Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4565

Appeal MA21-00748

Toronto Police Services Board

September 18, 2024

Summary: An individual asked the Toronto Police Services Board to provide her with all records in which she is named. The police decided to disclose a significant number of records to her but refused to provide her with some records and parts of records. The individual wanted access to the information not provided to her and also believed that the police had not located all records in their search. In this order, the adjudicator upholds the police's decision to withhold some records because they are excluded from the *Act* under the exclusion for labour relations or employment records (section 52(3)3). He also upholds the police's decision to withhold information that they received from a law enforcement agency in the United States (section 38(a), read with section 9(1)(d)), and the names and other personal information of individuals other than the appellant, because disclosure would be an unjustified invasion of those individuals' personal privacy (section 38(b)). He orders the police to provide the appellant with the names of two individuals identified in a professional capacity in the records. Finally, he finds that the police conducted a reasonable search for records responsive to the appellant's request.

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"), 2(2.1), 9(1)(d), 17, 38(a) and 38(b).

OVERVIEW:

[1] The appellant has had several interactions with the Toronto Police Service (the police) over the past two decades. In some cases, she complained to the police about alleged criminal offences committed against her by other individuals. The appellant also

filed complaints with the Office of the Independent Police Review Director (OIPRD) about the alleged misconduct of police officers in responding to some of these incidents. This order considers the extent of the appellant's right of access to police records relating to these interactions.

[2] The appellant submitted a request to the police[1] under the *Act*, which was subsequently amended to a request for the following records:

> All TPS records in which [the appellant] is named, including and/or additionally:
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> - Notes of [named police officer];
> - Notes of [named police officer], badge [specific number].
> - Any recorded statement made by [the appellant]; and
> - Any intimate images obtained by TPS officers of [the appellant].

[3] In response, the police located records including occurrence reports, police officers' notes and Intergraph Computer-Aided Dispatch (I/CAD) event detail reports. The police granted the appellant partial access to these records.

[4] The police disclosed most of the information in these records to the appellant, including information about her. However, they withheld information about several other individuals under the discretionary exemption in section 38(b) (personal privacy) of the *Act*. In addition, they withheld information that they received from a police service in the United States under section 38(a) (discretion to refuse access to requester's own personal information), read with section 9(1)(d) (relations with other governments) of the *Act*.

[5] The police also severed some information from the police officers' notes as not responsive because it relates to other incidents not involving the appellant. Their decision letter also advised the appellant that the police had not yet received the notes of one officer named in her access request.

[6] The appellant appealed the police's access decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute.

[7] During mediation, the police issued a supplementary decision providing the appellant with partial access to the notes of the officer named in the appellant's request. They withheld information in those notes about other individuals under section 38(b) of the *Act* and also other information that is not responsive to the appellant's request. The

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[1] The definition of "institution" in paragraph (b) of section 2(1) of the *Act* includes a "police services board." Consequently, the institution in this appeal is formally the Toronto Police Services Board. However, the Toronto Police Service processes access-to-information requests on behalf of the Board.

appellant advised the mediator that she seeks access to all the withheld information in the records, except for the non-responsive information.

[8] The appellant confirmed that she also believes that additional records responsive to her request should exist. In response, the police conducted a search for additional records, including any audio or video recordings, as well as photographs, but confirmed that they could not locate any additional records. The appellant then identified a named officer in the Sex Crimes Unit as potentially having records about her. The police subsequently conducted a search in the Sex Crimes Unit for records responsive to her request but did not locate any further records.

[9] The appellant submitted a document identifying additional records that she believes should exist. This document was shared with the police. The police confirmed that no further records exist and claimed that some of the records she identified in that document are outside the scope of her access request.

[10] The appellant then submitted a second document outlining other additional records that she believes should exist. In response to that document, the police agreed to conduct another search and located additional records, including emails. They sent a second supplementary decision letter to the appellant granting partial access to these emails. They withheld some information in the emails because it is not responsive to the appellant's request. The appellant confirmed that she does not seek access to this non-responsive information.

[11] The police's second supplementary decision letter also stated that some emails that relate to the appellant's complaint against specific officers with the OIPRD are excluded from the *Act* by section 52(3) (labour relations or employment records). The appellant advised the mediator that she seeks access to these records.

[12] The second supplementary decision letter also stated the following:

> After consultation with key internal stakeholders, based on your additional request for the [police] to search for files (with your name) on computers/servers, it has been determined that the [police] is not capable of producing the information that you seek without interfering with the operations of this institution. There is no purpose built tool in place that can assist in locating files and file contents based on a search criteria. In addition, many of the officers involved in the initial investigation are no longer with the Toronto Police Service and their computer terminals would have reached end of life replacement.[2]

[2] The police referenced section 1 of Regulation 823 to support its position, which states: "A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution."

[13] The appellant confirmed that she continues to believe that additional records should exist in response to her access request, including intimate images of her, a statement made to the police by a specific individual, and a report filed by a specific police officer.

[14] The appeal was not resolved during mediation and was moved to adjudication, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator initially assigned to this appeal decided to conduct an inquiry and sought and received representations from both the police and the appellant on the issues to be resolved. This appeal was then transferred to me to complete the inquiry. I determined that it was not necessary to seek additional information from the parties before making my decision.

[15] In this order, I find that:

- the 21 pages of emails that relate to an officer who was the subject of a complaint that the appellant filed with the OIPRD are excluded from the *Act* by section 52(3)3;
- the remaining records at issue contain the "personal information" of the appellant and several other individuals;
- the information in an occurrence report that the police received from a U.S. law enforcement agency, which includes the appellant's personal information, is exempt from disclosure under section 38(a), read with section 9(1)(d) of the *Act*;
- the names and other personal information of individuals other than the appellant in the 29 pages of occurrence reports, police officers' notes and I/CAD event detail reports are exempt from disclosure under section 38(b) of the *Act*; and
- the police conducted a reasonable search for records responsive to the appellant's access request, as required by section 17 of the *Act*.

[16] I uphold the police's access decisions but order them to disclose the names of two individuals identified in a professional capacity in an occurrence report, because such information is not their personal information and it cannot be exempt from disclosure under section 38(b) of the *Act*.

RECORDS:

[17] There are 50 pages of records at issue in this appeal:

- 28 pages of occurrence reports, police officer's notes and I/CAD event detail reports from the police's initial access decision [withheld in part under the exemptions in sections 38(a)/9(1)(d) and 38(b)];

- one page of a police officer's notes from the police's first supplementary access decision, [withheld in part under the exemption in section 38(b)]; and
- 21 pages of emails from the police's second supplementary access decision [withheld in full under the exclusion in section 52(3)].

ISSUES:

A. Does the section 52(3) exclusion for records relating to labour relations or employment matters apply to any records?

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

C. Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the section 9(1)(d) exemption, apply to the information at issue?

D. Does the discretionary personal privacy exemption at section 38(b) apply to the personal information in the records?

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

F. Did the police conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the section 52(3) exclusion for records relating to labour relations or employment matters apply to any records?

[18] The police claim that the 21 pages of emails that relate to an officer who was the subject of a complaint that the appellant filed with the OIPRD are excluded from the *Act* by section 52(3)3, which states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
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> . . .
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[19] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*.[3]

[20] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[4] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*. If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.[5]

Analysis and findings

[21] For section 52(3)3 to apply, the police must establish that the emails were collected, prepared, maintained or used by themselves or on their behalf in relation to meetings, consultations, discussions or communications about labour relations or employment-related matters in which the police have an interest.

[22] For the reasons that follow, I find that these emails are excluded from the *Act* by section 52(3)3.

[23] The police submit that these emails are excluded under section 52(3)3 because they were collected, maintained and used by them in relation to consultations and communications about "employment related matters" in which they have an interest.

[24] The appellant submits that the emails are not excluded from the *Act* by section 52(3)3 because the OIPRD did not investigate the complaints that she filed against the two police officers, which means that these records are not communications about "employment related matters."

[25] The emails are between staff in the police's professional standards unit and they discuss the employment status of one of the two officers who was the subject of the appellant's complaint to the OIPRD. These discussions were triggered after the professional standards unit staff received a letter from the OIPRD that informed them that it would not be proceeding with investigating the appellant's complaint against two officers because it was not in the public interest to do so.

[26] The term "employment related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[6] The discussions about the officer's employment status in these emails is clearly a human resources issue arising from the

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[3] Order PO-2639.
[4] *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).
[5] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[6] Order PO-2157.

relationship between the employer (the police) and one of its employees (the officer). As the employer of this officer, the police clearly have an "interest" in his employment status.

[27] In these circumstances, I find that the emails were prepared, maintained and used by the police in relation to discussions and communications about "employment related" matters in which the police have an interest. As a result, these records are excluded from the *Act* by section 52(3)3.

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

[28] The remaining records at issue include 29 pages of occurrence reports, police officers' notes and I/CAD event detail reports. As noted above, the police disclosed most of the information in these records to the appellant, including information about her. However, they withheld information that they received from a police service in the United States under the exemption in section 38(a), read with section 9(1)(d) of the *Act*. In addition, they withheld information about several other individuals under the personal privacy exemption in section 38(b) of the *Act*.

[29] The sections 38(a) and (b) exemptions only apply to "personal information." If the information that the police have withheld is not "personal information," it cannot be exempt from disclosure under section 38(a) or (b). Consequently, it must be first determined whether the remaining records contain "personal information," and if so, to whom it relates.

[30] Section 2(1) of the *Act* gives a list of examples of personal information. Those that are relevant to this appeal are:

> "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,
> >
> > . . . .
> >
> > (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.

[31] 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."[7]

[32] 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] In addition, section 2(2.1) of the *Act* states:

> 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.

[33] 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]

[34] Information in records about individuals that reveals that they are complainants, victims, witnesses or the subjects of a criminal investigation, is their "personal information," as that term is defined in section 2(1) of the *Act*.[10]

Analysis and findings

[35] For the reasons that follow, I find that the records contain the "personal information" of the appellant and several other individuals. However, I also find that the names of two individuals in an occurrence report is not their "personal information" because it identifies them in a professional capacity and does not reveal something of a personal nature about them.

[36] The police submit that the records contain the personal information of three individuals with whom the appellant has engaged in disputes. It submits that this personal information includes their names, ages, sex and other identifying information.

[37] The appellant submits that the records contain the personal information of individuals other than herself and the mixed personal information of herself and other individuals. She claims that the five other individuals whose personal information appears in the records include a woman who has been stalking her; two former boyfriends; an

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[7] Order 11.
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[9] Orders P-1409, R-980015, PO-2225 and MO-2344.
[10] E.g., Orders PO-2604, PO-4336, PO-4411-F, MO-4274, MO-4409 and MO-4474.

individual who suggested that he had received intimate images of the appellant; and a university faculty member.

[38] I have reviewed the 29 pages of records, which include occurrence reports, police officers' notes and I/CAD event detail reports. There is information in these records about the appellant and several other individuals.

Appellant

[39] There is a substantial amount of information about the appellant in all of the records. Her name appears with other information relating to her in the occurrence reports, police officers' notes and I/CAD event detail reports. This other information includes her age, sex, education, and the views or opinions of other individuals about her. In some records, she is identified as the victim/complainant, while in others, she is the subject of a criminal investigation.

[40] I find that the information about the appellant in these records is her "personal information." In particular, it is "recorded information about an identifiable individual" that is personal in nature that falls within paragraphs (a), (b), (c), (g) and (h) of the definition of "personal information" in section 2(1). The police have disclosed most of the appellant's own personal information to her but have withheld some of her personal information under section 38(a), read with section 9(1)(d).

Other individuals

Personal capacity

[41] There is also information about several other individuals in the records, including a woman whom the appellant claims is stalking her and two other individuals who had run-ins with the appellant that resulted in police investigations. These individuals are identified in the records in a personal capacity (not a professional, official or business capacity) and their names appear with other information about them, including their ages and sex. In the records, the alleged stalker is identified as the subject of a criminal investigation and the other two individuals who had run-ins with the appellant are identified as victims (complainants).

[42] I find, therefore, that the information about these individuals in the records is their "personal information." In particular, it is "recorded information about an identifiable individual" that is personal in nature that falls within paragraphs (a) and (h) of the definition of "personal information" in section 2(1). The police have withheld the names and other personal information of these individuals under the personal privacy exemption in section 38(b) of the *Act*.

Professional, official or business capacity

[43] The records also identify a number of individuals in a professional capacity,

including their names and job titles. Such information is excluded from the definition of "personal information" by section 2(2.1) of the *Act*. As noted above, however, 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.[11]

[44] Consequently, the names and job titles of these individuals, coupled with other information about them in the records, might still qualify as their personal information if this information reveals something of a personal nature about them (e.g., if they are identified as complainants, victims, witnesses or the subjects of a criminal investigation.)

[45] There are at least three individuals who are identified in the records in a professional capacity, including their names and job titles. The police withheld the names of these individuals under section 38(b) of the *Act*. Even though these individuals are identified in a professional capacity in the records, the information about them reveals that they are witnesses in a criminal investigation. In my view, this reveals something of a personal nature about these individuals, which causes the information to cross over from professional information into the realm of "personal information."

[46] I find, therefore, that the information about these individuals in the records is their "personal information." In particular, it is "recorded information about an identifiable individual" that is personal in nature that falls within paragraphs (a) and (h) of the definition of "personal information" in section 2(1).

[47] However, there are also references in an occurrence report to a complaint that the appellant filed with the "Title IX Compliance Officer" at a university in California that she attended, and another one that she filed with a "Civil Rights Director" at the U.S. Department of Education. These individuals are both identified by name and job title. The police disclosed these individuals' job titles but withheld their names, even though the appellant is the person who filed complaints with these two individuals and knows their names.

[48] In my view, these two individuals are identified purely in a professional capacity in the records. Even though they are mentioned incidentally in the police records, they are not complainants, victims, witnesses or the subjects of a criminal investigation. I find, therefore, that the information in the records about these two individuals, including their names, does not reveal something of a personal nature about them that would cause it to cross over from professional information into the realm of "personal information."

[49] Because the names of these two individuals are not their "personal information," this information cannot be withheld under section 38(b) of the *Act*, and I will order that it be disclosed to the appellant.

[50] I will now determine whether the remaining "personal information" in the records

[11] *Supra* note 9.

withheld by the police is exempt from disclosure under sections 38(a) and (b) of the *Act*.

Issue C: Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the section 9(1)(d) exemption, apply to the information at issue?

[51] 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 general right of access to one's own personal information.

[52] Section 38(a) of the *Act* 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.

[53] 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.[12]

[54] 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. This is addressed under Issue E (Exercise of Discretion)," below.

[55] In this case, the police rely on section 38(a), read with section 9(1)(d), to deny access to the appellant's personal information in part of an occurrence report that contains information that they received from a law enforcement agency in the United States.

Section 9(1)(d)

[56] Section 9(1) protects certain information that an institution has received from other governments.[13] It states, in part:

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[12] Order M-352.

[13] The IPC has issued several orders on the purpose of a similar exemption under section 15 of the provincial *Freedom of Information and Protection of Privacy Act*: see Orders PO-2247, PO-2369-F, PO-2715, PO-2734. See also Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.); and Orders PO-1927-I, PO-2569, PO-2647, and PO-2666.

> A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> . . . .
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c);

[57] Section 9(2) contains an exception to the exemptions in section 9(1). It states:

> A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

[58] The purpose of the section 9(1) exemption is to ensure that institutions under the *Act* can continue to receive information that other governments might not be willing to provide without some assurance that it will not be disclosed.[14] It is meant to protect the interests of the organization that provided the information, not the institution that received it.[15]

[59] The exemptions found in section 9(1) apply where disclosure of the record "could reasonably be expected to" reveal information received from the other government. Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[16] However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[17]

Analysis and findings

[60] For the reasons that follow, I find that the information in the part of the occurrence report withheld by the police is exempt from disclosure under section 38(a), read with section 9(1)(d).

[61] The police claim that 38(a), read with 9(1)(d) of the *Act*, applies because the information was provided to them by a U.S. agency in confidence for the purpose of assisting with a criminal investigation of the appellant's complaint against an alleged stalker. They further state that this U.S. agency did not consent to disclosing this

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[14] Order M-912.
[15] Orders M-844 and MO-2032-F.
[16] *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] 1 S.C.R. 23.
[17] *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.

information, and it was only provided for the purpose of facilitating their investigation. They submit that disclosing this type of information would jeopardize future cooperation with outside agencies, including agencies in other countries, thus hampering the control of crime.

[62] The appellant submits that it is difficult for her to comment on the sections 38(a)/9(1)(d) exemptions because she does not know which U.S. agency provided information about her to the police, nor the nature of the information that was shared.

[63] The part of the occurrence report that the police have withheld is an excerpt from an affidavit, dated October 7, 1997, that was prepared by an officer with the University of California Police Department (UCPD). This officer had investigated the appellant's complaint that an individual was stalking her in California. The UCPD provided this information to the police in Toronto to assist them in their investigation of the appellant's complaint about the same alleged stalker.

[64] Under section 9(1)(d) of the *Act*, the police must refuse to disclose this information if they received it in confidence from an agency of a government referred to in clause (a), (b) or (c). In this case, the UCPD is a publicly funded law enforcement agency established by the State of California in the U.S., which brings it within the meaning of an agency of a "government" referred to in clause (c), as required by section 9(1)(d).

[65] I am satisfied that the UCPD provided this information to the Toronto police with, at a minimum, an implicit expectation of confidentiality and did not consent to it being disclosed. In these circumstances, I accept that disclosing the information in this part of the occurrence report, which includes the appellant's personal information, could reasonably be expected to reveal information that the police have received in confidence from an agency of a government referred to in clause (c) of section 9(1). As a result, I find that the information in this part of the occurrence report is exempt from disclosure under section 38(a), read with section 9(1)(d), and the exception in section 9(2) does not apply to it.

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

[66] The personal privacy exemption in section 38(b) of the *Act* states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[67] 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. However, only the personal information of individuals other than the requester can be exempt from disclosure under section 38(b).[18]

[68] I have found that the 29 pages of occurrence reports, police officers' notes and I/CAD event detail reports contain the personal information of both the appellant and other individuals. The police have disclosed most of these records to the appellant, including those parts that contain her own personal information, but have withheld the names and other personal information of several other individuals under section 38(b) of the *Act*.

[69] In the circumstances of this appeal, it must be determined whether disclosing the personal information of these other individuals to the appellant would constitute an unjustified invasion of their personal privacy under section 38(b).

[70] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met:

- 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 must be considered;
- section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[71] There is no evidence before me to suggest that the exceptions in section 14(1)(a) to (e) or the circumstances in section 14(4) apply to the personal information in the records. I find that none of these provisions is applicable in the circumstances of this appeal and will not consider them.

Sections 14(2) and (3)

[72] In determining 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

[18] See Order PO-3672 at para 58, which addresses the equivalent provision in section 49(b) of the *Freedom of Information and Protection of Privacy Act*. See also Order PO-2560, which found that a requester's personal information cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.

interests of the parties.[19]

Section 14(3)

[73] Section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy.

[74] The police claim that the section 14(3)(b) presumption applies to the personal information of the complainant and the witnesses in the occurrence reports. This provision states:

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

[75] This presumption requires only that there be an investigation into a *possible* violation of law.[20] So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[21]

[76] The police submit that section 14(3)(b) applies to the personal information in the records because their officers gathered personal information about identifiable individuals as part of investigations into possible violations of law. In her representations, the appellant acknowledges that the section 14(3)(b) presumption applies to the personal information in the records.

[77] Based on my review of the records, I am satisfied that the names and other personal information of individuals other than the appellant in the records was compiled and is identifiable as part of investigations into possible violations of the *Criminal Code*. In these circumstances, I find that this personal information falls within the section 14(3)(b) presumption and its disclosure to the appellant is presumed to constitute an unjustified invasion of these other individuals' personal privacy.[22]

Section 14(2)

[78] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal

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[19] Order MO-2954.
[20] Orders P-242 and MO-2235.
[21] 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).
[22] None of the other presumptions have been claimed and it does not appear that any are relevant in the circumstances of this appeal.

privacy.[23]

[79] The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.[24] 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).[25]

[80] Neither the police nor the appellant claim that any of the section 14(2) factors apply to the personal information of individuals other than the appellant in the records. In these circumstances, I find that none of the section 14(2) factors are applicable here. Specifically, I find that there is no evidence before me to suggest that any factors, either listed or unlisted, that weigh in favour of disclosure apply to the personal information of these other individuals.

Conclusion

[81] In assessing whether the names and other personal information of individuals other than the appellant qualify for exemption under section 38(b), I have found that it fits within the section 14(3)(b) presumption and disclosing it to the appellant is presumed to be an unjustified invasion of these other individuals' personal privacy. In addition, I have found that none of the section 14(2) factors apply.

[82] Given that the section 14(3)(b) presumption against disclosure applies to the personal information of individuals other than the appellant and there are no section 14(2) factors weighing in favour of disclosure, I find that this personal information is exempt from disclosure under section 38(b), because disclosing it to the appellant would constitute an unjustified invasion of these other individuals' personal privacy.

Issue E: Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should the IPC uphold the exercise of discretion?

[83] The section 38(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[84] 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;

[23] Order P-239.
[24] Order PO-2265.
[25] Order P-99.

- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[85] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[26] The IPC may not, however, substitute its own discretion for that of the institution.[27]

[86] The police submit they exercised their discretion under section 38(a) and (b), took into account all relevant considerations, did not consider any irrelevant considerations, and did not exercise their discretion in bad faith or for an improper purpose.

[87] They state that they exercised their discretion under section 38(a), read with 9(1)(d), and the IPC should uphold this exercise of discretion. They submit that in exercising their discretion, they considered that providing access to this type of information would jeopardize future cooperation with outside agencies, including agencies in other countries, thus hampering the control of crime.

[88] With respect to section 38(b), they submit that they considered that the individuals other than the appellant who supplied their personal information to the police did so with an expectation of confidentiality and trusted that such information would not be disclosed.

[89] In her representations, the appellant does not clearly address whether the police exercised their discretion appropriately under sections 38(a) and (b).

[90] I am satisfied that the police exercised their discretion and did so appropriately in withholding some of the appellant's personal information under section 38(a), read with section 9(1)(d), and the personal information of other individuals under section 38(b). There is no evidence before me to suggest that they exercised their discretion in bad faith or for an improper purpose or that they took into account irrelevant considerations. In short, I uphold the police's exercise of discretion under sections 38(a) and (b).

Issue F: Did the police conduct a reasonable search for records?

[91] The appellant takes issue with the reasonableness of the police's searches for records. She believes that additional records should exist in response to her access request, such as intimate images of her, a statement made to the police by a specific individual, and a report filed by a specific police officer.

[92] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[28] If the IPC is satisfied that the search carried

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[26] Order MO-1573.
[27] Section 43(2).
[28] Orders P-85, P-221 and PO-1954-I.

out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[93] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[29]

[94] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records; [30]that is, records that are "reasonably related" to the request.[31]

[95] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[32] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[33]

[96] For the reasons that follow, I find that the police conducted a reasonable search for records, as required by section 17 of the *Act*.

[97] The police submit that they conducted a reasonable search for records that are responsive to the appellant's request. They submit that they searched all of their databases and disclosed many of the records that were located to the appellant. They point out that during the mediation stage of the appeal process, they agreed to conduct additional searches for records, based on information provided by the appellant, and located additional records that resulted in two supplementary access decisions.

[98] To support their position, the police included a sworn affidavit from a disclosure analyst in their Privacy and Access section. This individual sets out, in chronological order, the numerous searches for records that the police carried out, in response to the appellant's access request, including:

- conducting queries and searches on the following databases: Versadex, Legacy and NYC;
- asking various units and offices within the police to search for officers' notes associated with the occurrence reports that were located; and
- searching I/CAD for records of calls for service for three addresses.

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[29] Order MO-2246.
[30] Orders P-624 and PO-2559.
[31] Order PO-2554.
[32] Orders M-909, PO-2469 and PO-2592.
[33] Order MO-2185.

[99] The disclosure analyst further states that searches were conducted in the following additional offices during the mediation stage of the appeal process: the Sex Crimes Unit and its archives, the Video Evidence Unit, the Photo Archive Unit, and the Information Privacy Security (IPS) Unit.

[100] Finally, the disclosure analyst states that the IPS Unit advised him that attempting to produce further records that might be responsive to the appellant's access request from some workstations and servers would not be possible because the process of producing them would unreasonably interfere with their operations.[34]

[101] The appellant disputes the police's position that they have conducted a reasonable search for records that are responsive to her access request. In addition to the other records that she claims should exist that she identified during the mediation stage of the appeal process, the appellant submits that the police should have the IT capability of providing her with a log of all staff who have accessed records relating to her and particularly intimate images of her. She further submits that the police have failed to locate records that document how much money they have spent investigating her.

[102] In my view, the police have provided sufficient evidence to show that they conducted a reasonable search for records that are responsive to the appellant's broad access request, which is for all records in which she is named. They conducted searches on numerous databases and in the units and offices that would be most likely to have records. In addition, it is clear from the evidence provided by the disclosure analyst that many experienced police employees who are knowledgeable about the record holdings in their particular units or offices, expended substantial time, effort and resources to locate responsive records.

[103] I am not persuaded by the appellant's argument that further records should exist, such as a log of all police employees who accessed intimate images of her and how much money the police have spent investigating her. In my view, the appellant's claim about the existence of these and other records is speculative, and she has not provided a reasonable basis for concluding that such records exist.

[104] With respect to the police's claim that attempting to produce records from some workstations and servers would unreasonably interfere with their operations, I find that it is not necessary to decide this issue, because I have concluded that the police have conducted a reasonable search for records. As noted above, the *Act* does not require the police to prove with certainty that further records do not exist.[35] They must simply demonstrate that they made reasonable efforts to locate records, and I find that they have met this threshold.

[105] In summary, I find that the police conducted a reasonable search for records, as

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[34] *Supra* note 2.
[35] See para. 94 above.

required by section 17 of the *Act*.

ORDER:

1. I uphold the police's decision that the 21 pages of emails that relate to an officer who was the subject of a complaint that the appellant filed with the OIPRD are excluded from the *Act* by section 52(3)3.

2. I uphold the police's decision to withhold parts of an occurrence report under section 38(a), read with section 9(1)(d) of the *Act*.

3. Subject to two exceptions set out in order provision 4 below, I uphold the police's decision to withhold the following information under section 38(b) of the *Act*: the names and other personal information of individuals other than the appellant in the 29 pages of occurrence reports, police officers' notes and I/CAD event detail reports.

4. I order the police to disclose the names of two individuals identified in a professional capacity in an occurrence report (page 3), because such information is not their personal information and it cannot be exempt from disclosure under section 38(b).

5. I have attached a copy of the page of the occurrence report containing the names of the two individuals referenced in order provision 4. The police's previous severances are highlighted in yellow but not the names of the two individuals. To be clear, the police must disclose this page of the occurrence report to the appellant but should only withhold the information highlighted in yellow. I order the police to disclose this page to the appellant by **October 18, 2024**. (a)

6. I uphold the police's search for records that are responsive to the appellant's access request.

Original Signed by: September 18, 2024

Colin Bhattacharjee
Adjudicator