

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4299

Appeal MA19-00755

Toronto Police Services Board

December 20, 2022

**Summary:** The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to investigations that occurred at an apartment building where the appellant resides. After a series of searches, the police identified responsive records and disclosed a large portion of them to the appellant, relying on section 38(b) to deny access to a portion they withheld and taking the position that certain information in the records was not responsive to the request. The appellant asserted that section 38(b) did not apply, that it is in the public interest that the withheld information be disclosed to her and that the police did not conduct a reasonable search for responsive records. In this order the adjudicator upholds the police's application of section 38(b), agrees that certain information in the records is not responsive to the request and finds that the public interest override at section 16 of the *Act* does not apply. He orders the police to conduct a search for certain responsive records and issue an access decision if they are found.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act* RSO 1990, c M.56, sections 2(1) ("definition of personal information"), 14(2)(a), 14(2)(b), 14(2)(f), 14(3)(b), 16, 17 and 38(b).

**Order Considered:** Order PO-2265.

### OVERVIEW:

[1] The Toronto Police Services Board (the police) received the following request

under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Please provide all past and present records of investigations for [particular address] apartment building property and its [property management company A] and [property management company B]. Please include all clandestine drug laboratory investigations and money laundering investigations conducted by Toronto Police Service including Toronto Police Service Drug Squad department, Organized Crime Enforcement department of Toronto Police Service and all other units of Toronto Police Service.

Please also include all records of investigation for [apartment building address as above] apartments [six particular units] including all clandestine drug laboratory investigations and money laundering investigations.

[2] The police issued an initial access decision advising that:

... records indicating that the above noted address, including [the six units specified in the request], have been used as a location where marijuana or any other illicit drugs have been cultivated could not be found. A thorough search of the relevant Toronto Police Service databases was carried out for responsive records matching the information you provided, and proved negative.

Please also be advised that the *Act* defines personal information as that which refers to recorded information about an identifiable individual. Access to such information is strictly controlled by section 14 of the *Act* and subject to specific exemptions. The involvement in any incident by other parties referred to in your request therefore cannot be corroborated without the written approval of the individual(s) or their representatives.

In light of the aforementioned, the existence of other records requested, including "... all past and present records of investigations..." cannot be confirmed or denied in accordance with subsection 14(5) of the *Act*:

"A head may refuse "to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified Invasion of personal privacy."

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

[4] At mediation, the appellant took issue with the reasonableness of the police's search for responsive records and the police's refusal to confirm or deny the existence of responsive records. The appellant also asserted that it was in the public interest that

any withheld information be disclosed, thereby raising the possible application of the public interest override at section 16 of the *Act*.

[5] The police then conducted another search and issued a supplementary decision letter.

[6] The police advised that it searched for records in relation to the two named property management companies but that "records related to these companies, and the location of [the apartment building], including the units outlined in your request, where these locations were used for marijuana cultivation or clandestine drug laboratory operations could not be found." However, the police advised that it had now located an occurrence report in relation to drug laboratory investigation at the apartment building. This was an August 2019 Occurrence Report Hardcopy (the August 2019 Occurrence Report) relating to air testing at the property. The police granted partial access to this record relying on the mandatory exemption at section 14(1) (personal privacy) of the *Act* to deny access to the portion they withheld.

[7] The supplementary decision letter further advised that:

Regarding the remaining balance of your request, and as advised in our letter to you on September 25, 2019, please note that the *Act* defines personal information as that which refers to recorded information about an identifiable individual. Access to such information is strictly controlled by section 14 of the *Act* and subject to specific exemptions. The involvement in any incident by other parties referred to in your request therefore cannot be corroborated without the written approval of the individual(s) or their representatives.

As such, the existence of other records requested, including "... all past and present records of investigations..." and "... money laundering investigations" cannot be confirmed or denied in accordance with subsection 14(5) of the *Act* ...

[8] The appellant advised that she wished to pursue access to any withheld unit numbers in the August 2019 Occurrence Report relating to air testing at the property but not to the other withheld information in it. In addition, she sought access to records relating to the air quality tests and copies of all occurrence reports and investigation records over the past 2 to 3 years that she says the author of the August 2019 Occurrence Report refers to in that report.

[9] The police subsequently conducted another search for records relating to the management companies as well as the six apartment units listed in the request. The police located additional records and issued a second supplementary decision letter.

[10] In their second supplementary decision the police advised that, "after further consultations with subject-matter experts in regards to the production of marijuana at

the above-noted address there is one confirmed case where police located [marijuana] plants." The decision letter further advised that:

Please note that access to the specific apartment unit number, as well as further records of any investigations, is denied pursuant to subsections 14(1)(f) and 14(3)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), as detailed below.

Please further note that the Toronto Police Drug Squad does not maintain information about specific property management companies, i.e. - [property management company A] and [property management company B], regarding the growth or manufacture of illegal substances. Only information regarding a particular property, with a specific address, is maintained, if applicable.

Pursuant to the above appeal, additional records are being released to you, which include summaries of 911 calls and of police investigations relating to [the apartment building], as well as the results of searches for the above- noted property management companies, referred to in your request.

[11] The police also provided the following information regarding the August 2019 Occurrence Report:

... please note that the case was deemed unfounded and further investigations were not pursued. You may wish to contact the officer-in-charge of the case, [named officer] of the Toronto Police Service Drug Squad Unit at [telephone number provided] for any questions you may have regarding details of the air quality test that had been conducted, i.e. - the equipment used, what fumes were tested for, etc. You may also wish to contact the building superintendents regarding this information.

[12] In this second supplementary decision letter, the police also disclosed an Intergraph Computer Aided Dispatch Address History Report (I/CAD report) for the apartment building for the date range from May 31, 2004 to September 14, 2020. The police explained that:

Information regarding police attendance at [the apartment building] are enclosed and they include the dates and times of police attendance. If you wish to obtain further records regarding a particular incident listed in these records, please note that the *Act* requires that in order to receive personal information, an individual must have been involved in the capacity of a victim/witness/accused or the personal representative of such a person. Alternatively, the individual must provide signed authorization to access the information.

Details about police investigations of specific apartment units is considered personal information and access to this information is incumbent on meeting the above-noted criteria pursuant to the *Act*.

You may wish to submit a new request to our office for records regarding those incidents in which you were involved, or for which you supply the appropriate consent of the involved party. Please ensure you provide sufficient detail in your request to enable an adequate search, such as the dates, times and/or telephone number of the calls you had placed to the police regarding the property in question.

[13] The police also took the position that some withheld information from the I/CAD report was not responsive to the request.

[14] The appellant again took issue with the reasonableness of the police's search for responsive records, this time asserting that she should have been provided access to summary records dating back to 1990.

[15] The police conducted another search and located an I/CAD report for the apartment building for the date range from January 1, 1995 to May 31, 2004. In their third supplementary decision letter the police granted partial access to this I/CAD report, relying on section 14(1) to deny access to the portion they withheld. The police also took the position that some withheld information was not responsive to the request.

[16] No further mediation was possible and the appellant advised that she wished all outstanding issues to be transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[17] An adjudicator decided to conduct an inquiry by sending the police a Notice of Inquiry setting out the facts and issues in the appeal. The police provided responding representations.

[18] In their representations the police withdrew their reliance on section 14(5) (refuse to confirm or deny) of the *Act*. Accordingly, the possible application of that discretionary exemption is no longer at issue in the appeal.

[19] A Notice of Inquiry was then sent to the appellant along with a copy of the police's representations. The appellant provided responding representations. The prior adjudicator decided that it was not necessary to share the appellant's representations with the police.

[20] The appeal was then transferred to me to continue the inquiry. I reviewed the materials in the appeal and did not find it necessary to invite further representations from either party.

[21] In this order, I uphold the police's application of section 38(b), agree that certain information in the records is not responsive to the request and find that the public interest override at section 16 of the *Act* does not apply. I order the police to issue an access decision for information that I have found to be responsive. I also order the police to conduct a search for certain records and issue an access decision if they are found.

## **RECORDS:**

[22] At issue in this appeal are withheld portions of a General Occurrence Hardcopy pertaining to an investigation at the apartment building on August 21, 2019, withheld portions of an I/CAD report for the apartment building for the date range from January 1, 1995 to May 31, 2004 and withheld portions of an I/CAD report for the apartment building for the date range from May 31, 2004 to September 14, 2020.

[23] The appellant also believes that there are additional records and also seeks access to the unit number where police located marijuana plants.

## **ISSUES:**

- A. What is the scope of the request? What records or portions of records are responsive to the request?
- B. Did the police conduct a reasonable search for records?
- C. Do the August 2019 Occurrence Report and I/CAD reports partially disclosed to the appellant contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

## **DISCUSSION:**

### **Issue A: What is the scope of the request? What records or portions of records are responsive to the request?**

[24] The police have withheld certain information in the I/CAD reports on the basis that it is not responsive to the appellant's request. I therefore considered whether information withheld on this basis is responsive, or as described below, reasonably

related to the request.

[25] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>1</sup>

[26] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

### ***The police's representations***

[27] The police take the position that the appellant's initial request was clear and contained sufficient detail to identify responsive records. The police submit that the appellant sought access to investigations related to money laundering, organized crime, clandestine drug laboratories, chemical hazards, hazards, drug trafficking and marijuana grow operations at the apartment building from January 1, 1980 to the date of the request.

[28] The police also took the position that call sign numbers, call-taker event times, the length of time the attending officers spent at the scene, the officer badge numbers and the disposition of those events in the I/CAD reports disclosed to the appellant, was not responsive to the request. The police submit that even with a liberal interpretation, this information does not fall within the scope of the appellant's request which focuses on police investigations at the apartment building.

[29] The police state that other information relating to police investigations at the apartment building in the I/CAD reports was disclosed to the appellant, as was the time period of those events, which the police acknowledge is responsive to the request.

### ***The appellant's representations***

[30] The appellant asserts that the police provided irrelevant information and withheld responsive information. She takes the position that the police's actions demonstrate a lack of transparency.

[31] In particular, with respect to the responsiveness of the information the police provided, she states that she seeks access to investigation records that are related to organized crime, money laundering and clandestine drug laboratories and not related to other violations of law. She asserts that with respect to the disclosed I/CAD reports, this would include access to unit numbers of records which has event types listed as "hazard, suspicious event, chem. hazard and suspicious death."

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<sup>1</sup> Orders P-134 and P-880.

<sup>2</sup> Orders P-880 and PO-2661.

### ***Analysis and finding***

[32] In my view, the appellant's request, as modified, is clear. She only seeks access to information pertaining to investigations related to money laundering, organized crime, clandestine drug laboratories, drug trafficking and marijuana grow operations at the apartment building (including the units specified in her request) from January 1, 1980 to the date of her request as well as information on the I/CAD reports pertaining to event types listed as "hazard, suspicious event, chem. hazard and suspicious death." Therefore, other information in the I/CAD reports that does not relate to "hazard, suspicious event, chem. hazard and suspicious death" is not responsive information that is reasonably related to the appellant's modified request.

[33] That said, I do not agree with the police that withheld information in the I/CAD reports that are related to event types listed as "hazard, suspicious event, chem. hazard and suspicious death" are not responsive to the request. In my view, that information is reasonably related to the appellant's modified access request. The police have not made any exemption claim for this information and I shall therefore order the police to issue an access decision with respect to that information.

### **Issue B: Did the police conduct a reasonable search for records?**

[34] The appellant does not believe that the police have conducted a reasonable search for responsive records.

[35] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.<sup>3</sup> If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. Otherwise, I may order the institution to conduct another search for records.

[36] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>4</sup>

[37] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>5</sup> that is, records that are "reasonably related" to the request.<sup>6</sup>

[38] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are

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<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Order MO-2246.

<sup>5</sup> Orders P-624 and PO-2559.

<sup>6</sup> Order PO-2554.



reasonably related to the request.<sup>7</sup> The IPC may order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>8</sup>

[39] If the requester failed to respond to the institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to the request were reasonable.

### ***The police's representations***

[40] With respect to the details of their search for responsive records the police submit that after receiving the request, the Analyst assigned to the file contacted their subject-matter experts at the Toronto Police Service Drug Squad Unit (TDS), the unit that is consulted to verify whether a given property has had a confirmed history of illicit drug production. After searching their records, the TDS advised that there had been no confirmed cases for the six units at the property listed in the request. The police submit that they advised the appellant in their initial decision letter that they could not locate responsive records confirming that the locations referred to in her request had been used for illicit drug cultivation. However, they submit that this was an oversight, as the appropriate search did not appear to have been conducted at first instance.

[41] During mediation, in order to remedy their oversight, a search of their databases relating to the management companies specified in the request, including a search for any involvement they may have had in incidents relating to clandestine drug laboratory investigations and money laundering were conducted. They state that no responsive records were found. The police also conducted a targeted search in relation to the six units listed in the request. They submit that this search produced non-responsive information/records, there being no connection to incidents of money laundering or clandestine drug laboratories.

[42] The police explain that the partially disclosed August 2019 Occurrence Report accompanying the first supplementary decision letter related to an investigation at the apartment building that was prompted by a complaint of suspected drug laboratories, among other complaints, by an anonymous caller. They state that it was not an active investigation initiated by the Toronto Police Service Drug Squad. The police explain that this was cryptically described as "information only" in their search results. They submit that the record was reviewed because it contained the appellant's name and that it was partially disclosed to her.

[43] The police submit that to assist their search efforts the appellant was asked through the Mediator to share other incidents where the appellant had complained to the police or had made anonymous calls for that property and the units specified in her request. They submit that:

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<sup>7</sup> Orders M-909, PO-2469 and PO-2592.

<sup>8</sup> Order MO-2185.

With this information, such as specific dates of incidents and 911 calls, more focused searches would have been possible and merited since the appellant would be demonstrating knowledge of the possible existence of records. The appellant, however refused to impart any details about having any personal involvement in past incidents relating to other units or having any knowledge about such incidents.

In an effort to address the issue of reasonableness of search, the only viable option was therefore to conduct a search of our Intergraph Computer Aided Dispatch database (I/CAD) for all the 911-calls for the property. With the exception of the unit numbers and information that was determined to be non-responsive, details such as dates, times and nature of the calls were subsequently disclosed to the appellant via an Address History Report.

[44] The police explained that they hoped the partial disclosure of the first I/CAD report would answer any questions the appellant had about previous calls regarding chemical smells and drug laboratories as mentioned in the August 2019 Occurrence Report, as well as all police investigations. The police submit that additional searches for records regarding air quality testing and previous anonymous calls could not be done in the absence of additional information from the appellant.

[45] The police say that even though no such information was provided by the appellant they again asked the Toronto Drug Squad to verify if there were any confirmed cases of clandestine drug cultivation linked to the property management companies identified in the appellant's request. This led to the police disclosing information about marijuana cultivation in their second supplementary decision letter. The police clarified that, however:

There was not a confirmed case of illicit drug production in relation to the second supplementary decision. Our subject-matter experts only confirmed that 9 marijuana plants were found at the [apartment building] location but there was no indication of illicit production. This is explicitly stated in our decision letter to the Appellant, dated [specified date].

[46] The police state that in response, the appellant requested call summary records dating back to 1990. The police explain that the system was only implemented in 1994 and data was only collected from 1995 onward. They state that as a result, between 1995 and 2003 only summary data were available and the call logs were subject to a 5-year retention schedule. They state that this information was relayed to the appellant through the Mediator.

[47] Following this third supplementary disclosure, the police say that the appellant sought disclosure of the unit numbers for those event types listed as "hazard, suspicious event, chem. hazard and suspicious death." The police denied access to this

information "since only those involved or had the consent of the involved in those matters, would be granted access to the related records."

[48] The police submit that:

[...] the discovery of the August 2019 Occurrence Report was not illustrative of a failure to conduct a thorough search in the initial response but, on the contrary, it was a fortuitous outcome from a concerted effort on our part in this appeal. The release of the I/CAD reports and the electronic search results was done as an effort to reach a compromise by disclosing records reasonably related to the request (they revealed possible police investigations at the property) without breaching the personal privacy of others (the unit numbers and the actual police reports, which were denied to the appellant). Institutions are required to conduct 'reasonable' searches for responsive records; they are not expected to go to extraordinary lengths. We believe we carried out exhaustive efforts to identify and locate responsive records under the circumstances and provided to the appellant all records reasonably related to the request.

### ***The appellant's representations***

[49] The appellant takes the position that the police's search for responsive records is not reasonable and thorough and sets out in detail the reason for her position in confidential representations.

[50] She also points to the August 2019 Occurrence Report. She asserts that details of the testing apparatus and methods and supporting documentation and information as well as occurrence reports regarding previous attendances and complaints that she says are mentioned in the report should have been disclosed.

[51] She also states the police did not reveal the unit number where the 9 marijuana plants were found in the apartment building. She asserts that this raises concerns regarding the accuracy of the police's search results.

### ***Analysis and finding***

[52] As set out above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody and control.

[53] I found above that the police properly interpreted the scope of the appellant's modified request and I also find that its searches were extensive and wide-ranging and undertaken by an experienced employee knowledgeable in the subject matter of the request. I also find that, based on the searches that were conducted, with three

exceptions, the police have made a reasonable effort to locate records responsive to the request.

[54] The first exception relates to any records that may be in the custody or control of the police referred to in the August 2019 Occurrence Report that accompanied the police's first supplementary decision letter. Although the appellant was invited to contact the officer in charge, it is not clear to me that the police took steps to attempt to identify any associated responsive information, such as test results, in their custody or control for these events. Accordingly, I will order the police to conduct a search for any such responsive records and provide the results of their search in a decision letter.

[55] The second exception relates to the request for information on the I/CAD reports pertaining to event types listed as "hazard, suspicious event, chem. hazard and suspicious death." It is not clear to me that the police took steps to attempt to locate any associated responsive information, such as occurrence reports, in their custody or control. Accordingly, the police are to conduct a search for any such responsive records and provide the results of their search in a decision letter.

[56] The third exception is the record from which the police sourced the information about marijuana cultivation in their second supplementary decision letter. Although the police provided certain details about marijuana cultivation at a unit in the apartment building, it is not clear to me that they took the step of locating responsive records relating to it. Accordingly, I will order the police to conduct a search for any such responsive records and provide the results of their search in a decision letter. As a result of this finding, I will not be making any determinations with respect to the withheld unit number where the marijuana plants were found.

[57] In all other respects, I am satisfied that the police conducted a reasonable search for records responsive to the appellant's modified request.

[58] I now address the information withheld from the three records that were partially disclosed to the appellant.

**Issue C: Do the August 2019 Occurrence Report and I/CAD reports partially disclosed to the appellant contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[59] 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.

[60] 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.<sup>9</sup>

[61] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.<sup>10</sup> See also sections 2(2.1) and (2.2) of the *Act*, which state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[62] 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.<sup>11</sup>

[63] 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,

(c) any identifying number, symbol or other particular assigned to the individual,

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

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<sup>9</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>10</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>11</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[64] 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."<sup>12</sup>

[65] 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.<sup>13</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>14</sup>

### ***The representations***

[66] The police take the position that the withheld information relates to various tenants at the apartment building or individuals other than the appellant and fall under sections 2(1)(a), (d) and/or (h) of the definition of personal information. The appellant does not specifically address whether the records contain personal information.

### ***Analysis and finding***

[67] I have reviewed the records and I am satisfied that they all contain the personal information of the appellant and other identifiable individuals that falls within the definition of personal information under section 2(1) of the *Act*.

[68] I find that the August 2019 Occurrence Report contains the appellant's name and apartment unit number and information of a personal nature relating to her. It also contains information of a personal nature relating to other identifiable individuals, including their apartment unit numbers.

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<sup>12</sup> Order 11.

<sup>13</sup> 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.

<sup>14</sup> See sections 14(1) and 38(b).

[69] The I/CAD reports contain the appellant's and other's individuals apartment unit numbers, combined with other information about the nature of police calls and/or attendances relating to those units.

[70] With respect to the apartment unit numbers in the August 2019 Occurrence report and the I/CAD reports, a number of IPC orders have found that the street address as well as the unit number of a property, in association with other information, can qualify as the personal information of an identifiable individual.<sup>15</sup> I adopt the approach taken in these orders which have found that with the use of reverse directories and other tools that are widely available to search and identify residents, it is possible to identify residents of a municipal address and therefore, there is a reasonable expectation that the release of the full address will result in the identification of individuals and is therefore personal information. In Order PO-2265 former Assistant Commissioner, Tom Mitchinson, explained:

In this appeal, the appellant is seeking the street address, city, postal code and specific unit number that is subject to an application before the Tribunal. In my view, if all of this address-related information is disclosed, it is reasonable to expect that the individual tenant residing in the specified unit can be identified. Directories or mailboxes posted in apartment buildings routinely list tenants by unit number, and reverse directories and other tools are also widely available to search and identify residents of a particular unit in a building if the full address is known. Accordingly, I find that the full addresses of units subject to Tribunal applications consist of the "personal information" of tenants residing in those units, as contemplated by paragraph (d) of the definition.

[71] I agree with and adopt this reasoning in the present appeal and find that in the circumstances, the full municipal address with unit number is about an identifiable individual and the release of the address will reveal something of a personal nature of the individuals that reside there, for example, that they either called for police service or that the police attended at their residence. If the complete municipal address with unit number is disclosed to the appellant, it is reasonable to expect that someone residing in those premises may be identified through the use of the tools described above. Accordingly, it follows that the unit numbers at issue in this appeal qualify as the personal information of identifiable individuals.

[72] Because both the August 2019 Occurrence Report and the I/CAD reports contain both the personal information of the appellant and other identifiable individuals, it is necessary to consider the discretionary personal privacy exemption at section 38(b) which I do next.

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<sup>15</sup> See in this regard Orders MO-2019, PO-2265 and PO-3547.

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

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

[74] 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.

[75] 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 other individual's personal privacy.

[76] Sections 14(1) to (4) provide guidance in deciding whether the information is exempt under section 38(b).

[77] 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).

[78] No party relies on the exceptions contained in section 14(1) as a basis for justifying disclosure and in my view, none of the exceptions in section 14(1) would apply in the circumstances of the appeal.

[79] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply. None of the situations in section 14(4) apply to the circumstances of the present appeal and I will therefore not consider them any further in this order.

[80] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the decision-maker<sup>16</sup> must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>17</sup>

[81] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.<sup>18</sup> Some of the factors weigh in favour of disclosure, while others weigh against

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<sup>16</sup> The institution or, on appeal, the IPC.

<sup>17</sup> Order MO-2954.

<sup>18</sup> Order P-239.



disclosure.

[82] 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).<sup>19</sup>

[83] 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.

[84] 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).

***The sections at issue***

[85] Based on my review of the records and the representations of the parties, I find that the presumption at section 14(3)(b) and the factors identified at sections 14(2)(a), 14(2)(b), 14(2)(e), 14(2)(f), 14(2)(h) and 14(2)(i) may be relevant in the circumstances of this appeal. Those sections read:

14(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;

(b) access to the personal information may promote public health and safety;

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

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

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

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<sup>19</sup> Order P-99.

(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;

***The police's representations***

[86] The police submit that the section 14(3)(b) presumption applies to the withheld personal information because it was compiled as part of an investigation into possible violations of law.

[87] With respect to section 14(2)(e) the police submit that the disclosure of the withheld responsive information would be unfair and potentially harmful to the individual to whom those records relate. The police submit that:

.... As it was indicated in the August 2019 [Occurrence Report], the appellant has a history of complaining to police about her neighbours, this suggests the possibility of an antagonistic relationship. Further, the appellant's unwillingness to corroborate involvement in past incidents suggests that there may be more information about the nature of the relationships with the other tenants, and the circumstances behind this relentless pursuit to access their personal information. Given these considerations, concern that some form of damage or harm would befall the individual(s) involved should not be ruled out.

[88] With respect to section 14(2)(f) the police submit that the types of events listed in the I/CAD reports that the police investigated relate to a variety of possible offences, many of which are sensitive in nature.

[89] With respect to section 14(2)(h), the police submit that it is highly reasonable to expect that there is a pre-existing understanding of confidentiality when information is supplied to police officers in the course of an investigation. The police further submit that there is a vital and implicit assumption of confidentiality when providing information to aid in an investigation. They submit that any disclosure would violate the public's trust in the police to safeguard their rights and would also be deleterious to the ability of the police to fulfill their role in ensuring public safety and administering the law.

[90] With respect to section 14(2)(i) the police submit that the disclosure of information may unfairly damage the reputation of any person referred to in the record:

Given that the appellant lives at the same property as the individuals to whom the appellant is seeking their personal information, there is legitimate concern that the disclosure of their information could damage their reputation, whether this damage is intentional or not. These individuals dwell in a physical community where familiarity and knowledge of one another to a certain degree is reasonably expected. Records that

demonstrate police involvement with residents at particular units, especially if the information was not disseminated directly from these parties or with their consent and knowledge, could negatively influence how they are perceived and treated within this milieu. ...

[91] The police submit that the appellant has not advised the police of any knowledge or awareness of the information she seeks and that accordingly, it would not be absurd to withhold it.

### ***The appellant's representations***

[92] The appellant's representations focus on the considerations set out in the factors at sections 14(2)(a) and 14(2)(b) of the *Act*.

[93] In her representations, the appellant takes issue with certain actions and conduct of the police and asserts that they have made false allegations against her. In her confidential representations she provides information that she says supports her position.

[94] She also submits that the information she seeks should be disclosed for reasons of police transparency and public interest because organized crime, money laundering and clandestine drug laboratories impact public safety and wellbeing. She submits that this is important to tackle corruption and organized crime issues.

[95] She submits that it is important to know what measures and steps the police are taking and have taken in the past to ensure public safety and tackle issues of organized crimes, money laundering and clandestine drug laboratories operating at the property.

[96] Finally, she relates that she and a relative have been impacted by "toxic fumes and gases" entering into their apartment. She states that her relative has had adverse reactions and had to attend at hospital emergency departments as a consequence.

### ***Analysis and finding***

[97] In order for section 14(3)(b) of the *Act* to apply, the personal information must have been compiled and must be identifiable as part of an investigation into a possible violation of law. Section 14(3)(b) applies in circumstances of both quasi-criminal and criminal activity and it applies whether or not charges have been laid in relation to the investigation.<sup>20</sup> I have carefully reviewed the records and, in my view, the withheld information consists of information that was compiled and is identifiable as part of an investigation by the police into possible violations of law. Accordingly, I find that section 14(3)(b) applies to create a presumption of an unjustified invasion of privacy with respect to the personal information of other identifiable individuals in the August 2019

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<sup>20</sup> Order MO-2199.

Occurrence Report and in the responsive portion of the I/CAD reports.<sup>21</sup>

[98] I also agree with the police that, in all the circumstances, this responsive information is also highly sensitive within the meaning of section 14(2)(f). All of the personal information at issue relates to times when the police were contacted about particular units about matters of a highly sensitive nature including potential criminal conduct, either being reported or to be investigated.

[99] Before considering other factors that may also favour privacy protection, as argued by the police (i.e. sections 14(2)(e), (h) and (i)), I will consider whether the appellant has established that any of the factors favouring disclosure apply.

[100] 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.<sup>22</sup> It promotes transparency of government actions. Institutions should consider the broader interests of public accountability when considering whether disclosure is “desirable” or appropriate to allow for public scrutiny of its activities.<sup>23</sup> I begin by observing that the appellant has been provided with a significant amount of information about the actions of the police in response to her request. I also acknowledge that the crimes that the appellant seeks information on are serious. However, I am not persuaded that disclosing the personal information that is withheld would allow for the public scrutiny of the police. Rather, its disclosure would risk unwarranted scrutiny of private individuals.

[101] Giving the appellant’s representations a broad reading, I also considered whether the factor at section 14(2)(b) applies – the factor that favours disclosure when access to the personal information may promote public health and safety. I am not satisfied, however, that disclosing the small amount of personal information that is withheld from the August 2019 Occurrence Report relating to air testing or the unit numbers that were withheld from the responsive portion of the I/CAD reports might promote public health and safety.

### ***Balancing the interests***

[102] As set out above, in deciding whether the disclosure of the personal information in the records 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.<sup>24</sup> In this appeal, I found that the 14(3)(b) presumption and the section 14(2)(f) factor apply and weigh in favour of withholding

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<sup>21</sup> Because I have found that the appellant does not seek access to many entries in the I/CAD report and those entries are therefore not responsive to the request; this finding relates only to entries related to “a hazard, suspicious event, chem. hazard and suspicious death.”

<sup>22</sup> Order P-1134.

<sup>23</sup> Order P-256.

<sup>24</sup> Order MO-2954.

the information. I am unpersuaded that any section 14(2) factors that weigh in favour of disclosure are applicable.<sup>25</sup>

[103] When I weigh the presumption with the interests of the parties themselves, I conclude that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and the section 38(b) exemption applies.

### ***Exercise of discretion***

[104] Because section 38(b) is a discretionary exemption, it is necessary to review and consider whether the police properly exercised their discretion in withholding the personal information at issue. If I find that the police failed to exercise their discretion or did so based on improper considerations, I may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>26</sup> I cannot, however, substitute my own discretion for that of the institution.<sup>27</sup>

[105] Having considered the police's extensive representations and the reasons stated for their supplemental disclosures to the appellant, I see no basis to conclude that the police improperly exercised their discretion under the *Act*. It is clear that the police understood the purpose of the appellant's modified request and attempted to disclose as much information to her as possible without revealing the personal information of other individuals. There is no evidence to suggest that the police failed to consider relevant factors, took into account irrelevant factors, or otherwise exercised their discretion in an improper manner. Taking into consideration the significant level of disclosure they have already made to the appellant, I am satisfied that the police exercised their discretion in accordance with the requirements of the *Act*.

### **Issue E: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?**

[106] Section 16 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[107] Even though section 38(b) is not listed, because section 16 may override the application of section 14, it may also override the application of section 38(b) with

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<sup>25</sup> As the appellant failed to establish any factors favouring disclosure, I need not address any of the factors in favour of non-disclosure raised by the police.

<sup>26</sup> Order MO-1573.

<sup>27</sup> Section 43(2).

reference to section 14.<sup>28</sup> If section 16 were to apply in this case, it would have the effect of overriding the application of section 38(b), and the appellant would have a right of access to the information at issue.

[108] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[109] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.<sup>29</sup>

### ***Compelling public interest***

[110] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government.<sup>30</sup> In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>31</sup>

[111] A “public interest” does not exist where the interests being advanced are essentially private in nature.<sup>32</sup> However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.<sup>33</sup>

[112] The IPC has defined the word “compelling” as “rousing strong interest or attention.”<sup>34</sup>

[113] The IPC must also consider any public interest in not disclosing the record.<sup>35</sup> A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling.”<sup>36</sup>

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<sup>28</sup> See for example Order PO-2246, which deals with the equivalent sections of the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31.

<sup>29</sup> Order P-244.

<sup>30</sup> Orders P-984 and PO-2607.

<sup>31</sup> Orders P-984 and PO-2556.

<sup>32</sup> Orders P-12, P-347 and P-1439.

<sup>33</sup> Order MO-1564.

<sup>34</sup> Order P-984.

<sup>35</sup> *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

<sup>36</sup> Orders PO-2072-F, PO-2098-R and PO-3197.

[114] The existence of a compelling public interest is not enough to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances.

[115] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.<sup>37</sup>

### ***The representations***

[116] The police submit that there is no public interest in the disclosure of the withheld information. The police further submit that the information already disclosed to the appellant should sufficiently address any public interest concerns.

[117] The police submit that it appears that any public interest concerns relating to the withheld information stem from the unsubstantiated suspicions of a single individual and the only interest that would be advanced by the disclosure of the withheld information is the personal interest of the appellant which would not outweigh the purpose of the section 38(b) exemptions.

[118] The appellant submits that the information she seeks should be disclosed for reasons of police transparency and public interest because organized crime, money laundering and clandestine drug laboratories impact public safety and wellbeing. She submits that transparency is key in tackling corruption and organized crime issues.

### ***Analysis and finding***

[119] I have carefully reviewed the representations of the parties and the withheld information. Disclosure of information about police action – or not – in relation to the serious crimes about which the appellant is concerned is in the public interest. However, the appellant's concerns are focused on a very specific apartment building and not at the issue at large. In my view, the appellant's concerns as a resident of the property are arguably private in nature. However, even if disclosure of the information she seeks gives rise to a compelling public interest, I find that this interest does not outweigh the personal privacy interest that is at stake if the withheld personal information in the August 19 Occurrence Report or the withheld unit numbers in the responsive portion of the I/CAD Reports, including the precise unit numbers of individuals other than the appellant, were disclosed to her.

[120] I also find that any public interest advanced by the appellant in disclosure of the records is satisfied by the information that had already been disclosed. Accordingly, I find that section 16 of the *Act* does not apply in the circumstances of this appeal.

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<sup>37</sup> Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

**ORDER:**

1. I uphold the decision of the police with respect to its withholding of the severed information in the August 2019 Occurrence Report and the unit numbers in the responsive portion of the I/CAD reports.
2. I find that the call sign numbers, call-taker event times, the length of time the attending officers spent at the scene, the officer badge numbers and the disposition of those events in the I/CAD reports related to event types listed as "hazard, suspicious event, chem. hazard and suspicious death", is responsive to the appellant's request.
3. The police are ordered to conduct a search for the following records:

Any records that may be in their custody or control referred to in the August 2019 Occurrence Report that accompanied the police's first supplementary decision letter.

Any records that may be in their custody or control relating to the event types on the I/CAD reports listed as "hazard, suspicious event, chem. hazard and suspicious death".

Any records that may be in their custody or control relating to marijuana cultivation at a unit in the apartment building, as set out in their second supplementary decision letter.

4. The police shall issue an access decision to the appellant regarding the information set out in Provision 2 and with respect to any results of the searches undertaken in response to Order provision 3, treating the date of this order as the date of the request for the purposes of the procedural requirements in the *Act* relating to their access decision. The access decision shall also describe the steps they took to conduct the searches outlined in order Provision 3.
5. In all other respects the reasonableness of the police's search for responsive records is upheld.
6. The police are also to provide the IPC with a copy of the decision letter set out in provision 4.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

December 20, 2022 \_\_\_\_\_