

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-4506

Appeal MA23-00119

Peel Regional Police Services Board

March 27, 2024

**Summary:** The appellant made a request to the police for access to information relating to a complaint about him. The police granted partial access to responsive records but denied access under the personal privacy exemption in section 38(b) to a video recording of an interview with the individual who made the complaint. In this order, the adjudicator finds that the video recording is exempt under section 38(b). She upholds the police's decision to deny access to it and dismisses the appeal.

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

**Orders Considered:** Order MO-1410.

### OVERVIEW:

[1] The appellant made a request to the Peel Regional Police Services Board (the police) for access to information about a specific occurrence arising from a complaint made against him.

[2] The police located responsive records and issued a decision granting partial access. Among the responsive records was a video recording of an interview with the individual who made the complaint (the affected party in this appeal). The police denied access to the video in its entirety based on the personal privacy exemption in section 38(b).

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). The appellant and the police participated in mediation to explore the possibility of resolution.

[4] The police maintained their position that the video is exempt from disclosure. When a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the appeal process on the sole issue of access to the video recording. I conducted an inquiry during which I received representations from the police, the affected party, and the appellant.

[5] In this order, I find that the video recording is exempt under section 38(b), and I uphold the police's decision to deny access to it.

## **RECORDS:**

[6] The record at issue is a video recording of a police interview with the affected party.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the record?

## **DISCUSSION:**

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

[7] Before considering the personal privacy exemption in section 38(b), I must determine whether the record contains "personal information." If it does, I must determine whether the personal information belongs to the appellant, to other identifiable individuals, or both.

[8] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is about an identifiable individual when it refers to the individual in a personal capacity, meaning that it reveals something of a personal nature about them, and it is reasonable to expect that the individual can be

identified from the information alone or combined with other information.<sup>1</sup> Section 2(1) of the *Act* contains a list of examples of personal information. The list of examples is not an exhaustive list, meaning that other kinds of information may also be “personal information,” even if not listed in section 2(1).<sup>2</sup> Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” them.<sup>3</sup>

### ***Representations***

[9] The police submit that the record contains personal information belonging to multiple affected parties, including the appellant, who are discussed in the video recording. The police submit that the record relates to allegations of criminal harassment and to the affected parties in their personal capacities.

[10] The appellant submits that the information in the record cannot be characterized as personal information because it relates to matters arising from a “professional type” relationship. The appellant submits that his interactions with the affected party were limited to a “professional organization and committee” with which they were both involved, and that the allegations against him did not relate to any personal dealings but rather arose from organization matters. He submits that, although information provided to the police by the complaining affected party is about him, the affected parties’ information in the records is not personal information. The appellant submits that the affected party cannot hide behind the personal information provisions in the *Act* because she is a public figure, and that her complaint against him relates to the organization’s business and to affected parties acting in a business, professional or official capacity.

[11] The affected party says that the record contains her personal information.

### ***Analysis and findings***

[12] I find that the record contains personal information belonging to multiple identifiable individuals, including the appellant and the affected party.

[13] First, I find that the entire record contains the affected party’s personal information. This includes her voice and her image, which, in turn, reveal other personal information about her;<sup>4</sup> her name and the nature of her involvement with the organization;<sup>5</sup> and her personal views or opinions about her interactions and relationships with various affected parties and on various topics.<sup>6</sup>

[14] I also find that the record contains information belonging to other identifiable

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

<sup>2</sup> Order 11.

<sup>3</sup> See orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Section 2(1)(a) and (b).

<sup>5</sup> Section 2(1)(h).

<sup>6</sup> Section 2(1)(e).

individuals, including the appellant. This includes their names together with the affected party's comments on her past and current relationships with them and their actions and roles in the organization,<sup>7</sup> and reveals the individuals to be the subjects of complaints by the affected party.<sup>8</sup>

[15] As noted above, the appellant submits that the information in the record is not personal information because he and the affected party had contact only by their involvement in what he says was a professional organization.

[16] While generally information about an individual in an official or professional capacity is not considered to be "about" them,<sup>9</sup> in some situations, even if information relates to an individual in an official or professional capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.<sup>10</sup>

[17] Based on both the appellant and the affected party's representations, they were involved in a volunteer organization within their community and that, but for their involvement in this organization, their paths did not otherwise cross. I acknowledge that the reasons that prompted the appellant to go to the police may have arisen from actions occurring in, or associated with, the community-based volunteer group or organization. However, based on my review of the parties' representations and the video itself, I find that, although the cause of the affected party's alleged concerns may have had its genesis in organization business, disclosure of the video would reveal matters of a personal nature about the affected party, including her personal and political views or opinions, and that it therefore contains her personal information. I find that the same is true for the information of other affected parties, including the appellant, and that disclosure would reveal other personal information about them, including that they were identified in a complaint made to the police.

[18] Because I find that the record contains personal information belonging to the appellant and to other identifiable individuals, I will next consider whether it is exempt from disclosure under section 38(b).

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<sup>7</sup> Sections 2(1)(g) and (h).

<sup>8</sup> Section 21(h).

<sup>9</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(2.1) and (2.2), which state:

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

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

<sup>10</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

**Issue B: Does the discretionary personal privacy exemption in section 38(b) apply to the record?**

[19] 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.

[20] 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 privacy.

[21] 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 this would result in an unjustified invasion of the other individual's personal privacy.

[22] 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).

[23] Sections 14(1) to (4) of the *Act* provide guidance in determining whether disclosure would be an unjustified invasion of the other individual's personal privacy, as follows:

- if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b);
- section 14(2) lists relevant circumstances, or factors, that weigh for or against disclosure and that must be considered. Some of the factors weigh in favour of disclosure, while others weigh against it;
- section 14(3) lists circumstances in which disclosure of another's personal information is presumed to constitute an unjustified invasion of their personal privacy; and,
- section 14(4) lists circumstances where disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[24] The parties do not rely on paragraphs (a) to (e) of section 14(1) or on section 14(4), and I find that they do not apply in this appeal.

[25] Because the appellant seeks access to the entire video interview, I will consider and weigh the factors and presumptions in section 14(2) and (3) and balance the interests of the parties in deciding whether disclosure would be an unjustified invasion of personal

privacy under section 38(b).<sup>11</sup>

## ***Representations***

### *The police's representations*

[26] The police submit that the personal information was collected in support of an investigation into allegations of criminal harassment contrary to the *Criminal Code*. They submit that the presumption in section 14(3)(b) therefore applies and weighs against disclosure, and that no factors in section 14(2), or any unlisted factors, might apply to weigh either in favour of or against disclosure.

### *The appellant's representations*

[27] The appellant concedes that the affected party made a complaint of harassment against him that was investigated and determined to be unfounded.

[28] He submits that he needs access to the video to start criminal proceedings against the affected party, and that the factor in section 14(2)(d) (which concerns a fair determination of rights) therefore applies and weighs in favour of disclosure. He says that he needs the video so that he may prosecute the affected party for public mischief for causing a police investigation by filing false charges and attempting to damage his reputation. He argues that disclosure would increase public confidence in the police and shed light on what the police determined were unfounded allegations. He says that the police ought to have cautioned the affected party about public mischief before she made the allegations and that the record is necessary to prosecute her accordingly. He says that disclosure would not constitute an unjustified invasion of the affected party's personal privacy because making an unfounded complaint has opened her to scrutiny and repercussions.

[29] The appellant argues that disclosure of the video is necessary to continue an investigation or prosecute a violation, in this case, the potential charge of public mischief against the affected party. He says that the exception in section 14(3)(b), which allows for disclosure where it is necessary to continue an investigation or to prosecute it, therefore applies.

[30] The appellant also says that he is aware of the information the affected party provided to the police, since a police officer relayed it to him during the investigation. He says that the partially disclosed officer's notes describe the investigation, so that it would be absurd to withhold the video. He submits that he is aware of all the parties involved because they were all part of the same committee, and that there is no reason to deny him access to the video since he knows the affected party's identity.

[31] The affected party's representations discuss several matters relating to her

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<sup>11</sup> Order MO-2954. Also see paragraph 38, below.

involvement with the organization, and with her relations and issues with various members. I have read the affected party's entire representations but have only considered those portions relevant to the issues before me. The affected party says that the information in the record is highly sensitive because it relates to a "very personal matter" for her. She says that the appellant seeks access for the purpose of evidence-gathering before deciding whether to proceed with litigation. She says that disclosure would compromise her safety, expose her to harm, and would constitute an unjustified invasion of her personal privacy.

### ***Analysis and findings***

#### *The presumption against disclosure in section 14(3)(b)*

[32] Section 14(3)(b) states that:

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

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation[.]

[33] Even if, as is the case here, no charges or criminal proceedings followed the investigation, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>12</sup>

[34] I have reviewed the video and find that the personal information in it was compiled and is identifiable as part of an investigation into a possible violation of law alleged in a complaint against the appellant. The affected party contacted the police with allegations which, if founded, could have resulted in charges. The police closed their investigation after concluding that no charges were warranted, and this conclusion was the result of their investigation. The video was compiled and is identifiable as part of the investigation that ended when the complaint was determined to be unfounded. The fact that no charges were laid does not alter my finding that the presumption in section 14(3)(b) applies to the video, since, as noted above, the presumption only requires that there be an investigation into a possible violation of law.

[35] I do not accept the appellant's submission that the presumption in section 14(3)(b) does not apply because of the exception that "disclosure is necessary to prosecute the violation or to continue the investigation." The appellant in Order MO-1410 raised a similar argument. In addressing this argument, the adjudicator held that the exception contained in the phrase "continue the investigation" refers to the investigation for which the personal information was compiled. In this case, the record was compiled as part of an investigation into allegations against the appellant that the police closed as unfounded.

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<sup>12</sup> Orders P-242 and MO-2235.

As a result, no prosecution is anticipated. Because there is no investigation to continue and no violation has been made out for the purpose of the second part of section 14(3)(b), I find that this provision does not apply in the circumstances.

[36] As a result, I find that disclosure of the personal information in the record would result in a presumed unjustified invasion of the affected party's personal privacy under section 14(3)(b).

[37] Under section 38(b), however, the presumption in section 14(3)(b) must also be weighed and balanced with any factors in section 14(2) that apply in the circumstances.<sup>13</sup>

[38] The police submit that the factors in section 14(2) cannot be used to rebut a presumed unjustified invasion of personal privacy under section 14(3)(b). This is true for records that do not contain a requester's own personal information.<sup>14</sup> However, for records claimed to be exempt under section 38(b), which applies to records containing the mixed personal information of a requester and others as is the case here, the factors and presumptions in sections 14(2) and 14(3) are weighed and the parties' interests balanced in deciding whether disclosure of the other individual's personal information would be an unjustified invasion of their personal privacy.<sup>15</sup>

[39] I will therefore next consider whether any factors in section 14(2), or unlisted factors, apply to weigh in favour of disclosure or against it.

*Do any of the factors in section 14(2) apply?*

[40] Section 14(2) lists factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>16</sup>

[41] The appellant relies on the factor in section 14(2)(d) (fair determination of rights), which weighs in favour of disclosure, while the affected party submits that the factor in section 14(2)(f) (highly sensitive) is relevant and weighs against disclosure.

Section 14(2)(d): fair determination of rights

[42] The appellant submits that the factor in section 14(2)(d) applies because he says the record is necessary for him "to start" legal proceedings against the affected party.

[43] Section 14(2)(d) requires an institution, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, to consider whether "the personal information is relevant to a fair determination of rights affecting the person who made the request." If found to apply, this factor weighs in favour of

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<sup>13</sup> Orders P-242 and MO-2235.

<sup>14</sup> See section 14.

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

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



disclosing the personal information.

[44] The IPC has found that for section 14(2)(d) to apply, however, the appellant must establish that the right in question is a legal right; that it is related to a proceeding that has not already been completed but that is either existing or contemplated; that the information has some bearing or is significant to the determination of the right in question, and that it is required in order to prepare for the proceeding or to ensure an impartial hearing.

[45] All four parts must be established for section 14(2)(d) to apply. Although I am mindful that the video appears to relate to charges that the appellant says he wishes to pursue, and therefore, to a fair determination of his rights, I find that all four parts of the test for section 14(2)(d) to apply have not been met in the circumstances. I am not persuaded that the video recording is itself required for the appellant to start a legal proceeding, that is, to make a complaint to the police, to lay a private information against the affected party, or to start a civil claim. I further find that the police's withholding of only the videotape (while having disclosed other responsive records) does not prevent the appellant from pursuing remedies that might be available to him legally. Therefore, as the appellant has not satisfied me that the four-part test of section 14(2)(d) has been met, I find that section 14(2)(d) does not apply to this appeal.<sup>17</sup>

[46] In any event, even if I were to find that all four-parts of the test have been met and that section 14(2)(d) does apply, I find that it would nevertheless be outweighed by the presumption in section 14(3)(b), above, and by the factors in section 14(2) that I discuss next.

Section 14(2)(f): highly sensitive

[47] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether 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.

[48] The affected party submits that her police interview was "highly personal." In the circumstances of this appeal, which include the tensions described by the parties, I accept that disclosure of the video could reasonably be expected to cause the affected party significant personal distress. Accordingly, I find that the factor in section 14(2)(f) applies and weighs against disclosure.

[49] I have also considered whether any additional or unlisted factors apply to weigh in favour of disclosure of the record. The appellant submits that none of the factors in section 14(2)(f) through (i) – factors which, if they apply, favour privacy protection – apply in this case. I disagree and find, based on my review of the video and the parties'

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<sup>17</sup> Order PO-1833.

representations, that the factor in section 14(2)(h) also applies and weighs in favour of privacy protection.

Section 14(2)(h): supplied in confidence

[50] For the factor at section 14(2)(h) to apply, I must be satisfied that the individual supplying the information and the recipient (in this case, the affected party, and the police, respectively) had an expectation that the information would be treated confidentially, and that this expectation is reasonable in the circumstances. Section 14(2)(h) requires an objective assessment of the reasonableness of the expectation of confidentiality.<sup>18</sup>

[51] I find that it was reasonable in the circumstances for the affected party to expect that she provided her personal information to the police in confidence. In my view, the context of the affected party's statements to the police and the surrounding circumstances are such that a reasonable person would expect that the information they were providing to the police would be subject to a degree of confidentiality. The record contains the affected party's views and opinions, including on various matters in which she was involved, and which were collected outside of the presence of the appellant. I find that the factor in section 14(2)(h) applies and weighs against disclosure of the affected party's personal information in the circumstances.

*Absurd result*

[52] As noted above, the appellant submits that it would be absurd to deny him access to the record, since an officer relayed to him the information that the affected party provided to the police during the investigation, and the appellant therefore "already know[s] what the information is about."

[53] Past IPC orders have held that denying a requester access to information that they are otherwise aware of could lead to an absurd result. In certain cases, the information may not be exempt under section 38(b), because to withhold it would be absurd and inconsistent with the purpose of the exemption.<sup>19</sup> The absurd result principle has been applied where, for example, a requester was present when the information was provided to the institution,<sup>20</sup> or where the information is clearly within the requester's knowledge.<sup>21</sup>

[54] It is apparent from the records the appellant submitted with his representations (that were partially disclosed in response to his request) that the police spoke with the appellant about the affected party's complaint and the allegations against him. However, it is also apparent from those records and the video at issue that the police spoke to the parties separately. I have no basis to conclude that the appellant is aware of the contents

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<sup>18</sup> Order PO-1670.

<sup>19</sup> Orders M-444 and MO-1323.

<sup>20</sup> Orders M-444 and P-1414.

<sup>21</sup> Orders MO-1196, PO-1679 and MO-1755.

of the affected party's remaining statements to police contained in the video and which, as I have noted above, include matters and individuals other than the appellant.

[55] In these circumstances, I find that disclosure under the absurd result principle would be inconsistent with the purpose of the section 38(b) exemption. I therefore find that the absurd result principle does not apply.

[56] Finally, I have considered whether the appellant's personal information can be severed from the record so that portions of the video could be disclosed to him. Section 4(2) of the *Act* obliges institutions to disclose as much of a responsive record as can reasonably be severed without disclosing material which is exempt. The key question raised by section 4(2) is one of reasonableness. An institution will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets," or "worthless," "meaningless" or "misleading" information.<sup>22</sup> Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed.<sup>23</sup>

[57] As I have found above, the entire video contains the affected party's personal information. Although she makes some comments about the appellant that she claimed warranted police intervention, and which the appellant can ascertain from the records already disclosed to him and his familiarity with the underlying circumstances, this personal information of the appellant is intertwined with the affected party's own personal information, either in the form of her views, or because her video image would reveal her demeanour and emotions. After reviewing the video and considering the circumstances under which the complaint was made, I am satisfied that the appellant's personal information is inextricably intertwined with the affected party's personal information and the personal information of other identifiable individuals and that it cannot reasonably be severed without revealing information that is exempt under section 38(b), or without resulting in disconnected snippets of information being revealed.<sup>24</sup>

[58] Since I find that there are no factors favouring disclosure that would outweigh considerations favouring privacy protection under the *Act*, I find that the record is exempt under section 38(b), and I uphold the police's decision to deny access to it.

***The police properly exercised their discretion under section 38(b)***

[59] The section 38(b) exemption is discretionary, meaning that the police can decide to disclose information even if it qualifies for exemption. The police must exercise their discretion when determining whether to disclose information in response to a request. On appeal, although it cannot substitute its discretion for that of the police, the IPC may

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<sup>22</sup> Order PO-3809; see also, Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

<sup>23</sup> Order PO-3809.

<sup>24</sup> See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997) 192 O.A.C. 71 (Div. Ct.)

determine whether the police failed to exercise their discretion properly.<sup>25</sup>

[60] The police submit that they balanced the rights of the parties and the need to protect sensitive personal information. The police say they considered that disclosure of videotaped statements about alleged criminal activity would be contrary to their public safety mandate and could risk public safety and decrease confidence in the police. The appellant did not expressly address the police's exercise of discretion, although he argues that he has a compelling need for access to the video in order to bring charges, and that his interest in the video is greater than the affected party's, both of which may be relevant considerations in the exercise of an institution's discretion.

[61] In this case, I am satisfied that the police considered relevant factors in exercising their discretion to deny access to the video. I find that they considered that the records contain personal information belonging to a number of identifiable individuals, only one of which was the appellant, and weighed this against the fact that disclosure would identify these individuals and reveal personal information about them. I have also considered that the police made efforts to disclose responsive records to the appellant, except for the video. I am satisfied that that police did not act in bad faith in denying access to the video, considering that they were required to protect the interests of other identifiable individuals whose privacy rights would be affected by disclosure. I accept that the police's exercise of discretion was reasonable, and that they did not exercise their discretion for an improper purpose.

[62] For these reasons, I uphold the police's decision and dismiss this appeal.

**ORDER:**

This appeal is dismissed.

Original signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ March 27, 2024

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<sup>25</sup> In the case of a finding of an improper exercise of discretion, the IPC may send a matter back to the institution for a re-exercise of its discretion.