher" right of access to one's own personal information.

[73] Applying these principles to this appeal, I find that denying the appellant access to information taken from his own statements made to the police would lead to an absurd result. Although I appreciate that the information withheld from his statement contains the personal information of other individuals (such as their names and opinions), I find that because the information was provided to the police by the appellant himself, its disclosure to him would not result in an unjustified invasion of the personal privacy of any other individuals.[19] Accordingly, I am satisfied that the appellant is entitled to access to the summary of his entire statement found at pages 2 and 3 of the occurrence report.

[74] Therefore, I find that the personal information that relates exclusively to individuals other than the appellant and/or his children contained on pages 1, 2, 3, 5, 7 and 8 of the records qualifies for exemption under section 38(b) of the *Act*. I will now consider whether the police's exercise of discretion to withhold these portions of the record should be upheld.

E. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[75] The section 38(b) exemption is discretionary, and permits 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.

[76] 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.

[77] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[20] This office may not, however, substitute its own discretion for that of the institution.[21]

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[19] Order MO-2035.
[20] Order MO-1573.
[21] Section 43(2).

[78] The police submit that it applied section 14 of the *Act* to withhold portions of the record, taking into consideration that the right of access is not obligatory. The police indicate that, in exercising their discretion to not disclose portions of the records, it considered all of the facts in the case and considered the following principles:

- information should be available to the public;
- individuals should have access to their own personal information; and
- exemptions to this right of access should be limited and specific.

[79] The police indicate that the individuals whose personal information is contained in the records were not contacted for consent. As a result, the police decided to withhold their personal information.

[80] The police also submit that they considered the appellant's right of access to the information at issue and balanced that right against the privacy interests of affected parties.

[81] In addition, the police indicate that they considered whether the records could be severed in a manner that would allow the disclosure of the appellant's information without disclosing another individual's personal information or breach their privacy. The police submit that after this consideration, it disclosed as much as possible to the appellant, while respecting the privacy of others.

[82] In his representations, the appellant submits that the police did not properly exercise their discretion. He submits that the police only considered the privacy of the individuals identified in the record and not the best interests of his children.

[83] I have reviewed the circumstances of this appeal and the records at issue. In its original decision, the police provided the appellant with portions of the records, including information relating to the investigation and the incident that is the subject of the appellant's complaint. I also note that additional portions of the records (including the entire DVD and portions of the occurrence report) are to be disclosed to the appellant as a result of this order. With respect to the remaining information, I found that disclosure of this information would constitute an unjustified invasion of the personal information of the affected parties and that it qualifies for exemption under section 38(b). Based on the nature of the information remaining at issue, and on the police's representations, I am satisfied that the police have not erred in exercising their discretion to not disclose the remaining information contained in the record to the appellant.

ORDER:

1. I order the police to disclose to the appellant a copy of the DVD and a copy of the occurrence report, with the exception of the information I have found to be exempt, by **May 7, 2014**, but not before **May 2, 2014**. For further clarification, I have highlighted the portions of the occurrence report to remain withheld from disclosure on a copy sent to the police along with this order.

2. In order to verify compliance with Order Provision 1, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant, upon request.

Original signed by: March 31, 2014
Justine Wai
Adjudicator