Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4168

Appeal MA20-00141

York Regional Police Services Board

February 23, 2022

Summary: The York Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records of various police personnel in specified matters involving the appellant. The police located an officer's notes in response to the request, and partially disclosed this record to the appellant. Information in the record was withheld under the discretionary exemption at section 38(b) (personal privacy) of the *Act*. The appellant appealed the police's decision to the IPC, and added the issue of reasonable search, under section 17 of the *Act*. In this order, the adjudicator upholds the police's access decision and the reasonableness of the police's search, and dismisses the appeal.

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

OVERVIEW:

[1] This appeal resolves a dispute between York Regional Police Services Board (the police) and a requester who was seeking records under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) containing personal information relating to him and other identifiable individuals (affected parties).

[2] The police received a request under the *Act* for a copy of the following:

1. "All officer notes, correspondence, and text messages obtained and sent by [named inspector] involving [named inspector], [named sergeant], and any other officer or public servant of the York Regional Police and [Royal Canadian Mounted Police] RCMP regarding meetings, including text messages related to a specified incident conducted on work and personal cell phones and emails received from [named sergeant], [named inspector], and [named officer], or other York Regional Police or court employee related to a specified investigation, and specified follow up investigation relating to a specified incident;

2. All additional officer notes and correspondence obtained by [named inspector] obtained from any York Regional Police or RCMP employees who discussed or directed [named inspector] to obtain another statement from the [named individual] in his notebook claiming that the [named individual] felt moisture on her face when the appellant was talking to the [named individual] on a specified date.

3. This request is not limited to the subjects mentioned above if the information obtained contains anything to do with correspondence regarding York Regional Police or RCMP interference or obstruction, Reasonable Probable Grounds not being established, complaint lacking credibility, and lack of evidence obtained to support the charge related to the specified incident."

[3] In response to the request, the police located responsive records.

[4] The police issued an access decision, granting partial access to the responsive records. The police withheld some information on the basis of the discretionary exemption at section 38(b) (personal privacy) of the *Act*, taking into consideration the presumption at section 14(3)(b) (investigation into possible violation of law).

[5] The requester, now the appellant, appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[6] The IPC appointed a mediator to explore resolution.

[7] During mediation, the mediator communicated with the appellant and the police in order to discuss the issues of the appeal. The appellant advised the mediator that he is pursuing access to the information severed in the officer's notes relating to a specified incident. The appellant advised that the officer's notes had been disclosed to him in full within a courtroom setting, and that this should allow for disclosure of the records from the police. The appellant also indicated his belief that additional records exist, including texts, notes, and emails between the police and the RCMP. The mediator conveyed this to the police. The police advised the mediator that they would not change their decision to withhold the information severed in the records, and indicated that no additional responsive records exist. The appellant advised the mediator that he wishes to pursue the appeal at the next stage of the appeal process.

Accordingly, the appeal moved to the adjudication stage, where an adjudicator may conduct a written inquiry.

[8] As the adjudicator of this appeal, I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the police. I sought and received written representations in response. I then provided the appellant with an opportunity to provide written representations from the appellant on the issues set out in the Notice of Inquiry and the police's representations. Upon my review of the appellant's representations, I determined that it was not necessary to seek further representations.

[9] For the reasons that follow, I uphold the police's access decision and the reasonableness of the police's search, and I dismiss the appeal.

RECORDS:

[10] The withheld portions of a two-page record entitled "Officer's Notes" is at issue in this appeal.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

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

C. Did the institution exercise its discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

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

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[11] As set out below, I find that the record contains the personal information of both the appellant and other identifiable individuals (affected parties).

Background information about the record at issue

[12] The police set out some background to the record at issue in this appeal. They investigated a domestic incident involving the appellant and an affected party, as well

as an assault complaint reported by an affected party to the police a few months after the domestic incident. Criminal charges were laid against the appellant in relation to the assault complaint. During the criminal trial, at the request of the Crown Attorney, a named constable obtained a statement from the affected party. This statement was captured within the notebook of the constable.

[13] The police state that the statement contains the name of the affected party, their date of birth and opinions and views of a situation that occurred on a particular date, involving the affected party and the appellant, which led to the criminal charges being laid. The appellant requested access to all notes and correspondence that the constable in question obtained regarding the affected party's statement. The police explain that the constable notes are the only records that exist in relation to this statement, and that the notes were partially withheld.

[14] With this context in mind, I will turn to the first issue to be decided in this appeal. In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

What is "personal information"?

[15] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

Recorded information

[16] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.[1]

About

[17] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[2] See also sections 2(2.1) and (2.2), which state:

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

[1] See the definition of "record" in section 2(1).
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

> dwelling and the contact information for the individual relates to that dwelling.

[18] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.[3]

Identifiable individual

[19] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[4]

What are some examples of "personal information"?

[20] Section 2(1) of the *Act* gives a list of examples of personal information:

> "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,
>
> . . .
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
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> . . .
>
> (g) the views or opinions of another individual about the individual, and
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> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[21] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."[5]

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[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[5] Order 11.

Statutory exclusions from the definition of "personal information"

[22] Sections 2(2), (2.1) and (2.2) of the *Act* exclude some information from the definition of personal information. Sections 2(2.1) and (2.2) are described above. Section 2(2) states that personal information does not include information about an individual who has been dead for more than thirty years.

Whose personal information is in the record?

[23] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.[6] Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.[7]

[24] The police state age and the personal opinions or views of an individual are types of recorded information about identifiable individuals (listed at paragraphs (a) and (e) of the definition of "personal information at section 2(1) of the *Act*). Therefore, the police submit that the record is the personal information of an affected party in their personal capacity because it is a statement that the affected party gave to police in relation to an assault investigation. The police submit that it would be reasonable for the affected party to be identified if the information withheld is disclosed because the statement was obtained during a criminal investigation in which the appellant was charged with assault on the affected party.

[25] In response to the police's representations, the appellant states that the records relate to him and that, to his knowledge, the identity of the only non-police officer involved is known, and there is no point in withholding it. In addition, he submits that the police officers involved were all involved in a professional capacity.

[26] Based on my review of the record, I find that it contains "personal information," as that term is defined in section 2(1) of the *Act*, relating to the appellant and other identifiable individuals (affected parties). For example, the record contains views or opinions of an individual, views or opinions about another identifiable individual, and names appearing with other personal information, which is "personal information" under paragraphs (e), (g), and (h) of the definition of that term in section 2(1) of the *Act*. I also find that the *fact that* the affected parties are mentioned in police records and/or the *fact of* their involvement with police regarding an investigation are also examples of "personal information" under the introductory wording of the definition of that term at section 2(1) of the *Act* ("recorded information about an identifiable individual").

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[6] Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

[7] See sections 14(1) and 38(b).

[27] In the circumstances, I find that it is reasonable to expect that the affected parties can be identifiable from the information in the record even if their names were severed. In addition, I am satisfied that the personal information in the record is about the appellant and affected parties in a personal capacity.

[28] Since the record at issue contains the personal information of the appellant, I must assess any right of access he may have to the personal information withheld belonging to him and other individuals under the discretionary exemption at section 38(b) of the *Act*.

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

[29] The police withheld the record under the discretionary personal privacy exemption at section 38(b) of the *Act*, and for the reasons that follow, I uphold that decision.

[30] 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 some exemptions from this right.

[31] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[32] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.[8]

[33] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[34] Also, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.[9]

Would disclosure be "an unjustified invasion of personal privacy" under section 38(b)?

[35] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

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[8] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).
[9] Order PO-2560.

Section 14(1) – do any of the exceptions in sections 14(1)(a) to (e) apply?

[36] If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). The appellant does not cite any these exceptions in his representations. The police submit that none of the exceptions apply. Based on my review of the parties' representations and the record, I agree with the police, and find that none of the exceptions at section 14(1) apply.

Sections 14(2), (3) and (4)

[37] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would *not* be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply.

[38] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the decision-maker[10] must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[11]

Section 14(3) - is disclosure presumed to be an unjustified invasion of personal privacy?

[39] Sections 14(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[40] In this appeal, the police submit that the presumption at section 14(3)(b) applies.

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

[41] This presumption requires only that there be an investigation into a *possible* violation of law.[12] So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[13]

[42] The police state that the personal information in the record at issue was collected as part of a criminal investigation, in which the appellant had been charged with a criminal offence. Given this context, the police submit that releasing the personal information of the affected parties to the appellant in this context would be an

[10] The institution or, on appeal, the IPC.
[11] Order MO-2954.
[12] Orders P-242 and MO-2235.
[13] The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

unjustified invasion of personal privacy of the affected parties.

[43] In response, the appellant points out that he was acquitted in the criminal proceeding. He argues that, therefore, because he is guilty of no wrongdoing criminally, he has "every right to understand every aspect of the process to which he was subjected." The appellant also makes submissions about the substantive allegation against him and the professional consequence of being charged in the first place.

[44] Based on my review of the parties' representations and the record itself, I find that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of criminal law, despite the appellant's acquittal. That is because, as mentioned at the outset, the presumption at section 14(3)(b) requires only that there be an investigation into a possible violation of law. As there was such an investigation, the presumption applies to the personal information. This weighs significantly against disclosure of the affected parties' personal information.

Section 14(2): Do any factors in section 14(2) help in deciding if disclosure would be an unjustified invasion of personal privacy?

[45] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.[14] Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[46] The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).[15]

[47] Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2)(e) to (i), if established, would tend to support non-disclosure of that information.

[48] The police submit that none of the section 14(2) factors apply to the record.

[49] The appellant's representations do not cite any of the factors listed at section 14(2)(a) to (d) that would support disclosure of the personal information in question. He does mention ongoing litigation, arguing that it is not a relevant factor. Usually existing or contemplated litigation is referenced in relation to the factor at section 14(2)(d), which would support disclosure. However, as the appellant argues that the existing litigation is not relevant, and his evidence indicates that he has significant knowledge of the surrounding circumstances, I will not consider section 14(2)(d) as relevant. In the circumstances, I find that disclosure of the personal information of the

[14] Order P-239.
[15] Order P-99.

affected parties is not needed to allow the appellant to participate in a court process, and would therefore not meet part four of the four-part test for section 14(2)(d).[16]

[50] However, the appellant argues that the allegations made against him had consequences for him, so he should therefore have disclosure of the record. I will consider this as an unlisted factor of inherent fairness.

Other factors or relevant circumstances

[51] Other considerations (besides the ones listed in sections 14(2)(a) to (i)) must be considered under section 14(2) if they are relevant. These may include inherent fairness issues.[17]

[52] As mentioned, the appellant submits that on the basis of allegations against him, he was prosecuted criminally and was acquitted, but was nevertheless subjected to serious consequences at work based on the allegation, and should have full disclosure to understand the basis of the process that he was subjected to.

[53] Based on my review of the appellant's representations and the record, I am prepared to accept the appellant's position, and appreciate that disclosure would provide him with the details of a statement made about him to police. However, it is also worth noting that there is insufficient evidence about the disciplinary matter or ongoing litigation that he mentioned in his representations, and that the appellant was tried criminally and was acquitted. As a result, while I acknowledge that the unlisted factor of inherent fairness is relevant, I give it low weight in the circumstances.

Weighing the presumptions and factors

[54] As mentioned, in determining whether disclosure of the affected parties' personal information would constitute an unjustified invasion of personal privacy, I have considered the factors and presumptions at sections 14(2) and 14(3) of the *Act*, and an unlisted factor (inherent fairness), in the circumstances of this appeal. I have found that the presumption at section 14(3)(b) applies, which weighs significantly against disclosure. Although the parties did not cite any listed factors at section 14(2), I found that an unlisted factor (inherent fairness) has some weight, in the circumstances. I find that the presumption at section 14(3)(b) outweighs the unlisted factor that I have

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[16] The IPC uses a four-part test to decide whether the factor at section 14(2)(d) applies. For the factor to apply, all four parts of the test must be met: (1) Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds? (2) Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed? (3) Is the personal information significant to the determination of the right in question? (4) Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing? See 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.).

[17] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

considered.

[55] Therefore, weighing the factors and presumptions, and taking into account the interests of the parties, I find that disclosure of the record at issue would be an unjustified invasion of personal privacy of the identifiable individuals whose personal information is contained in the record. Therefore, I find that the responsive information is exempt from disclosure under the personal privacy exemption at section 38(b), subject to my review of the absurd result principle, and the exercise of the discretion of the police.

Absurd result – the section 38(b) exemption may not apply

[56] An institution might not be able to rely on the section 38(b) exemption in cases where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[18]

[57] For example, the "absurd result" principle has been applied when:

- the requester sought access to their own witness statement,[19]
- the requester was present when the information was provided to the institution,[20] and
- the information was or is clearly within the requester's knowledge.[21]

[58] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[22]

[59] The police submit that it would not be absurd to withhold the information in the circumstances, stating that the personal information was "supplied by [an] affected party directly to a police officer and not by the appellant." Furthermore, the police state that, according to the officer who obtained the statement, the judge presiding over the criminal trial did not accept the statement as evidence. Therefore, the police submit that it has not been confirmed whether or not the appellant had knowledge of the contents of the statement.

[60] The appellant submits that while there would be "good reason in most cases to keep the complainant's identity partly or completely secret, that has never been a realistic consideration in the context" of this appeal. He states that there is only one civilian directly involved, to his knowledge, and provided a name for that individual. He

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[18] Orders M-444 and MO-1323.
[19] Orders M-444 and M-451.
[20] Orders M-444 and P-1414.
[21] Orders MO-1196, PO-1679 and MO-1755.
[22] Orders M-757, MO-1323 and MO-1378.

also states that, in the particular circumstances here, certain personal information about this individual (which he specified) were known to him, and continue to be known by him.

[61] Having considered the contents of the record itself and the parties' representations, while I appreciate that the appellant's circumstances afford him a degree of knowledge about some types of personal information that may be at issue in this appeal, I find that it would not be absurd to withhold the record from disclosure in the circumstances. I find the fact that the record is a statement given to police by an affected party weighs against accepting that the appellant is aware of the contents of the record. Similarly, the fact that the record was not accepted as evidence at the criminal trial also weighs against finding that withholding the record would be absurd. Furthermore, the appellant's representations mention certain types of personal information, but they do not address the fact that the record itself, as a whole, constitutes the personal information of an affected party, as a statement made to the police. Since the statement as a whole constitutes the personal information of an affected party, and this statement was not provided by the appellant and was not disclosed through the criminal trial, I find that there is insufficient evidence for me to accept that it would be absurd to withhold the information at issue.

Severance is not possible

[62] Based on my review of the record, I also find that personal information of the affected parties in the record is inextricably linked to the personal information of the appellant. As a result, it is not reasonably possible to sever the record so that some information can be disclosed to the appellant, without revealing information that I have found is subject to section 38(b) of the *Act*.

Issue C: Did the institution exercise its discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

[63] As I will explain below, I find that the police exercised their discretion under section 38(b) of the *Act*, and I uphold that exercise of that discretion.

[64] The section 38(b) exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[65] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or

- it fails to take into account relevant considerations.

[66] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[23] The IPC cannot, however, substitute its own discretion for that of the institution.[24]

What considerations are relevant to the exercise of discretion?

[67] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:[25]

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

[68] Summarizing the police's representations on this, they identified the following considerations taken in determining whether or not to release the personal information of the affected parties to the appellant:

- the purpose of the *Act*, that individuals should have a right of access to their own personal information and that the privacy of individuals should be protected,

[23] Order MO-1573.
[24] Section 43(2).
[25] Orders P-344 and MO-1573.

- the police's inability to confirm whether or not the appellant saw the record during the criminal trial, as he claims,
- the fact that a statement of an individual to the police is personal information of that individual under the *Act*,
- the nature of the record, as a statement relating to an assault investigation involving the appellant and an affected party, and as such, re-victimization of this individual, and
- the litigation started by the appellant, providing him with another avenue of obtaining the record through the rules of civil litigation.
- The police submit that taking the above factors into consideration, they exercised their discretion not to release the affected parties' personal information to the appellant, as protecting the privacy of the affected parties outweighed any factor that would convince the police to grant access to this type of personal information to the appellant.

[69] While the appellant's representations did not address the issues in the order set out in the Notice of Inquiry, I will summarize his representations about relevant considerations. The appellant argues that the litigation makes disclosure all the more important to him. He also submits that the possibility of obtaining the record through the courts should not be relevant in this appeal. His representations also indicate, as mentioned, that the allegations made against him have had consequences for him, he believes only one affected party is involved, and he knows the identity of that individual, so the protection of personal privacy is not engaged. Rather, he should have the record fully disclosed to him in fulfillment of one of the purposes of the *Act*.

[70] Based on my review of the parties' representations and the record itself, I find that the police have exercised their discretion under section 38(b) of the *Act*, and that I should uphold that exercise. I find that all of the factors mentioned by the police are relevant considerations in the circumstances, and in particular, those with respect to the specific nature of the record, in the circumstances. While having an alternate means of disclosure outside the *Act* is not determinative, I find that it is not irrelevant either, and that this consideration was taken into account along with others. There is also no evidence before me that the police acted in bad faith in exercising their discretion. For these reasons, I am satisfied that the police considered relevant, not irrelevant factors, in exercising their discretion, and that they acted in good faith, not bad faith. Therefore, I uphold the police's exercise of discretion under section 38(b) of the *Act*.

Issue D: Did the police conduct a reasonable search for records?

[71] The appellant raised the issue of reasonable search. For the reasons set out below, I uphold the reasonableness of the police's search.

[72] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[26] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[73] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[27] that is, records that are "reasonably related" to the request.[28]

[74] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[29] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[30]

The police's evidence

[75] The police provided representations and an affidavit from their Freedom of Information Supervisor (the FOI supervisor), who attests to holding that position for over twenty years. Below, I will summarize the police's evidence from both the representations and the FOI supervisor's affidavit.

[76] Part of the request relates to a meeting that the appellant alleges occurred between a certain police sergeant (now inspector) and certain RCMP officers regarding a pending Code of Conduct investigation, as well as a domestic incident on a specified date. The police say that a search was conducted by the police's Freedom of Information unit, but no records were located in relation to that meeting.

[77] The police explain that the appellant had submitted an earlier access request for any and all records of that same police sergeant with the RCMP regarding the appellant, for a specified time period. In response to that earlier request, the police sergeant provided the FOI office with all responsive emails, which the police then disclosed to the appellant.

[78] The police's response to the request that is the subject matter of this appeal did not involve records from that sergeant, but rather, the record that I discussed above.

[79] After receiving the police's access decision (that is the subject of this appeal), the

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[26] Orders P-85, P-221 and PO-1954-I.
[27] Orders P-624 and PO-2559.
[28] Order PO-2554.
[29] Orders M-909, PO-2469 and PO-2592.
[30] Order MO-2185.

appellant asked the police about why the records relating to the alleged meeting between the police sergeant and the RCMP were not included with the police's access decision. The police advised the appellant that they had already been disclosed to him through a previous request.

[80] However, the police also took steps to confirm that this is the case.

[81] The FOIC supervisor (who had also processed the appellant's earlier request) asked the police sergeant in question to confirm this by email. The sergeant advised that she had no recollection of a meeting with the RCMP about the Code of Conduct allegation, and that her meeting was limited to the criminal matter. Nevertheless, the sergeant stated that she would check her notes to confirm this. About a week later, the sergeant confirmed to the FOIC supervisor that she checked her records and that the only records she had relating to the RCMP and the appellant were the notes and emails that she had previously provided the FOI office in response to the previous request.

[82] The FOI supervisor advised the appellant of the sergeant's search results by email.

The appellant's representations

[83] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[31]

[84] Here, the appellant's representations did not address the police's representations and affidavit evidence regarding the police's search.

Analysis/findings

[85] I uphold the police's search efforts as reasonable. The appellant did not address the police's evidence about their search efforts and has not provided any submissions or evidence to establish the reasonable basis for his belief that additional responsive records should exist.

[86] I find that the FOI supervisor is an experienced employee knowledgeable in the subject matter of the request, given the nature of her role and the length of time she has held it, as well has her knowledge of the appellant's earlier request (having led the search efforts for it).

[87] Furthermore, I find that it was reasonable for the FOI supervisor to reach out to the sergeant in question, and in turn, for the sergeant to check her record holdings. Given the expansive scope of the earlier request, for any and all records of this sergeant, as described in the FOI supervisor's affidavit, and the previous disclosure

[31] Order MO-2246.

made as a result, I am satisfied that the police have provided sufficient evidence that they took reasonable steps to search for responsive records, and that the appellant has not provided a basis for believing that additional responsive records exist. As a result, I uphold the police's search efforts as reasonable and find no basis for ordering a further search.

ORDER:

I uphold the police's access decision and the reasonableness of their search, and dismiss the appeal.

Original Signed by: February 23, 2022

Marian Sami
Adjudicator