Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4575

Appeal MA21-00108

Durham Regional Police Services Board

September 27, 2024

Summary: An individual sought access under the *Municipal Freedom of Information and Protection of Privacy Act* to police records relating to two incidents that involved her. The police granted partial access to reports and officers' notes, withholding some information on the basis that it was not responsive to the request (section 17) and other information on the basis that disclosure would be an unjustified invasion of another individual's personal privacy (section 38(b)). The individual appealed the police's access decision and also took issue with the reasonableness of the police's search. In this order, the adjudicator finds that the police properly withheld the information and conducted a reasonable search. She upholds the police's decision 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(1)(b), 14(2)(d), 14(2)(f), 14(2)(h), 14(3)(b), 17, 32, 38(b), and 48(1).

Orders Considered: Orders MO-2677, MO-3247, MO-3911, MO-4526, PO-2541, MO-2844, MO- 1727, PO-2167, PO-2236, MO-4546, PO-3571, MO-2005, M-96, P-679, M-936, MO-4222, P-1014, MO-1540, MO-4324.

OVERVIEW:

[1] This order determines whether the Durham Regional Police Services Board (the police) properly withheld information that was identified as non-responsive from police records, as well as whether the disclosure of personal information from those records

would constitute an unjustified invasion of personal privacy under section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). It also considers whether the police conducted a reasonable search for records relating to the request.

[2] The police received a request pursuant to the *Act* for all records and notebook entries relating to a number of calls for service that the requester made on two specified dates. The calls related to the requester's allegations of criminal harassment by other individuals.

[3] The police denied access to the responsive records, citing the discretionary exemption at section 38(a) (discretion to refuse requester's own information), read with the law enforcement exemptions at sections 8(1)(a) (law enforcement matter) and 8(1)(b) (law enforcement investigation) of the *Act*. The police advised that there is an ongoing Professional Standards Unit (PSU) investigation, and that disclosure of the records could interfere with the completion of that investigation.

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

[5] During mediation, the police clarified that some information was removed from the records as it was deemed non-responsive to the request. The appellant took issue with both the police's application of the exemptions, as well as their decision to withhold information deemed non-responsive.

[6] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the appeal sought representations from the police on their application of the exemptions, as well as on the responsiveness of certain information within the records.

[7] During the inquiry, the police advised that the investigation they cited in their original decision letter had been completed. The police indicated that they would issue a revised decision letter to address the change in circumstances.

[8] The police issued a revised decision granting partial access to the responsive records, citing section 38(b) (personal privacy) to deny access to the remaining information. In their decision, the police explained that Named Officer 1 advised that he was not involved in the incidents and therefore had no notes to provide, despite being named in one of the records. The police also indicated that Named Officer 2 had retired and that any notes he may have had would not be available, as they were not stored. The adjudicator confirmed with the police that they were no longer relying on section 38(a), read with the law enforcement exemptions at 8(1)(a) and 8(1)(b).

[9] After receiving the police's revised decision, the appellant contacted the police for audio recordings of her calls for service, which she believed to be responsive to her

request. The police issued a supplementary decision granting full access to a recording of a 911 call that the appellant made on the first specified date. The police explained that the audio recording had not been included in the revised decision due to an oversight.

[10] The adjudicator asked the appellant whether she had any additional concerns following the police's revised and supplementary decisions. The appellant indicated that she made two calls for service and that she continues to seek access to the audio recording of her second call for service. The appellant also indicated that she is not satisfied with the police's explanation regarding the officers' notes, and that she is continuing to seek access to the notes of Named Officer 1 and Named Officer 2 (retired officer), as well as to the notes of Named Officer 3. The appellant also listed additional records that she wishes to receive and requested that her file be "unlocked", alleging that nobody can access her files in order to assist her and that she is being denied service.

[11] In response, the adjudicator confirmed that this appeal concerns only the appellant's right of access, under the *Act*, to records that are responsive to the appellant's initial request (for records and notebook entries relating to a number of calls for service that the appellant made on two specified dates). The adjudicator advised the appellant that she may wish to file a new access request for records that are not "reasonably related" to her original request. The adjudicator also advised that the IPC's jurisdiction does not extend to any concerns that the appellant may have with the police that fall outside of the *Act*. For example, the adjudicator noted that the appellant's request for her file to be "unlocked" would not appear to be a matter within the scope of this appeal under the *Act*. With these caveats, and with the appellant's subsequent consent, the adjudicator forwarded the appellant's concerns to the police.

[12] The police issued another revised decision in which they indicated that they were able to locate a copy of the retired officer's notes and granted full access to them. The police later confirmed that some information was removed from the retired officer's notes as it was deemed non-responsive to the request

[13] In response, the appellant reiterated that the police had not yet provided the audio recording of her second call for service, and that she is continuing to seek access to this call. The appellant suggested that she would be willing to close her appeal upon receipt of this call and upon receiving confirmation from the police that "this is all that is remaining in [her] file that they are withholding".

[14] The police sought additional details from the appellant about her second call for service, stating that they had conducted a search and was only able to locate one recorded call relating to the appellant's incidents. The appellant provided additional details about the information that she was looking for, which the adjudicator forwarded to the police with the appellant's consent.

[15] The police indicated that they completed another search based on the information provided by the appellant and confirmed that there is no record that corresponds with the appellant's request for a second call for service. In their response, the police included correspondence from the analyst who completed the search to demonstrate the efforts they made to locate the record. The adjudicator shared the correspondence with the appellant with the police's consent.

[16] The appellant considered the police's response and advised that she is not satisfied with the police's explanations and therefore wished to proceed with the appeal. The adjudicator resumed the inquiry and sought and received representations and supplementary representations from the appellant and the police.

[17] The appeal was subsequently transferred to me to continue with the inquiry. After reviewing the parties' representations, I determined that I did not need to hear from the parties further before issuing this decision.

[18] For the reasons that follow, I uphold the police's decision to withhold information identified as non-responsive, as well as portions of the records under section 38(b). I also uphold the police's search. I dismiss the appeal.

RECORDS:

[19] The records remaining at issue consist of police reports and officers' notes that were denied in part, as set out in the following chart:

Description of Record	**Number of Pages**	**Exemption**
General occurrence hardcopy for June 16, 2020 incident	9	38(b)
Notes, Detective Sergeant (attached to general occurrence hardcopy for June 16, 2020 incident)	6 (includes cover page)	Non-responsive
Call hardcopy for June 16, 2020 incident	3	38(b)
Call hardcopy for June 17, 2020 incident	7	38(b)
Notes, Detective	6	38(b), non-responsive

Notes, Police Constable	2	38(b), non-responsive
Notes, Detective Constable (Named Officer 3)	2 (includes cover page)	38(b), non-responsive
Notes, Staff Sergeant	5	Non-responsive
Notes, Inspector	3	Non-responsive
Notes, Retired Officer	4	Non-responsive
(Named Officer 2)		

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

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 personal privacy exemption at section 38(b) apply to the information at issue?

D. Did the police properly exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

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

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[20] The police withheld portions of the officers' handwritten notes as being non-responsive to the appellant's request.

[21] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,

> (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[22] To be considered responsive to the request, records must "reasonably relate" to the request.[1] Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[2]

Representations

[23] The police submit that the only information that they withheld as non-responsive is information in the officers' notebook entries that relate to other incidents. The police explain that officers routinely work on several incidents at the same time and record their progress in their notes, and that none of the information withheld as non-responsive relate in any way to the appellant's incidents or request. The police submit that there is no ambiguity in the appellant's request and therefore there was no need to clarify it.

[24] The appellant does not directly reference the issue of responsiveness in her representations, but states that she is requesting full disclosure of the records.

Analysis and findings

[25] I have reviewed the records and find that the police correctly identified and withheld portions of the officers' notes as non-responsive to the appellant's request. In my view, these withheld portions contain information about incidents or matters that are not related to the appellant or to the incidents identified by the appellant and are therefore not reasonably related to the appellant's request.

[26] Accordingly, I uphold the police's decision to withhold portions of the officers' notes on the basis that this information is not responsive to the appellant's request.

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[1] Orders P-880 and PO-2661.
[2] Orders P-134 and P-880.

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

[27] Before I consider whether section 38(b) applies, I must first determine whether the records contain "personal information". If it does, I must determine whether the personal information belongs to the appellant, the affected parties, or both.

[28] It is important to know whose personal information is in the records. If the records contain the requester's own personal information, their access rights are greater than if it does not.[3] Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.[4]

[29] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual". Recorded information is information recorded in any form, including paper and electronic records.[5]

[30] Information is "about" an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about that individual. Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[6] Section 2(1) of the *Act* contains some examples of personal information, though this list is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

Representations

[31] The police submit that the records contain the personal information of the appellant and other individuals (the affected parties), including dates of birth, addresses, phone numbers, and statements. Specifically, the police indicate that the general occurrence report and officers' notes contain the personal information of three affected parties, including their dates of birth, addresses, phone numbers, and statements. The police further indicate that one call hardcopy contains the dates of birth of two of the three affected parties, while the other call hardcopy contains CPIC information belonging to the three affected parties and other affected parties, including their names, dates of birth, addresses, and outstanding charges.

[32] The appellant does not explicitly state whose personal information might be in the records, but appears to accept that the records contain her own personal information, as well as the information of affected parties. For instance, the appellant

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[3] Under sections 36(1) and 38 of the *Act,* a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.
[4] See sections 14(1) and 38(b).
[5] See the definition of "record" in section 2(1) of the Act.
[6] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

states that the information she is seeking access to includes statements from her sister, brother-in-law, and niece. The appellant also suggests that she already knows some of the withheld information, such as their names and dates of birth. The appellant mentions that she "[does] not require their CPIC", appearing to refer to any CPIC information belonging to her sister, brother-in-law, and niece.

Analysis and findings

[33] I have reviewed the records and find that they contain both the appellant's and the affected parties' personal information as defined by section 2(1) of the *Act*, including dates of birth and other demographic information, such as age, sex, ethnicity, and marital or family status (paragraph (a) of the definition of personal information in section 2(1)), addresses (paragraph (d)), telephone numbers (paragraph (d)), as well as statements made to police officers (paragraphs (e) and (g)) and information about the outstanding charges of various affected parties (paragraph (b)). The affected parties are identifiable from the information in the report, and this information is personal in nature.

[34] Having found that the records contain the personal information of both the appellant and the affected parties, I will consider the application of the personal privacy exemption at section 38(b) to the information remaining at issue.

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

[35] 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.

[36] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

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

[38] 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).

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

- If any of the section 14(1)(a) to (e) exceptions apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

- Section 14(2) contains a non-exhaustive list of factors that may be relevant in determining whether the disclosure of personal information would be an unjustified invasion of personal privacy. Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

- Section 14(3) lists circumstances where disclosure of personal information is presumed to be an unjustified invasion of personal privacy.

- Section 14(4) lists circumstances where disclosure of personal information is not an unjustified invasion of personal privacy, even if one of the section 14(3) presumptions exists.

[40] In determining whether the disclosure of the personal information would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the relevant factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[7]

Representations

The police's representations

[41] The police state that they are a law enforcement agency with the responsibility, under the *Police Services Act*, of investigating offences under the *Criminal Code of Canada*. The police submit that the information in the records was clearly compiled as part of an investigation into a possible violation of law (specifically the offence of criminal harassment), therefore engaging the presumption in section 14(3)(b). The police acknowledge that section 38(b) introduces a balancing principle, wherein the appellant's right of access to her own personal information must be balanced with the affected individuals' rights to the protection of their privacy. In this case, the police submit that disclosing the information withheld under section 38(b) would be an unjustified invasion of the affected parties' personal privacy, as the withheld information consists of their personal information, not the appellant's.

[42] The police do not raise any of the section 14(1)(a) to (e) exceptions or any of the circumstances in section 14(4).

The appellant's representations

[43] The appellant submits that there are compelling reasons for which the withheld information should be disclosed to her.

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[7] Order MO-2954.

[44] First, the appellant submits that the section 14(1)(b) exception applies. Section 14(1)(b) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[45] In her representations, the appellant describes the physical, psychological, and emotional toll that her interactions with her alleged harassers and the police have had upon her. The appellant indicates that these incidents have caused her profound distress and that this has contributed to her requiring assistance with most day-to-day tasks. The appellant indicates that she has very real and reasonable fears arising from the conduct of both her alleged harassers and the police, and that she requires the withheld information to protect herself. The appellant submits that these are compelling circumstances that affect her health and safety and that therefore the exception applies.

[46] The appellant submits that the factor at section 14(2)(d) (fair determination of rights) applies and weighs in favour of disclosure. As indicated above, the appellant submits that she is being criminally harassed by the named individuals. The appellant also makes numerous allegations against the police, including reprisal, illegal denial of service and other offences under the *Police Services Act*, discrimination under the *Human Rights Code*, and violation of the *Canadian Charter of Rights and Freedoms* (the *Charter*). The appellant states that she has obtained legal counsel for the purposes of seeking private prosecution against her alleged harassers and anyone who has obstructed justice and denied her rights, and that she requires all of the withheld information in order to do so.

[47] Finally, the appellant cites section 14(3)(b), which is a presumption against disclosure, but does not elaborate upon its application. The appellant does not rely on any of the circumstances in section 14(4).

Analysis and findings

[48] If any of the section 14(1)(a) to (e) exceptions apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). In this case, the appellant relies upon the section 14(1)(b) exception, which requires compelling circumstances affecting the health and safety of an individual. The purpose of section 14(1)(b) is to permit disclosure of potentially significant information affecting the health or safety of an individual.[8]

[8] Order PO-2541.

[49] Previous IPC orders have held that in order to meet the "compelling threshold", the purpose for seeking the personal information in question must be a matter of immediate and essential health or safety affecting the requester.[9] Additionally, the compelling circumstances must either be self-evident, or evidence must be provided to demonstrate that release of the information could reasonably be expected to ameliorate any health or safety issues.[10]

[50] For example, the "compelling threshold" was found to have been met in a case where a requester sought information about a named individual believed to be his birth father because the requester's daughter was experiencing serious and undiagnosed medical difficulties, and medical professionals suggested that a medical history might provide essential information.[11] Conversely, the threshold was found not to have been met in cases where the requester sought information for the purpose of bringing a civil action[12], or for the reported purpose of obtaining a restraining order against alleged perpetrators of incidents against the requester and his family[13].

[51] Based on my review of the records and the appellant's representations, it is my view that the appellant has not established "compelling circumstances affecting the health and safety of an individual". The appellant submits that she requires the information to protect herself, both from her alleged harassers and from the police in light of their alleged misconduct. The appellant also describes the serious negative impact that these events have had upon her. While I am sympathetic to the appellant's description of her physical and emotional state, I am not convinced that the personal information of the affected parties, a significant portion of which is demographic information, would have an impact on her situation in the immediate and essential way contemplated by section 14(1)(b). In my view, there is not enough evidence for me to understand how this information would affect the appellant's health or safety, or the extent of the impact that this information would have on the appellant's health or safety. For these reasons, I am not satisfied that this situation meets the "compelling" threshold.

[52] Consequently, I find that the section 14(1)(b) exception does not apply to the personal information at issue in this appeal. Considering the parties' representations, I conclude that none of the other section 14(1)(a) to (e) exceptions apply in this appeal.

[53] To determine whether disclosure of the withheld information in the records would be an unjustified invasion of personal privacy under section 38(b), I must therefore consider and weigh the relevant factors and presumptions in sections 14(2)

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[9] Orders MO-2677, MO-3247, MO-3911, and MO-4526.
[10] Orders MO-3247, MO-3911, and MO-4526.
[11] Order PO-2541.
[12] Order MO-3911.
[13] Order MO-2844.

and (3) and balance the interests of the parties.[14]

Do any of the presumptions listed in 14(3) apply?

[54] As stated above, the police claim that the section 14(3)(b) presumption against disclosure applies to the information at issue. Section 14(3)(b) states:

> A disclosure of personal information is presumed to constitute an unjustified violation 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[.]

[55] Even if no criminal proceedings were commenced against an individual, as is the case in this appeal, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[15]

[56] I have reviewed the records and find that the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The records are about the police's investigation into allegations of criminal harassment, which gave rise to the possibility of criminal charges being laid. As the presumption only requires that there be an investigation into a possible violation of law, the fact that no criminal proceedings were initiated does not alter my finding. Furthermore, although the appellant raised concerns with the adequacy of the police's investigation, there is no basis for me to find that the information itself was not compiled as part of a police investigation.

[57] The appellant also cites section 14(3)(b) in her representations, but does not make clear arguments about its application. The appellant's intended purpose of citing section 14(3)(b) may be to highlight the second half of the section, which states that the presumption does not apply to the extent that disclosure is necessary to prosecute the violation or to continue the investigation (presumably referring to her intention to investigate or take action against her alleged harassers). However, previous IPC orders have found that "continue the investigation" refers to the investigation in which the information at issue was compiled, not the appellant's own investigation.[16] I agree with this reasoning and adopt it for the purposes of this appeal. In this case, the police's investigation is the investigation in which the information at issue was compiled. There is no evidence to suggest that this investigation remains ongoing, or that disclosure of the personal information at issue would be necessary to continue the investigation.

[58] As a result, I am satisfied that section 14(3)(b) applies and that disclosure of the

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[14] Order MO-2954.
[15] Orders P-242 and MO-2235.
[16] Orders MO-1727, PO-2167, PO-2236, and MO-4546.

personal information in the records is presumed to be an unjustified invasion of the affected parties' personal privacy.

[59] Under section 38(b), the section 14(3)(b) presumption must be weighed and balanced with any other factors in section 14(2) that apply in the circumstances.

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

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

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

[61] The appellant submits that the factor at section 14(2)(d) applies to the withheld information. This section requires an institution to consider whether "the personal information is relevant to a fair determination of rights affecting the person who made the request".[17] This factor weighs in favour of disclosure, if it is found to apply.

[62] In order for the section 14(2)(d) factor to apply, the appellant must establish all four parts of the following test:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[18]

[63] The appellant did not address the four-part test in her representations. However, it is apparent that the appellant has numerous grievances against both her alleged harassers and the police. As previously indicated, the appellant submits that she has obtained legal counsel for the purposes of seeking private prosecution against her alleged harassers and anyone else who has obstructed justice and denied her rights, and that she requires all of the withheld information to do so.

[64] I am not convinced that all four parts of the section 14(2)(d) test have been met.

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[17] Section 14(2)(d) of the *Act*.
[18] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario* (*Minister of Government Services*) *v. Ontario* (*Information and Privacy Commissioner*) (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

Even if I were prepared to accept that there is a legal right related to a proceeding which is either existing or contemplated, there is insufficient evidence for me to conclude that the personal information at issue is required in order to prepare for the proceeding or to ensure an impartial hearing. Specifically, I have reviewed the records and find that there is insufficient evidence to conclude that the affected parties' personal information, including their demographic information, is required to prepare for a proceeding or to ensure an impartial hearing. This is the case regardless of whether said proceeding is being contemplated against the alleged harassers or the police.

[65] As a result, I find that the factor at section 14(2)(d) is not relevant and does not favour disclosure of the personal information in the circumstances of this appeal.

Other factors

[66] Although the police do not explicitly cite these sections, I find that their representations raise the possible application of the factors in sections 14(2)(f) (highly sensitive) and 14(2)(h) (information supplied in confidence).

[67] Section 14(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be "highly sensitive", there must be a reasonable expectation of significant personal distress if the information is disclosed.[19]

[68] Considering the nature of the records, the nature of the information at issue, and the circumstances that the police were called to investigate, I find that disclosure of the withheld personal information could reasonably be expected to cause the affected parties significant personal distress. As a result, I find that the personal information at issue is highly sensitive and the factor at section 14(2)(f) applies to the portions that have been withheld and weighs against disclosure.

[69] Section 14(2)(h) requires an institution to consider whether "the personal information has been supplied by the individual to whom the information relates in confidence". This factor weighs against disclosure, if it is found to apply.

[70] For this factor to apply, I must be satisfied that both the individual supplying the information and the recipient 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 "reasonableness".

[71] In the circumstances, I find that it was reasonable for the affected parties to expect that they provided their 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

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

they were providing to the police would be subject to a degree of confidentiality. This is especially true given the nature of the incidents. I also accept that the affected parties' expectation of confidentiality was shared by the recipient of that information (i.e. the attending officers). As a result, I find that the factor at section 14(2)(h) applies to the withheld information and weighs against disclosure.

[72] As previously indicated, section 14(2) lists factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. This list is not exhaustive – the institution must consider any other circumstances that are relevant, even if these circumstances are not listed.

[73] I find that some of the appellant's representations potentially raise issues of "inherent fairness"[20]. Previous IPC orders have found inherent fairness to be a relevant consideration under section 14(2).

[74] I have already described the appellant's experience of these events and the impact that they have had on her. The appellant indicates that she is the victim of both her alleged harassers and the police, and that she requires all of the information in the records in order to protect herself, particularly in light of the police's alleged violations of her human and constitutional rights. The appellant suggests that she cannot rely on the police to make a decision that is "just and right", and that a fair decision in the circumstances would be to grant her full access to the records. The appellant indicates that she does not believe that the police's description of the withheld information is truthful, and reiterates that she requires the withheld information not only to verify its contents, but also to protect herself and her family. The appellant submits that the impact that these events have had on her health should outweigh concerns about personal privacy.

[75] For this unlisted factor of inherent fairness, I am required to consider whether withholding the personal information at issue would be inherently unfair to the appellant. Previously, I found that the personal information at issue consists of dates of birth, addresses, telephone numbers and other demographic information, as well as statements made to police officers and information about the outstanding charges of various affected parties. While I understand that the appellant has numerous concerns with her alleged harassers and the police, I am not convinced that the disclosure of the withheld personal information could reasonably be expected to facilitate the appellant's stated goal of protecting herself and others. I have reviewed the records and agree with the police that the redactions were minimal and, apart from non-responsive information, consist of the affected parties' personal information. I find that the appellant received significant portions of the records and am not convinced that the appellant's need to verify the accuracy of the withheld information is a matter of inherent fairness. Even considering the appellant's allegations against the police, which I am not in a position to evaluate, I cannot see how the disclosure of the personal

[20] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

information at issue is connected to, or would assist the appellant in resolving her various concerns. Therefore, I do not agree that withholding the personal information at issue is inherently unfair.

[76] As a result, I find that the unlisted factor of inherent fairness weighing in favour of disclosure is not relevant in this appeal.

Balancing the relevant presumption and factors

[77] I have found that disclosure of the affected parties' personal information would result in a presumed unjustified invasion of their personal privacy under section 14(3)(b). I have also found that the section 14(2)(f) and 14(2)(h) factors weigh against the disclosure of the affected parties' personal information.

[78] Overall, I find that the balance weighs in favour of protecting the affected parties' personal privacy, rather than the appellant's access rights. As a result, I find that the information at issue is exempt from disclosure under section 38(b) of the *Act*.

Absurd result

[79] An institution may not be able to rely on the section 38(b) exemption where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In these cases, withholding the information might be absurd and inconsistent with the purpose of the exemption.[21] This is referred to as the absurd result principle.

[80] The police submit that the absurd result principle does not apply in this case. The police submit that while the appellant may know some of the withheld information, there are other details in the record that may not be known to her. The police also submit that disclosure would be inconsistent with the purpose of the exemption (i.e. to protect the privacy of the affected parties). The appellant argues that she is already aware of some of the withheld information, such as the names and dates of birth of specific named individuals.

[81] Based on my review of the records, I find that the absurd result principle does not apply. Previous IPC orders have found that the absurd result principle may not apply if disclosure is inconsistent with the purpose of the exemption, even if the information is otherwise known to the requester.[22]

[82] While the record contains some information that the appellant may have knowledge of, it also includes information that the appellant may not know. Given my earlier finding that disclosure would be an unjustified invasion of personal privacy, I find that to apply the absurd result principle would be inconsistent with the purpose of the

[21] Orders M-444 and MO-1323.
[22] Orders M-757, MO-1323 and MO-1378.

section 38(b) exemption.

[83] As a result, I find that it would not be absurd to withhold the personal information of the affected parties in the circumstances of this appeal.

Issue D: Did the police properly exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

[84] The section 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. Having found that portions of the record are exempt from disclosure under section 38(b), I must next determine if the police properly exercised their discretion in withholding the information. An institution must exercise its discretion. On appeal, the IPC may determine whether an institution has failed to do so.

[85] The IPC may find that an institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[86] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[23] The IPC may not, however, substitute its own discretion for that of the institution.[24]

Representations, analysis and finding

[87] The police submit that they did not exercise their discretion in bad faith or for an improper purpose. The police submit that they sought to grant access to as much of the record as possible, including to the appellant's own personal information. The police argue that disclosing any further information would represent an unjustified invasion of the affected parties' personal privacy. The appellant does not specifically address the police's exercise of discretion in her representations, but makes it clear that she believes that the police have deliberately withheld information that she is entitled to receive and have consistently acted in bad faith.

[88] I have reviewed the considerations relied upon by the police and find that they properly exercised their discretion in withholding portions of the report under section 38(b). Based on the police's representations, it is clear that they considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the

[23] Order MO-1573.
[24] Section 43(2) of the *Act*.

entire record with the protection of the affected parties' privacy when making their decision.

[89] I find that the police did not exercise their discretion to withhold portions of the report in bad faith or for any improper purpose, and that there is no evidence that they failed to take relevant factors into account or considered irrelevant factors. Accordingly, I uphold the police's exercise of discretion in denying access to the information at issue.

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

[90] The appellant claims that additional responsive records should exist. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[25] If the IPC is satisfied that the search carried 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.

[91] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they must still provide a reasonable basis for concluding that such records exist.[26] 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;[27] that is, records that are "reasonably related" to the request.[28]

[92] 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.[29] 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.[30]

[93] In order to consider the reasonableness of the police's search, it is necessary for me to first understand the parameters of the appellant's request. In her representations, the appellant sometimes states that she is requesting access to all contents of her calls for service on two specified dates. At other times, the appellant states that she is requesting access to everything in her file. It is not clear whether the appellant is using these two descriptions interchangeably, or whether she is suggesting that the responsive records should include all records relating to her, even if they do not relate to her calls for service on the specified dates.

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[25] Orders P-85, P-221 and PO-1954-I.
[26] Order MO-2246.
[27] Orders P-624 and PO-2559.
[28] Order PO-2554.
[29] Orders M-909, PO-2469 and PO-2592.
[30] Order MO-2185.

[94] I refer to the appellant's original request, which was for:

> All records and notebook entries pertaining to my numerous calls for service [two specified dates] for criminal harassment in which I was abused and victimized also by your officers.

[95] It is my view that the appellant's request was not ambiguous and included sufficient detail to enable the police to identify the records responsive to the request without seeking clarification. I will therefore consider the reasonableness of the police's search based on the appellant's request for records relating to her calls for service on the two specified dates.

Representations

The appellant's representations

[96] The appellant has numerous concerns with the police's search. First, the appellant spends a significant amount of time discussing her strong opposition to the police's decision to "lock" her file. The appellant reiterates that because her file is locked, officers cannot access her file to assist her and that she is being denied service. The appellant submits that her access rights are also being affected by her file being "locked", insofar as she suspects that the employee(s) in charge of responding to her access request do not have access to her file.

[97] Second, the appellant identifies specific instances where the police have provided inaccurate or incomplete information. The appellant states that the police's initial decision to deny access to the responsive records due to an ongoing PSU investigation was incorrect as the investigation had been completed. The appellant also provides as examples the retired officer's notes, which the police initially said would not be available but were subsequently located, and the 911 call recording from the first specified date, which was not included with the police's revised decision and which the police later described as an oversight. The appellant submits that she should not have to specifically identify and ask for certain records in order to receive them, especially since she can only do this for records that she knows to exist.

[98] Third, the appellant identifies additional records that she believes should exist. Specifically, the appellant continues to seek access to the notes of Named Officer 1, who the police advised was not involved in the incidents and therefore had no notes to provide. The appellant submits that Named Officer 1 is clearly identified as the lead investigator in the general occurrence hardcopy for one incident, and that this is a reasonable basis for believing that his notes should exist. The appellant submits that the police have provided several explanations regarding said officer's involvement or lack thereof: while the general occurrence hardcopy identifies the officer as the lead investigator, the police have stated that the officer has no notes and was not involved in the incident, and also that the officer has no notes and was on days off during the

incident. The appellant submits that these explanations are inconsistent and do not address why the officer is named if he was not involved.

[99] The appellant also submits that the Detective Constable has additional notes that should be disclosed to her. The appellant states that she telephoned the Detective Constable the day after he attended her property to alert him to the fact that her alleged harassers may have deleted evidence. The appellant submits that this conversation is not reflected in his notes. The appellant also cites the Detective Sergeant's notes, which reference a voicemail that was transferred to him by the Detective Constable, as evidence that the Detective Constable had greater involvement than is reflected in his current notes. The appellant appears to believe that out of all of the officers, only the Detective Constable's notes were released in part and questions why this would be the case.

[100] The appellant further submits that additional audio recordings of her calls with the police should exist. The appellant provides call logs, which identify numerous outgoing and incoming calls between her and the police. The appellant states that given the number of communications that took place, she does not believe that only the single primary call for service was recorded.

[101] Finally, the appellant references a telephone call that she had with the Detective that took place while the Detective was at the station. Based on the appellant's representations, I understand that this telephone call was relevant to a separate proceeding with a different agency. The appellant states that she is seeking video surveillance footage of the Detective and his surroundings from the time of that telephone call, as well as the notes of two constables who were present at the station at the time of that telephone call.

The police's representations

[102] The police submit that the search was completed by an employee knowledgeable in the subject matter of the request with over 20 years of experience in the Records Unit.

[103] The police submit that a reasonable effort was made to locate the records. The police indicate that they completed an initial search of the Records Management System using the appellant's name, which yielded two incident numbers which corresponded with the specified dates. The police submit that it was clear that these incidents contained the information that the appellant referenced in her request.

[104] The police indicate that after gathering the general occurrence hardcopy and two call hardcopies, the employee emailed the related officers to request copies of their notebook entries. The employee then contacted the Tape Analyst for any 911 calls relating to the two incident numbers, as well as the Video Disclosure Unit for any video or audio relating to the two incidents.

[105] The police state that per policy, they sent an email to the administrative staff of PSU as the appellant had made another request for information relating to an internal police investigation. The police explained that they wished to confirm whether the requests were related and if there was an ongoing investigation, as this could affect their decision. The police indicate that their decision to deny access to the responsive records was a result of PSU's confirmation that there was an ongoing investigation. The police indicate that they issued a revised decision after they learned that the investigation had been completed.

[106] The police submit that the employee received all officers' notes except those associated with the retired officer, which were retrieved at a later date and provided to the appellant. Regarding the 911 call, the police reiterated that it was not included in the revised decision due to an oversight; once the appellant advised that she did not receive it, the police apologized and promptly released it to her in full.

[107] The police explain that records relating to a police incident generally include 911 calls, general occurrence hardcopies, call hardcopies, officers' notes, and audio or video footage if any was taken. The police submit that this corresponds with the records that the appellant received, and that they contacted all responsible units and officers for records. The police indicate that no video or audio was found in relation to these two incidents.

[108] Finally, the police submit that it is not possible for responsive records to have been destroyed. The police explain that their retention by-law states that all general occurrence hardcopies, call hardcopies, officers' notes, and audio/video evidence are permanent records. The police advise that the retention period for 911 calls is three years plus the current year; therefore, no 911 calls relating to these incidents would have yet been destroyed.

Analysis and findings

[109] During the inquiry, the police explained that the incident was "privatized", which means that "only [police] employees who are granted access by the person who privatized the report can view the incident". The police further explained that this was done to protect the privacy of the appellant's spouse, who is a police employee. In response to a concern that the appellant raised, the police indicated that they do not reveal information over the phone, and that the proper way to receive records is through an access request, as the appellant did.

[110] The appellant is concerned that because her file is "locked", the employee(s) responsible for responding to her access request do not have access to the relevant records and that this raises questions about the reasonableness of the police's search. Based on the evidence before me, I am unable to reach the same conclusion. It is evident that the police were able to conduct a search, locate responsive records, and subsequently review the records for disclosure. In my view, this runs counter to the

idea that any privatization prevented the employees from accessing and viewing the relevant records. As such, I cannot conclude that privatization had any substantial impact on the reasonableness of the police's search.

[111] It is apparent that the appellant does not have confidence in the police's explanations, and that she believes that the police are deliberately withholding records and not acting in good faith. The appellant suggests that the need for revised and supplementary decisions should cast doubt on the reasonableness of the police's search. While I acknowledge the events that have led the appellant to question the police's position in this appeal, I am not convinced that they are determinative on the question of the reasonableness of the police's search. I have reviewed the parties' representations and accept that the police issued the revised decision letter once they learned that the PSU investigation had concluded. I also accept that the omission of certain records from the revised decision was an oversight, which the police later remedied.

[112] While I appreciate that the appellant is not satisfied with the police's search, the *Act* does not require the police to prove with certainty that further records do not exist, only that they made a reasonable effort to identify and locate responsive records. The appellant suggests that the search was not reasonable because additional notes from Named Officer 1 and the Detective Constable should exist. However, I am not convinced that the appellant has provided a sufficiently reasonable basis for believing that additional notes exist, especially when weighed against the information I have received from the police.

[113] For instance, although Named Officer 1 is listed as the lead investigator in the general occurrence hardcopy, I have reviewed correspondence which confirms that the officer was contacted for his notes, after which he reported that he checked his schedule and was on days off when the incident was assigned. I have also reviewed the records and did not locate additional references to Named Officer 1 or evidence of his involvement in the incidents. Regarding the Detective Constable's notes, it is my view that the fact that another telephone call took place, or that the Detective Constable transferred a voicemail, does not necessarily mean additional notes were taken. Additionally, although the appellant claims that only the Detective Constable's notes were released in part, I note that other officers' notes also had either non-responsive or personal information removed.

[114] The appellant also expresses doubt that only the single primary call for service was recorded. During the inquiry, the police provided evidence of their search efforts in relation to audio recordings of the appellant's calls for service. These were shared with the appellant and can be summarized as follows:

- After the appellant contacted the police for audio recordings of her calls for service, the employee asked the Tape Analyst to search for 911 tapes relating to

the two specified incident numbers. The Tape Analyst identified one recording and indicated that there was no call for the second incident.

- The employee then asked the Tape Analyst to advise whether there were any other taped phone lines that she could access as the appellant had "called into different lines a couple of times", in case those were what the appellant was requesting. The Tape Analyst advised that she located no other calls for the number that related to the specified dates.

- During the inquiry, the appellant indicated that she wished to receive her "second call for service". After the appellant provided additional details about the call, the employee contacted the Tape Analyst to request an additional search based on the exact date, time, phone number used to call in, and name of the individual the appellant spoke to. The employee also asked the Tape Analyst to search for "any other calls from this number".

- The Tape Analyst confirmed that they had provided the available call for the first incident, and that there was no call for the second incident. The Tape Analyst also provided an explanation for how the second incident was created. The Tape Analyst reiterated that she was not able to locate a call relating to the second incident number, and that she had also completed a search using the appellant's telephone number.

[115] In my view, the police have engaged an experienced employee knowledgeable in the subject matter of the request, who made a reasonable effort to locate records that are reasonably related to the request. The police have provided information about the employees involved in the search, how they conducted the search, as well as the results of the search. I also find that the police contacted the relevant individuals for records.

[116] Finally, regarding the appellant's request for video surveillance footage from the station, as well as the notes of the two constables who were present at the station at the time of the appellant's telephone call with the Detective, it is my view that these records are not reasonably related to the appellant's original request.

[117] As a result, I find that the police's search for responsive records was reasonable.

ADDITIONAL ISSUES

[118] The appellant provided lengthy representations in support of her position in this appeal. I have reviewed and considered the entirety of the appellant's representations and have discussed the relevant portions above. I conclude with a few comments.

Right of Correction

[119] This order dispenses with the issues arising from the appellant's request for

information and the police's subsequent decisions. These issues were established during the mediation and inquiry stages of the appeal process. In her representations, the appellant indicates that she is choosing to exercise her right of correction and/or requiring that a statement of disagreement be attached to her file. However, there is no evidence that the appellant made a correction request to the police before raising it in her representations. An appellant must first make a correction request to the institution before the IPC will consider whether the correction should be made.[31] As there is no evidence that the appellant made a request for correction, I do not consider the issue of correction in this order.

Section 32

[120] In her representations, the appellant cites subsections of section 32, including (c), (g)(i), (g)(ii) and (h) and submits that the withheld personal information can and should be disclosed pursuant to these subsections. Section 32 is found in Part II of the *Act*, which contains the privacy protection provisions of the legislation. Section 32 sets out certain circumstances where an institution is permitted to disclose personal information in its custody or under its control.

[121] In Order M-96, former Assistant Commissioner Tom Mitchinson considered the relationship between section 32, found in Part II of the *Act*, and the general access provisions which are found in Part I. He found that section 32 does not create a right of access and is not relevant to an access request for general records under Part I.

[122] The former Assistant Commissioner stated:

> Section 32 is contained in Part II of the *Act*. This Part establishes a set of rules governing the collection, retention, use and disclosure of personal information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The Federation's request to the Board was made under Part I of the *Act*, and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the *Act*, and specifically the factors listed in section 32, are not relevant to an access request made under Part I.[32]

[123] In Order P-1014, the adjudicator applied the reasoning of the former Assistant Commissioner in Order M-96 to the context of a request by an individual seeking access to records containing their own personal information. The adjudicator stated:

> Because section 42 [of *the Freedom of Information and Protection of Privacy Act* (*FIPPA*), equivalent to section 32 of the *Act*] and the access

[31] Orders PO-3571 and MO-2005.
[32] Order M-96. See also, P-679, M-936, MO-3247, and MO-4222.

> provisions which apply in this case (namely, sections 47, 48 and 49 [of *FIPPA*, equivalent to sections 36, 37 and 38 of the *Act*]) all fall within the same part of [*FIPPA*], the analysis of the applicability of section 42 in this appeal is slightly different from the analysis in Order M-96, where the applicable provisions were in totally separate parts of the statute. However, in my view, **sections 47, 48 and 49 create a code for the treatment of requests for records containing an individual's own personal information (including the exemptions which may be applied), and for this reason they are analogous to the "general records" access provisions found in Part II [of *FIPPA*]. For this reason, I believe that similar considerations to those adopted by former Assistant Commissioner Mitchinson in Order M-96 apply here, with the result that the provisions of section 42 do not apply to requests for records containing an individual's own personal information. These are fully dealt with by the provisions of sections 47, 48 and 49.**[33] **[Emphasis added]**

[124] I agree with this analysis and adopt it for the purposes of this appeal. Although the access provisions which apply in this case (namely sections 36, 37 and 38) fall within the same part of the *Act* as section 32, cited by the appellant, I find that sections 36, 37 and 38 similarly "create a code for the treatment of requests for records containing an individual's own personal information" that is distinct from the provisions relating to the use and disclosure of personal information by an institution. I conclude that section 32 of the *Act* does not create a right of access and is not a relevant consideration in determining whether the release of personal information constitutes an unjustified invasion of personal privacy in this appeal. However, to the extent that the appellant's representations on section 32 raise considerations that are relevant to my analysis of the issues under appeal, I have considered and discussed them above.

Section 48(1)

[125] The appellant also submits that the police have committed offences under sections 48(1)(b), (c.1), (d) and (e) of the *Act*. In Order MO-1540, the appellant similarly claimed that the institution committed offences under section 48. I agree with and adopt with the reasoning of the adjudicator in that case, who stated:

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

[33] Order P-1014.

the Peace and lay an information (see Orders M-777, P-1311 and P-1534).[34]

Other matters

[126] The appellant has made detailed allegations against the police's conduct, which includes concerns about their privatization of her file, alleged failure to follow their own directive on criminal harassment matters, alleged denial of services as reprisal for the appellant's complaints with the Human Rights Tribunal and the Office of the Independent Police Review Director, and violation of the *Human Rights Code* and the *Police Services Act*. As I do not have the jurisdiction to review the police's conduct, I do not address or make any findings about these allegations.

[127] Finally, the appellant argues that the police's conduct, in particular their alleged denial of service, violates her rights to life, liberty and security of the person, as well as her right to not be subjected to any cruel and unusual treatment or punishment under the *Charter*. Although the appellant references the *Charter*, she does so in the context of her complaints about police conduct, and not in the context of the police's application of the discretionary exemption and search for responsive records. The appellant does not allege that her *Charter* rights are violated by any provision of the *Act*, nor did she file a Notice of Constitutional question with the IPC and the Attorneys General of Canada and Ontario. With this context in mind, I find that the appellant's arguments about her sections 7 and 12 *Charter* rights have no bearing on my determination on the questions of access and search in this appeal.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original signed by: September 27, 2024
Anda Wang
Adjudicator

[34] Order MO-1540. See also, Order MO-4324.