Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-3025-I

Appeal MA12-410

Ottawa Police Services Board

March 26, 2014

Summary: This interim order addresses an appeal arising from an individual's access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act)* to the Ottawa Police Services Board (the police) for any records containing her name, particularly any that showed database searches by police personnel. The police located records responsive to the request and disclosed them in part, denying access under section 38(a), together with various parts of section 8(1) (law enforcement), and section 38(b) (personal privacy). The appellant challenged the adequacy of the police's search for responsive records, as well as the exemption claims applied by the police.

The adjudicator orders the police to disclose the appellant's personal information to her, but finds that section 38(a), together with sections 8(1)(g) (intelligence information) and (i) (endanger security of a system), and section 38(b), together with the presumption in section 14(3)(b) (personal information compiled and identifiable as part of an investigation into a possible violation of law), apply to portions of the records. Finally, the adjudicator finds that the police did not conduct a reasonable search for responsive records and orders additional searches. The adjudicator remains seized of the appeal pending the results of the searches.

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)(a), 8(1)(c), 8(1)(g), 8(1)(i), 8(3), 14(1), 14(3)(b), 17, 38(a) and 38(b).

Orders and Investigation Reports Considered: Orders MO-2954 and PO-2751.

OVERVIEW:

[1] This order addresses the decision of the Ottawa Police Services Board (the police) in response to an individual's request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records from December 2008 to "present" (July 27, 2012) relating to her. The request stated:

> All physical records (printouts, police reports, memos, meeting agendas, photocopy documents, reports, investigative summary reports, handwritten notes) and electronic records (email, CPIC[1] records, investigative summary reports, scanned documents and any information stored in a[n] electronic database) in relation to my name [requester's name]. Please include all instances where my name was searched in a database by the Ottawa Police Service, specifically, any searches of my name completed by [a named detective] (include date and time stamp).

[2] In response to the request, the police issued a decision granting partial access to the responsive records. The police relied on section 38(a), together with sections 8(1)(a), 8(1)(c), 8(1)(g), 8(1)(i) and 8(1)(l) (law enforcement), as well as section 38(b), in conjunction with section 14(1) and the presumption against disclosure in section 14(3)(b), to deny access to the remaining portions.

[3] The requester, now the appellant, appealed the decision to this office. During mediation, the appellant decided not to pursue her appeal with respect to information withheld under section 8(1)(l). She also described a record she did not receive with the police's partial disclosure, but which she believes exists. After the mediator discussed this information with the police, another search was conducted. Subsequently, the police issued a new decision, citing section 8(3) of the *Act,* which signals a refusal to confirm or deny the existence of such a record.

[4] The appeal could not be resolved by mediation and it was transferred to the adjudication stage of the appeals process for an inquiry. I sent a Notice of Inquiry to the police, initially, to seek representations on the issues. After the police submitted representations, a non-confidential version[2] of them was shared with the appellant, along with a modified Notice of Inquiry. In particular, I added the issue of reasonable search to the appellant's Notice of Inquiry in order to clarify whether or not she was still

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[1] The Canadian Police Information CPIC is a system operated by the Canadian Police Information (CPI) Centre under the stewardship of National Police Services, on behalf of the Canadian law enforcement community. CPIC provides public safety information on charges, warrants, persons of interest, stolen property and vehicles. It is Canada's primary public and officer safety tool, used by law enforcement agencies, to share law enforcement and criminal justice information. The CPIC website is managed by the RCMP on behalf of the Canadian law enforcement community. Source: http://www.cpic-cipc.ca/about-ausujet/index-eng.htm.

[2] I also severed certain other portions of the police's representations that were not relevant to the issues in this appeal, including one section that clearly related to another appeal.

asserting, as she had during mediation, that additional responsive records ought to exist.

[5] In turn, the appellant provided representations for my consideration. Although the appellant's representations did not directly address the exemption claims, they did challenge the adequacy of the police's search. Accordingly, I sought reply representations from the police by sending them the relevant, non-confidential parts of the appellant's representations, inviting comment on the issues of search and the exercise of discretion.[3] I received reply representations from the police.

[6] Before concluding the inquiry, the limitations under the *Act* were also discussed with the appellant. In particular, staff confirmed with the appellant that this inquiry will address only the denial of access to information and the reasonableness of the search conducted by the police, not the actions of the police that precipitated her making the request under the *Act.* With regard to the concerns expressed about a possible breach of her privacy by the police, the appellant was advised about privacy complaint options. Additionally, in supplementary documents provided with the appellant's representations, she cites section 36(2) of the *Act* (correction of personal information) in reference to information that appears in an incident report to which she was granted access. As the issue had not been raised previously during the appeal, the proper process for requesting correction under the *Act* was confirmed with the appellant.[4]

[7] In this order, I find that the records contain the personal information of the appellant and several other identifiable individuals. I order the appellant's personal information disclosed to her. I uphold the police's decision respecting access, in part, based on my finding that section 38(a), together with sections 8(1)(g) and 8(1)(i), and section 38(b), with reference to section 14(3)(b) apply. I find the searches conducted by the police were not adequate and I order them to conduct further searches.

RECORDS:

[8] There are 14 pages of records at issue, either in part, or in their entirety. These consist of various queries, street check/field interview hardcopy and other documents.[5]

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[3] Although requested to provide representations on the exercise of discretion under sections 38(a) and 38(b) in the initial Notice of Inquiry, the police did not do so.

[4] Section 36(2) of the *Act* gives the individual a right to ask the institution to correct their own personal information in a record to which access has been granted. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. The individual must first ask the institution to correct the information before this office will consider whether the correction should be made.

[5] In the Notice of Inquiry sent to the parties, 20 pages were listed as being at issue. Since pages 4-6 and 8-10 were disclosed to the appellant by the police, in their entirety, this number was inaccurate. Notably, as discussed below, pages 19 and 20 are blank.

ISSUES:

A. Do the records contain "personal information" according to the definition in section 2(1) of the *Act*?

B. Do the records contain law enforcement information that is exempt under the discretionary exemption in section 38(a), in conjunction with section 8(1)(a), (c), (g) or (i)?

C. Does the personal privacy exemption in section 14(1) or section 38(b) apply to the withheld information?

D. Did the police properly exercise their discretion under sections 38(a) and 38(b)?

E. Did the police conduct a reasonable search for records?

DISCUSSION:

A. Do the records contain "personal information" according to the definition in section 2(1) of the *Act*?

[9] In order to determine if sections 38(a) or 38(b) apply, together with the exemptions in sections 8 and 14 claimed by the police, I must first 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,
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> (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.

[11] Sections 2(2.1) and (2.2) also relate to the definition of personal information and 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.

[12] 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.[6] However, 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.[7]

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[6] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[7] Orders P-1409, R-980015, PO-2225 and MO-2344.

Representations

[13] The police submit that personal information is "contained throughout the records" and relates to "individuals in the intelligence reports and other individuals who were interviewed or seen during the collection" of the information. The types of information specifically identified by the police are names, dates of birth, race, origin, contact information and employment history.

[14] The appellant's representations do not specifically address this issue, other than to state that the records contain her personal information.

Analysis and findings

[15] I have reviewed the records to determine whether they contain "personal information" and, if so, to whom it relates. Based on this review, I find that the records contain information pertaining to the appellant that qualifies as her personal information within the meaning of paragraphs (a) (age, sex, marital or family status), (c) (identifying number or other assigned particular), (d) (address or phone number), (g) (views or opinions about her), and (h) (name, with other personal information) of the definition in section 2(1) of the *Act*.

[16] Additionally, I find that there is personal information about other identifiable individuals in the records that falls under the following paragraphs of the definition: (a) (age, sex, marital or family status), (b) (employment history), (c) (identifying number or other assigned particular), (d) (address or phone number), (g) (views or opinions about them), and (h) (names, with other personal information relating to these individuals).

[17] Previous orders have found that a police officer's badge number does not qualify as personal information because it is associated with the officer in a professional, rather than a personal capacity.[8] I agree with these previous orders, and I find that the badge numbers in the records are the officers' professional information and do not reveal anything of a personal nature about them. Furthermore, pursuant to section 2(2.1) of the *Act,* the "name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity" does not qualify as "personal information." Accordingly, I find that information fitting within section 2(2.1) and the badge numbers contained in the records do not qualify as the personal information of these individuals referred to in the records.

[18] In summary, I find pages 3, 7, and 13-18 of the records contain the mixed personal information of both the appellant and other identifiable individuals, while pages 1-2, 11 and 12 contain only the personal information of the appellant. In view of

[8] Orders MO-2050, MO-2112, MO-2252, MO-2527 and MO-2911.

this finding, section 38(b) cannot apply to pages 1-2 and 12,[9] as claimed by the police, since disclosure of the appellant's own personal information could not result in an unjustified invasion of *another* individual's personal privacy.

[19] I will begin with review of the possible application of section 38(a), in conjunction with the law enforcement exemption in section 8.

B. Do the records contain law enforcement information that is exempt under the discretionary exemption in section 38(a), in conjunction with section 8(1)(a), (c), (g) or (i)?

[20] 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.

[21] 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.

[22] 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. 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 police claim that section 38(a) applies, together with sections 8(1)(a), (c), (g) and (i). Earlier in the appeal, however, the police had also relied on section 8(3) of the *Act,* and I will address this provision first.

[24] During mediation, the appellant described a record she did not receive as part of the disclosure made in response to her request, but which she believes exists. After the mediator discussed this information with the police, another search was conducted and the police subsequently issued a new decision refusing to confirm or deny the existence of a record, citing section 8(3) of the *Act*.

[9] The police did not claim section 38(b) in relation to page 11.

[25] Section 8(3) states:

> A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

[26] This section acknowledges the fact that in order to carry out their mandates, in certain circumstances, law enforcement agencies must have the ability to be less than totally responsive in answering requests for access to information. However, it would be the rare case where disclosure of the existence of a record would communicate information to the requester that would frustrate an ongoing investigation or intelligence-gathering activity.[10] For this provision to apply, an institution must provide detailed and convincing evidence to establish that disclosure of the mere existence of records would convey information that could compromise the effectiveness of a law enforcement activity.[11]

[27] When I sought representations from the police respecting the possible application of section 8(3) in the circumstances of this appeal, they provided none. In the appellant's Notice of Inquiry, I advised the appellant of this fact. I also referred to the letter written to the appellant by the police superintendent (during the inquiry, but not as part of it) that had been provided to me by the appellant and the police. The police superintendent wrote this letter to the appellant in response to a letter the appellant had written to the police chief. As I advised the appellant in the Notice of Inquiry, certain information in the police superintendent's letter to her suggested that section 8(3) could not apply. As such, I concluded that it was unnecessary to address section 8(3) further.

[28] As of the date of writing this order, I remain satisfied that section 8(3) – refusal to confirm or deny the existence of a law enforcement record – is not at issue in this appeal. However, in view of my finding on the search issue, below, section 8(3) may once again become relevant, if the police choose to claim it for any records they might locate as a result of the searches ordered.

[29] Next, and as stated, the police rely on section 38(a), in conjunction with sections 8(1)(a), (c), (g) and (i), to deny access.

[30] Sections 8(1)(a), (c), (g) and (i) state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;

[10] Orders P-255 and P-1656.
[11] Order P-344.

> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[31] 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)

[32] The term "law enforcement" has been found to apply to a police investigation into a possible violation of the *Criminal Code.*[12]

[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.[13] 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.[14]

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[12] Orders M-202 and PO-2085.
[13] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[14] 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.).

[34] 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* fulfillment of the requirements of the exemption.[15]

Representations

[35] Certain portions of the police's representations regarding the law enforcement exemption claims are not set out in this order because I accepted the position taken by the police that they ought to be withheld for confidentiality reasons.

[36] According to the police, disclosure of the withheld information could interfere with a law enforcement matter. The remainder of the police's representations in support of section 8(1)(a) were not shared with the appellant; however, it may be said that the police refer to the potential consequences of the disclosure of this information to the appellant.

[37] Regarding the application of sections 8(1)(c) and 8(1)(g), the police submit that disclosure would reveal investigative techniques and procedures currently in use or likely to be used in law enforcement or reveal law enforcement intelligence information respecting organizations or persons. Additional comments on the application of these exemptions in the following paragraph of the police's representations were withheld as confidential.

[38] With respect to section 8(1)(i), the representations that were shared with the appellant stated:

> The records that fall under section 8(1)(i) of the *Act* were not released because they are records in the occurrence report involving the CPIC system which is hosted by the Royal Canadian Mounted Police. It is the Policy of the Ministry of the Attorney General to protect and safeguard all information that is posted on the CPIC system. The CPIC information can only be used and shared amongst Law Enforcement Personnel for Law enforcement purposes only. There has been a recent Directive from summer of 2012 that states, no information from CPIC can be released to an individual and if an individual makes a formal FOI, they are to be notified that the request must be made to the RCMP because they are in care and control of the CPIC system.

[39] With their representations, the police attached an email sent to FOI staff by the "CPIC Supervisor," which forwarded an email from September 2012, advising two other police personnel that, effective August 2, 2012, FOI requests for "off-line" searches would be denied. Specifically, the "New Policy" states:

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[15] Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

> There will be no processing of FOIP related OLS [off-line search] requests unless authorized by the OIC CPIC Network Access and Policy. Provincial agencies subjected to the Freedom of Information and Protection of Privacy Act (FOIPPA) may not request an Offline Search and should redirect their client to the originating contributing agency.

[40] In response to this point, the appellant notes that the access decision sent to her by the police does not mention anything about her personal information being listed on the CPIC system or that she needed to contact the RCMP to gain access to CPIC information.

[41] The appellant's representations do not otherwise address the law enforcement exemptions claimed by the police to deny access.

Analysis and findings

[42] Order 188 articulates the principle that establishing one of the exemptions in section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.[16] This requirement that the expectation of harm must be "based on reason" means that there must be some logical connection between disclosure of the actual records and the potential harm which the institution seeks to avoid by applying the exemption.[17]

[43] As stated above, portions of the representations submitted by the police were withheld as confidential and, consequently, were not reproduced in this order. However, I have considered these submissions, in their entirety. I conclude that the police have, with limited exceptions, failed to provide the necessary "detailed and convincing evidence" to connect the disclosure of the information withheld under sections 8(1)(a), (c), (g) or (i) with the harms these law enforcement exemptions seek to avoid. The exceptions relate to the application of section 8(1)(g) to brief portions of pages 13 and 17 and section 8(1)(i) to codes on pages 11 and 12. My reasons with respect to each individual exemption follow.

Section 8(1)(a): law enforcement matter

[44] In order for section 8(1)(a) to apply, the law enforcement matter in question must be ongoing or in existence.[18] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement

[16] See also Orders PO-2099 and MO-2986.
[17] Orders 188 and P-948.
[18] Order PO-2657.

matters.[19] However, the "matter" may extend beyond a specific investigation or proceeding.[20]

[45] While I acknowledge that the word "matter" in section 8(1)(a) may include ongoing monitoring of criminal activities and associations or on-going police activity regarding a specific type of serious criminal activity, I conclude that the evidence provided by the police in this appeal not only lacks specificity, but is also highly speculative. In particular, I am not persuaded that the information actually at issue in this appeal was recorded for the purpose of broader policing activity or to assist the police in executing their law enforcement and crime prevention responsibilities.

[46] In other words, I am not satisfied that disclosure of the withheld information on pages 1, 2 and 13-18 of the records could reasonably be expected to interfere with a law enforcement matter. Accordingly, I find that section 8(1)(a) does not apply.

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

[47] In order to meet the "investigative technique or procedure" test, the police 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.[21]

[48] Even accounting for the portions of the combined submissions on sections 8(1)(c) and 8(1)(g) that I agreed to withhold as confidential, I conclude that the evidence provided respecting investigative techniques or procedures that could be revealed by disclosure is neither precise or convincing. Former Senior Adjudicator John Higgins explained the evidentiary requirement in Order PO-2751, as follows:

> The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that its effectiveness would not be hindered or compromised by disclosure and, accordingly, that the technique or procedure in question is not within the scope of section 14(1)(c) [the provincial equivalent to section 8(1)(c)].[22]

[49] Notably, in Order PO-2751, the records contained very detailed information about investigative methods used to investigate child pornography. The former Senior Adjudicator found that section 14(1)(c) of the provincial *Act* applied to many of them, explaining that "any information of this nature in the records that has not been clearly

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[19] Orders PO-2085 and MO-1578.
[20] From the judicial review decision concerning Order PO-2455: *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* [2007] O.J. No. 4233 (Div. Ct.).
[21] Orders P-170, P-1487, MO-2347-I and PO-2751.
[22] See also Orders P-170, P-1487 and PO-2470.

identified in the public domain, or is not a sufficiently obvious technique or procedure to clearly qualify as being subject to inference based on a "common sense perception" as referred to in *Mentuck*, falls under this exemption."[23]

[50] I agree with the former Senior Adjudicator that the *Mentuck* principles are relevant in a determination of the application of section 8(1)(c) of the *Act*. In this appeal, the police have not identified a technique or a procedure contained in the records that is anything other than "sufficiently obvious" or widely known. In particular, I am not satisfied that disclosure could reasonably be expected to compromise the efficacy of any technique or procedure or prejudice its use by the police in future investigations.

[51] Since I have concluded that the explanation provided by the police for why the disclosure of this particular information could reveal current law enforcement techniques or procedures that are not already known is not sufficient, I find that section 8(1)(c) does not apply.

Section 8(1)(g): law enforcement intelligence information

[52] Under section 8(1)(g), an institution may refuse to disclose a record where the disclosure could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

[53] The term "intelligence information" means:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.[24]

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[23] In *R. v Mentuck* ([2001] 3 S.C.R. 442), the Supreme Court of Canada dismissed the Crown's appeal of a partial publication ban granted in criminal proceedings in relation to undercover "operational methods." The Court identified the potential risk to be evaluated as one in which:

> … the efficacy of present and future police operations will be reduced by publication of these details. I find it difficult to accept that the publication of information regarding the techniques employed by police will seriously compromise the efficacy of this type of operation. There are a limited number of ways in which undercover operations can be run … While I accept that operations will be compromised if suspects learn that they are targets, I do not believe that media publication will seriously increase the rate of compromise. The media have reported the details of similar operations several times in the past, including this one.

[24] Orders M-202, MO-1261, MO-1583 and PO-2751. See also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

[54] The police argued that disclosure would reveal law enforcement intelligence information respecting organizations or persons but added very little detail in the following paragraph of the police's representations that I agreed to withhold as confidential.

[55] Based on the brevity of the evidence, I find that it is not sufficient to support the police's position that section 8(1)(g) applies to pages 1, 2 and 13-18. Indeed, for the most part, I find that the records for which the police claim section 8(1)(g) do not contain, nor would their disclosure reveal, "intelligence information" as that term has been interpreted by this office.[25]

[56] However, the records do speak for themselves. There is information on pages 13 and 17 that fits within the description of "intelligence information" outlined above. Specifically, I find that one line of text near the bottom of page 13 and the third paragraph of page 17 qualify for exemption under section 38(a), in conjunction with section 8(1)(g), because disclosure of this particular information could reasonably be expected to reveal law enforcement intelligence information respecting a person, as contemplated by this provision.

Section 8(1)(i): security of a building, vehicle, system or procedure

[57] To establish that section 8(1)(i) applies, the police were required to provide sufficient evidence to satisfy me that disclosure of the records could reasonably be expected to endanger the security of a system or procedure established for the protection of items and, further, that such protection is reasonably required.

[58] In the specific context of section 8(1)(i), I accept that CPIC is an information management system and that its security, or protection, is reasonably required. In this appeal, with regard for the representations provided, as well as the withheld portions of the records, I find that there is limited evidence to support a conclusion that disclosure of the information could reasonably be expected to endanger the security of that system.

[59] As part of their representations, the police attach a relatively recent (August 2012) change to the policy for "off-line" CPIC searches. As the "New Policy" is described, requests for off-line CPIC searches will not be approved "unless authorized by the OIC CPIC Network Access and Policy." Further, the police submit that "CPIC information can only be used and shared amongst law enforcement personnel for law enforcement purposes only."

[60] To begin, I note that this new directive and the other evidence provided regarding it, post-dates the appellant's request. More importantly, however, I do not

[25] Order PO-3075.

think the policy directive has much, if any, impact on this request and appeal, where the appellant has made an access request *to* the Ottawa Police for quasi-audit information *about* police-initiated queries of CPIC (and other) databases. The records to which the police have applied section 8(1)(i) are line form print-outs of two separate queries related to the appellant. I do not read the directive to have the effect of removing the responsive queries at pages 11 and 12 out of the reach of the *Act*.

[61] Previous orders have established that disclosure of CPIC system code information, including transmission access codes, could reasonably be expected to facilitate the commission an unlawful act – the unauthorized use of CPIC content – according to section 8(1)(l).[26] Although the police initially claimed section 8(1)(l), the appellant abandoned her appeal as regards the information contained in the severances made on this basis. It is not possible to discern from the police's representations whether identical information was withheld under sections 8(1)(i) and 8(1)(l), but I am satisfied nevertheless that certain code information on pages 11 and 12 is also exempt under section 8(1)(i). In my view, the same unauthorized access to CPIC that these past orders accept as a harm under section 8(1)(l) could also reasonably be expected to endanger the security of CPIC, which is a system for which protection is reasonably required.

[62] However, and notwithstanding that the limited code information on pages 11 and 12 qualifies for exemption under section 8(1)(i), I am not persuaded that the other withheld content on the line form printouts is also exempt under section 8(1)(i). Turning again to discussion of this type of information under (the abandoned) section 8(1)(l), I note that in Order MO-1698, Adjudicator Laurel Cropley found that other information is not exempt under section 8(1)(l) of the *Act*, where the person seeks access to her own CPIC information:

> In my view, the Police have not established that there is a reasonable expectation that disclosure of the substantive information (as distinct from the system code information), such as the appellant's name, date of birth, age, and any criminal charges, criminal convictions, warrants, probations and drivers licence suspensions, as well as basic date information and the name of the contributing agency could facilitate the commission of an unlawful act or hamper the control of crime. While there may be unusual situations where this type of information should be withheld from a requester (such as where disclosure could reasonably be expected to cause harm to an individual), the Police have not identified any particular concerns of this nature here.

[26] Section 8(1)(l) states: A head may refuse to disclose a record if the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. See, for example, Orders M-933, MO-1335 and MO-1698.

> Therefore, I conclude that the non-CPIC system code information is not exempt under section 38(a), in conjunction with section 8(1)(l) of the *Act*.

[63] With reference to the analogous situation of section 8(1)(i), I conclude that the police have failed to provide sufficiently detailed and convincing evidence to make the connection between disclosure of the information on pages 11 and 12 and harm to the security of CPIC, with the exception of the codes in one column of the queries on those pages. With respect to the codes under that one column, I am satisfied that their disclosure could reasonably be expected to endanger the security of the CPIC system and that they are exempt under section 38(a), together with section 8(1)(i).

[64] However, I find that the remaining withheld information on pages 11 and 12 consists of information whose disclosure could not reasonably be expected to endanger the security of the CPIC system. Rather, I find that the other withheld portions of those pages consist of information about the appellant and would not reveal information about the CPIC system or gaining access to it. As no other exemptions have been claimed for the information on pages 11 and 12 to which the exemption in section 8(1)(i) applies, I will order it disclosed. This finding takes into account the fact that section 38(b) cannot apply to page 12, as claimed by the police, because it contains no personal information relating to an individual other than the appellant.

[65] Accordingly, subject to my review of the police's exercise of discretion, I find that only the brief portions of pages 11, 12, 13 and 17 identified in the discussion above are exempt by reason of section 38(a), in conjunction with sections 8(1)(g) and (i).

C. Does the personal privacy exemption in section 14(1) or section 38(b) apply to the withheld information?

[66] Previously in this order, I found that pages 3, 7, and 13-18 of the records contain the mixed personal information of the appellant and other identifiable individuals, while pages 1-2 and 12[27] contain only the personal information of the appellant. As indicated, section 38(b) cannot apply to pages 1-2 and 12 because these records contain the appellant's personal information only and its disclosure could not result in an unjustified invasion of *another* individual's personal privacy. Therefore, in this section, I will only be reviewing the application of section 38(b) to pages 3, 7 and 13-18.[28]

[67] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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

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[27] As indicated above, the police did not claim section 38(b) for page 11.

[28] Pages 19 and 20, which are technically part of the same Street Check record, are blank and will not be considered.

the requester. This approach 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.

[68] Whether the relevant exemption is section 14(1) or section 38(b), sections 14(1) to (4) are considered in determining whether the unjustified invasion of personal privacy threshold is met. The exceptions in sections 14(1)(a) to (e) are relatively straightforward. None of them apply in this appeal. The exception in section 14(1)(f) (where "disclosure does not constitute an unjustified invasion of personal privacy"), is more complex and requires a consideration of additional parts of section 14.

[69] 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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

[70] For records claimed to be exempt 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 in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[29] This represents a shift away from the previous approach under both sections 38(b) and 14, whereby a finding that a section 14(3) presumption applied could not be rebutted by any combination of factors under section 14(2). As explained by Adjudicator Laurel Cropley in Order MO-2954:

> … [I]t is apparent that the mandatory and prohibitive nature of section 14(1) is intended to create a very high hurdle for a requester to obtain the personal information of another identifiable individual where the record does not also contain the requester's own information. On the other hand, section 38(b) is discretionary and permissive in nature, which, in my view, reflects the intention of the legislature that careful balancing of the privacy rights versus the right to access one's own personal information is required in cases where a requester is seeking his own personal information.[30]

[71] With this rationale in mind, I approach the information at issue on pages 3, 7 and 13-18 under section 38(b).

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[29] Order MO-2954.
[30] Paragraph 74, page 24.

Representations

[72] The police provided representations on both section 14(1) and section 38(b). The representations on the two issues are essentially identical in content although the police take the position that some of the pages contain only the personal information of other individuals, but not the appellant.

[73] According to the police, the personal information at issue is exempt because it was "collected for the sole purpose of law enforcement for traffic enforcement to ascertain if charges were warranted or if intelligence information should be collect [*sic*] to aid the police in investigations…". The police refer to the *Criminal Code of Canada* and the *Highway Traffic Act* but do not identify a specific provision. The police submit that:

> Although the appellant may have an interest in the information, the parties involved have a right to the protection of their privacy. Information collected by the police, from individuals, must be safe guarded in order to protect processes. If the information collected by the police is released without the consent of the individuals who supplied the information, these individuals may be hesitant to assist the police in the future as there would be no guarantee that the information would not be released.

[74] The police rely on Order M-170 in submitting that once a presumption against disclosure in section 14(3) is established, it cannot be rebutted by a combination of circumstances in section 14(2). The police clarify that factors from both sections 14(2) and 14(3) were considered in making the access decision in this matter. However, the police do not specify, or provide representations on, any of the factors in section 14(2), instead stating that the factors were not viewed as "mitigating" the presumption in section 14(3)(b) or the conclusion that the privacy rights of the other individuals outweighed the appellant's right of access.

[75] The appellant's representations do not address the personal privacy exemption in section 38(b) or the presumptions and factors to be considered in sections 14(3) and 14(2). She does state the following with respect to why she believes the information at issue ought to be disclosed:

> I think it is imperative that the [police] release all the information I have requested as they have taken such brash actions and made completely unfounded accusations about my character to my employer. It is essential that I know all information that I requested that is related to me, so that I can have any erroneous information removed or at the very least add a statement of disagreement.

Analysis and findings

[76] The appellant's interest in this appeal lies with accessing information about her that is in the custody or control of the police, so that "erroneous information [can be] removed or at the very least [so that she can] add a statement of disagreement." Previously in this order, I stated that the appellant's personal information (that was not otherwise exempt under section 38(a)) would be disclosed to her since its disclosure would not result in an unjustified invasion of another individual's personal privacy. She will, therefore, be provided with access to all of her own personal information in the records and she is entitled to request correction of it under section 36(2). In this analysis, therefore, I am concerned with the personal information of other identifiable individuals.

[77] The police argue that some of the pages contain only the personal information of other individuals, not the appellant. This statement implies that the mandatory personal privacy exemption in section 14(1) is the provision that should apply to those pages. However, it is the well-established approach of this office to conduct an analysis on a record by record basis.[31] In this appeal, for example, pages 13-18 clearly represent one record, a street check: consisting of four pages of information about the involved individuals and their vehicles and a two-page narrative. The appellant's personal information appears in this *record*, even if not on every page. On this basis, I confirm that the relevant personal privacy exemption is the discretionary one in section 38(b).

[78] As outlined above, this office's approach to reviewing the possible application of the discretionary personal privacy exemption follows the more nuanced approach explained in Order MO-2954. Order MO-2954 post-dates the inquiry into this appeal, but it incorporates and expands upon the view of the analysis to be conducted under the discretionary exemption in section 38(b) that was acknowledged by the Divisional Court in *Grant v. Cropley* in 2001, which was referred to in the Notice of Inquiry sent to the police and the appellant.[32] This view acknowledges the special nature of requests for one's own personal information under section 38(b). Following Order MO-2954, therefore, I will consider the factors and presumptions in sections 14(2) and (3) to balance the interests of the parties in determining whether the disclosure of the personal information in the records *would* constitute an unjustified invasion of personal privacy under section 38(b).

[79] Upon consideration of the circumstances of this appeal, I find that the presumption against disclosure at section 14(3)(b), which favours privacy protection, is applicable. Section 14(3)(b) states:

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[31] See Orders MO-1891, MO-2477 and PO-3259.

[32] As set out in the Notice of Inquiry: In *Grant v. Cropley* ([2001] O.J. 749), the Divisional Court said that the Commissioner could: "… consider the criteria mentioned in s. 21(3)(b) [the provincial equivalent to section 14(3)(b)] in determining, under s.49(b) [the equivalent to section 38(b)], whether disclosure … would constitute an unjustified invasion of personal privacy."

> 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;

[80] The presumption at section 14(3)(b) can apply to a variety of investigations.[33] 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.[34]

[81] To begin, I agree that the personal information at issue in these records was compiled by the police and is identifiable as part of investigations to determine if offences under the *Highway Traffic Act* had been committed. Nothing in the records expressly supports the possible relevance of the *Criminal Code*, although mentioned by the police. Regardless, on the basis of the evidence, I find that the presumption at section 14(3)(b) applies to the records. The next determination is what weight to afford this presumption, recognizing that the types of information set out in section 14(3) are generally regarded as particularly sensitive.[35] Based on the appellant's stated reasons for obtaining access, outlined previously, I conclude that the personal information about other identifiable individuals in these records is unrelated to that interest. Accordingly, I find that the presumption in section 14(3)(b) weighs heavily in favour of privacy protection for this information.

[82] The police did not argue that any of the factors favouring privacy protection in sections 14(2)(e)-(i) apply. Additionally, the appellant's representations did not support the possible application of any of the factors in sections 14(2)(a)-(d) that might weigh in favour of her access to the personal information of other individuals appearing in these records. Therefore, I find that there are no factors weighing in favour of the disclosure of the personal information of other individuals that is contained in these records.

[83] Having balanced the competing interests of the appellant's right to disclosure of information against the privacy rights of other individuals, I find that the disclosure of those portions of pages 3, 7, and 13-18 which contain personal information that is subject to section 14(3)(b) would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, this information qualifies for exemption under section 38(b).

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[33] Order MO-2147.
[34] Orders P-242 and MO-2235.
[35] Order MO-2954.

[84] In my view, however, the absurd result principle is relevant in the circumstances of this appeal. Although the appellant did not specifically address this point during my inquiry into the appeal, the circumstances raise the possible application of the "absurd result" principle. According to the absurd result principle, whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[36] One of the grounds upon which the absurd result principle has been applied in previous orders is where the information is clearly within the requester's knowledge.[37]

[85] In this section, I am concerned with the name of another individual where it appears intertwined with the appellant's personal information on pages 3, 7, 16 and 18. I have considered this information, and I conclude that it is clearly within the appellant's knowledge. In the particular circumstances of this appeal, I conclude that disclosure of this specific, limited, personal information would not result in an unjustified invasion of another individual's personal privacy under section 38(b), regardless of the application of the presumption in section 14(3)(b). Indeed, under the circumstances, I find that refusing to disclose this specific information to the appellant would lead to an absurd result. Therefore, I will order the police to disclose this information, along with the other information that I have found not to be exempt under section 38(a), above.

[86] In sum, subject to my review of the police's exercise of discretion, I find that the discretionary exemption in section 38(b) applies to the remaining personal information of other individuals in the records.

D. Did the police properly exercise their discretion under sections 38(a) and 38(b)?

[87] As I have upheld the decision of the police to deny access, in part, under sections 38(a) and 38(b), I must now consider their exercise of discretion in doing so. Since sections 38(a) and 38(b) are discretionary exemptions, the police had the discretion to disclose the withheld records, even if they qualified for exemption. This is the essence of a discretionary exemption.

[88] On appeal, an adjudicator may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so. In doing so in this appeal, I may find that the police erred in exercising their discretion where, for example, I find that they did so in bad faith or for an improper purpose, took into account irrelevant considerations, or failed to take into account relevant considerations. In such a case, I may send the matter back to the police for an

[36] Orders M-444 and MO-1323.
[37] Orders MO-1196, PO-1679, MO-1755 and PO-2679.

exercise of discretion based on proper considerations. However, section 43(2) of the *Act* states that I may not substitute my own discretion for that of the police.[38]

Representations

[89] The police take the position that they:

> … have provided the appellant with her own information and have used the appropriate exemptions in order to provide her with her own information, while at the same time protect the personal information of other individuals and retain proper continuity of the collection of information with respect to law enforcement.

[90] While not directly addressing the exercise of discretion by the police, the appellant's representations suggest a sympathetic or compelling need to obtain access to the information in the records. As outlined previously in this order, the appellant expresses the desire to challenge the "unfounded accusations about my character [which were conveyed] to my employer," and, further, to seek removal or correction of any erroneous information about her in records held by the police.

Analysis and Findings

[91] To begin, I would emphasize that my review of the exercise of discretion by the police relates only to the information in the records for which I have upheld the claims of section 38(a), together with sections 8(1)(g) and (i), and section 38(b), with reference to section 14(3)(b).

[92] In considering this issue, I am mindful of the competing interests in this appeal. In this respect, I am satisfied that police understood their obligation to balance the appellant's interests in seeking access to her own personal information against protecting the privacy interests of other individuals and preserving intelligence gathered in this particular law enforcement context.

[93] Overall, and in view of the disclosure of the non-exempt information provided for by this order, I am satisfied that the reasons given by the police for their exercise of discretion in denying access under sections 38(a) and 38(b) demonstrate that relevant factors were considered. In the circumstances, I find that the police exercised their discretion properly, and I uphold it.

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[38] Order MO-1573.

E. Did the police conduct a reasonable search for records?

[94] The record identified by the appellant during mediation (but not produced to her through her access request to the police) is a specific memorandum written by the detective named in her request and provided to an identified recipient at her place of employment. The appellant provided a copy of this memo with her representations because it had been provided to her by the recipient. The appellant suggests that the existence of the memorandum supports her belief that the police have not yet conducted a reasonable search for records responsive to her request for:

> All physical records (printouts, police reports, memos, meeting agendas, photocopy documents, reports, investigative summary reports, handwritten notes) and electronic records (email, CPIC records, investigative summary reports, scanned documents and any information stored in a[n] electronic database) in relation to my name [requester's name]. Please include all instances where my name was searched in a database by the Ottawa Police Service, specifically, any searches of my name completed by [a named detective] (include date and time stamp).

[95] As outlined in many past orders of this office, 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 of the *Act.*[39]

[96] 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.[40] To be responsive, a record must be "reasonably related" to the request.[41]

[97] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.[42] Additionally, 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.[43]

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[39] Orders P-85, P-221 and PO-1954-I.
[40] Orders M-909, PO-2469 and PO-2592.
[41] Order PO-2554.
[42] Orders P-624 and PO-2559.
[43] Order MO-2246.

[98] I may order further searches 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.[44]

Representations

[99] The appellant's interest in this appeal lies with accessing information about her that the police may have in its custody or control, so that "erroneous information [can be] removed or at the very least [so that she can] add a statement of disagreement."

[100] In this context, the appellant expresses the view that the police did not conduct an adequate search of their records in response to her access request. Referring to the wording of her request, the appellant submits that at the time she submitted it, she was aware of emails and memos that had been exchanged between her and the police, as well as between her employer and the police. The appellant enclosed copies of several documents with her representations that she has in her possession, but which were not identified or produced by the police in response to her access request. The attached documents consist of emails exchanged between the appellant and a police detective in June 2012 and a memo from the same detective to her employer from the same month.

[101] With the appellant's consent, her representations were shared with the police, with the exception of certain portions and several appendices, which were already in the police's possession. One of the appendices sent to the police for the purpose of seeking reply representations was the June 2012 email chain between the appellant and the detective named in the request.

[102] According to the police, the appellant was not contacted to clarify the scope of her request because "it was quite clear in her request that she was requesting all physical records in relation to herself with the date range of December 2008 to present (July 27, 2012)."

[103] In the affidavit of search provided by the police, the FOI analyst states:

- a query of the requester's name in the Records Management System (RMS) was made;
- emails were sent to two police constables known to have had contact with the requester;
- the IT Applications Manager was asked to search "RMS footprints" to see which employees queried the requester's name;
- a request was sent to CPIC regarding an offline search of the requester's name;

[44] Order MO-2185.

- using the result of the RMS footprints search, FOI staff contacted personnel in the Intelligence Section "requesting consultation as to why they queried the requester's name;" and
- an additional search for documents was done based on that consultation.

[104] Furthermore, according to the police:

> Any documentation, if any exist [*sic*], in the custody of the Intelligence Section is in a secure area and any files and/or computer entries are highly confidential and are not accessible to the Freedom of Information Analyst. A decision was made based on the information provided by the Intelligence Section.

[105] The police did not comment on the June 2012 email chain between the appellant and the named detective that I sent them with the Reply Notice of Inquiry.

Findings

[106] In reviewing the adequacy of this search for records, I must consider whether there is enough evidence to satisfy me that the police made a reasonable effort to identify and locate all of the responsive records within their custody or control. I can order further searches if I have not been provided with sufficient evidence to demonstrate that reasonable searches were conducted.

[107] As noted, part of the determination as to the adequacy of a search is based on a requester being able to provide a reasonable basis for concluding that additional responsive records exist.[45] In this appeal, I am satisfied that the appellant has provided the requisite detail to establish that certain records responsive to this request ought to exist, but have not been identified by the police through the searches conducted to this point.

[108] As the police acknowledge in their representations, "it was quite clear in her request that [the appellant] was requesting all physical records in relation to herself with the date range of December 2008 to present (July 27, 2012)."

[109] For the most part, I am satisfied that the searches for responsive records were conducted by individuals knowledgeable in the police's records holdings who made a reasonable effort to identify responsive records. However, there is one significant exception to this conclusion. The fact that the police's search did not locate a copy of the memo written by the police detective to the appellant's employer, or the email(s) exchanged between the appellant and that same police detective, suggests that a further search of these record holdings should be ordered. The unsatisfactory aspect of

[45] Order MO-2246.

the searches conducted relates to those records that may be held by the Intelligence Section. In saying this, I refer again to the position taken by the police that:

> Any documentation, if any exist [*sic*], in the custody of the Intelligence Section is in a secure area and any files and/or computer entries are highly confidential and are not accessible to the Freedom of Information Analyst…

[110] Based on the evidence before me, therefore, I find that the police have not taken adequate steps to identify responsive police intelligence records. The suggestion that additional responsive records *may* exist with the Intelligence Section, but are "not accessible" to FOI staff is not in keeping with the police's obligations under the *Municipal Freedom of Information and Protection of Privacy Act*. I acknowledge that FOI staff, in processing access requests, must rely on the cooperation of staff within each relevant section or area of the institution. However, this does not entail delegating the decision as to whether or not police records are accessible under the *Act* to police personnel from that section. Further, in my view, the position that records created by the Intelligence Section are somehow beyond the reach of the *Act* is at odds with the obligations of the police as an institution under the *Act.* The fact remains that, if intelligence records exist, they are responsive records in the record holdings of the police, and the police are obliged to issue a decision respecting access to them.

[111] Given my rejection of the position taken by the police about records in the Intelligence Section and because I have determined that the appellant has provided a reasonable basis for concluding that additional responsive records may exist there, I will order the police to conduct further searches of these record holdings.

[112] Specifically, I am requiring the police to conduct searches of its record holdings for all records, including records in its Intelligence Section, related to the appellant for the time period December 2008 to July 27, 2012. For greater certainty, *"all records" should be taken to include memos, emails and deleted emails,* among other possible categories of records.

ORDER:

1. I uphold the decision of the police not to disclose the portions of the records that I have found to be exempt under section 38(a), together with sections 8(1)(g) or 8(1)(i), or section 38(b), with reference to section 14(3)(b). For certainty, I have highlighted the exempt information in orange on the copies of the records provided to the police with this order.

2. I order the police to disclose to the appellant copies of all other withheld responsive portions of the records by May 2, 2014 but not before April 28, 2014.

To verify compliance with this provision, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

3. I order the police to conduct a further search for records responsive to the request that are in the custody and control of the police, and as specified previously in this order. The police are to conduct this search within the time period specified in section 19 of the *Act*, treating the date of this order as the date of the request and without recourse to section 20 of the *Act*.

4. With regard to provision 3, I order the police to provide me with affidavits sworn by the individuals who conduct the searches. At a minimum, the affidavit should include information relating to the following:

    a. information about the employee(s) swearing the affidavit describing his or her qualifications, position and responsibilities;

    b. a statement describing the employee's knowledge and understanding of the subject matter of the request;

    c. the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

    d. information about the type of files searched, the nature and location of the search, and the steps taken in conducting the search;

    e. the results of the search;

    f. if as a result of the further searches it appears that responsive records existed but no longer exist, details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

5. If further responsive records are located as a result of the searches referred to in Provision 3, I order the police to provide a decision letter to the appellant regarding access to those records in accordance with the provisions of the *Act*, considering the date of this order as the date of the request. The police must provide a copy of any new decision letter to me.

6. The affidavit(s) referred to in Provision 4 should be sent to my attention, and may be shared with the appellant, unless there is an overriding confidentiality concern.

7. I remain seized of this appeal in order to deal with any other outstanding issues arising from this order.

Original Signed By: March 26, 2014
Daphne Loukidelis
Adjudicator