

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2985

Appeal MA12-560

Hamilton Police Services Board

November 29, 2013

Summary: The Hamilton Police Services Board received a request for records relating to an incident involving the requester's granddaughter that occurred at her daughter's home. The police denied access to the information, in part, under sections 38(a) (discretion to refuse a requester's own information), read in conjunction with sections 8(1)(e) and (l) (law enforcement), and section 38(b) (personal privacy), read in conjunction with the factor at section 14(2)(f) (highly sensitive), and the presumptions at sections 14(3)(a) (medical information) and 14(3)(b) (compiled as part of an investigation into a possible violation of law). The requester appealed the decision. In this order, the adjudicator finds that the records contain the personal information of the appellant and other identifiable individuals; that the discretionary exemption at section 38(a), read in conjunction with section 8(1)(l), applies to the information for which it was claimed; and, that the discretionary exemption at section 38(b) applies to all of the information at issue. The adjudicator also finds that the police's exercise of discretion to deny access to portions of the records was reasonable. As a result, the adjudicator upholds the police's decision and dismisses the appeal.

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

Orders and Investigation Reports Considered: Order MO-2112.

OVERVIEW:

[1] The Hamilton Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an incident involving the requester's granddaughter that occurred at her daughter's home. The request provided the date of the incident and the incident number assigned by the police.

[2] The police located 59 pages of responsive records, including an 8-page incident report entitled "Occurrence Details", and a number of witness statements. The police issued a decision granting partial access to the records. Information was severed from them pursuant to sections 38(a) (discretion to refuse a requester's own information), read in conjunction with sections 8(1)(e) and (l) (law enforcement), and section 38(b) (personal privacy), read in conjunction with the factor at section 14(2)(f) (highly sensitive), and the presumptions at sections 14(3)(a) (medical information) and 14(3)(b) (compiled as part of an investigation into a possible violation of law) of the *Act*.

[3] The requester (now the appellant), appealed the police's decision to sever portions of the responsive records.

[4] As the appeal could not be resolved during mediation, it was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. I began my inquiry by seeking submissions from the police, who provided representations.

[5] I then sought the representations from the appellant and provided her with a copy of the police's representations. The appellant chose not to submit representations.

[6] In this order, I uphold the police's decision to deny access portions of the responsive information. In the discussion that follows, I reach the following conclusions:

- the records at issue contain the "personal information" of both the appellant and other identifiable individuals, within the meaning of that term, as defined at section 2(1) of the *Act*;
- the discretionary exemption at section 38(a), read in conjunction with section 8(1)(l) of the *Act*, applies to the information for which it has been claimed;
- the discretionary exemption at section 38(b) of the *Act* applies to the information at issue; and

- the police's exercise of discretion to deny access to portions of the records was reasonable.

RECORDS:

[7] The records at issue in this appeal consist of portions of an 8-page incident report entitled "Occurrence Details," and 9 witness statements.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom do they relate?
- B. Does the discretionary exemption at section 38(a), read in conjunction with sections 8(1)(e) and (l) apply to the information at issue?
- C. Does the discretionary exemption at section 38(b) apply to the information at issue?
- D. Did the police exercise their discretion under sections 38(a) and/or (b)? If so, should this office uphold the police's exercise of discretion?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom do they relate?

[8] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.¹ Where the records contain the requester's own information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records contain the personal information of individuals other than the appellant but do not contain the personal information of the appellant, access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[9] Accordingly, in order to determine which sections of the *Act* 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,

¹ Order M-352.

- (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;

[10] 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.²

² Order 11.

[11] Sections 2(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 (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] 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.³

[13] 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.⁴

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[15] The police submit that both the "occurrence details" and the witness statements contain both the personal information of the appellant and other identifiable individuals as defined in paragraphs (a), (b), (d), (e), (g) and (h), of the definition of "personal information" in section 2(1) of the *Act*. The police submit:

The victim(s) and others referred to in the records are minors along with their parents. Consent for the disclosure of their personal information was not obtained therefore needs to be protected.

Although some of the information pertains to the appellant, and the appellant is aware of the identity of all parties, some of the information contains statements made to the police during the investigation while there was a presumed understanding of confidentiality.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

These records contain the personal information of innocent affected parties that were drawn into this situation not by choice but due to their relationship with the involved individuals.

[16] Having reviewed the information at issue, which consists of portions of an occurrence report and a number of witness statements, I accept that they contain the personal information of the appellant and other identifiable individuals who were interviewed as part of the police investigation or whose personal information was otherwise collected as part of the police investigation. Specifically, the personal information includes information relating to race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status (paragraph (a)), medical, psychiatric, psychological, criminal or employment history (paragraph (b)), addresses and telephone numbers (paragraph (d)), personal opinions or views of individuals (paragraph (e)), the views or opinions of other individuals about the individual (paragraph (g)), and the names of individuals together with other personal information about them (paragraph (h)).

[17] Accordingly, I find that the records at issue contain the “personal information” of both the appellant and other identifiable individuals, within the meaning of the definition of that term at section 2(1) of the *Act*.

[18] As described above, in circumstances where the appellant’s personal information is mixed with that of other identifiable individuals, Part II of the *Act* applies and I must consider whether the information is properly exempt pursuant to the discretionary exemptions at section 38.

B. Does the discretionary exemption at section 38(a), read in conjunction with sections 8(1)(e) and (l) apply to the information at issue?

[19] 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.

[20] Section 38(a) reads:

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

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[21] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁶

[22] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[23] In this case, the institution relies on section 38(a) in conjunction with sections 8(1)(e) and (l).

Law enforcement

[24] Sections 8(1)(e) and (l) state:

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

(e) endanger the life or physical safety of a law enforcement officer or any other person;

...

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[25] The term "law enforcement" is used in several parts of section 8(1)(e), 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)

⁶ Order M-352.

[26] 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-law⁷
- a police investigation into a possible violation of the *Criminal Code*⁸
- a children’s aid society investigation under the *Child and Family Services Act*⁹
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997*¹⁰

[27] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹¹

[28] In the case of section 8(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.¹²

[29] 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.¹³

Representations

[30] The police’s submissions on the application of these exemptions are brief. They submit:

Section 38(a) was used in conjunction with sections 8(1)(e) and (l) to deny portions of these records. The exercise of discretion was applied to this decision. The use of exemptions 8(1)(e) and (l) apply to the law enforcement portions of the records not the appellant’s personal information.

⁷ Orders M-16 and MO-1245.

⁸ Orders M-202 and PO-2085.

⁹ Order MO-1416.

¹⁰ Order MO-1337-I.

¹¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹² *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

¹³ Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

Analysis and findings

[31] The police's representations provide no substantive representations to support denying access to the records pursuant to the discretion exemption at section 38(a), in conjunction with sections 8(1)(e) and (l). As previously mentioned, it is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record. However, having reviewed the information at issue for which the police have claimed the application of the exemption at section 38(a), read in conjunction with sections 8(1)(e) and (l), I note that all of it consists of police codes.

[32] The law surrounding the disclosure of police codes is well-established. In Order MO-2112, Adjudicator Colin Bhattacharjee considered the application of section 8(1)(l) to "police codes" despite a lack of evidence to support the police's decision to deny access to this type of information. In that order, Adjudicator Bhattacharjee stated:

I would note, however, that the police have withheld "police codes" from the records at issue. This office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l) applies to "10 codes,"¹⁴ as well as other coded information such as "900 codes."¹⁵ These orders adopted the reasoning of Adjudicator Laurel Cropley in Order PO-1665:

In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals to engage in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

Although the police have not provided any representations as to why they severed police codes in the records at issue, I accept that this information may be withheld pursuant to section 8(1)(l) of the *Act*. Consequently, I find that the police codes in the records at issue qualify for exemption under section 38(a) in conjunction with section 8(1)(l) of the *Act*.

[33] I agree with Adjudicator Bhattacharjee's reasoning in Order MO-2112, and find it to be relevant to the current appeal. I accept that this office has issued numerous orders with respect to the disclosure of police codes and has consistently found that

¹⁴ Orders M-93, M-757, MO-1715 and PO-1665.

¹⁵ Order MO-2014.

section 8(1)(l) applies to withhold them. In accordance with those orders, I find that disclosure of the police codes for which the police have claimed section 8(1)(l) could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Therefore, subject to my review of the police's exercise of discretion below, I find that section 38(a), read in conjunction with section 8(1)(l) applies to this information.

[34] As the police have claimed section 38(a), read in conjunction with section 8(1)(e), to the very same information for which it has claimed section 38(a), read in conjunction with section 8(1)(l), it is not necessary for me to determine whether 8(1)(e) applies to the information in that context.

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

[35] Under section 38(b), 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.

[36] 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 own personal information against the other individual's right to protection of their privacy.

[37] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1).

[38] The factors and presumptions in section 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). That section reads:

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

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

[39] 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). In this case, paragraphs (a) to (c) of section 14(4) do not apply.

Section 14(3) - presumptions

[40] In *Grant v. Cropley*¹⁶ the Divisional Court said the Commissioner could:

. . . consider the criteria mentioned in s.21(3)(b) [the equivalent provision in the provincial *Act* to section 14(3)(b)] in determining, under s. 49(b) [which is equivalent to section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

[41] 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).

[42] In its decision letter, the police submit that the presumptions at paragraphs (a) and (b) of section 14(3) could apply. Those sections read:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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;

14(3)(a)- medical history

[43] Having reviewed the information at issue, I accept that some of the information contained in the records relates to medical history, diagnosis, condition, treatment or evaluation of an identifiable individual other than the appellant. As a result, I find that the presumption at section 14(3)(a) applies, and disclosure of that information amounts to a presumed unjustified invasion of that individual's personal privacy under section 38(b).

14(3)(b) – investigation into a violation of law

[44] 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

¹⁶ [2001] O.J. 749.

into a possible violation of law.¹⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁸

[45] The police do not provide specific representations on the application of this presumption. However, from my review of the records issue, they are clearly records that were compiled by the police in the course of their investigation into an incident involving the appellant and others. The information at issue consists of a report detailing the incident and witness statements made to the police during the course of their investigation into that incident. In my view, these records are clearly compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the information falls under section 14(3)(b) of the *Act* and its disclosure amounts to a presumed unjustified invasion of the personal privacy of individuals other than the appellant, under section 38(b).

Section 14(2) - factors

[46] Section 14(2) provides some factors for the police to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the affected parties' personal privacy. The list of factors under section 14(2) is not exhaustive. The police must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹⁹ Some of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection.

[47] In the circumstances of this appeal, the police raised the possible application of the factor at section 14(2)(f) in its decision letter. However, in the representations provided to me by the police, they do not make any submissions on the application of any of the factors in section 14(2) to the disclosure of the information at issue. However, on my review of the information at issue, the criteria listed at sections 14(2)(d), (f), and (h) may be relevant. Those sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances including whether,

- (d) the information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom it relates in confidence;

¹⁷ Orders P-242 and MO-2235.

¹⁸ Orders MO-2213, PO-1849 and PO-2608.

¹⁹ Order P-99.

Section 14(2)(d)

[48] For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.²⁰

[49] Previous orders have established that an appellant must provide sufficient evidence to establish that there is a proceeding that exists or is contemplated in some definite fashion and that is relevant to a fair determination of a right.²¹

[50] Additionally, it has previously been held that for the purpose of civil litigation, it may be that the discovery mechanisms available to the requester in that litigation will be sufficient to ensure a fair hearing with the result that section 14(3)(d) does not apply.²²

[51] As the appellant has not made submissions, I have not been provided with sufficient evidence to establish that a proceeding exists or is contemplated. Additionally, I have not been provided with sufficient evidence to establish that any of the other three elements of the test outlined above have been met. Accordingly, I do not find that the criteria at section 14(2)(d) is a relevant consideration in the circumstances of this appeal.

²⁰ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

²¹ Order P-443.

²² Order PO-1833.

Section 14(2)(f)

[52] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.²³ Given the nature of the information that is at issue, I accept that the personal information that has been withheld can be considered to be highly sensitive and that its disclosure could reasonably be expected to result in significant personal distress for the other identified individuals. Accordingly, I find that this factor weighing against disclosure is relevant.

Section 14(2)(h)

[53] The factor at section 14(2)(h) weighs in favour of privacy protection. For it to apply, both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.²⁴

[54] In my view, the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied by them to the police would be subject to a degree of confidentiality. Accordingly, in this appeal, I find that the factor in section 14(2)(h) is a relevant consideration that weighs in favour of protecting the privacy of the affected parties and withholding their personal information.

Summary

[55] In conclusion, I have found that the presumptions at sections 14(3)(a) and (b) apply to the personal information at issue because it consists of, in part, information that relates to an individual's medical history as well as, in its entirety, amounts to information that was compiled as part of an investigation into a possible violation of law. Accordingly, I find that disclosure of the information at issue is presumed to result in an unjustified invasion of the personal privacy of individuals other than the appellant.

[56] Even if some of the information is not covered by a presumption, there is no evidence to support a conclusion that any of the criteria in section 14(2) which favour disclosure apply in the circumstances. However, I have found that there is some evidence that the factors weighing in favour of privacy protection and against disclosure at sections 14(2)(f) and (h) are relevant considerations as the information is highly sensitive and was supplied to the police by the individuals to whom it relates in confidence.

²³ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁴ Order PO-1670.

[57] As a result, I find that the disclosure of the information, which amounts to the affected parties' personal information, would constitute an unjustified invasion of personal privacy and the discretionary exemption at section 38(b) applies to the information for which it was claimed. Accordingly, subject to my discussion below on the exercise of discretion, I will uphold the police's decision not to disclose it.

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

[58] The exemptions at sections 38(a) and (b) 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.

[59] 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.

[60] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁵ This office may not, however, substitute its own discretion for that of the institution.²⁶

Relevant considerations

[61] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²⁷

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information

²⁵ Order MO-1573.

²⁶ Section 43(2).

²⁷ Orders P-344 and MO-1573.

- 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.

[62] The police states that they took into account the above-mentioned relevant factors and discounted irrelevant ones. They submit that their discretion was not exercised in bad faith or for any improper purpose. Specifically, they submit:

[The police] have taken into consideration section 38(a) and (b) and strongly feel that any information that was disclosed to the officers by affected parties should remain protected as those parties have a right of privacy. Often times, [police] officers act as mediators in situations like this and they document both sides of the story and all parties are given the right to freely express their views and opinions without fear of reprisal. Information collected by the police from individuals must be safe guarded in order to protect processes....

The relationship between the appellant and all affected parties was given the utmost consideration after review of all of the responsive records and as stated in these representations these relationships are not good and further release of this information would cause these individuals undue stress. The information in these records is highly sensitive and involves

minors who were interviewed by the police. Access to this sensitive information should never be released to anyone without the written consent of their parent or guardian. This consent has not been obtained.

[63] Based on my review of the information at issue and the representations submitted by the police, I accept that the police exercised their discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors.

[64] Accordingly, I uphold the police's exercise of discretion as reasonable and find that the information which is subject to sections 38(a) and (b) is properly exempt under those discretionary exemptions.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ November 29, 2013