

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3742

Appeal MA17-649

Durham Regional Police Services Board

March 19, 2019

**Summary:** The Durham Regional Police Services Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to a record related to an incident of an alleged dog bite involving the requester. The police granted partial access to the responsive record, denying access to the personal information of the dog owner and two witnesses pursuant to the personal privacy exemption at section 38(b) of the *Act*. The requester appealed the police's decision to this office, and sought access to the names, telephone numbers, and addresses of the dog owner and one witness, in particular. The adjudicator finds that disclosure of the dog owner's name would not constitute an unjustified invasion of the dog owner's personal privacy under section 38(b); however, she finds that the remaining personal information of both the dog owner and witness does qualify for exemption under section 38(b). The adjudicator orders the police to disclose the dog owner's name to the appellant.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(2)(d), 14(2)(e), 14(2)(f), 14(2)(g), 14(3)(b), and 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16, as amended.

**Orders and Investigation Reports Considered:** Orders MO-2980, MO-3088, MO-3370, and MO-3383.

### OVERVIEW:

[1] The Durham Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*) for access to a record related to an alleged dog bite incident involving the requester.

[2] The police issued a decision granting partial access to the responsive record, a seven-page general occurrence report. The personal information of three other individuals, the dog owner and two witnesses, was withheld pursuant to the discretionary exemption at section 38(b) (personal information) in conjunction with section 14(3)(b) (investigation into a possible violation of law) of the *Act*.

[3] The requester appealed the police's decision on the basis that disclosure of the individuals' identities and contact information is necessary to pursue any potential claim relating to the alleged dog bite and his resulting injuries.

[4] During mediation, the police maintained their decision to withhold certain information from the record pursuant to section 38(b) in conjunction with section 14(3)(b) of the *Act*.

[5] The appellant clarified that he is only seeking access to the names, addresses, and phone numbers for two individuals named in the record, the dog owner and a witness who was walking with the dog owner when the alleged incident occurred (collectively referred to as the affected parties). The police severed this particular information relating to the affected parties from the first three pages of the record. Accordingly, the other severances made to the record are no longer at issue in this appeal.

[6] The mediator notified the two affected parties of the request. Both affected parties declined to consent to release their personal information. A mediated resolution was not possible and the file was transferred to the adjudication stage where an adjudicator conducts an inquiry under the *Act*.

[7] At the beginning of my inquiry, I sought the complete mailing address for one of the affected parties. That affected party, the witness who was walking with the dog owner, declined to provide her mailing address and advised that she did not want to participate in the inquiry process. She also confirmed that she does not consent to the disclosure of any information relating to her.

[8] I then sent a Notice of Inquiry inviting representations from the police and the dog owner. Upon receipt of representations from the police and the dog owner, I sent the appellant a Notice of Inquiry inviting representations. Enclosed with the Notice of Inquiry was a complete copy of the police's representations and the non-confidential portions of the dog owner's representations, which were shared with the appellant in accordance with section 7 and *Practice Direction Number 7* of the IPC's *Code of Procedure*. I received representations from the appellant, and shared the non-confidential portions with the police and the dog owner to seek reply representations. The police provided reply representations. The dog owner did not provide reply representations for my consideration. I then invited the appellant to provide sur-reply representations, responding to the police's reply; however, the appellant declined to do so.

[9] In this order, I find that the record at issue contains the appellant's personal information, as well as the personal information of other individuals, including the dog owner and the witness. I find that disclosure of the dog owner's name would not constitute an unjustified invasion of that individual's personal privacy, and is therefore not exempt from disclosure under section 38(b). I uphold the police's decision to withhold the remaining personal information of the dog owner and the witness pursuant to section 38(b).

## **RECORDS:**

[10] The record at issue is a general occurrence report prepared by the police. The information remaining at issue consists of the names, addresses, and phone numbers of two individuals on the first three pages of the record.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Would disclosure of the information constitute an unjustified invasion of personal privacy under section 38(b)?
- C. Should the police's exercise of discretion under section 38(b) be upheld?

## **DISCUSSION:**

### **Issue A: Does the record contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?**

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

"personal information" means recorded information about an identifiable individual, including,

- (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 if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[12] 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.<sup>1</sup>

[13] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(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.

[14] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be

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<sup>1</sup> Order 11.

identified if the information is disclosed.<sup>2</sup> 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.<sup>3</sup>

### ***Representations***

[15] The police submit that the record at issue contains the names, addresses, dates of birth, telephone numbers, personal views and statements of the appellant and the other individuals involved in the incident. The police submit that it is reasonable that the dog owner and witness may be identified if the requested information is disclosed. Accordingly, the police maintain that the record contains recorded information about identifiable individuals as contemplated by the definition of “personal information” in section 2(1) of the *Act*.

[16] The appellant agrees that the records contain personal information as that term is defined in the *Act*, and he seeks access to the names, addresses, and telephone numbers of the dog owner and witness.

[17] The dog owner’s representations provide a detailed account of the incident leading to the creation of the record at issue, but do not address whether the record contains “personal information” as defined in the *Act*.

### ***Analysis and findings***

[18] Based on my review of the record and the parties’ submissions, I find that the record contains the personal information of the appellant and affected parties. The record contain biographical and other personal information relating to both the appellant and the affected parties. With respect to the appellant, I find that the records contain his name, address, telephone number, gender, age, and date of birth, as well as his opinions or views regarding the alleged dog bite incident. As a result, I find that the record contains information about the appellant that qualifies as his personal information within the meaning of paragraphs (a), (b), (d), (e), and (h) of the definition in section 2(1).

[19] With respect to the affected parties, I find that the record contains their names, addresses and telephone numbers, ages, dates of birth, genders, and their opinions and views regarding the alleged incident. This is information that also qualifies as “personal information” within the meaning of paragraphs (a), (b), (d), (e), and (h) of section 2(1).

[20] Having found that the record contains the personal information of both the

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<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

appellant and affected parties, I will now consider the application of the discretionary personal privacy exemption in section 38(b) to the personal information withheld by the police.

**Issue B: Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 38(b)?**

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

[22] Under section 38(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the appellant. This involves a weighing of the appellant’s right of access to his own personal information against the other individual’s right to protection of their privacy.

[23] Sections 14(1) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy under section 38(b) is met. Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an invasion of personal privacy.

[24] Section 14(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. In the circumstances of this appeal, I find that section 14(4) does not apply.

[25] 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.<sup>4</sup>

***Representations***

[26] The police submit that the *Police Services Act* mandates them to investigate provincial offences as well as offences under the *Criminal Code of Canada*. The police advise that the record at issue was produced as a result of a call for service, which may have been found to be related to a variety of offences, such as by-law infractions, *Criminal Code*, and/or provincial offences.

[27] The police rely on section 38(b), together with the presumption against

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<sup>4</sup> Order MO-2954.

disclosure in section 14(3)(b), which states:

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

(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

[28] The police maintain that they considered the information at issue and weighed the appellant's right of access to his own information against the affected parties' right to the protection of their privacy. The police note that the affected parties declined to provide consent to disclosure of the information to the appellant, and that both parties expressed fear of the appellant during the incident. The police maintain that the appellant was granted access to his own personal information, but was denied access to the personal information of other individuals who did not consent to their information being disclosed.

[29] The police also submit that they considered paragraphs (a) to (e) of section 14(1), the provisions under section 14(4), and the absurd result principle, and found that none apply in the circumstances.

[30] The police acknowledge past orders of this office that have determined that a dog owner's name should be disclosed to the victim of a dog bite, in the spirit of dog owner responsibility under the *Dog Owner's Liability Act (DOLA)*.<sup>5</sup> However, the police distinguish past orders because a dog bite was never confirmed in this case. In the police's decision and representations, the police advise that their decision was informed by the fact that the cause of the appellant's injuries was never confirmed to be from a dog bite. The police submit that there are conflicting versions of the incident, and that the investigation revealed that the cause of the appellant's minor injuries was undetermined. On this basis, the police submit that it would be an unjustified invasion of the affected parties' personal privacy to disclose their personal information to the appellant.

[31] Again, while the dog owner's representations provide a detailed account of the incident leading to the creation of the record, they do not specifically address the police's decision to withhold information pursuant to the exemption at section 38(b). The dog owner maintains that her dog did not bite the appellant, and that the appellant is merely trying to obtain damages from a false claim. The dog owner also submits that

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<sup>5</sup> The *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16 (*DOLA*) is a strict liability statute that makes a dog owner liable for damages resulting from a bite or attack by his or her dog on another person or domestic animal (s. 2(1)). The *DOLA* gives the victim the right to bring civil proceedings against the owner in the Ontario Court of Justice (s. 4(1)).

the incident and resulting proceedings have caused her stress.

[32] The appellant maintains that disclosing the affected parties' personal information would not be an unjustified invasion of personal privacy under the *Act*. In support of this position, the appellant relies on the factors at sections 14(2)(d), (e), (f), and (g), which state:

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

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

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

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

[33] The appellant submits that there is a "considerable amount of evidence to support the fact that [he] was [bitten] by a dog." The appellant's representations include a photograph of a wound on the outside of his leg, documentation noting that he was ordered to receive a tetanus shot by his treating physician at a hospital, and evidence of a discussion with his family physician regarding the possibility of treating for rabies. The appellant's representations also refer to the appellant's ongoing treatment for health issues, which he maintains are related to the incident.

[34] With respect to the factor weighing in favour of disclosure at section 14(2)(d), the appellant maintains that the withheld information is relevant to a fair determination of his rights, as he would like to pursue compensation for the damages sustained as a result of the dog owner's wrongdoing.

[35] With respect to the factors weighing against disclosure at sections 14(2)(e) to (g), the appellant maintains that the information he seeks is likely to be accurate and reliable; the information is not highly sensitive; and disclosure will not unfairly expose the affected parties to pecuniary or other harm.

[36] Only the police provided reply submissions. In them, the police maintain that there is a provision under *DOLA* for the name of a dog owner to be disclosed to the victim of a dog bite. The police maintain that this provision does not include the owner's address and/or telephone number. However, the police submit that the *DOLA* provisions do not apply in this case, because there is no confirmation that a dog bite occurred.

[37] The police state that if there is further evidence to support the appellant's dog bite allegation, the appellant should contact the investigating officer to submit that



evidence. The officer could then submit a supplementary report to the General Occurrence Report confirming that the injuries were sustained by a dog bite. Only then would the police reconsider its decision. In that case, however, the police maintain that only the name of the dog owner would be considered to be released pursuant to *DOLA*. The owner's address and telephone number and the witness' personal information would remain withheld. In the absence of this additional evidence, however, the police maintain that disclosure of any of the affected parties' personal information would be an unjustified invasion of their personal privacy.

### ***Analysis and findings***

#### *Section 14(3)(b) presumption*

[38] The police rely on the presumption in section 14(3)(b) to deny access to the personal information remaining at issue. Under section 14(3)(b), the disclosure of personal information is presumed to be 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 of law or to continue the investigation.

[39] The appellant does not dispute that the personal information in the record was collected as part of the police's investigation into a possible violation of law.

[40] I find that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. The police were contacted by a witness and, upon arriving at the scene, initiated an investigation. This finding is not altered by the fact that no charges were laid against the dog owner, since the presumption only requires that there be an investigation into a *possible* violation of law.<sup>6</sup> As a result, I find that the presumption in section 14(3)(b) applies to the withheld personal information in the record and should be given significant weight in determining whether disclosure of the requested information would constitute an unjustified invasion of the affected parties' personal privacy under section 38(b).

#### *Section 14(2) factors*

[41] The appellant maintains that the factors at sections 14(2)(d), (e), (f), and (g) are relevant in the circumstances of this appeal. Generally, the factors in paragraphs (a) to (d) of section 14(2) weigh in favour of disclosure, while those in paragraphs (e) to (i) weigh in favour of privacy protection.

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<sup>6</sup> Orders P-242 and MO-2235.

[42] 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 in section 14(2).<sup>7</sup>

14(2)(d): fair determination of rights

[43] I will begin my analysis of the section 14(2) factors by examining section 14(2)(d), which has particular relevance in the circumstances of this appeal.

[44] In determining whether the disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(d) requires the police to consider whether the personal information is relevant to a fair determination of the requester's rights. If this factor is found to apply, it weighs in favour of disclosing the personal information.

[45] This office has found that for this factor 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.<sup>8</sup>

[46] In Order MO-2980, Adjudicator Colin Bhattacharjee wrote the following about a situation very similar to the one before me in this appeal:

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part [test] for section 14(2)(d) is applicable to this information because:

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<sup>7</sup> Order P-99.

<sup>8</sup> 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.).

(1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);

(2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;

(3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and

(4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

[47] I agree with this analysis and adopt it for the purposes of this appeal.

[48] In the case before me, the appellant maintains that disclosure of the dog owner and witness' names, telephone numbers, and addresses are required to allow him to pursue compensatory damages as a result of the dog owner's wrongdoing. While the appellant's representations do not specifically refer to *DOLA*, I am satisfied that the appellant is contemplating bringing a proceeding against and seeking damages from the dog owner pursuant to his rights arising under that statute.

[49] As noted above, *DOLA* is a strict liability statute that makes a dog owner liable for damages resulting from a bite or attack by his or her dog on another person or domestic animal,<sup>9</sup> and gives the victim the right to bring civil proceedings against the dog owner in the Ontario Court of Justice.<sup>10</sup>

[50] The police maintain that disclosure of the withheld personal information would be an unjustified invasion of the personal privacy of both the dog owner and the witness, given that their investigation was inconclusive about whether a dog bite had, in fact, occurred. It is not my role to determine whether a dog bite occurred. However, the wording of the *DOLA* provision is relevant: proceedings may be commenced under *DOLA* when "it is alleged that [a] dog has bitten or attacked a person" [emphasis added],<sup>11</sup> as in the case before me. This determination, and any resulting liability, are best resolved in a civil proceeding brought by the appellant.

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<sup>9</sup> Section 2(1).

<sup>10</sup> *Ibid.*

<sup>11</sup> *DOLA* section 4(1)(a).

[51] I am satisfied that disclosure of the dog owner's name relates to the appellant's legal right to pursue a civil remedy under *DOLA*. Given the appellant's evidence, I am also satisfied that the appellant's legal rights relate to a proceeding that has not yet commenced. Accordingly, I find that parts 1 and 2 of the section 14(2)(d) test have been met.

[52] In addition, I am satisfied that disclosure of the dog owner's name has some bearing on the appellant's right to pursue a civil claim against the dog owner and that this information is required for the appellant to prepare for the proceeding. Accordingly, I am satisfied that parts 3 and 4 of the section 14(2)(d) test have been met, and I find that the factor at section 14(2)(d) applies in the circumstances of this appeal.

[53] However, in my view, there is insufficient evidence before me to find that disclosing the dog owner's remaining personal information or the personal information of the witness is relevant to a fair determination of the appellant's rights. I find, therefore, that the factor at section 14(2)(d) does not apply to the dog owner's address or telephone number, or the personal information of the witness.

[54] Past decisions have addressed how much weight the factor at section 14(2)(d) should be given in cases relating to dog bites. In Order MO-2980, the adjudicator stated:

The IPC has found in previous orders that the existence of disclosure processes available to parties under the *Rules of Civil Procedure*<sup>12</sup> reduces the weight that should be given to the section 14(2)(d) factor.<sup>13</sup> In particular, the appellant could commence a civil action against the dog owner as an unnamed defendant, by use of a pseudonym, and then use the *Rules of Civil Procedure* to obtain the dog owner's name and address from the police or another body that holds that information.<sup>14</sup>

...

In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

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<sup>12</sup> R.R.O. 1990, Reg 194.

<sup>13</sup> Orders MO-2943 and PO-1715.

<sup>14</sup> Orders PO-1728 and M-1146.

However, I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

[55] I agree and adopt the reasoning in Order MO-2980, which was also followed in Orders MO-3088, MO-3370 and MO-3383. Therefore, I find that the factor at section 14(2)(d) weighs considerably in favour of disclosure of the dog owner's name in the circumstances of this appeal.

14(2)(e) – pecuniary or other harm

[56] The appellant raised the factor favouring privacy protection at section 14(2)(e). This factor would apply if I am persuaded that the person to whom the information relates, namely the two affected parties, would be exposed unfairly to pecuniary or other harm if their personal information is disclosed. The appellant maintains no such harms would occur.

[57] Without referring to the section 14(2) factors, the police's representations allude to the affected parties being afraid of the appellant, and the dog owner's representations indicate that the incident and ongoing proceedings have caused her stress.

[58] In order for this factor to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.<sup>15</sup>

[59] In my view, the fact that the dog owner may be exposed to pecuniary consequences as a result of the appellant pursuing a civil claim does not necessarily lead to a conclusion that disclosure would result in the appellant being exposed to "unfair" pecuniary harm. I note that in Order MO-3088, Adjudicator Diane Smith found that a dog owner's exposure to pecuniary or other harm as the result of a dog bite incident is "merely a consequence that any defendant would be exposed to in a civil action."

[60] In this situation, I accept that the dog owner may suffer from additional stress if

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<sup>15</sup> Order P-256.

her personal information is disclosed to the appellant; however, given that the appellant is entitled to commence proceedings under *DOLA*, I am not satisfied that such stress is an "unfair" harm as contemplated by section 14(2)(e) of the *Act*.

[61] As the witness to the incident did not provide submissions, I have no basis to find that the factor in section 14(2)(e) would apply to the disclosure of her personal information.

[62] Accordingly, I find that the factor favouring privacy protection in section 14(2)(e) does not apply to the circumstances of this appeal.

14(2)(f) and (g) – highly sensitive; unreliable or inaccurate

[63] The appellant's submissions also raise the factors at sections 14(2)(f) and (g), asserting that the personal information at issue is not highly sensitive nor is it likely to be inaccurate or unreliable. As with section 14(2)(e), these factors favour privacy protection and are typically raised by the individual seeking to have their personal information protected. In the absence of representations from the police and affected parties on these factors, and based on the personal information at issue, there is no basis for me to find that they apply.

Unlisted factor

[64] In Order MO-2980, Adjudicator Bhattacharjee referred to a past order in which Adjudicator Laurel Cropley recognized an "unlisted factor" that may be relevant in some cases. Adjudicator Bhattacharjee stated:

In Order MO-2954, Adjudicator Cropley stated that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. She found that this is an unlisted factor favouring disclosure and gave significant weight to this unlisted factor.

The facts in the appeal before me are different than those before Adjudicator Cropley in Order MO-2954, but the same general principle applies. The appellant was knocked down and bitten by a pit bull dog on a public street. In my view, the police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries.

In the particular circumstances of this appeal, I give significant weight to this unlisted factor but only with respect to the dog owner's name. In my view, there is insufficient evidence before me to find that this unlisted factor would apply to the dog owner's other personal information or the personal information of the other possible dog owner and the witness.

[65] The reasoning in Order MO-2954 has also been adopted in Orders MO-2088, MO-3370, and MO-3383. With consideration of the circumstances of this appeal, I agree with these orders and find that this unlisted factor applies. I find that it weighs significantly in favour of disclosure of the name of the dog owner.

### *Conclusion*

[66] As previously stated, in determining whether disclosure of the affected parties' names and contact information would constitute an unjustified invasion of their personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and 14(3) and balance the interests of the parties.

[67] I have found that the withheld personal information of the two affected parties falls within the section 14(3)(b) presumption and its disclosure is presumed to constitute an unjustified invasion of their personal privacy. This presumption is given significant weight.

[68] With respect to the dog owner's name, however, I find that the presumption at section 14(3)(b) is outweighed by the significant weight of section 14(2)(d) and the unlisted factor established in Order MO-2954. Accordingly, I find that disclosure of the dog owner's name would not constitute an unjustified invasion of that individual's personal privacy under section 38(b).

[69] This finding does not, however, extend to the remaining personal information of the dog owner or the personal information of the witness. I have found that the section 14(3)(b) presumption applies to that information, and I am not satisfied that any of the section 14(2) factors weigh in favour of its disclosure to the appellant. In balancing the interests of the parties, I find that the affected parties' privacy interests outweigh the appellant's right of access to the remaining personal information.

[70] Therefore, subject to my review of the police's exercise of discretion, I find that the remaining personal information in the record qualifies for exemption under section 38(b), because its disclosure to the appellant would constitute an unjustified invasion of the affected parties' personal privacy.

### **Issue C: Should the police's exercise of discretion under section 38(b) be upheld?**

[71] The section 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. Where an institution has the discretion to disclose information, it must exercise that discretion. On appeal, the Commissioner may determine whether the institution erred in its exercise of discretion, or did so in bad faith or for an improper purpose, or whether it failed to consider relevant factors and considered irrelevant ones.

[72] While this office may send the matter back to the institution for an exercise of

discretion based on proper considerations,<sup>16</sup> it may not, however, substitute its own discretion for that of the institution.<sup>17</sup>

[73] In this appeal, my review of the police's exercise of discretion is limited to the affected parties' personal information that I found above to be exempt under section 38(b).

### ***Representations***

[74] The police submit that they considered and weighed the appellant's right of access to his own information against the affected parties' right to the protection of their privacy. The police maintain that the appellant was given full access to his own personal information, while the information of the affected parties who did not provide consent to disclosure and who expressed a fear of the appellant during the incident was withheld.

[75] The police also submit that they considered the presumption at section 14(3)(b) and the fact that a dog bite is not confirmed in the records. On this basis, the police submit that they have properly applied the discretionary exemption at section 38(b) to the personal information.

[76] The appellant maintains that the police failed to take into account relevant considerations when exercising their discretion. The appellant submits that he does not speak English, which made it difficult for him to communicate with the parties at the scene regarding how the injury occurred. The appellant states that he was outnumbered by the dog owner, her friend, another witness, and the police officer, all of whom were speaking English. The appellant submits that he did his best to communicate to the officer that the dog bit him, but he was unable to fully explain himself due to the language barrier. As such, the appellant submits that the police have based their decision on the story provided by the English-speaking affected parties without obtaining his version of events. He submits that the location and appearance of the puncture wounds on his leg support the claim that he sustained a dog bite.

[77] Finally, the appellant submits that he has a sympathetic need to obtain access to the requested information. He maintains that he continues to struggle with health issues as a result of the incident and if the information continues to be withheld, he will have absolutely no recourse.

### ***Analysis and findings***

[78] Based on the circumstances of this appeal, the record, and the submissions

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<sup>16</sup> Order MO-1573.

<sup>17</sup> Section 43(2).



before me, I find that the police properly exercised their discretion under section 38(b) to withhold the affected parties' personal information. In withholding that information, I am satisfied that the police considered that the record contains the appellant's own personal information, as well as that of the affected parties. I am satisfied that the police weighed the appellant's interests in disclosure and the affected parties' interest in non-disclosure of the information at issue, which, if disclosed, would identify them and reveal other personal information about them. I am also satisfied that the police considered that exemptions from the right of access should be limited and specific. In disclosing the record to the appellant, the police withheld only the personal information belonging to other individuals.

[79] Based on the police's submissions, I am also satisfied that the police did not take into account irrelevant factors in exercising their discretion. There is no evidence before me to suggest that the police acted in bad faith and I am satisfied that the police exercised their discretion based on proper considerations in withholding the exempt personal information. Accordingly, I uphold the police's exercise of discretion to withhold the remainder of the affected parties' personal information under section 38(b) of the *Act*.

**ORDER:**

1. I order the police to disclose the dog owner's name in the record to the appellant by **April 25, 2019** but not before **April 18, 2019**.
2. I uphold the police's decision to withhold the remaining personal information in the record under section 38(b).
3. In order to verify compliance with order provision 1, I reserve the right to require that a copy of the record disclosed to the appellant be provided to me.

Original signed by \_\_\_\_\_  
Jaime Cardy  
Adjudicator

\_\_\_\_\_  
March 19, 2019