Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4324

Appeal MA20-00466

Peel Regional Police Services Board

January 30, 2023

Summary: The police received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the appellant. The police granted access to the responsive records in part, relying on section 38(b) (personal privacy) and section 38(a) (discretion to refuse access to requester's own personal information) read with sections 8(1)(g) (intelligence information) and 8(1)(l) (facilitate commission of an unlawful act) of the *Act* to withhold some information.

In this order, the adjudicator upholds the police's decisions in part. She finds that some of the information withheld under section 38(b) is not exempt and orders the police to disclose it to the appellant. She otherwise upholds the police's decisions.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c. M.56, as amended, 8(1)(g), 8(1)(l), 14(2)(a), 14(2)(d), 14(2)(f), 14(2)(g), 14(2)(h), 14(2)(i), 14(3)(b), 16, 38(a) and 38(b).

Orders Considered: Orders MO-1540, MO-2980 and PO-1665.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to the requester.

[2] The police issued a decision to the requester claiming the application of section

14(5) (refuse to confirm or deny existence of record) and section 38(b) (personal privacy) of the *Act*.

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

[4] During mediation, the appellant provided the mediator with portions of a partially severed police report. The police withdrew their reliance on section 14(5) and issued a revised decision granting partial access to this police report, withholding certain information under section 38(b) of the *Act*.

[5] The appellant informed the mediator they were seeking access to any police officer notes about them. The police conducted another search and located police officers' notes. The police issued a supplemental decision denying access, in full, under sections 8(1)(g) (intelligence information) and 8(1)(l) (facilitate commission of an unlawful act) read in conjunction with 38(a) (discretion to refuse requester's own information), and section 38(b) (personal privacy) of the *Act*.

[6] The appellant confirmed they are appealing the police's claim to deny access to the records under sections 8(1)(g) and 8(1)(l) read in conjunction 38(a), and section 38(b).[1]

[7] As the parties did not reach a mediated resolution, the appeal was transferred to the adjudication stage of the appeal process.

[8] The adjudicator originally assigned to this appeal conducted an inquiry in which she sought and received representations from the parties. The police submitted their representations, which were shared in accordance with the IPC's *Practice Direction 7*.[2] The appellant then submitted their representations in response.[3]

[9] The file was assigned to me to continue the adjudication of the appeal. I have reviewed the file, including the police and the appellant's representations and concluded that I do not need further representations from them before rendering a decision.

[10] In this order, I partly uphold the police's decisions. I order the police to disclose certain information that relates to the appellant only, as well as other information that is not exempt under section 38(b) of the *Act*. I otherwise uphold the police's severances

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[1] These are the only issues on appeal; issues relating to the police's search and the responsiveness of records were settled at mediation.

[2] The appellant requested that I reconsider the decision to withhold confidential portions of the police's representations to them. The adjudicator who oversaw the inquiry communicated their decision not to disclose these portions. I have also reviewed the police's representations and find that the confidentiality criteria in *Practice Direction 7* apply to the withheld portions.

[3] I considered the confidentiality criteria in *Practice Direction 7* and determined that they do not apply to the appellant's representations. However, I note the appellant's concern about sharing their representations with the police and have attempted to refer to them in a general way.

under sections 38(a) and 38(b).

RECORDS:

[11] The records at issue consist of a 5-page police occurrence report and 13 pages of police officers' notes.

[12] I note that the police have already disclosed the occurrence number to the appellant in the report. For consistency reasons, I will therefore order the police to disclose this same information on page 5 of the police officers' notes.

ISSUES:

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

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

C. Does the discretionary exemption at section 38(a) (discretion to refuse requester's own personal information), read with sections 8(1)(g) (intelligence information) or 8(1)(l) (facilitate commission of an unlawful act) of the *Act,* apply to the information at issue?

D. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should I uphold the exercise of discretion?

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the personal privacy exemption?

DISCUSSION:

Preliminary issues

[13] The appellant raises a number of matters that are either not before me or not relevant to the issues before me. Accordingly, these matters will not be addressed in this order. For example, the appellant claims that the report is missing some pages, however, as the issue of reasonable search was settled at mediation, this issue is not before me.

[14] The appellant submits that there are discrepancies between the partially severed report they provided to the police during mediation, and the partially severed version of the report they received from the police with their revised decision. The appellant

alleges that the police altered the report provided in the context of this appeal, noting differences between the two versions. I note that a previous version of the report was provided to the appellant at an earlier time, and that it is standard practice for police to update occurrence reports. Aside from the appellant's bare assertion, I have no reason to believe the police otherwise altered the report.

[15] The appellant makes detailed arguments relating to the police's conduct and documentation of their investigation, as well as the conduct of certain named individuals. I will not outline or comment on these allegations as they are not relevant to the issues before me in this appeal.[4]

[16] The appellant further submits that the police have committed an offence described in section 48 of the *Act* as they altered a record "with the intention of denying a right under this *Act* to access the record or the information contained in the record." The IPC is not the forum to pursue a prosecution under section 48. The appellant in Order MO- 1540 made similar allegations against that institution, and I find the reasoning in that case is also applicable here:

> The appellant also contends that the Township has committed offences that fall within the provisions of sections 48(1) (d), (e) and/or (f) of the *Act*. All of these require a wilful act by the offending party, and need the consent of the Attorney General to commence a prosecution. The *Provincial Offences Act* permits any member of the public to lay a charge under section 48(1) of the *Act,* and the appellant is free to attend on a Justice of the Peace and lay an information (see Orders M-777, P-1311 and P-1534).

[17] The appellant cites section 46(b) of the *Act,* which outlines the Commissioner's power to order an institution to "cease a collection practice. . . [and] destroy collections of personal information that contravene this Act." They submit that it is necessary for the Commissioner to invoke these powers in this case. I note that these remedial powers and the appellant's concerns relate to matters of privacy that are outside the scope of this access appeal.

[18] In addition, the appellant submits that as a resident of Quebec, they are subject to its laws, and that this appeal should be decided under Quebec's access to information legislation. However, the records at issue are in the custody of the police, who are an institution under Ontario's law. It is therefore the Ontario law that governs this appeal.

[19] I note that the appellant refers to certain named individuals throughout their representations, which they submit are affected parties in this appeal. I make no

[4] In relation to their allegations against the police, the appellant requests a refund of fees paid to the police. I cannot, however, order a refund of an institutional request fee, if the appellant was charged one.

comment on the appellant's speculation about the identity of the affected parties throughout this order.

[20] As noted above, the police withheld information on the basis that it is exempt from disclosure under section 38(b) or under section 38(a), read with the law enforcement exemptions in section 8(1)(g) and (l). In their representations, the police addressed the possible application of these sections to the report and the police officers' notes. The appellant was then given an opportunity to respond. I will therefore consider the possible application of these sections to both the report and the police officers' notes.

[21] I have reviewed and considered all of the parties' representations, and I summarize below the portions that are most relevant to the issues before me.

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

[22] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information," and if so, whose. If the record contains the requester's own personal information, their access rights are greater than if it does not.[5] Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.[6]

[23] For the reasons below, I find that the records contain the personal information of both the appellant and other individuals whose interests may be affected by the disclosure of the records (the affected parties).

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

[25] "Recorded information" is information recorded in any format, such as paper and electronic records.[7]

[26] 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.[8] See also sections 2(2.1) and (2.2), which state:

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[5] 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.
[6] See sections 14(1) and 38(b).
[7] See the definition of "record" in section 2(1).
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

> (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.

[27] 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.[9]

[28] 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.[10]

[29] 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,
>
> (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

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

> 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.

[30] 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."[11]

Representations

[31] The police submit that the records contain personal information relating to both the appellant and affected parties. According to the police, the information at issue falls under paragraphs (a), (b), (c), (d), (e) and (g) of the definition of "personal information" in section 2(1) of the *Act*.

[32] The police submit that the records include personal information about the appellant, documented by police officers conducting an investigation into the allegations and circumstances before them. They note that the records document an investigation into a civilian request for assistance. The police submit that the records contain the affected parties' names, home addresses, dates of birth, and personal records queries, as well as comments made by certain affected parties to the police about other affected parties.

[33] Given the nature of the occurrence documented in the records, the police argue that it is reasonable to expect that affected parties may be identified from the redacted information.[12]

[34] The appellant does not specifically address this issue in their representations.

Analysis and findings

[35] Based on my review of the report and police officers' notes, I find that both contain the personal information of the appellant and the affected parties, in accordance with the definition of the term "personal information" in section 2(1) of the *Act.*

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[11] Order 11.

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

Appellant

[36] I find that there is some limited information that relates only to the appellant, namely, their name alongside their address and date of birth. I find that this information, which appears on pages 3, 7, and 12 of the police officers' notes, constitutes their personal information under paragraphs (a), (d) and (h) of section 2(1) of the *Act.*

[37] The personal privacy exemption in section 38(b) can only apply to the personal information of someone other than the requester. As the information described above only relates to the appellant, I find that it cannot be withheld from them under section 38(b). As the police also rely on the section 38(a) exemption for this information, I will consider under Issue C below, whether the information that relates solely to the appellant is exempt under section 38(a).

Police officers

[38] In parts of the records, information relating to certain police officers was withheld pursuant to the personal privacy exemption. This includes names, titles, badge numbers and professional contact information, as well as the police officers' units (either the acronym or the full name for the unit).

[39] According to section 2(2.1) of the *Act*, personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a professional capacity. As noted above, previous IPC orders have established that professional information may still qualify as personal information if it reveals something of a personal nature about the individual. I find that the information described above is not personal information. Names, titles and contact information that identify someone in a professional capacity are specifically excluded from the definition of personal information by virtue of section 2(2.1). Badge numbers are also professional information.[13]

[40] The police have not made representations in relation to police officers' professional information, or specifically addressed the officers' units. I have reviewed the records and in the absence of additional evidence, I find that the police officers' units are also their professional information.

[41] In addition, I find that the information relating to the officers in their professional capacities does not reveal anything of a personal nature about them.

[42] The personal privacy exemption at section 38(b) cannot apply to information that is not personal information. Since the police have also claimed the section 38(a) exemption for this information, I will consider that issue below (see Issue C). This information appears on pages 1, 3, 4 and 5 of the report, and pages 1, 2, 5 and 6 of

[13] Orders MO-2050, MO-2252 and MO-2326.

the police officers' notes.

Affected parties

[43] I agree with the police that the records contain personal information of affected parties. This includes their names and other identifying information alongside their views and opinions documented in the course of the investigation that is the subject of the records at issue. This information appears throughout the five-page report, and on pages 2, 3, 4, 6, 7, 8, 9, 10 and 13 of the police officers' notes. I note that some of this information is so intertwined with the personal information of the appellant that it is not reasonably severable.

[44] I have found that the records contain the personal information of the appellant mixed with the information of the affected parties and will therefore consider whether the latter is exempt under the personal privacy exemption at section 38(b) under Issue B below.

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

[45] 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.

[46] 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. 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).

[47] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.[14]

[48] I found above that the records contain the personal information of affected parties, both on its own and intertwined with the appellant's information. For the reasons below, I find that section 38(b) applies to this information, because its disclosure would amount to an unjustified invasion of the affected parties' personal privacy.

[14] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

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

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

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

[50] 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).

[51] The appellant submits that the section 14(1)(a) exception applies as a named individual provided them with written consent. The police submit that none of these exceptions apply.

[52] For the section 14(1)(a) exception to apply, the individual(s) whose personal information is in the record must have consented to the release of their personal information in writing. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.[15] Based on the evidence before me, no affected parties provided written consent to the police granting permission to share information relating to them with the appellant, in the context of the appellant's access request.

[53] Based on my review of the records and the parties' representations, I also find that none of the exceptions 14(1)(b) to (e) apply in the circumstances.

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

[54] 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. I find that none of the situations described in section 14(4) apply in the circumstances.

[55] 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), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[16]

[56] The police claim that the presumption at section 14(3)(b) and the factors at

[15] Order PO-1723.
[16] Order MO-2954.

sections 14(2)(f) and (h) weigh against disclosure. The appellant disagrees with the police and submits that several factors weigh in favour of disclosure. I consider the parties' arguments below.

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

[57] 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 police submit that the presumption at section 14(3)(b) is applicable to the records at issue. Section 14(3)(b) states:

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

[58] The police submit that the presumption at section 14(3)(b) applies to the personal information at issue as it is contained in records pertaining to an investigation into a possible violation of law under the *Criminal Code of Canada*. The police note that the records contain officers' notes, records queries, interview notes and references to correspondence and database searches into a possible violation of criminal law, which, they argue, are inherently sensitive in nature. The police note that this presumption applies even if criminal proceedings were never started against the individual in question.[17]

[59] The appellant submits that section 14(3)(b) does not apply as the investigation was deemed to be non-criminal and was completed over six years ago. They note that this presumption does not apply if the records were created after the completion of an investigation into a possible violation of law.[18]

[60] Based on my review of the parties' representations and review of the records, I find that section 14(3)(b) applies. The section 14(3)(b) presumption requires only that there be an investigation into a possible violation of law,[19] which is the case here. The appellant notes that the police closed their investigation as "non-criminal," suggesting that section 14(3)(b) does not apply as a result. However, as the police note, the presumption applies even if criminal proceedings were never started.[20]

[61] The appellant argues that the presumption does not apply where records are

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[17] The police cite Order MO-2235.
[18] The appellant cites Orders M-734, M-841, M-1086, PO-1819 and MO-2019.
[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).

created after the completion of an investigation. This is true; however, if the records were created *during* the course of the investigation, then the presumption applies, even if the investigation was completed years ago. Based on my review of the records, I am satisfied that they were created as part of the investigation, and not after it was concluded.

[62] As a result, I find the section 14(3)(b) presumption applies to the personal information contained in the records and weighs against its disclosure.

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

[63] 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.[21] Some of the factors (paragraphs (a) through (d)) generally weigh in favour of disclosure, while the others generally weigh against disclosure.

[64] 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).[22]

[65] The police submit that sections 14(2)(f) and (h) apply to the records at issue. The appellant submits that sections 14(2)(a), (d), (g) and (i) are applicable as well as an unlisted factor.

[66] The section 14(2) factors cited by the parties state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
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> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
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> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
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> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

[21] Order P-239.
[22] Order P-99.

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

Factors weighing in favour of disclosure

14(2)(a): disclosure is desirable for public scrutiny and ensuring public confidence in an institution[23]

[67] The appellant submits that the police should be subject to public scrutiny as they have a history of misconduct. As an example, the appellant cites the investigation documented in the records at issue, alleging that it was negligent. The appellant argues that disclosure of the information at issue would promote public transparency of the police's actions and would help remedy their conduct.

[68] The appellant also submits that public scrutiny would help ensure public confidence in the police. They note that they received documents from a police force in Quebec in relation to the matter documented in the records at issue.[24] The appellant submits that these documents refer to a named individual. As I understand it, the appellant's argument is that disclosure of the information at issue would increase public confidence in police operations given that they already have knowledge of this individual, who they submit is an affected party in the current appeal.

[69] 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.[25] It promotes transparency of government actions. An institution should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.[26]

[70] Having reviewed the appellant's representations, the excerpted documents in their representations, and the records at issue, I find that section 14(2)(a) is not relevant in the circumstances. Aside from making general statements about the police's history of misconduct, and alleging negligence in the context of the investigation at issue, the appellant provides no evidence demonstrating how disclosure of the information at issue – the personal information of affected parties – would be desirable to promote transparency of the police's actions or help to hold the police accountable. In addition, whether the appellant has knowledge of an affected party's identity or not, has no bearing on the relevance of section 14(2)(a) or the unlisted factor of ensuring public confidence in an institution. Finally, based on my independent review of the records, I am not persuaded that their disclosure would promote public scrutiny of or confidence in the police. As a result, I find that this factor does not apply.

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[23] Orders M-129, P-237, P-1014 and PO-2657.
[24] The appellant provides excerpts of these documents with their representations.
[25] Order P-1134.
[26] Order P-256.

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

[71] The appellant submits that the personal information at issue is relevant to a fair determination of their rights. They surmise that certain individuals are named in the records and says that they falsely reported a crime leading to an investigation against the appellant. According to the appellant, the police are shielding these individuals from being charged with public mischief under the *Criminal Code of Canada*. The appellant submits that they have a right to know the identity of the individuals who accused them, so that they may file criminal charges against them. The appellant maintains that disclosure is in the interest of justice and public safety, given that the incident documented in the records was deemed non-criminal.

[72] The appellant further submits that they need the information at issue to determine what civil remedies are available to them, to use it in future legal proceedings that they intend to bring, and to ensure an impartial hearing.

[73] Section 14(2)(d) supports disclosure of someone else's personal information where the information is needed to allow a requester to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?

2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?

3. Is the personal information significant to the determination of the right in question?

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?[27]

[74] The appellant does not identify a legal right that they wish to assert, and they state only in general terms their intention to start unspecified claims against certain individuals at some point. In my view, section 14(2)(d) is not relevant in the circumstances. Even if I were satisfied that this factor was relevant, I would assign it little weight. If and when the appellant commences legal proceedings, the decision maker will be better placed than I to determine what information must be disclosed to them to ensure a fair determination of their rights.

Other factors/relevant circumstances

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[27] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

[75] The appellant makes the following additional arguments in support of their position that the information at issue is not exempt under section 38(b) and should be disclosed to them:

- Named individuals made false claims about them to the police and it is likely the records contain misleading information or testimony
- The police mistreated them and were negligent in their investigation
- Their personal information and private communications were shared with a police force in Quebec, and their reputation was unfairly damaged

[76] The appellant cites sections 14(2)(i) (the information is unlikely to be accurate or reliable) and (g) (disclosure may unfairly damage the reputation of any person referred to in the record) in support of their arguments. I note that these sections are among the factors that, if established, tend to support non-disclosure of the personal information in question. However, I will consider the appellant's representations in relation to these sections, along with their other arguments above, as raising inherent fairness issues.

[77] Previous IPC orders have considered inherent fairness as an unlisted factor, on the basis that individuals who face accusations are entitled to know the case which has been made against them.[28] Inherent fairness has also been recognized in cases where no charges were laid but where allegations led to a police investigation.[29]

[78] The appellant alleges that they were wronged and mistreated by the police and certain named individuals. They submit that they need the information withheld under section 38(b) so they may know the nature of the allegations made against them and information shared about them, and to enable them to right any wrongs they suffered as a result. As the appellant notes in their representations, the investigation in this case was concluded as non-criminal. Without disclosing the contents of the records, I find that the appellant has established inherent fairness as a relevant factor weighing in favour of disclosure.

Factors weighing in favour of privacy protection

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

[79] The police submit that section 14(2)(f) applies as the records contain personal information about witnesses, complainants, or suspects in a police investigation that could result in significant personal distress if disclosed.[30]

[80] The appellant disagrees. They submit that they have known the identities of

[28] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.
[29] See Order MO-4234 and MO-4040.
[30] The police cite Order MO-2980.

those involved for years and have yet to witness their distress. The appellant adds that the individuals in question were not subjects of an alleged crime. As I understand their argument, the appellant submits that should the information at issue be disclosed, certain named individuals would not be distressed because it was the appellant, and not these individuals, who suffered as a result of the allegations that were investigated.

[81] This section is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.[31] The police cite Order MO-2980, in which Adjudicator Colin Bhattacharjee found that whether personal information is considered highly sensitive will depend on context, and that personal information has "greater sensitivity when this information is collected by the state or agencies of the state such as the police."

[82] I agree with the police that disclosure of the personal information at issue could reasonably cause the affected parties significant distress. I appreciate the appellant's own distress, which is apparent from their representations. However, in my view, the claim that disclosure would not cause distress to those whose information appears in the records to be speculative and not borne out from my independent review of the records.

[83] I note that certain affected parties interacted with the police as complainants, witnesses or suspects, while it is likely the others are not aware that their information was collected by the police in the course of their investigation. Based on this, my review of the records, and the context in which this information was gathered, I find that section 14(2)(f) applies and weighs in favour of non-disclosure.

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

[84] The police submit that section 14(2)(h) is applicable because the personal information at issue was supplied by the affected parties to whom the information relates in confidence. The police maintain that both the affected parties supplying the information and the members of the service receiving it had a reasonable expectation that the information would be treated confidentially. They submit that there was a reasonable expectation of confidentiality based on the law enforcement roles of those receiving the information.

[85] The appellant disagrees that section 14(2)(h) is applicable. They submit that a police force in Quebec revealed the identities of specified parties that they allege were involved in the investigation. In the appellant's view, these individuals did not have a reasonable expectation of confidentiality as they committed a potential crime in making false accusations against the appellant. They further note that courts can and have revealed information in many circumstances, and that police may withhold information as a courtesy but are not legally obliged to.

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[31] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[86] Section 14(2)(h) weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."[32]

[87] I agree with the police that affected parties supplied information to the police in confidence. In making this finding, I considered the context in which the information was provided (that is, to police officers in the course of an investigation), that the personal information at issue is highly sensitive, that no charges were laid and that the matter did not go to court. As a result, I find that both the affected parties and the officers that interacted with them had a reasonable expectation that the information received would remain confidential.

[88] The appellant submits that section 14(2)(h) does not apply as the information provided to police is false. The appellant has not provided evidence indicating the information contained in the records is false, and in any case, I am not satisfied that this is a relevant factor in the circumstances. As noted above, no charges were laid, and in these circumstances, the affected parties would not expect the information to be disclosed.

[89] Accordingly, I find that section 14(2)(h) applies and weighs in favour of non-disclosure.

Weighing the presumption and factors

[90] I have found that inherent fairness, an unlisted factor, favours disclosure of the information at issue. On the other hand, I have found that the factors at section 14(2)(g) and (h) favour non-disclosure. I have also found that disclosure in this case would be a presumed unjustified invasion of privacy under section 14(3)(b), which favours non- disclosure. Weighing the factors and presumption, and balancing the interests of the parties, I find that the protection of the affected parties' privacy outweighs the appellant's desire to gain access to the personal information in the records, and to assess and pursue legal actions that may be open to them. In making this finding, I considered the highly sensitive nature of the personal information at issue and the reasonable expectation that it would remain confidential. I also considered the fact that no charges were laid against the appellant. Accordingly, I find that disclosure of the information would amount to an unjustified invasion of privacy of the affected parties, and that the information is therefore exempt under section 38(b), subject to the absurd result principle which I address next. As noted above, the affected parties' personal information appears throughout the report, and on pages 2, 3, 4, 6, 7, 8, 9, 10 and 13 of the police officers' notes.

[32] Order PO-1670.

Absurd result

[91] An institution might not be able to rely on the section 38(b) exemption in cases where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[33]

[92] For example, the "absurd result" principle has been applied when the requester was present when the information was provided to the institution,[34] and the information was or is clearly within the requester's knowledge.[35] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[36]

[93] The appellant submits that the absurd result principle applies because the police withheld information that the appellant is aware of or that is already in their possession. They again say that they know who the individuals mentioned in the records are.

[94] The police submit that the absurd result principle does not apply in the circumstances. The police note that the appellant was not present when the information was provided to the police or investigated by them.

[95] Both the report at issue and the version obtained previously are largely redacted, and the appellant has not demonstrated that the redacted information is clearly within their knowledge. As the police note, the appellant was not present when the information was provided. Even assuming the appellant is aware of the identities of the affected parties, they have not established that they have knowledge of the contents of the records, including the affected parties' contact information and other identifiers, and the information relayed in the context of the investigation.

[96] Accordingly, I find that the absurd result principle does not apply and that the information withheld under section 38(b) is exempt under that section. Section 38(b) is a discretionary exemption and I will address the police's exercise of discretion under Issue D.

Issue C. Does the discretionary exemption at section 38(a) (discretion to refuse requester's own personal information), read with sections 8(1)(g) (intelligence information) or 8(1)(l) (facilitate commission of an unlawful act) of the *Act,* apply to the information at issue?

[97] I found above that the personal information of identifiable individuals, either intertwined with the appellant's own personal information or on its own, is exempt

[33] Orders M-444 and MO-1323.
[34] Orders M-444 and P-1414.
[35] Orders MO-1196, PO-1679 and MO-1755.
[36] Orders M-757, MO-1323 and MO-1378.

under 38(b) and need not consider whether it is also exempt under section 38(a).

[98] I will now assess whether the information I found not to be exempt under section 38(b), is exempt under section 38(a). This includes the appellant's own personal information and the professional information of police officers.

[99] As I noted above, section 38 provides some exemptions from the general right of access to one's own personal information. The police have claimed section 38(a) of the *Act* which reads:

> 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.

[100] 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.[37]

[101] If the institution refuses to give an individual access to their own personal information under section 38(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information. The police's exercise of discretion is addressed under Issue D below.

[102] In this case, the police rely on section 38(a) read with sections 8(1)(g) and 8(1)(l) of the *Act* which read:

> 8 (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[103] The term "law enforcement"[38] is defined in section 2(1):

> "law enforcement" means,
>
> > (a) policing,

[37] Order M-352.
[38] The term "law enforcement" appears in many, but not all, parts of section 8.

> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

[104] The police submit that the investigation at issue falls under the definition of law enforcement at section 2(1) of the *Act* as it is a police investigation into a possible violation of law under the *Criminal Code of Canada*. The appellant disagrees, arguing that the report at issue indicates the investigation is complete and that no violations of law were found. The IPC has found that "law enforcement" can include a police investigation into a *possible* violation of the *Criminal Code,*[39] indicating that the investigation in question need not have led to charges to be considered "law enforcement" under the *Act*. Based on my review of the records, I find that they document an investigation into a possible violation of law, which qualifies as "law enforcement."

[105] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.[40]

[106] However, the exemption does not apply just because a continuing law enforcement matter exists,[41] and parties resisting disclosure of a record cannot simply assert that the harms under section 8 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act.*[42]

[107] The above exemptions listed in section 8 apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[43] However, they do not have to prove that disclosure will in fact result in harm.

[108] 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.[44]

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[39] Orders M-202 and PO-2085.
[40] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[41] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[42] Orders MO-2363 and PO-2435.
[43] *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] 1 S.C.R. 23.
[44] *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.

[109] The police submit that the information at issue was gathered in the course of a police investigation, and falls within the scope of the law enforcement exemption. They submit that the remaining information is exempt under section 38(a), read with sections 8(1)(g) and (l). The appellant disagrees. For the reasons outlined below, I find the remaining information is exempt under section 38(a).

Section 8(1)(l): facilitate commission of an unlawful act or hamper the control of crime

[110] The police submit that they withheld police operational codes in accordance with a long line of IPC orders that have found that these qualify for exemption under section 8(1)(l) due to the reasonable expectation of harm that could result from their release.[45] The police submit that knowledge of police operational codes could reasonably interfere with police investigations, and should not be disclosed to members of the public. The appellant submits that the codes the police refer to are not exempt and can easily be found online or through other means.

[111] For section 8(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime. As the police submit, the IPC has consistently found that police codes are exempt from disclosure under section 8(1)(l). The police cite Order PO-1665, along with several other IPC orders, in support of their position. Order PO-1665, which has been followed by many other orders,[46] states the following:

> disclosure of the [police codes] would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

[112] The appellant states that police codes are available to the public, but presents no other information. Moreover, the codes at issue before me appear in the specific context of an investigation. In the circumstances, I see no reason to depart from the approach taken in previous IPC orders. I find that the police operational codes in the records are exempt under section 8(1)(l). This information appears on pages 1, 3 and 4 of the report and pages 2, 4, 6, 9, and 13 of the police officers' notes. I will address the police's exercise of discretion below under Issue D.

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[45] The police cite Orders PO-1665, PO-1777, PO-1877, PO-2209, PO-2339, PO-2409, M-393, M-757, M-781 and MO-1428.

[46] See Orders MO-2112, MO-2871, MO-3279, and more recently PO-4020 and MO-3952.

Section 8(1)(g): interfere with the gathering of or reveal law enforcement intelligence information

[113] As the police have not specified which portions of the records they claim section 8(1)(g) applies to, I will consider its application to the information remaining at issue that is not exempt under sections 38(b) or 38(a) read with 8(1)(l).

[114] For section 8(1)(g) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to interfere with the gathering of or reveal law enforcement intelligence information.

[115] The term "intelligence information" has been defined in the caselaw as:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.[47]

[116] The police submit that there is a reasonable basis for concluding that disclosure of the information at issue could reasonably be expected to interfere with the gathering of, or reveal law enforcement intelligence information. They make confidential representations in support of their position, which I am unable to share in this order as that would reveal the nature of the withheld information and the purpose for which it was gathered.

[117] The police rely on the definition of "intelligence" information above, as well as the following excerpt from The Williams Commission Report which was cited in Order M-202:

> Speaking very broadly, intelligence information may be distinguished from investigatory information by virtue of the fact that the former is generally unrelated to the investigation of the occurrence of specific offenses. For example, authorities may engage in surveillance of the activities of persons whom they suspect may be involved in criminal activity in the expectation that the information gathered will be useful in future investigations. In this sense, intelligence information may be derived from investigations of previous incidents which may or may not have resulted in trial and conviction of the individual under surveillance. Such information

[47] Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario (Community Safety and Correctional Services),* 2007 CanLII 46174 (ON SCDC).

> may be gathered through observation of the conduct of associates of known criminals or through similar surveillance activities.[48]

[118] The appellant submits that the police have not provided a reasonable basis for concluding that section 8(1)(g) applies in the circumstances. The appellant's other representations in response to the police with regard to section 8(1)(g) include their speculations about police surveillance, and allegations about the police's conduct and treatment of the appellant. As I mentioned above, I will not be addressing these arguments as they are not related to the issues before me in this appeal.

[119] Based on my review of the content of the records and the police's confidential representations, I find that the police have provided sufficiently detailed arguments to support their application of section 8(1)(g). I accept that there is a reasonable basis to conclude that disclosure of the remaining withheld information could be expected to interfere with the gathering of or reveal law enforcement intelligence information. I have also taken into consideration that the section 8(1) exemption must be approached in a sensitive manner due to the difficulty of predicting future events in the law enforcement context. As a result, I conclude that this information is exempt under section 8(1)(g). This information appears on pages 4 and 5 of the report and pages 11, 12 and 13 of the police officers' notes. I address the police's exercise of discretion next.

[120] I found above that some information in the records relates only to the appellant, or to police officers acting in a professional capacity. The police have not provided evidence to establish that disclosure of this limited information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime under section 8(1)(l), or interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons under section 8(1)(g). Based on my review of the records and the police's representations, I find no reason to conclude that this information qualifies for exemption under sections 8(1)(l) or 8(1)(g) read with section 38(a). Accordingly, I find that this information is not exempt and order the police to disclose it.

Issue D. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should I uphold the exercise of discretion?

[121] I will now consider whether the police exercised their discretion properly in deciding to withhold the information that I have found is exempt under sections 38(a) and (b), which includes the personal information of affected parties, police codes and information exempt under section 8(1)(g).

[122] The section 38(a) and 38(b) exemptions are discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even

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[48] *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3 (Toronto: Queen's Printer, 1980) at 709-710. ("The Williams Commission Report")

if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[123] In addition, the IPC may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations.

[124] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[49] The IPC cannot, however, substitute its own discretion for that of the institution.[50]

[125] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:[51]

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

[49] Order MO-1573.
[50] Section 43(2).
[51] Orders P-344 and MO-1573.

- the historic practice of the institution with respect to similar information.

Representations, analysis and findings

[126] The police submit that they exercised their discretion appropriately in withholding the information at issue, and took into account relevant considerations. They submit that they balanced the appellant's right to their own information with the need to protect the personal information and privacy interests of others. The police acknowledge that the appellant was mentioned in portions of the records, but also note that the appellant never spoke with investigating officers, and was not present for any part of the investigation. The police further submit that they considered the sensitive and confidential nature of the investigation.

[127] The police maintain that they exercised their discretion in good faith, as demonstrated by their active engagement in the mediation process and partial disclosure of the records. They submit that they fulfilled their obligation under section 4(2) to disclose as much of the responsive records as can reasonably be severed, without disclosing information that is exempt.

[128] The appellant submits that the police did not appropriately exercise their discretion and acted in bad faith. They argue that they are seeking access to their own personal information, that they have a compelling need to receive the information, that the identities of specified individuals are known to them, and that disclosure will increase public confidence in police operations.

[129] The appellant submits that the police's bad faith was evidenced by their actions during mediation. They note that the police only revised their decision to refuse to confirm or deny the existence of records after the appellant provided documentation demonstrating they had knowledge of the records. The appellant disagrees that the police balanced the rights of the parties, arguing that the fact the police never spoke with them before exercising their discretion is evidence of bias and bad faith.

[130] I find that the police appropriately exercised their discretion and took into account relevant considerations in withholding the information I have found is exempt under sections 38(a) and (b). The police considered the sensitive and confidential nature of the information, its significance to all the parties involved, and the effect of its disclosure on police operations. They considered the purposes of the *Act*, weighing the appellant's right to their own information along with the affected parties' privacy interests.

[131] The appellant submits that the police's actions during mediation are evidence of bad faith. The police initially claimed section 14(5) and refused to confirm or deny the existence of records on the basis that to do so would constitute an unjustified invasion of personal privacy. During mediation, they revised their decision after finding out that the appellant had knowledge of the records. The police revised their decision in light of

new information they received, which, in my view, does not amount to bad faith.

[132] The appellant submits that the police never spoke with them, and therefore could not have balanced the interests of the parties. I do not agree. In my view, to ensure a proper exercise of discretion, the police did not need to canvass each party. In this case, the police demonstrated their exercise of discretion by confirming the existence of responsive records and granting the appellant partial access – though I acknowledge that the appellant is unsatisfied with the level of access they were granted.

[133] I do not find that the police took into account irrelevant considerations or that they exercised their discretion in bad faith. Accordingly, I uphold their exercise of discretion in the circumstances.

[134] I have also considered the police's obligation under section 4(2) to disclose as much of the records as can reasonably be severed without disclosing information that is exempt under the *Act*. Based on my review of the records, I am satisfied that the appellant's remaining personal information is inextricably intertwined with information that I have found is exempt under sections 38(b) and 38(a). Any possible disclosure would only reveal meaningless or disconnected snippets, which the police is not required to disclose.[52]

Issue E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the personal privacy exemption?

[135] The appellant submits that the exemptions at issue do not apply as there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the exemption, as stated in section 16.

[136] 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.

[137] Section 16 does not provide for the disclosure of information exempt under the law enforcement exemption at section 8. I will therefore consider its possible application to the information I have found to be exempt under the personal privacy exemption.[53]

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[52] Order PO-1663 & *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)

[53] Even though section 38 (b) is not listed in section 16, because section 16 may override the application of the mandatory personal privacy exemption in section 14, it may also override the application of the discretionary personal privacy exemption in section 38(b). See Orders MO-2854, MO-3459 and MO-3475.

[138] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[139] 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.[54]

[140] 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.[55] 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.[56]

[141] A "public interest" does not exist where the interests being advanced are essentially private in nature.[57] However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.[58]

[142] The appellant's representations on this point are brief. They quote from section 16, allege that they were mistreated by the police and the subject of a negligent investigation, and require the withheld information to assess the violation of their rights. They argue that their circumstances are compelling enough to warrant full disclosure.

[143] The appellant's representations on section 16 do not invoke the public interest, or explain how the proposed disclosure might shed light of the actions of the police. The appellant explains how they were wronged, and how disclosure may help them in their pursuit of justice. In my view, the appellant describes a private interest rather than a public one.

[144] I have also considered the appellant's representations under Issue B, to the extent that they may be relevant to the question of public interest. The appellant submits that disclosure is desirable to subject the police's activities to public scrutiny and to ensure public confidence in the police. They allege that the police have a history of misconduct, and that disclosure would promote transparency of the police's actions. I understand the appellant to be arguing that the mistreatment they suffered personally

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[54] Order P-244.
[55] Orders P-984 and PO-2607.
[56] Orders P-984 and PO-2556.
[57] Orders P-12, P-347 and P-1439.
[58] Order MO-1564.

is an example of a broader pattern of police misconduct. However, the appellant has not provided evidence to support their allegations of misconduct.

[145] I have reviewed the records and the appellant's representations, and find there is no compelling public interest in disclosure which clearly outweighs the purpose of the personal privacy exemption. In my view, the disclosure of the affected parties' personal information, which I have found is exempt under section 38(b), would not inform or enlighten the public about the police's activities, or add to the information the public has to make effective use of the means of expressing public opinion or to make political choices. Based on my review of the appellant's representations, they argue in favour of disclosure to satisfy a personal interest, or to expose an instance of police misconduct as an example of a broader pattern. However, there is no evidence before me to substantiate this alleged pattern of misconduct, either in the appellant's representations or the records themselves.

[146] I am not satisfied that there exists a public interest, compelling or otherwise, in the disclosure of the personal information I have found is exempt under section 38(b). Therefore, I find that the "public interest override" at section 16 does not apply in these circumstances.

ORDER:

1. I order the police to disclose to the appellant the information highlighted in the copy of the records included with the police's copy of this order by **March 6, 2023,** but not before **February 28, 2023.**

2. I otherwise uphold the police's decision.

3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

Original signed by: January 30, 2023
Hannah Wizman-Cartier
Adjudicator