Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4262

Appeal MA20-00335

Ottawa Police Service

October 4, 2022

Summary: Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the appellant requested police records relating to an October 2018 rally in which he was involved. The police granted partial access to a responsive record, consisting of a table of contents and a "call hardcopy" related to the incident, withholding portions of the record on law enforcement (section 8) and personal privacy [section 38(b)] grounds. On appeal to the IPC, the adjudicator upholds the police's access decision in part. She upholds the police's denial of access to portions of the record addressing building security under section 38(a) of the *Act* (discretion to refuse requester's own information), read with section 8(1)(i) (security). She also upholds the police's denial of access to other portions of the record containing the personal information of an affected person under the discretionary personal privacy exemption at section 38(b) of the *Act*. She finds that other withheld information in the record does not qualify for exemption under the *Act*, and she orders the police to disclose these portions of the record to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 2 (definitions), 8(1)(i), 14(1), and 38.

OVERVIEW:

[1] This order concerns an appellant's request to the Ottawa Police Service (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to police records relating to an October 2018 rally concerning evictions carried out by a corporate landlord. The appellant was involved in the rally. In this

order, I allow, in part, the appellant's appeal of the police's decision to withhold portions of one record responsive to his request.

[2] The appellant requested the following records:

- All notes taken by any and all members of the [police] that attended the rally [on a specified date in October 2018], including but not limited to [specified officer];
- All police records and/or reports pertaining to the [the specified date in October 2018] rally; and
- All records and/or audio recordings of the call made by [a named company's] staff to the [police] on [the specified date in October 2018].

[3] In response to the request, the police granted partial access to one record, an eight-page police "call hardcopy," preceded by a one-page table of contents. The police denied access to portions of the record, citing the exemptions at sections 8(1)(i) and (l) (law enforcement) and 14(1) (personal privacy) of the *Act*.

[4] In this decision, the police also explained that the officers involved in the incident had not taken any notes, and thus there are no officers' notes to disclose. With respect to the request for audio recordings of any calls to police, the police referred the appellant to their separate process for requesting access to such records.

[5] The appellant was dissatisfied with the police's decision, and filed an appeal with the Information and Privacy Commissioner of Ontario (IPC).

[6] During the mediation stage of the appeal process, the mediator contacted an individual whose information appears in the record to ask if this individual would consent to the disclosure of any of that information to the appellant. (This individual is an "affected party" in this appeal because disclosure of the record may affect the individual's interests.) The affected party did not consent to disclosure of any of the affected party's information to the appellant.

[7] Also during mediation, the police acknowledged that the record contains information relating to the appellant, which appears to be the appellant's "personal information," as that term is defined in the *Act*. On this basis, the police amended their personal privacy claim so that it is made under the discretionary exemption at section 38(b) of the *Act*, rather than under the mandatory personal privacy exemption at section 14(1). As I discuss in more detail below, section 38 is the appropriate exemption to consider in respect of records that contain a requester's own personal information. For the same reason, I will consider below the police's reliance on section 8(1) of the *Act* in conjunction with section 38(a), which permits an institution to deny access to a requester's own personal information on the basis of certain listed exemptions.

[8] The appellant did not take issue with the remainder of the police's decision. At the close of mediation, the only issues remaining to be addressed were the police's severances (withholding) of certain information in the record based on law enforcement and personal privacy grounds.

[9] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[10] I conducted an inquiry, during which I received representations from the police and the appellant, which I shared in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*. During the inquiry, the police withdrew their reliance on section 8(1)(l), but maintained their claims under section 38(b) and under section 8(1)(i) (which I consider, below, in conjunction with section 38(a) of the *Act*). Through IPC staff, I notified the affected party of the inquiry. The affected party declined to participate in the inquiry.

[11] In this order, I allow the appellant's appeal, in part. I order the police to disclose to the appellant discrete portions of the record that the police withheld but that do not qualify for exemption under section 38(a) of the *Act*, read with section 8(1)(i), or under section 38(b). I uphold the police's decision to withhold other portions of the record on these grounds.

RECORD:

[12] The record at issue in this appeal is an eight-page "call hardcopy" for a specified incident number, which is preceded by a one-page table of contents.

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 law enforcement exemption at section 8(1)(i), read with section 38(a) (discretion to refuse access to a requester's own personal information), apply to the withheld information in the table of contents and in pages 4, 5, 6, and 7 of the call hardcopy? Did the police properly exercise their discretion under section 38(a)?

C. Does the discretionary personal privacy exemption at section 38(b) apply to the withheld personal information in item 5 of the table of contents, and in pages 1, 3, 6, and 7 of the call hardcopy? Did the police properly exercise their discretion under section 38(b)?

DISCUSSION:

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

[13] In order to decide which sections of the *Act* may apply in this case, I must first decide whether each record contains "personal information," and if so, to whom the personal information in the record relates.

[14] This question is relevant because if a record contains the requester's own personal information, the requester's rights of access to the record are greater than if it does not. In addition, if the record contains the personal information of other individuals, one of the personal privacy exemptions from the right of access may apply.

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

[16] Section 2(1) of the *Act* gives a non-exhaustive list of examples of personal information. The list includes:

- information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual (at paragraph (a) of the definition);
- any identifying number, symbol or other particular assigned to the individual [at paragraph (c)];
- the address, telephone number, fingerprints or blood type of the individual [at paragraph (d)]; and
- 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 [at paragraph (h)].

[17] Information is "about" the individual when it refers to the individual in a personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in a professional, official or business capacity is not considered to be "about" the individual for the purposes of the definition of

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

"personal information" in section 2(1).[2] Sections 2(2.1) and 2(2.2) state:

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

[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]

Parties' representations, and my findings

[19] The police take the position that the record contains the personal information of both the appellant and the affected party. They say the affected party's personal information in the record includes the affected party's name, date of birth, personal contact information, and other personal identifiers. The police assert that this information relates to the affected party in a personal capacity, rather than in a professional capacity.

[20] The appellant says that he is aware of the identity of the affected party. He states that the affected party is a contractor for the property management company that manages the site from which the affected party made the 911 call. Because the affected party was present at the site in a business and professional capacity, the appellant says, the affected party's call to the police from that site was also made in those capacities, on behalf of the affected party's employer.

[21] The appellant also provides evidence to show that the affected party is a member of the police board. The appellant says it is reasonable to believe that the affected party had direct access to the police chief as a result of the affected party's role as a police board member. The appellant thus characterizes the affected party's 911 call as a call made in an official capacity as a police board member.

[22] As noted above, the affected party declined to participate in the inquiry.

[23] If the information about the affected party in the record identifies the affected party in a business, professional or official capacity, then the statutory exclusion at section 2(2.1) from the definition of "personal information" could apply, so that the

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

police may be unable to exempt that information on personal privacy grounds.[4] In this case, the appellant advances a belief about the identity of the affected party, and reasons why any information about that party in the record would not qualify as personal information.

[24] I have examined the record, and considered the representations of the parties. It is not in dispute that the record contains the personal information of the appellant, who is identified by name and physical description in the portions of the record that have already been disclosed to him. As will be seen further below, because the record contains the appellant's own personal information, the police's exemption claims for the portions of the record they seek to withhold must be considered under section 38 of the *Act*.

[25] I find that the record also contains the personal information of the affected party. I make no comment on the appellant's speculation about the identity of this individual. Assuming without deciding that the affected party has business, professional, and official relationships with the property or with the police, as the appellant claims, I find nonetheless that the particular information about the affected party that appears in the record goes beyond business, professional, and official information, and instead relates to the affected party in a personal capacity.

[26] This information includes, for example, the affected party's date of birth, sex, home telephone number, place of birth, and driver's licence number, which fall within paragraphs (a), (c), and (d) of the definition of personal information at section 2(1) of the *Act*. As discussed in more detail further below, it also includes other information gathered by the police in relation to the affected party. Even if, as the appellant asserts, the affected party made the 911 call that led to the record's creation in a business, professional, or official capacity, the above-noted information would, if disclosed, reveal something of an inherently personal nature about the affected party.[5] It is therefore the affected party's personal information within the meaning of section 2(1).

[27] I find, however, that other information in the record does not qualify as the personal information of the affected party, or of any other party. This information is found in the table of contents, from which the police withheld two entries (items 4 and 5), and the identical information appearing in the headings of pages 6 and 7 of the call hardcopy. With the exception of the affected party's name (which is reproduced in part in item 5), which qualifies as the affected party's personal information in the context in which it appears, the remainder of the withheld information in the table of contents merely describes, at a very high level and in generic terms, the headings that appear in the call hardcopy. When the affected party's name in item 5 is severed (which severance I will be upholding later in this decision), the remaining information in item 5,

[4] Unless that information were to reveal something of a personal nature about the affected party: Order PO-2225.
[5] Order PO-2225.

and item 4 in its entirety, do not qualify as the personal information of any identifiable individual. Because this information does not qualify as personal information, the personal privacy exemption at section 38(b) cannot apply to these entries in the table of contents. Under Issue B, below, I will consider the police's alternate claim that these portions of the table of contents are exempt under section 8(1)(i) of the *Act*, when read with section 38(a).

[28] I also find that certain information on page 1 of the call hardcopy does not qualify as personal information within the meaning of the *Act*. This information is found in the narrative portions of page 1 setting out the affected party's account of the incident. Further below, I will be upholding the police's decision to withhold the affected party's name and home telephone number on this page. Besides these, there are eight discrete severances on the page, mainly of one or two words each, which relate to the affected party's description of events. These severances do not contain any information about identifiable individuals that qualifies as personal information under the *Act*. As a result, the personal privacy exemption claimed by the police cannot apply to them. The police have not claimed any other exemptions for these portions of page 1 of the call hardcopy, and I find no mandatory exemption applies. As a result, I will order the police to disclose these portions of page 1 of the call hardcopy to the appellant.

[29] Under the next headings, I will consider the police's exemption claims for the information withheld in the table of contents, and in the remaining portions of the call hardcopy. Because I have found the record contains the personal information of the appellant (as well as that of the affected party), I will consider these claims under section 38 of the *Act*.

B. Does the discretionary law enforcement exemption at section 8(1)(i), read with section 38(a) (discretion to refuse access to a requester's own personal information), apply to the withheld information in the table of contents and in pages 4, 5, 6, and 7 of the call hardcopy? Did the police properly exercise their discretion under section 38(a)?

[30] Under this heading I will consider the police's law enforcement claims to withhold some of the information at issue in the record. Specifically, the police rely on section 8(1)(i) to withhold the following: items 4 and 5 in the table of contents, the information in the body of pages 4 and 5 of the call hardcopy, and the information in the body and headings of pages 6 and 7 of the call hardcopy.

[31] Above, I found that the record contains the personal information of the appellant (as well as the personal information of the affected party). This means the appellant's right of access to the record is under section 36(1), which gives an individual a greater right of access to his or her own personal information held by an institution. Section 38 provides some exemptions from this general right of access to one's own personal information. First, I will consider the exemption at section 38(a) of the *Act*, which states:

> A head may refuse to disclose to the individual to whom the information relates personal information […] if section 6, 7, **8**, 8.1, 8.2, 9, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information[.]

[32] I recognize that the police take the position that section 38(a) does not apply because the discrete severances they made to the record under section 8(1)(i) do not refer specifically to the appellant.

[33] This position is inconsistent with the IPC's long-standing approach to the consideration of exemptions in a record of a requester's own personal information. The IPC adopts a "record-by-record" method of analysis that considers the whole record, rather than individual paragraphs, sentences or words contained in a record.[6] Under this approach, a requester's right of access to any portion of a record of his or her own personal information is under section 36(1), and any claimed exemptions from this right of access must be addressed under section 38. This is the case even where the withheld information does not appear, on its face, to pertain directly to the requester.

[34] I will therefore consider the police's law enforcement exemption claim with section 38(a). The discretionary nature of section 38(a) ("may refuse to disclose") recognizes the special nature of requests for one's own personal information, and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information. I will address further below the police's exercise of discretion under section 38(a).

[35] In this case, the police rely on section 38(a) in conjunction with section 8(1)(i). This section states:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to […] endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required[.]

[36] For section 8(1)(i) to apply, there must be a basis for concluding that disclosure of the information at issue could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required. Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.[7]

[37] Parties resisting disclosure must show that the risk of harm is real and not just a

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[6] Order PO-3642, describing the record-by-record method of analysis set out in Order M-352.
[7] Orders P-900 and PO-2461.

possibility.[8] However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[9]

[38] For the reasons that follow, I find that section 38(a), read with section 8(1)(i), applies to some, but not all, of the information in respect of which the police have claimed this law enforcement exemption.

[39] First, the police explain that they withheld under section 8(1)(i) certain details that they maintain internally about the property involved in the incident. This information appears on pages 4 and 5 of the call hardcopy. These details include emergency contact names and numbers that may not otherwise be publicly available. The police explain that they maintain this information in a secure database that is only accessible by authorized law enforcement personnel.

[40] The appellant disputes that section 8(1)(i) could apply, given that (in his view) the incident captured in the record never posed a real danger to any building or vehicle. He states that no officers took notes relating to the rally, and that he has received no letters related to the incident, or notice of any charge or legal action against him in connection with the incident. He believes these circumstances strongly indicate that no investigation was ever initiated in relation to the incident. On this basis, he urges me to find there is no risk of harm from disclosure of the information in the record.

[41] In the circumstances, I am satisfied that the exemption at section 8(1)(i), through section 38(a), applies to the withheld information relating to building security in pages 4 and 5 of the call hardcopy. I note that in addition to contact names and emergency numbers, this information includes certain codes to be used in particular circumstances. In making this decision, I have considered the nature of this information, the context in which it appears in the record, and the secure manner in which the police maintain the information. The appellant's view that the incident described in the record posed no real danger at the time it occurred does not diminish the risk of future harm to the building's security from disclosure of this information.

[42] I am also satisfied that the police properly exercised their discretion in withholding these discrete portions of the record under section 38(a), read with section 8(1)(i). I am mindful that the police improperly characterized this information in their representations by denying that it qualifies as the appellant's personal information. However, I have no reason to believe the police would have reached a different decision about disclosing this building security information had they treated it as the appellant's personal information. The police were aware that the law enforcement

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[8] *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23.

[9] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.

exemption at section 8(1)(i) is discretionary, and they provided representations on their exercise of discretion under this section. I am satisfied the police took into account relevant factors, including the purpose of the law enforcement exemption and the appellant's need for the information, in making their decision on access. I have no evidence to suggest the police took into account irrelevant factors, acted in bad faith or for an improper purpose, or otherwise exercised their discretion in an improper manner. I uphold the police's exercise of discretion.

[43] As a result, I uphold the police's decision to withhold the building security information in the body of pages 4 and 5 of the call hardcopy on the basis of section 38(a) of the *Act*, read with section 8(1)(i).

[44] However, I do not uphold the police's reliance on these same sections of the *Act* to withhold portions of item 5 and all of item 4 in the table of contents, and the identical information appearing in the headings to pages 6 and 7 of the call hardcopy.

[45] The police state that all this information relates to searches they conducted of the Canadian Police Information Centre (CPIC) database. They explain that CPIC is a computerized system that provides the law enforcement community with informational tools to assist in combatting crime. They assert that disclosure of the CPIC information contained in the record has the potential to compromise the integrity and ongoing security of the CPIC system, and to facilitate unauthorized access to information held by the CPIC system.

[46] I am not persuaded that disclosure of the particular information withheld in items 4 and 5 of the table of contents, and the same information reproduced in the headings of pages 6 and 7 of the call hardcopy could reasonably be expected to result in the claimed harms. With the exception of the affected party's name appearing in item 5 of the table of contents (which I find, further below, to be exempt on personal privacy grounds), these entries in the table of contents merely set out generic, high-level descriptions of the contents of the call hardcopy that follows the table of contents. The withheld information does not reveal anything more than the fact of the police's use of the CPIC system, which fact the police have already revealed through their representations. I do not see how disclosure of these particular items in the table of contents could reasonably be expected to result in the harms contemplated by section 8(1)(i).

[47] I make the same finding for this same information appearing in the headings of pages 6 and 7 of the call hardcopy. With the exception of the affected party's name (appearing in the heading of page 7 of the call hardcopy), these headings do not contain information whose disclosure could reasonably be expected to result in the harms described in section 8(1)(i).

[48] As a result, I do not uphold the police's reliance on section 38(a), read with section 8(1)(i), to withhold the high-level descriptions in the table of contents and in

the headings of pages 6 and 7 of the call hardcopy. I already found (at Issue A, above) that, apart from the affected party's name, these descriptions do not qualify as personal information; as a result, the personal privacy exemption cannot apply to this information. As no exemption applies, I will order the police disclose to the appellant this information in item 4 and item 5 (apart from the affected party's name) in the table of contents, and the identical information appearing in the headings of pages 6 and 7 of the call hardcopy.

[49] Next, under Issue C, I will consider the police's claim under section 38(b) to withhold the affected party's name appearing in item 5 of the table of contents and in the heading of page 7 of the call hardcopy. I will also consider the police's section 38(b) claim for other personal information about the affected party in the record.

C. Does the discretionary personal privacy exemption at section 38(b) apply to the withheld personal information in item 5 of the table of contents, and in pages 1, 3, 6, and 7 of the call hardcopy? Did the police properly exercise their discretion under section 38(b)?

[50] 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. Because the section 38(b) exemption is discretionary, an institution can decide to disclose another individual's personal information to a requester, even if doing so would result in an unjustified invasion of other individual's personal privacy. (I discuss the police's exercise of discretion under section 38(b) further below.)

[51] Under this heading, I will consider the police's decision to withhold on personal privacy grounds the affected party's name and home telephone number on page 1 of the call hardcopy,[10] and other information about the affected party appearing on page 3. I will also consider the police's personal privacy claim for the affected party's name appearing in item 5 of the table of contents and in the heading to page 7 of the call hardcopy,[11] as well as the affected party's name along with other personal information about the affected party appearing in the body of pages 6 and 7 of the call hardcopy. The police describe the information on pages 6 and 7 as personal information of the affected party relating to their CPIC searches.

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[10] At Issue A, above, I found that the remainder of page 1 of the call hardcopy does not contain personal information within the meaning of the *Act*. As a result, the personal privacy exemption cannot apply to this other information on page 1.

[11] At Issue A, above, I found that the only personal information in the table of contents is the appearance of the affected party's name in item 5. When the affected party's name is severed from item 5, the remaining information in item 5 does not qualify as "personal information" within the meaning of the *Act*. (The identical information is contained in the heading of page 7 of the call hardcopy.) I also found that item 4 in the table of contents does not contain any personal information. As a result, the personal privacy exemption cannot apply to item 4 or the remainder of item 5 in the table of contents, or to the identical information contained in the headings of pages 6 and 7 of the call hardcopy.

[52] For the reasons that follow, I find that section 38(b) applies to all this personal information of the affected party in the record.

[53] In determining whether disclosure would be "an unjustified invasion of personal privacy" under section 38(b), I have regard to sections 14(1) to (4) of the *Act*. These sections provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[54] I will first consider sections 14(1) and 14(4). 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). Section 14(4) also lists situations where disclosure would not be an unjustified invasion of personal privacy.

[55] The appellant asserts that the exceptions at sections 14(1)(c), (d), and (e) apply in the circumstances. He also raises section 14(4)(a). These sections state:

> (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
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> > (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
> >
> > (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
> >
> > (e) for a research purpose if,
> >
> > > (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
> > >
> > > (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
> > >
> > > (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations[.]
>
> (4) Despite subsection (3) [which sets out circumstances in which a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy], a disclosure does not constitute an unjustified invasion of personal privacy if it …

> (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution[.]

[56] I find that none of the exceptions at section 14(1) or the situation at section 14(4) applies in the circumstances.

[57] With regard to the exception at section 14(1)(c), the appellant states that "it is known" that the affected party contacted the police chief directly in relation to the incident giving rise to the record at issue. He states that communications between members of the police board and police officers (and especially the police chief) "are of high public interest and must constitute the public record. The information being withheld should be released to create a record available to the general public."

[58] The appellant makes similar arguments to support his claim that certain factors favouring disclosure apply in the circumstances, and I will consider them again further below in that context. However, these arguments do not establish that the exception at section 14(1)(c) applies. This exception applies in circumstances where the information in question was collected and maintained specifically for the purpose of creating a public record. It could apply, for example, to information that an individual is required by law to file with the appropriate government institution, and that the government institution is required to make publicly available, in connection with corporate registrations in Ontario.[12] There is no evidence that the information in the record before me was collected and maintained for an analogous public purpose. The appellant's view that the information at issue should be a matter of public record does not, by itself, support a finding that the exception at section 14(1)(c) applies, and I find it does not.

[59] For the exception at section 14(1)(d) to apply, there must be either a specific authorization in another statute that allows for the disclosure of the type of personal information at issue; or a general reference in the other statute to the possibility of disclosure, together with a specific reference in a regulation to the type of personal information at issue.[13] One example is the Ontario *Public Sector Salary Disclosure Act, 1996*,[14] which expressly authorizes the disclosure of certain salary and benefit amounts of public servants.

[60] The appellant states that the affected party was appointed by the Lieutenant Governor of Ontario, through an Order in Council, to serve on the police board. He says that the *Police Services Act*[15] (which addresses the police board appointment process) and the *Public Service of Ontario Act, 2006*[16] are both applicable in the circumstances. The appellant has not referred me to any provision in either statute that authorizes the

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[12] Order P-318.
[13] Orders M-292, MO-2030, PO-2641 and MO-2344.
[14] 1996, SO 1996, c 1, Sch A.
[15] RSO 1990, c P.15.
[16] SO 2006, c 35, Sch A.

disclosure of the type of information at issue in this appeal, and I am not aware of any such authority in either statute. In these circumstances, the exception at section 14(1)(d) does not apply.

[61] With respect to the exception at section 14(1)(e), the appellant states that the information he seeks "undoubtedly has value as research material." To support this assertion, he provides a copy of an article published in an academic journal whose topic is the strategies employed by real estate investment and asset management firms to accelerate the gentrification process. It is my understanding that the October 2018 rally was organized, at least in part, in response to some of the issues examined in the article. The appellant says that these issues, and the broader interactions between the police and the corporate landlord, have been the subject of investigative research and local, national, and international news.

[62] The section 14(1)(e) exception provides for the disclosure of personal information for a research purpose where the following conditions are met:

- the disclosure of the information must be consistent with any conditions under which the personal information was provided, collected or obtained **or** there must have been a "reasonable expectation" that disclosure would be requested,

- there should be evidence that the research purpose for which the personal information has been asked for cannot reasonably be accomplished unless the personal information identifies specific individuals, and

- the requester must have agreed to comply with the conditions relating to security and confidentiality set out in the regulations to the *Act*.

[63] The IPC has defined "research," in the context of the equivalent section (and other sections) of the *Act*'s provincial counterpart[17] as "the systematic investigation into and study of materials, sources, etc. in order to establish facts and reach new conclusions [and] ... an endeavour to discover new or to collate old facts etc. by the scientific study or by a course of critical investigation;" and as "a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research."

[64] Even if I accept the appellant's assertion that the broader circumstances that precipitated the rally are of interest to academic researchers, there is no evidence that the three conditions for the application of the section 14(1)(e) exception are met here. For example, there is no evidence to suggest that the information in the record was collected under conditions giving rise to a reasonable expectation of its disclosure for research purposes. Nor is there evidence of a connection between the particular

[17] Section 21(1)(e)(ii) of the *Freedom of Information and Protection of Privacy Act*; also sections 13(2)(h) and 65(8.1)(a) of that statute: see Orders PO-2693 and PO-2694.

personal information at issue in this appeal and a research purpose that cannot reasonably be accomplished without this identifying information. I conclude that section 14(1)(e) does not apply in these circumstances.

[65] Finally, with respect to section 14(4)(a), this section applies when the personal information at issue is the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution. I confirm for the appellant's benefit that the information at issue in the record is none of these things. Section 14(4)(a) has no application in the circumstances.

[66] I now turn to consider the factors and presumptions at sections 14(2) and (3) of the *Act*. In deciding whether disclosure of the personal information at issue would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[18]

[67] The police rely on the presumption at section 14(3)(b), and the factor weighing against disclosure at section 14(2)(h). The appellant cites the factors favouring disclosure at sections 14(2)(a), (c), and (d). These sections state:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
> >
> > (c) access to the personal information will promote informed choice in the purchase of goods and services;
> >
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence[.]
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation[.]

[68] To begin, I am satisfied that the presumption at section 14(3)(b) applies to the

[18] Order MO-2954.

personal information of the affected party in the record. This presumption weighs against disclosure. In reaching this conclusion, I considered the appellant's argument that it is reasonable to believe there was no criminal investigation of this matter because there are no officers' notes of the incident, and he questions how there could be an investigation without officers' notes. However, I am satisfied from my own examination of the record that the personal information in it was compiled and is identifiable as part of a police investigation precipitated by the 911 call they received. The presumption at section 14(3)(b) requires only that there be an investigation into a possible violation of law.[19] Even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[20]

[69] In addition to their reliance on the presumption at section 14(3)(b), the police cite the factor at section 14(2)(h) (personal information supplied in confidence), which weighs against disclosure. A plain reading of this section limits its application to situations where the personal information at issue was supplied in confidence by the individual to whom the information relates (and not, for example, by a third party). As a result, while section 14(2)(h) applies to the personal information of the affected party on pages 1 and 3 of the call hardcopy, it does not apply to the personal information that the police obtained through their CPIC queries (and not directly from the affected party). This latter information appears in the table of contents and on pages 6 and 7 of the call hardcopy.

[70] In summary, while the presumption against disclosure at section 14(3)(b) applies to all the withheld personal information of the affected party in the record, the factor weighing against disclosure at section 14(2)(h) applies only to some of this personal information.

[71] I turn now to consider the other factors at section 14(2). For the reasons that follow, I find that none of the factors cited by the appellant, or any other listed or unlisted factor favouring disclosure, applies in the circumstances.

[72] The appellant raises sections 14(2)(a) and (c) in arguing that disclosure of correspondence between the police and a member of the police board would provide an opportunity for public scrutiny, transparency, and accountability of these institutions, and would promote informed choice for tenants and investors of large corporate landlords.

[73] Section 14(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[21] It promotes transparency of government actions. Section 14(2)(c) supports disclosure where disclosure of the information would promote informed choices in the

[19] Orders P-242 and MO-2235.
[20] 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).
[21] Order P-1134.

purchase of goods and services.

[74] The personal information withheld under section 38(b) includes the affected party's name, address, age, sex, personal contact information and other personal identifiers. It also includes the results of CPIC queries by the police in connection with the affected party. To be clear, the information at issue does not consist of any correspondence of the nature described by the appellant. I see no connection between the withheld personal information of the affected party in the record and the promotion of public scrutiny and transparency of government actions, or informed consumer choice. Sections 14(2)(a) and (c) do not apply in the circumstances.

[75] Section 14(2)(d) favours disclosure in circumstances where the personal information of another individual is needed for participation in a court or tribunal process. For this factor to apply, the IPC must be satisfied that the following four-part test is 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?[22]

[76] The appellant states that he is currently pursuing a defamation action against the affected party's former employer. He proposes that correspondence between the affected party and the police may assist in identifying the multiple ways in which he was defamed.

[77] As noted above, the record does not contain correspondence of the nature described by the appellant. As I described above, the affected party's personal information in the record consists of certain personal contact information and identifiers for the affected party, and information derived from CPIC queries. The appellant has not demonstrated to my satisfaction how this personal information of the affected party is relevant to the determination of his rights in the defamation action, or why he requires this information in order to prepare for the proceeding or to ensure an impartial hearing. I conclude that section 14(2)(d) does not apply in the circumstances.

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[22] 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.).

[78] I have considered whether any other listed factors in section 14(2) (or any unlisted factors) favouring disclosure applies, and I find none does.

[79] I have weighed the interests of the parties against the presumptions and factors described above. I conclude that the personal privacy interests of the affected party and the interests of the police in preserving the confidentiality of personal information compiled during an investigation prevail over the appellant's interests in disclosure of the particular information at issue under this heading. As a result, I find that disclosure of this personal information would constitute an unjustified invasion of the affected party's personal privacy.

[80] I acknowledge the appellant's arguments about the absurd result principle. The appellant states that it is absurd to withhold the information in the record from him since he has prior knowledge of the individual (the affected party) whose personal information appears in the record, and he believes the affected party was acting in a non-personal capacity at the time of the events captured in the record. He also asserts that this is a matter of high public interest and will serve research purposes.

[81] If applicable, the absurd result principle may prevent an institution from relying 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 such a situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[23] For example, the IPC has applied the absurd result principle where requesters sought access to their own witness statements,[24] where requesters were present when the information was provided to the institution,[25] and where the information was or is clearly within the requester's knowledge.[26] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[27]

[82] In this case, even assuming the appellant knows the identity of the affected party, I have no evidence to suggest that he has specific knowledge of the particular information the police have withheld under section 38(b). As noted, this information includes personal contact information and other personal identifiers for the affected party, as well as the results of CPIC queries carried out in connection with the affected party. This is not a case where the appellant himself supplied the personal information at issue, or was present at the time the police obtained this information. The appellant has not established that he is otherwise aware of the specific information about the affected party contained in the record. The absurd result principle has no application in this case.

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[23] Orders M-444 and MO-1323.
[24] Orders M-444 and M-451.
[25] Orders M-444 and P-1414.
[26] Orders MO-1196, PO-1679 and MO-1755.
[27] Orders M-757, MO-1323 and MO-1378.

[83] For these reasons, I find that section 38(b) applies to the personal information of the affected party contained in the table of contents (in item 5), and on pages 1, 3, 6, and 7 of the call hardcopy.

[84] I also uphold the police's exercise of discretion in withholding this personal information under section 38(b). The police made their decision in consideration of the affected party's refusal of consent to disclosure of this information, the broader purposes of the personal privacy exemption, and the appellant's right of access to this information, among other relevant factors. There is no evidence to suggest the police took into account irrelevant factors, acted in bad faith, or otherwise failed to properly exercise their discretion under section 38(b).

[85] I therefore uphold the police's decision to withhold the affected party's personal information in the record under section 38(b) of the *Act*.

ORDER:

I uphold the police's decision in part, as follows:

1. I uphold the police's denial of access to the body of pages 4 and 5 of the call hardcopy on the basis of section 38(a) of the *Act*, read with section 8(1)(i).

2. I uphold the police's denial of access, under section 38(b) of the *Act*, to the affected party's name in item 5 of the table of contents and in the heading of page 7 of the call hardcopy, and to the affected party's name and home telephone number on page 1 of the call hardcopy. I also uphold the police's denial of access under section 38(b) to the body of pages 3, 6, and 7 of the call hardcopy.

3. I do not uphold the police's decision to withhold the remaining information at issue in the record.

4. I order the police to disclose to the appellant the remaining information in the table of contents (in items 4 and 5), in the body of page 1, and in the headings of pages 6 and 7 of the call hardcopy. The police are to disclose this information to the appellant by **November 9, 2022** but not before **November 4, 2022**. For ease of reference, with their copy of this order I will provide the police with detailed instructions specifying the portions of the record to be disclosed.

5. I reserve the right to require the police to provide me with a copy of the disclosure described in order provision 4.

Original Signed by: October 4, 2022

Jenny Ryu
Adjudicator