

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-4421

Appeal MA19-00675

Ottawa-Carleton District School Board

August 3, 2023

**Summary:** A parent of a former student of the board requested access under *MFIPPA* to their child's complete file. After providing a substantial amount of the file to the parent, access to several portions of information remained at issue on the basis of the following exemptions: section 38(b) (personal privacy) and section 38(a), read with sections 12 (solicitor-client) and 7(1) (advice or recommendations).

In this order, the adjudicator finds that the *Youth Criminal Justice Act* governs access to several portions of the information at issue and she therefore declines to adjudicate the access request in relation to these portions. For the portions for which access is governed by *MFIPPA*, the adjudicator decides that some of the information is outside of the scope of the request because the appellant does not seek access to it and she upholds the board's decision to deny access to the remaining portions on the basis of the personal privacy exemption at section 38(b).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 14(1), 38(b), and 54(c); *Youth Criminal Justice Act*, S.C. 2002, c. 1, sections 110(1), 111(1), and 116.

**Orders Considered:** Order F18-38 (British Columbia Information and Privacy Commissioner), Order MO-3746-I.

**Cases Considered:** *S.L. v. N.B.*, [2005] O.J. No. 1411, *Ontario (Human Rights Commission) v. Toronto Police Services Board*, [2008] O.J. No. 4546 (Ont. C.J.).

## OVERVIEW:

[1] A student attended a school under the jurisdiction of the of the Ottawa-Carleton District School Board (the board). After the student left the board, the requester (the student's father) submitted a request to the board under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to his daughter's complete school file.

[2] Due to the daughter's age at the time of the request, the board treated the father as exercising her rights under the *Act*.<sup>1</sup> The board issued a decision granting the father partial access to emails and hand-written notes (all described in further detail in the Records section below). The board withheld portions of the records pursuant to the exemptions in sections 7(1) (advice or recommendations), 12 (solicitor-client privilege), and 14(1) (personal privacy) of *MFIPPA*. Some portions of the records were withheld on the basis that they are not responsive to the request.

[3] The father, now the appellant, appealed the board's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was assigned to explore the possibility of resolving the issues in the appeal.

[4] During the mediation, the board clarified that it was relying on the exemptions applicable when the information at issue is the requester's own personal information (the section 38(b) personal privacy exemption and section 38(a) read with the other exemptions cited in its decision letter).<sup>2</sup> During the mediation of the appeal, the board revised its decision and granted the appellant access to additional information.

[5] The appellant advised that he does not pursue access to information withheld on the basis that it is not responsive to his request or on the basis of the exemption for solicitor-client privilege (section 38(a), read with section 12). Lastly, the appellant stated that he is not pursuing access to names or contact information of individuals other than his daughter or himself.

[6] The parties were unable to reach a mediated resolution and the file was

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<sup>1</sup> Section 54(c) of the *Act* states:

54 Any right or power conferred on an individual by this Act may be exercised,

...

(c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual. R.S.O. 1990, c. M.56, s. 54; 1992, c. 32, s. 23; 1996, c. 2, s. 73.

<sup>2</sup> Section 38 pertains to access requests that include the requester's own personal information, and states:

A head may refuse to disclose to the individual to whom the information relates personal information,

(a) 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;

(b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

transferred to the adjudication stage of the appeal process.

[7] The adjudicator previously assigned to this appeal commenced an inquiry during which the board and the appellant were invited to make representations about the issues under appeal.

[8] The parties were invited to make representations about the pages remaining at issue, as well as the other issues in the appeal.

[9] The board's representations were shared with the appellant and he was invited to make representations in response as well as to the issues in the appeal. The appellant made brief representations, initially, noting that because he did not have access to the records he was at a disadvantage in making relevant arguments.

[10] The file was transferred to me to continue the inquiry. I reviewed the records and the representations exchanged and I decided that it was not necessary to share the appellant's representations with the board.

[11] In its representations the board argued for the first time that access to some of the records (i.e. the case notes of a social worker) is governed by the *Personal Health Information Protection Act, 2004*<sup>3</sup> (*PHIPA*), not *MFIPPA*, and that therefore the daughter's consent is required before the board will disclose them to the father. During the inquiry, I invited and received further representations from the board about its claim that access to the case notes is governed by *PHIPA* not *MFIPPA*.

[12] Later in the inquiry, and based on my review of the records, I made the following two preliminary determinations about which I invited further representations from the board:

- A preliminary determination that several pages of records are not at issue in the appeal because the father does not seek access to the following: individuals' names or contact information, non-responsive information, or information withheld on the basis of the section 12 exemption for solicitor-client privilege.
- A preliminary determination that certain information remaining at issue in the appeal is properly addressed under the *Youth Criminal Justice Act (YCJA)*,<sup>4</sup> not the *Act*.

[13] The board did not make any representations on these issues.

[14] I then invited the father to make representations about the possible application of *PHIPA* to the case notes and the two preliminary determinations listed above. The father made representations.

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<sup>3</sup> S.O. 2004, c. 3, Sched. A.

<sup>4</sup> S.C. 2002, c. 1.

[15] As of the time of the inquiry, the daughter was more than 16 years old. Considering the circumstances of the appeal, I notified the daughter of the appeal and invited her to participate if she wished. The daughter made brief representations.

[16] Considering the positions of the parties about the case notes, the potential applicability of *PHIPA* and the board's position that the daughter's consent is required, I inquired with the parties about whether the appellant and his daughter would be willing to make a fresh request to the board for the case notes. A new request will be made and a new decision will be issued. The case notes are therefore no longer within the scope of the appeal, but the appellant is not barred from making a new complaint or appeal if he is dissatisfied with the outcome of that request.

[17] In this order, I identify the information that is outside the scope of the appeal in accordance with the appellant's position that he does not seek certain types of information. I then find that the *YCJA* governs access to several portions of information at issue and I decline to adjudicate the access request under *MFIPPA* in relation to these portions. For the remaining information, access to which is governed by *MFIPPA*, I uphold the board's decision to deny access to these portions on the basis of the personal privacy exemption at section 38(b).

## **RECORDS:**

[18] There are two categories of records at issue in the appeal.

### **Emails**

[19] These records consist of emails or email chains exchanged between board employees and other individuals. The board identified 192 pages of emails, several of which were disclosed in full, and some of which were withheld in full or in part. The board relies on the personal privacy exemptions at sections 38(b) and/or 14(1) to withhold most of the remaining information in the emails. It also relies on section 38(a) read with section 7(1) (advice and recommendations) to withhold part of page 127 of the emails.<sup>5</sup>

[20] At Issue A below, I will discuss further the information that remains at issue within the emails.

### **Handwritten notes**

[21] These records consist of pages taken from a notebook maintained by the school principal. The board identified 18 pages of handwritten notes, several pages of which were disclosed in part. The board relies on the personal privacy exemptions at sections

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<sup>5</sup> The appellant is not pursuing the information the board withheld under the solicitor-client privilege exemption in section 12 [read with section 38(a)].

38(b) and/or 14(1) to withhold most of the handwritten notes.

[22] At Issue A below, I will discuss further the information that remains at issue within the handwritten notes.

## **ISSUES:**

- A. What information is removed from the scope of the appeal because the appellant does not seek access to it?
- B. Does the *YCJA* or *MFIPPA* govern access to certain information in the records?
- C. Do the records subject to *MFIPPA* contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- D. Should the board's decision to withhold certain information on the basis of the exemption for personal privacy at section 38(b) be upheld?

## **DISCUSSION:**

### **Issue A: What information is removed from the scope of the appeal because the appellant does not seek access to it?**

[23] The appellant does not pursue access to other individuals' names or contact information, information that was withheld as not responsive to the request or information withheld on the basis of the section 12 exemption for solicitor-client privilege. The appellant's position narrows the scope of the information that requires determination in this appeal.

[24] Based on my review of the records and the appellant's position, I made a preliminary determination that only certain information remained within the scope of the appeal. I informed the parties of my preliminary determination and sought their views. The board made no representations about this issue. The appellant observed that he is at a disadvantage in making representations because he has not seen the records. He stated, however, that if the records pertain to his daughter and the "redactable data is addressed appropriately," they should be disclosed to him.

[25] I have reviewed the records taking into account the appellant's position and relative disadvantage in commenting on the issue and have concluded that the withheld information on the pages listed below is not at issue in the present appeal. I will not discuss it further in this order.

- The entirety of the withheld information in Emails 29, 38, 48, 49, 62, 63, 64, 73, 76, 80, 83, 88, 100, 119, 125, 131, 135, 136, 137, 163, 174, 179, 182, 185, 188, 191.
- Part of the withheld information in Emails 71, 87 (portions), 89 (portions).
- All of the withheld information in handwritten notes 1, 3, 4, 6, 9.
- Part of withheld information in the remaining handwritten notes.

[26] To reiterate, I have reached this conclusion because the information at issue consists of information that the appellant does not seek. That is: other individuals' names or contact information, information that is not reasonably related to the appellant's daughter,<sup>6</sup> or information withheld on the basis of the section 12 exemption for solicitor-client privilege.

[27] This means that only the information on the following pages remains at issue in this appeal:

- Emails: 68, 71 (part), 84, 87 (part), 89 (part), 99, 101, 102, 105, 106, 107, 108, 126, 127, 129, 133, 134, 141, 143-150, 151, 153, 154, 155, 156, 157, 158, 159, 160, 161, 176.
- Handwritten notes: 2, 5, 7, 8, 10-18.

### **Issue B: Does the *YCJA* or *MFIPPA* govern access to certain information in the records?**

[28] As explained in the Overview, I concluded on a preliminary basis, that access to some of the information remaining at issue is properly addressed under the *YCJA* and not the *Act*. I reached this conclusion because some of the information at issue relates to the involvement of the police, together with the school board, in incidents involving youth.

[29] The *YCJA* is a federal law. The doctrine of the paramountcy of federal legislation provides that where there is a conflict between federal legislation (such as the *YCJA*) and provincial legislation (such as *MFIPPA*), the federal legislation will prevail.

[30] Part 6 of the *YCJA* governs the management, publication and disclosure of records kept under the *YCJA* and information that would identify individuals who become involved in the youth justice system. The scope and purpose of the *YCJA* was discussed in the Ontario Court of Appeal decision, *S.L. v. N.B.*<sup>7</sup> (*S.L. v. N.B.*). The Court in *S.L. v. N.B.* held that Part 6 of the *YCJA* is an exclusive and comprehensive regime

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<sup>6</sup> This arises in two situations and when an email within an email chain is not related to the appellant's daughter or any matter involving the appellant's daughter.

<sup>7</sup> [2005] O.J. No. 1411

governing the disclosure of information about young persons involved in the youth criminal justice system.

[31] Section 110(1) of the *YCJA* states that no person shall publish the name or other information related to young person "if it would identify the young person as a young person dealt with under [the *YCJA*]." Section 111(1) of the *YCJA* states that no person shall the publish the name or other information related to a child or a young person, "if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person."

[32] "Publication" is defined in the *YCJA* to mean "the communication of information by making it known or accessible to the general public through any means" including via media. IPC adjudicators have held that, with limited exceptions, disclosure under the access provisions of the *MFIPPA* is equivalent to disclosure to the world because there are generally no limits on the dissemination of records accessed under the *MFIPPA*.<sup>8</sup> The Ontario IPC has not yet considered whether disclosure under the *Act* is equivalent to publication under the *YCJA*. However, the British Columbia Information and Privacy Commissioner has considered this issue and found that disclosure under the B.C. equivalent to *MFIPPA* of certain information protected by the *YCJA* amounts to "access to the world at large" and moreover "publication" under section 110 of the *YCJA*.<sup>9</sup> In consideration of the Ontario IPC's consistent approach in relation to disclosure and the principles protected by the *YCJA*, I find that disclosure under the *Act* would be equivalent to publication under the *YCJA*.

[33] There are other provisions of the *YCJA* that deal expressly with access to records held by government entities that directly pertain to young persons having been dealt with under the *YCJA*, including section 116. It was not necessary for me to determine the potential applicability of these provisions in the circumstances of this appeal and I therefore do not elaborate on them further in this order.

### ***Representations***

[34] Both parties were invited to make representations on this issue, in consideration of my preliminary determination. Only the appellant did. He disagrees that the *YCJA* applies.

[35] The appellant submits that the board has informed him that no charges were laid and no legal action taken as the result of the board's or the police's actions. He says that in these circumstances, the *YCJA* does not apply.<sup>10</sup> I am unable to further describe

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<sup>8</sup> See for instance Order MO-3746-I, MO-4282 at para. 61.

<sup>9</sup> Order F18-38 (British Columbia Information and Privacy Commissioner).

<sup>10</sup> The appellant made other arguments about the circumstances that gave rise to the police involvement and its impact on his daughter. Although he disputes that the *YCJA* takes precedence over the *Act*, he also argues that if the *YCJA* does apply, it provides his daughter with greater rights than she has been

the appellant's arguments without revealing confidential information.

### ***Findings***

[36] I have carefully reviewed and considered the information at issue in the records. I have also taken into account the familiarity that the appellant and his daughter have with the underlying circumstances in the records.

[37] Section 110(1) of the *YCJA* prohibits publication of any information that would reveal the identity of a young person dealt with under the *YCJA*. Section 111(1) prohibits publication of any information that would identify "[a] child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person."

[38] I am mindful that the purpose of the Part 6 of the *YCJA* is to act as a comprehensive scheme designed to carefully control access to youth criminal justice records and information about young persons involved in the youth criminal justice system. As explained above, I agree with the B.C. Information and Privacy Commissioner, as stated in Order F18-38, that disclosure under *MFIPPA* amounts to publication under the *YCJA*. In the circumstances of this appeal, I find that the *YCJA* prevails over *MFIPPA* in relation to the information contained on several of the pages of records at issue in this appeal.

[39] It is important to state clearly that my conclusion that the *YCJA* prevails does not mean that any charges were laid against any young person. In order not to run afoul of the *YCJA*, I am unable in this order to describe the nature of any allegations, actions taken by the police or the board, or information contained in records that I have determined are outside of the scope of the access regime in *MFIPPA*.

#### *The emails*

[40] I conclude that the *YCJA* and not *MFIPPA* governs access to the withheld information on the following pages of emails: 99, 101, 102, 105, 106, 107, 108, 126, 127, 129, 133, 134, 141, 143-150, 151, 153, 154, 155, 159, 160, 161, 176. As *MFIPPA* does not apply, I will not address this information further in this order.

[41] I will accordingly consider the appellant's right under *MFIPPA* to access only the withheld information on the following pages of the emails: 68, 71 (part), 84, 87 (part), 89 (part), 156, 157, 158.

#### *The handwritten notes*

[42] I conclude that the *YCJA* and not *MFIPPA* governs access to the following pages

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provided by the police or the board. If the appellant's daughter has rights under the *YCJA*, it is not the IPC that can address or enforce these rights.



of handwritten notes: 7, 8, 10-18. As *MFIPPA* does not apply, I will not address this information further in this order.

[43] I will accordingly consider the appellant's right under *MFIPPA* to access only the information on the following pages of the handwritten notes: 2, 5.

**Issue C: Do the records that I am addressing under *MFIPPA* contain "personal information" and, if so, to whom does it relate?**

[44] Remaining to be decided is the appellant's right of access under *MFIPPA* to the emails and handwritten notes listed immediately above. The appellant has unique rights under section 36(1) of the *Act* to access his and [because of section 54(c)] his daughter's personal information and it is for this reason that the board has disclosed a large amount of information to the appellant. The board has withheld portions of the records on the basis that those portions also contain the personal information of other individuals and disclosure of that information would be an unjustified invasion of their personal privacy [the exemption at section 38(b)].

[45] As I will explain, there is no dispute that all of the records remaining at issue contain the personal information of the appellant and his daughter. However, I must determine whether this information also contains the personal information of others.

[46] Section 2(1) of the *MFIPPA* defines "personal information" as "recorded information about an identifiable individual."<sup>11</sup> 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.

[47] Section 2(1) of the *Act* gives a list of examples of personal information, but it is not necessary for me to list them here.<sup>12</sup> 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>13</sup>

[48] The board states that the records at issue contain the personal information of the appellant's daughter and other individuals. Regarding the personal information of other individuals, the board submits that even when their names are removed, the remaining information would continue to be their personal information. The board says that the personal information at stake includes educational histories, personal and family circumstances that may reveal information about the medical or psychological history of individuals, and information related to students' family status.

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<sup>11</sup> "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps. See the definition of "record" in section 2(1).

<sup>12</sup> 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.": See Order 11.

<sup>13</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[49] The appellant does not specifically address whether the records contain personal information.

[50] I agree that all of the records remaining at issue contain both the personal information of the daughter and other individuals. In a few cases, the records also contain the personal information of the appellant himself. The types of personal information in the records include information about family circumstances, associations or friendships, involvement with school and police investigations, and performance at school.

[51] Regarding the personal information of individuals other than the appellant or his daughter, I agree with the board that even if their names and contact information are removed, those individuals remain identifiable in the circumstances and the withheld information is therefore personal information.

[52] Having found that the records remaining at issue contain the personal information of other individuals, as well as that of the appellant or his daughter's, I will consider whether the discretionary personal privacy exemption applies to the personal information of the other individuals.

**Issue D: Should the board's decision to withhold certain information on the basis of the exemption for personal privacy at section 38(b) be upheld?**

[53] As I noted above, the information remaining at issue is on the following pages of the emails: 68, 71, 84 (entire page), 87, 89, 156, 157, 158; and the following pages of the handwritten notes: 2, 5. I refer to this information generally as the "information remaining at issue."

[54] As explained above, 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 a number of exemptions from this right. Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[55] A requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.<sup>14</sup> I therefore first considered whether any of the remaining withheld information includes any portions that consist *only* of the appellant or the daughter's personal information. I find that it does not. The information remaining at issue consists of relatively discrete portions of information about other individuals.

[56] Sections 14(2) to (4) provide guidance in determining whether disclosure would

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<sup>14</sup> Order PO-2560.

be an unjustified invasion of personal privacy. Based on my review, none of sections 14(4)(a) to (c) apply to the circumstances of the present appeal.

[57] Sections 14(2) and (3) help in assessing whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). 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>15</sup>

[58] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>16</sup> The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>17</sup>

[59] The presumptions and factors that have been raised by the parties or are otherwise relevant to the information remaining at issue are:

(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;

...

(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

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

(d) relates to employment or educational history;

[60] With reference to the emails on pages 89, 157 and 158, the board submits that the information at issue reveals personal or family circumstances of students, that this information is highly sensitive and its disclosure would cause significant personal distress to those students. The board says that due to the sensitive nature of the

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<sup>15</sup> Order MO-2954.

<sup>16</sup> Order P-239.

<sup>17</sup> Order P-99.

information, the IPC should find in favour of maintaining confidentiality over the personal information of individuals other than the appellant or his daughter. I understand the board to be raising the factor at section 14(2)(f).

[61] With reference to the emails on pages 68, 71, 84, 87 and 156, the board says that this information is about the conduct and behaviour of students in the school or involving the educational history of students. The board submits that the information at issue was provided to the board by students and their caregivers and that disclosure could cause a chilling effect on the free sharing of information between the board and others. I understand the board to be raising the factor at the section 14(2)(h). The board also says that the information about students' behaviours, activities and circumstances is highly sensitive, which refers to the factor at section 14(2)(f). Lastly, the board says that disclosure of some of the information would be a presumed unjustified invasion of personal privacy under 14(3)(d).

[62] The board says that the information at issue in pages 2 and 5 of the handwritten notes was provided by or to the principal and involves students, parents or staff in relation to the conduct of students other than the appellant's daughter.<sup>18</sup>

[63] The appellant did not make specific representations on these issues. Based on the representations that he made at a later stage in the inquiry, I understand that he seeks access to the information in the records in order to assess the actions of the board in relation to his daughter. Arguably, the appellant is raising the factor at section 14(2)(a), which I consider below.

[64] In my view, the only factors relevant to the unjustified invasion of privacy issue are section 14(2)(a), which weighs in favour of disclosure, and sections 14(2)(h) and (f), which weigh against disclosure. I need not address section 14(3)(d) to arrive at my conclusions.

[65] Considering the interests of the parties and the information itself, I find that the factors weighing against disclosure prevail and that disclosure of the information at issue would therefore constitute an unjustified invasion of the personal privacy of individuals other than the daughter or the appellant.

[66] To begin, it is clear that the appellant hopes to bring some measure of scrutiny to the actions of the board involving his daughter while she was a student at the school [section 14(2)(a)]. It is apparent that an incident occurred while the daughter was a student at the school that was significant enough to involve the police. However, the information remaining at issue has little bearing on the appellant's daughter. In many cases, the daughter's name is included only incidentally in a note or record relating to another student. This information has no relation to the matter of concern to the appellant. As a result, I find that the factor at section 14(2)(a) is not a relevant

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<sup>18</sup> I note that the board made other representations about portions of the handwritten for which I the *YCJA* is the governing authority. I have not repeated these arguments.

consideration bearing on disclosure of the information remaining at issue.

[67] On the other hand, I find that disclosure of the remaining information at issue would cause significant personal distress to the identifiable individuals and is therefore highly sensitive [section 14(2)(f)]. I also find that some of this information was provided to the school board with a reasonable expectation that it would be treated confidentiality [section 14(2)(h)]. These latter instances involve information provided to the board by a parent or caregiver about their own children that was only tangentially related to the appellant's daughter.

[68] Although I find that only factors favouring privacy protection are relevant and apply, I have nevertheless balanced these interests with the interests of the appellant given the significance of his right to access his daughter's information under sections 36(1) and 54(c). In my view, the privacy interests of the individuals other than the appellant and his daughter weigh more heavily. I therefore conclude that disclosure of the information at issue would result in an unjustified invasion of personal privacy of individuals other than the appellant and his daughter. The information is therefore exempt from disclosure under section 38(b).

[69] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion in good faith and take into account only relevant considerations. The IPC has the authority to determine that an institution failed to exercise its discretion or that it erred in doing so.

[70] The board asserts that it exercised its discretion to withhold certain information under section 38(b) properly, free from any bad faith and without taking into account any irrelevant considerations. The board explains that it had to find an appropriate balance between disclosure and protection of the privacy interests of other individuals.

[71] Although the appellant is dissatisfied with the board's actions and he feels at a disadvantage because he is unable to make submissions based on knowledge of the information at issue, he has not raised any particular concerns that could cast doubt on the board's exercise of discretion.

[72] In my view, the board has exercised its discretion properly and free from any improper consideration. I uphold its exercise of discretion and accordingly its decision to withhold the information remaining at issue.

**ORDER:**

I uphold the board's decision not to disclose the information remaining at issue under *MFIPPA* and I dismiss the appeal.

Original signed by: \_\_\_\_\_

August 3, 2023 \_\_\_\_\_

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Valerie Jepson  
Adjudicator