

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4181

Appeal MA20-00263

City of Pickering

March 30, 2022

Summary: The City of Pickering (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the complete Animal Control file related to a certain dog bite incident. In response to the request, the city provided the appellant with partial disclosure of the responsive records, but withheld personal information under the mandatory exemption at section 14(1) (personal privacy) of the *Act*. The appellant appealed the city's decision, seeking the remaining information so that he can pursue legal recourse against the dog owner under the *Dog Owners' Liability Act*. The appropriate personal privacy exemption was determined to be the discretionary one, at section 38(b) of the *Act*.

In this order, the adjudicator upholds the city's decision, in part. She finds that the absurd result principle applies to some personal information relating to the dog owner (a first name and an address) because the appellant provided the city with that personal information. As a result, that personal information is not exempt under section 38(b) of the *Act*, and she orders the city to disclose the portions of the records containing exactly that information to the appellant. In addition, the adjudicator finds that other names associated with the dog owner are not exempt under section 38(b), and orders the city to disclose them to the appellant. However, the adjudicator upholds the city's decision to withhold the remaining personal information at issue under the exemption at section 38(b), and dismisses that portion of the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 4(2), 14(1)(f), 14(2)(b), 14(2)(d), 14(2)(f), 14(2)(h), 14(3)(b), and 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16, as amended.

Orders Considered: Orders MO-2977, MO-2980, MO-3742, and MO-3911

OVERVIEW:

[1] The City of Pickering (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the complete Animal Control file related to a dog bite incident on a specified date.

[2] In response to the request, the city located responsive records and decided to grant the appellant access to most portions of the records. The city withheld portions of the records under the mandatory exemption at section 14(1) (personal privacy) of the *Act*.

[3] The requester (now the appellant) appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC) through a representative.

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

[5] During the mediation process, the mediator had discussions with both the appellant and the city. The city confirmed it would also be relying on the discretionary exemption at section 38(b) (personal privacy) of the *Act* and that this exemption was omitted from its decision letter in error. The city also notified an affected party about the request, for the purpose of obtaining consent to disclose the withheld information contained in the responsive records. The city did not obtain the consent of the affected party. The city advised it would not be changing its original decision to withhold the information.

[6] The appellant's representative advised the mediator that the appellant wishes to pursue access to some of the withheld information, and clarified that they are not pursuing access to any of the withheld information relating to the photos (pages 7-12). As a result, the photos are not at issue in this appeal. Since the appellant wished to pursue access to the other withheld information, this appeal moved to the adjudication stage, where an adjudicator may conduct a written inquiry.

[7] 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 city and the affected party. I asked the city and the affected party for written representations in response. In addition, I asked that in providing representations, the city and the affected party consider IPC Orders MO-2980 and MO-3742,¹ which ordered disclosure of the dog owner's name, and comment on whether the reasoning in these orders applies to this appeal. The city provided a response, but the affected party did not. I sought and received written representations from the appellant, in response to the Notice of Inquiry and the city's representations. The parties provided further representations, and I closed the inquiry.

[8] For the reasons that follow, I uphold the city's decision, in part. In this order, I find that the absurd result principle applies to some personal information withheld

¹ Copies of these orders were also provided to the parties, for ease of reference.

(specifically, a name and address), and that other names are not exempt under section 38(b) of the *Act*, so I order the city to disclose this personal information. However, I find that the remaining withheld personal information is exempt under section 38(b).

RECORDS:

[9] The portions of three records remain at issue in this appeal:

- record 1² - Animal Services Report (pages 1-3),
- record 2 - Animal Services Officer's Notes (page 4), and
- record 3 - the first page of the city's Written Warning (page 5).

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 city exercise its discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

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

[10] 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. As I will explain below, I find that the records contain personal information belonging to the appellant and another identifiable individual, the dog owner.

What is "personal information"?

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

Recorded information

[12] "Recorded information" is information recorded in any format, such as paper

² I have assigned these record numbers.

records, electronic records, digital photographs, videos, or maps.³

About

[13] 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.⁴

Identifiable individual

[14] 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.⁵

What are some examples of “personal information”?

[15] 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,

(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,

. . .

(d) the address, telephone number, fingerprints or blood type of the individual,

. . .

(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.

³ See the definition of “record” in section 2(1).

⁴ Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual (see Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225). 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 (see Orders P-1409, R-980015, PO-2225 and MO-2344).

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

[16] 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."⁶

Whose personal information is in the record?

[17] 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.⁷ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁸

[18] The city submits that the records include the name, telephone number, and address of the affected party, which qualifies as "personal information" under section paragraphs (d) and (h) of section 2(1) of the *Act*. The city states that the affected party provided the information to the city due to an incident with the affected party's dog, under the city's Responsible Pet Ownership By-law (6811/07). In addition, the city notes that the affected party's information was provided in a personal capacity, and not a professional, official, or business capacity. Therefore, the city submits that it is reasonable to expect that an individual may be identified if the information withheld is disclosed.

[19] In response to the city, the appellant acknowledges that the information at issue contains the name and address of the dog owner, and is "likely" personal information under section 2(1) of the *Act*. The appellant also submits that the record contains the personal information of the appellant, including his name, telephone number, and home address.

[20] Based on my review of the records, I find that each record contains information that qualifies as *personal information* belonging to the appellant and to the affected party (identified by the city in its representations as the owner of the dog in question). This personal information includes the names, telephone numbers, and addresses of these parties, which is *personal information* under paragraphs (d) and (h) of the definition of *personal information* at section 2(1) of the *Act*. I find that it is reasonable to believe that the affected party may be identified from the disclosure of the names and contact information at issue.

[21] In addition, I find that the fact of being involved in the dog bite incident (whether as the dog owner or as the individual bitten by the dog), and the location of the incident, qualify as personal information under the introductory wording of the definition of that term at section 2(1) (*recorded information about an identifiable individual*).

[22] Since the records contain the personal information of the appellant, I must

⁶ Order 11.

⁷ 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.

⁸ See sections 14(1) and 38(b).

assess any right of access he may have to the personal information of the dog owner in the records 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?

[23] The city withheld the personal information in the records under the discretionary exemption at section 38(b). For the reasons that follow, I uphold that decision, in part.

[24] Since this appeal regards access to records that were generated as a result of an alleged dog bite, the *Dog Owner's Liability Act*⁹ (*DOLA*) is relevant. That is because under section 4(1) of the *DOLA*, a dog owner may be sued in court if it is alleged that:

- the dog has bitten or attacked a person;
- the dog has behaved in a manner that poses a menace to the safety of persons; or
- the owner did not exercise reasonable precautions to prevent the dog from biting or attacking a person, or behaving in a manner that poses a menace to the safety of persons.¹⁰

[25] To file a civil suit, an individual making any of the above allegations may commence a civil action against an unnamed dog owner, but would ultimately need at least the dog owner's name to meaningfully exercise any legal rights of redress that they may have against them. The IPC has previously ordered disclosure of the names of dog owners in similar situations, and sometimes, has ordered the disclosure of the addresses of dog owners as well.

[26] In this appeal, based on my review of the full version of record 1, the address of the dog owner was provided to the city by the appellant himself.

[27] Therefore, in the particular circumstances of this appeal, it is necessary to consider the personal information at issue in three categories, as follows:

- whether the absurd result principle applies to the personal information of the dog owner that was provided by the appellant to the city;
- whether the other names associated with the dog owner in the records (which were not provided by the appellant to the city) are exempt under section 38(b); and
- whether any other personal information is exempt under section 38(b).

⁹ R.S.O. 1990, Chapter D.16

¹⁰ Under section 4(1) of the *DOLA*. These provisions also apply to alleged bites, attacks, or menacing behavior against domestic animals.

Category 1: personal information of the dog owner that was provided by the appellant to the city – the absurd result principle applies

[28] 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.¹¹

[29] For example, the “absurd result” principle has been applied when:

- the requester sought access to their own witness statement,¹²
- the requester was present when the information was provided to the institution,¹³ and
- the information was or is clearly within the requester’s knowledge.¹⁴

[30] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.¹⁵

[31] After reviewing the information disclosed to the appellant in record 1, as well as the withheld portions of record 1, I find that it would be absurd and inconsistent with the purpose of the exemption at section 38(b) of the *Act* to withhold personal information belonging to the dog owner which the appellant himself provided to the city.

[32] In its index of records, the city describes record 1 as a “Customer Care Complaint Report.” Record 1 was generated under the city’s Animal Services department; it logs the appellant’s complaint to the city about the dog bite, and the communications between the city and the appellant, the city’s attempts to reach the dog owner, the city’s communications with the dog owner, and the status of the complaint. Under a section of record 1 entitled “Attempt Details,” there are several chronological file notes (listed as “Comment[s] on File”) entered by city personnel, with information about the progress or status of the complaint.

[33] From my review of record 1, I find that the appellant provided a first name and a correct address to the city belonging to the dog owner. Portions of record 1 (which the city disclosed to the appellant) support this finding. They are set out below, without the personal information that the city withheld:¹⁶

5 Comment on File

¹¹ Orders M-444 and MO-1323.

¹² Orders M-444 and M-451.

¹³ Orders M-444 and P-1414.

¹⁴ Orders MO-1196, PO-1679 and MO-1755.

¹⁵ Orders M-757, MO-1323 and MO-1378.

¹⁶ I have omitted the dates and city personnel information in this order.

Complainant called in with dog owner information. Dog owner is [redacted first name] from [redacted address.]

...

7 Comment on File

Attended residence, *spoke with dog owner* as [redacted] was leaving [redacted] home. Gave NOI to dog owner, advised to call to discuss complaint. Advised dog owner that we need to meet to discuss the complaint and the restrictions of [redacted] dog, which I believe to be a pitbull [sic].¹⁷ [Emphasis added.]

[34] Several "Comment on File" entries after this show the city's further steps in dealing with the dog owner.

[35] The Notice of Inquiry sent to each party included a section about the absurd result principle (set out above), and asking each party to explain whether it would be absurd to the information at issue in the appeal. Neither the city nor the appellant addressed whether it is clear from the disclosed portions of record 1, set out above, that it would be absurd to withhold the first name and address (withheld under the fifth "Comment on File"), due to the fact that the city was able to use the address provided by the appellant to successfully contact the dog owner.

[36] On the basis of the evidence set out in the record, quoted above, I am satisfied that the absurd result principle applies to the first name and address withheld under that fifth "Comment on File" (and to the portions of records 2 and 3 containing the exact address information provided by the appellant to the city). In my view, it is clear from my review of record 1 that the appellant provided the city with the first name and address withheld under the fifth "Comment on File." As a result, the exemption at section 38(b) cannot apply to this information, and I will order the city to disclose it to the appellant.

[37] It is worth noting that there are instances in record 1 where other names of the dog owner appear both before and after the fifth "Comment on File," I will err on the side of not considering the other names of the dog owner in record 1 as personal information subject to the absurd result principle because I cannot be as certain whether this information was provided by the appellant. I will discuss these other names associated with the dog owner, and the remaining types of personal information withheld in the record, below.

Categories 2 and 3: other names of the dog owner, and all other personal information

[38] Section 36(1) of the *Act* gives individuals a general right of access to their own

¹⁷ These portions of record 1 were disclosed to the appellant, except for the portions I have identified as redacted.

personal information held by an institution. Section 38 provides some exemptions from this right.

[39] 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.

[40] 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.¹⁸

[41] 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).

[42] 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.¹⁹

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

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

[44] 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).

[45] Neither party argues that any of these exceptions apply, and based on my review of the records, I find that none apply in the circumstances of this appeal.

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

[46] Sections 14(2), (3) and (4) also help in deciding whether disclosure would 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.

[47] 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-maker²⁰ must consider and weigh the factors and presumptions in sections

¹⁸ See below in the "Exercise of Discretion" section (Issue C in this order) for a more detailed discussion of the institution's exercise of discretion under section 38(b).

¹⁹ Order PO-2560.

²⁰ The institution or, on appeal, the IPC.

14(2) and (3) and balance the interests of the parties.²¹

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

[48] 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).

[49] In this appeal, the city relies on the presumption at section 14(3)(b) (investigation into possible violation of law).

[50] This presumption requires only that there be an investigation into a *possible* violation of law.²² The presumption can apply to different types of investigations, including those relating to by-law enforcement,²³ but does not apply if the records were created after the completion of an investigation into a possible violation of law.²⁴

[51] The city submits that the information at issue is "similar to by-law complainant information, which previous orders have found falls within the presumption in section 14(3)(b)." In other portions of the city's representations, the city specifies that the dog owner provided information to the city further to an incident with their dog under the Responsible Pet Ownership By-law (6811/07). The city submits that there is no prosecution of the violation or confirmation of the investigation to warrant the release of the information.

[52] The appellant submits that the presumption at section 14(3)(b) may be the only presumption that should be considered because "[the] information may have been compiled as part of an investigation into a possible violation of law." However, the appellant argues that this consideration must be balanced against the factors that weigh in favour of disclosure.

[53] Based on my review of the records and the parties' representations, I accept that the personal information at issue in this appeal was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, I find that section 14(3)(b) applies to the dog owner's names and the remaining personal information withheld in the records. This weighs against disclosing the dog owner's names and remaining 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?

[54] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal

²¹ Order MO-2954.

²² Orders P-242 and MO-2235.

²³ Order MO-2147.

²⁴ Orders M-734, M-841, M-1086, PO-1819 and MO-2019.

privacy.²⁵ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[55] 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).²⁶

[56] 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.

14(2)(b): disclosure may promote public health and safety

[57] This section supports disclosure where disclosure of the information would promote public health and safety.

[58] The city submits that in the circumstances, there is insufficient evidence that disclosing the dog owner's personal information may promote public health and safety.

[59] In response, the appellant submits that the disclosure of the personal information at issue would promote public safety under section 14(2)(b), as it may lead to civil proceedings and/or a possible court order with public safety ramifications. The appellant submits that in order for claims under the *DOLA* to proceed, the dog owner must be a party to the proceedings in order to hold them accountable to both the injuries of a victim and any potential order that may apply to the control of their dog. The appellant argues that if an injured party is only provided a name without any further information, that name is effectively of no use to them in protecting their rights under the *DOLA*, especially if that name is of common use. As a result, the appellant submits that the dog owner's name and contact information is necessary in order for the appellant to continue his claim under the *DOLA*.

[60] Since the dog owner's address is subject to the absurd result principle, the only remaining contact information that is at issue is the dog owner's phone number.

[61] Based on my review of the records and the parties' representations, I find that the factor at section 14(2)(b) is relevant to my consideration of whether to disclose the dog owner's name, but not the dog owner's phone number. I am persuaded by the appellant's submissions that the dog owner's name is necessary to effectively pursue a civil action under *DOLA*. The appellant is only aware of a first name, as discussed; in my view, it is a common name at that. Since the city will be ordered to disclose an address in record 1 that the appellant provided to the city, and which the city successfully used to find the dog owner, I find that disclosing the other names associated with the dog owner are sufficient to address the need to efficiently pursue a

²⁵ Order P-239.

²⁶ Order P-99.

lawsuit under *DOLA*, not the dog owner's phone number.

[62] Furthermore, the disclosed portions of record 3 (the "Written Warning" to the dog owner) include an indication that the city received a complaint and has reason to believe that the dog owner was in violation of specified legal provisions relating to control of the dog in question. Since the affected party's name appears in this context, this too weighs in favour of finding that disclosing it would promote public health and safety.

[63] For these reasons, I find that the factor at section 14(2)(b) is relevant to whether the other names associated with the dog owner should be disclosed.

[64] However, I find that these reasons do not extend to the disclosure of any other withheld personal information relating to the dog owner in the records. There is insufficient evidence before me to conclude that disclosing personal information such as the dog owner's phone number, or the location of the alleged incident, would promote public health and safety.

14(2)(d): the personal information is relevant to the fair determination of requester's rights

[65] This section supports disclosure of someone else's personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor 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?²⁷

[66] In seeking written representations from the parties on whether the personal information relevant to a fair determination of rights affecting the appellant, I also asked the parties to comment on the relevance, if any, of the reasoning in Orders MO-2980 and MO-3742.

[67] The city submits that the circumstances in this appeal can be distinguished from

²⁷ 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.).

the circumstances in those orders on the basis that those orders involved requests made to police services board and involving investigations by police services appeals of decisions made by police services boards regarding policing matters. The city submits that in contrast, this appeal does not relate to a police matter. The city submits that Order MO-2977 is more relevant because the request in that appeal was to a municipality and not a police services board. Therefore, the city argues that the information at issue should not be released.

[68] In response to the city, the appellant relies on Order MO-3742, which held that section 14(2)(d) applied to the appellant seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from the dog owner under *DOLA* is fairly determined. In addition, along with its representations, the appellant provided a copy of a Statement of Claim that it filed with the Ontario Superior Court of Justice in order to seek damages from the dog owner, using a pseudonym "John Doe."

[69] As a result, the appellant submits that disclosure of the personal information is relevant to a fair determination of rights affecting the appellant, under section 14(2)(d), because:

1. the right in question is the appellant's right to sue and seek damages from the dog owner, which is drawn from both the *DOLA* and tort law at common law;
2. on [a specified date], the appellant filed a Statement of Claim with the Ontario Court of Justice in order to seek damages for this incident, using the pseudonym "John Doe," but the dog owner has not been identified;
3. the personal information that the appellant is seeking is very significant to the determination of these specific rights because, to obtain damages and/or an order in relation to dog owner, the appellant must correctly name the dog owner and ensure that the dog owner is made aware of those proceedings, necessitating the need for both the name and address of the dog owner; and
4. the answer to part three equally applies to this part because discovery is a necessary step in civil proceedings, the dog owner's participation is required to prepare for a potential trial, and the dog owner must be able to properly defend themselves to ensure an impartial hearing.

[70] It is not necessary to consider the appellant's arguments as they would apply to the dog owner's address, given my finding that the absurd result principle applies to it.

[71] Based on my review of the parties' representations and the records themselves, I find that the appellant has established that the four-part test for section 14(2)(d) applies to the other names associated with the dog owner in the records. I find that the orders that I asked the city to consider are relevant to the circumstances of this appeal, and not distinguishable on the basis that the requests were made to police boards and involved police investigations. The appellants in those appeals similarly alleged dog bites, and argued that the names of the dog owners were necessary for them to pursue

civil actions under *DOLA*. The IPC agreed and ordered disclosure of the dog owners' names, and I agree with that reasoning and adopt it here.

[72] However, I find that there is insufficient evidence before me to conclude section 14(2)(d) applies to the remaining personal information relating to the dog owner.

[73] Regarding the *weight* to be given to the factor at section 14(2)(d), the city submits the weight should be reduced, in light of past IPC orders have found that the existence of disclosure processes available to parties under the *Rules of Civil Procedure* reduces the weight that should be given to the section 14(2)(d) factor. The city submits that the appellant can 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 after commencing a civil action against the dog owner (using a pseudonym).

[74] The appellant acknowledges that it is possible to receive the requested information through an application under the *Rules of Civil Procedure*, but relies on Order MO-2980, where the IPC held that the appellant has a right to seek this information in the most efficient, cost-effective manner that he sees fit, and he should not have to jump through numerous hoops in different forums to seek basic information that would enable him to exercise his legal right to seek redress. The appellant argues that, while a court may order the production of the unredacted records under R. 30.10 of the *Rules of Civil Procedure*, doing so would be a waste of the time and resources of both the government and the appellant since the disclosure of that information can be done through this appeal.

[75] I agree with the reasoning in Order MO-2980, and adopt it here. As a result, I find that the factor at section 14(2)(d) weighs in favour of disclosing the names associated with the dog owner in the records, and is not reduced by the possibility of the appellant obtaining any of these names through a court process.

Other factors or relevant circumstances

[76] 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, for example, inherent fairness issues,²⁸ or ensuring public confidence in an institution.

[77] Here, the appellant argues that an unlisted factor weighing in favour of disclosure that has been recognized in past IPC orders involving injuries (such as Orders MO-3742 and MO-3911) is that the *Act* should not be used in a way that prevents or unduly impairs individuals from exercising their legal rights, and that this is an unlisted factor that favours disclosure. I agree with this reasoning, and adopt it here as it pertains to the other names associated with the dog owner, but not the remaining personal information at issue.

[78] Since I have found that there are no factors weighing in favour of disclosing the

²⁸ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

remaining personal information (and that a presumption at section 14(3) weighs against disclosing this information), it is not necessary to consider whether there are factors weighing in favour of withholding it. As a result of there being a presumption weighing against disclosure and no factors favouring the disclosure of the remaining personal information that is at issue, I find that it is exempt under section 38(b), subject to my review of the city's exercise of discretion to withhold that information (under Issue C).

[79] I will now proceed to consider the factors weighing against disclosure of the names associated with the dog owner, other than the first name provided by the appellant to the city.²⁹

14(2)(f): the personal information is highly sensitive

[80] This section is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.³⁰ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.³¹

[81] The city submits that identifying information is highly sensitive in a dog bite context, and that disclosure of personal information relating to the affected party may result in unwanted contact from the appellant and/or antagonism resulting in personal distress. The city also states that, in speaking on the phone and via email with the dog owner, it was clear this individual did not want their personal information provided to the appellant and had concerns about the inquiries.

[82] The appellant submits that the personal information is not highly sensitive, "as it contains merely the name, address, and contact information of the Dog Owner. It does not provide any details such as financial statements, personal opinions, medical history, or other similar information." The appellant relies on Order MO-2980 (which also involved a dog bite), and argues that the requested information may be sensitive, but not highly sensitive. In addition, the appellant submits that there are "no factors that would cause one to believe that the disclosure of this contact information will cause the Dog Owner significant personal distress." The appellant emphasizes that he only seeks the personal information to continue with his claim in the Ontario Superior Court of Justice. He states that he has already retained counsel to that effect.

[83] Having considered the parties' representations, in the circumstances of this

²⁹ The appellant argues that the factor weighing against disclosure at section 14(2)(e) (unfair pecuniary or other harm) does not apply, but since the city itself did not argue that it does, I have not considered it. The parties also made arguments about section 14(2)(g) (unlikely accurate or reliable) regarding contact information found in the records, but I will not address these arguments either because the address provided to the city will be disclosed under the absurd result principle, and I have already found that the remaining personal information in the records (which includes telephone numbers) is exempt under section 38(b).

³⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

³¹ Order MO-2980.

appeal, I find that section 14(2)(f) applies to the names associated with the dog owner (other than the first name that the appellant provided to the city), but with reduced weight. As the adjudicator in Order MO-2980 found, whether the names and addresses are highly sensitive must be determined on a case by case basis. He also observed that an individual's name and address is not always sensitive information, as such information for most individuals appears in publicly available directories. I acknowledge what the city is saying about its interactions with the dog owner and the concerns expressed. While I accept that the potential for unwanted contact and the prospect of a civil lawsuit might cause distress, or even significant personal distress, the fact is that the appellant already has a means of contacting the dog owner (the address he provided the city). As a result, I give the factor at section 14(2)(f) reduced weight regarding the dog owner's names because the appellant already has a means of contacting the dog owner if he wanted to.

14(2)(h): the personal information was supplied in confidence

[84] This section weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an *objective* assessment of whether the expectation of confidentiality is "reasonable."³²

[85] The city states that it is established practice at the city to keep confidential the names of individuals who provide information to aid an investigation/register a complaint. In addition, the city states that the identity of individuals charged under the city's *Responsible Pet Ownership By-law* would be kept confidential, although this type of information may become available through the prosecution of the matter.

[86] The appellant submits that it is not reasonable for a person to have "assumed" that the information provided at the time of the dog bite incident would have been submitted in confidence. The appellant submits that since that information was provided as a result of an injury to another party (the appellant), it is unclear as to why someone would believe that their information would be treated confidentially. In addition, the appellant argues that having open court hearings, except in specific circumstances, is a core tenet of the Canadian legal system, so it would not have been reasonable for a person to "assume" that their personal information would have been held in confidence. The appellant submits that if the issue had proceeded to a hearing, any person in the court room, either physically or virtually, would have had access to "some level of that information."

[87] While personal information may be revealed through a court process, what concerns me here is whether any expectation of confidentiality of disclosure of personal information through an access to information request under the *Act*.

[88] Based on my review of the parties' representations and the records, I find that there is insufficient evidence to accept that both the dog owner and the city had an

³² Order PO-1670.

expectation that the dog owner's name and other personal information provided to the city (such as telephone numbers) would be treated confidentially. The city did not provide sufficient evidence of this expectation. Asserting that there is an established practice does not sufficiently establish that this expectation existed on both sides. Similarly, the city states that individuals charged under a by-law would have their identities kept confidential, but the city does not otherwise state that the dog owner in this appeal was charged. If anything, record 3 as a "Written Warning" would suggest that the dog owner was not charged. Based on the evidence before me, I am not satisfied about what assurances of confidentiality, if any, were given, by the city to the dog owner following the alleged injury to the appellant.

[89] In any event, even if the city and the dog owner had expectations that the information provided by the dog owner would be kept confidential, I find that such an expectation would have been unreasonable in the circumstances. In my view, since the personal information provided by the dog owner was provided in the context of an injury occurring, any expectation that the dog owner and city may have had regarding confidentiality is diminished.

[90] As a result, I find that the factor at section 14(2)(h) does not apply to portions of the record(s) containing the names associated with the dog owner that were provided by the dog owner to the city.

Weighing the presumptions and factors, for and against disclosure

[91] As mentioned, in determining whether disclosure of the dog owner's 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, in the circumstances of this appeal. I have found that the presumption at section 14(3) applies to the names associated with the dog owner (other than the first name provided by the appellant to the city), weighing against disclosure. Turning to the section 14(2) factors, I have found that there are three factors favouring disclosure of the names associated with the dog owner: the factors listed at sections 14(2)(b) and 14(2)(d), and the unlisted factor that the *Act* should not be used in a way that prevents or unduly impairs individuals from exercising their legal rights. I have found that the factor weighing against disclosure at section 14(2)(f) has some weight against disclosing the dog owner's names. The factor listed at section 14(h) does not apply to the dog owner's names.

[92] Weighing the factors and interests of the parties, in the circumstances, I find that the factors favouring disclosure of names associated with the dog owner far outweigh the presumption at section 14(3)(b) and the limited weight that can be given to the factor at section 14(2)(f) in the circumstances. As a result, I find that the names associated with the dog owner are not exempt under section 38(b) of the *Act*, and I will order the city to disclose them to the appellant.

[93] With respect to the remaining personal information, I have found that the presumption at section 14(3)(b) applies to this information and that there are no factors

that favour the disclosure of it. As a result, that personal information is exempt under section 38(b) of the *Act* because disclosure of it would be an unjustified invasion of the personal privacy of the dog owner. Accordingly, I uphold the city's decision to withhold the remaining personal information, subject to my review of the city's exercise of discretion under section 38(b) regarding that information.

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

[94] 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.

[95] 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.

[96] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³³ The IPC cannot, however, substitute its own discretion for that of the institution.³⁴

What considerations are relevant to the exercise of discretion?

[97] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:³⁵

- 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,

³³ Order MO-1573.

³⁴ Section 43(2).

³⁵ Orders P-344 and MO-1573.

- 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.

[98] The city submits that it properly exercised its discretion under section 38(b) of the *Act* in order to protect the privacy of the personal information of the affected party (the dog owner). It also notes that it severed portions of the records consistent with section 4(2) of the *Act*, and disclosed as much of the responsive record as possible without disclosing information which was exempt. By doing so, the city argues that it provided the appellant with "an account of the investigation including a description of the timeline of events." In addition, the city notes that the affected party was contacted through the mediation process for the purpose of obtaining consent to disclose the personal information withheld, but consent was not obtained. Therefore, the city submits that the IPC should uphold the city's exercise of discretion.

[99] On the other hand, the appellant submits that the IPC should not uphold the city's exercise of discretion. The appellant states that he has a sympathetic and compelling need to receive this information, and makes arguments related to his ability to pursue a proceeding through *DOLA*. He also argues that disclosure will further increase public confidence in the operation of the institution, for reasons that he also ties to his ability to seek damages and an order under *DOLA*.

[100] Given my findings above regarding an address and the names associated with the dog owner, I am only reviewing the city's exercise of discretion as it relates to the remaining personal information withheld in the records. In my view, the appellant does not have a sympathetic and compelling need for any of this remaining personal information, and I am not persuaded that the confidence of the public would be increased in the operation of the city if the city were to disclose any of that remaining personal information. Given the level of disclosure that the city provided to the appellant already, and the further disclosure that will be made through this order of the names and address of the dog owner, I am satisfied that the city's consideration of the personal privacy of the dog owner is a relevant consideration. I find no evidence that the city considered irrelevant factors, or that it exercised its discretion in bad faith or for an improper purpose. As a result, I uphold the city's discretion to withhold all of the remaining personal information at issue in the records, and I dismiss that portion of the appeal.

ORDER:

1. I uphold the city's access decision, in part.
2. I order the city to disclose to the appellant the first name and address withheld in record 1 that I have found to be subject to the absurd result principle (and any subsequent instances of that same information in records 2 and 3). I also order the city to disclose the portions of the records containing the names associated with the affected party. I order the city to disclose this information to the appellant by **May 4, 2022**, but not before **April 29, 2022**.
3. I reserve the right to require the city to provide the IPC with a copy of the records as disclosed to the appellant.
4. I order the city to withhold the remaining personal information at issue, and I dismiss that portion of the appeal.

Original Signed by: _____
Marian Sami
Adjudicator

_____ March 30, 2022