

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4586

Appeal MA21-00518

South Simcoe Police Services Board

October 28, 2024

**Summary:** An individual submitted a request to the South Simcoe Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to three specific police occurrences. The police granted partial access to the responsive records withholding information under the discretionary personal privacy exemption (section 38(b)), and because some of the information could facilitate commission of an unlawful act (section 38(a) read with section 8(1)(l)) of the *Act*. In this order, the adjudicator 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*), 8(1)(l), 14(3)(b), 17, 38(a), and 38(b).

### OVERVIEW:

[1] The South Simcoe Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all information, including police officers' notes, related to three specified occurrence numbers.

[2] The police granted partial access to the records, withholding information under sections 8(1)(a) (law enforcement matter), 8(1)(l) (facilitate commission of an unlawful act), and 38(b) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the police advised that the second occurrence number specified in the appellant's request was not one of their occurrences. The police indicated that they conducted a search for all information about the appellant and provided information relating to three incidents including an incident with a fourth occurrence number that the appellant did not specify.

[5] The appellant confirmed that she does not take issue with this aspect of the police's response. However, she continues to seek access to the information withheld by the police, including the information withheld as nonresponsive to her request.

[6] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. Since all the records appear to contain the personal information of the appellant, I added section 38(a) (discretion to refuse requester's own information) as an issue in this appeal. I commenced an inquiry in which I sought and received representations from the parties about the issues in this appeal.<sup>1</sup>

[7] In this order, I uphold the police's decision to withhold portions of the records and dismiss the appeal.

## **RECORDS:**

[8] The information at issue consists of the withheld portions of 42 pages of police occurrence reports, supplementary reports, and police officers' notes.

## **ISSUES:**

- A. What is the scope of the request for records? What information is 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?

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<sup>1</sup> In accordance with the confidentiality criteria in the IPC's *Code of Procedure*, the appellant's representations were not shared with the police. I have reviewed all the representations of the parties, but I will only outline the most relevant non-confidential portions below.

- D. 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 8(1) exemption, apply to the withheld police codes at 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?

## **DISCUSSION:**

### **Issue A: What is the scope of the request for records? What information is responsive to the request?**

[9] The police submit that nonresponsive information was withheld from the records because it was unrelated to the appellant's request. Generally, the appellant seeks access to all the withheld information, both responsive and nonresponsive to her request.

[10] 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;

(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).

[11] Institutions should adopt a liberal interpretation of a request 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.<sup>2</sup>

[12] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>3</sup>

[13] After reviewing the portions of the records that the police have withheld because they claim they are nonresponsive to the appellant's request, I find that the police have

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<sup>2</sup> Orders P-134 and P-880.

<sup>3</sup> Orders P-880 and PO-2661.

correctly identified them as nonresponsive to the appellant's request.

[14] From my review of specific portions of the records identified by the police as nonresponsive, I conclude that these withheld portions contain information about other police matters unrelated to the appellant's request. Police officers typically work on more than one matter while on duty, and because of this, the records contain information from police matters unrelated to the appellant's request. Accordingly, I find that these portions of the records are not responsive to the appellant's request, and they are no longer at issue in this appeal.

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

[15] The police claim that the discretionary personal privacy exemptions at section 38(a) and (b) apply to the information it withheld. For these sections to apply, the IPC must first determine that the record contains "personal information," and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.<sup>4</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>5</sup>

[16] Section 2(1) of the *Act* gives a list of examples of personal information.<sup>6</sup> The relevant portions are as follows:

"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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,

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<sup>4</sup> 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.

<sup>5</sup> Sections 14(1) and 38(b), as discussed below.

<sup>6</sup> The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."

(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.

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>7</sup>

[18] 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.<sup>8</sup>

### ***Representations, and analysis and findings***

[19] After reviewing the records at issue and the representations of the parties, I find that all the records contain the personal information of the appellant as well as that of other identifiable individuals from the police occurrences.

[20] The police submit that the information at issue contains the personal information of the appellant and other identifiable individuals. The appellant submits that the records contain her personal information.

[21] Based on my review of the records, I find that they contain the personal information of the appellant and other identifiable individuals, including their sex, race, age, address, phone number, driver's licence, their personal views and opinions, views or opinions about them, and their name along with other information about them. This personal information fits within paragraphs (a), (c), (d), (e), (g), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[22] I considered whether the appellant's personal information could be severed from the records. However, based on my review, I find that the appellant's personal information is inextricably intertwined with that of the other identifiable individuals' and cannot be reasonably severed.

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

[23] The police submit that disclosure of the withheld personal information would be an unjustified invasion of the personal privacy of the other identifiable individuals. As noted above, the appellant's representations were withheld in their entirety. However, generally, the appellant's position is that she is entitled to her own personal information.

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<sup>7</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>8</sup> Orders P-1409, R-980015, PO-2225, and MO-2344.

[24] 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.

[25] 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.

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

[27] 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).

[28] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 38(b). Similarly, if any of the situations in section 14(4) apply, disclosure would not be an unjustified invasion of personal privacy under 38(b). In this appeal, neither party claims that the withheld information fits within any of the section 14(1) exceptions or that any of the situations in section 14(4) apply. From my review, I am satisfied that neither sections 14(1) nor (4) apply in the circumstances before me and will not discuss them further in this order.

[29] Sections 14(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>9</sup> The list of factors is not exhaustive. The institution must also consider circumstances that are relevant, even if they are not listed under section 14(2).<sup>10</sup>

[30] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>11</sup>

[31] Neither party raised the section 14(3)(b) presumption. However, from my review

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<sup>9</sup> Order P-239.

<sup>10</sup> Order P-99.

<sup>11</sup> Order MO-2954.

of the records, I find that it is relevant to my determination of whether the section 38(b) exemption applies to the withheld personal information.

[32] Section 14(3)(b) 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[.]

[33] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of investigations into possible violations of law. The personal information at issue appears in police records. Even if no criminal proceedings were commenced against an individual, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law,<sup>12</sup> and I am satisfied that investigations have occurred as documented by the police occurrence reports and the police officers' notes. Therefore, I find that the withheld personal information is subject to section 14(3)(b) and its disclosure is presumed to be an unjustified invasion of the personal privacy of the other identifiable individuals in the records.

[34] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant, as well as the interests of the parties. However, neither the police nor the appellant raised any section 14(2) factors, listed or unlisted, in their representations, so I find that none apply in the circumstances of this appeal.

[35] Overall, I have found that no section 14(2) factors, listed or unlisted, apply to the circumstances of this appeal, but I have found that the section 14(3)(b) presumption applies to the withheld personal information. This presumption weighs against disclosure. Balancing this presumption and the interests of the parties, I find that disclosure of the withheld personal information would constitute an unjustified invasion of the personal privacy of the other identifiable individuals whose personal information is contained in the records. Therefore, I find that the withheld personal information is exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*, subject to my finding on the police's exercise of discretion below.

[36] The police have also claimed the section 38(a), read with section 8(1)(a), exemption over some of the information that I have found exempt under section 38(b). Since I have found that the section 38(b) exemption applies to all the information that the police have claimed the section 8(1)(a) exemption over, I will not consider the police's

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

claim that section 8(1)(a) also applies to this information.

**Issue D: 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 8(1)(l) exemption, apply to the withheld police codes at issue?**

[37] Section 38(a) of the *Act* 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 personal information.<sup>13</sup>

[38] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[39] Section 8 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. In this case, the police rely on section 38(a) read with section 8(1)(l).<sup>14</sup> Section 8(1)(l) states:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[40] Like many of the exemptions listed in section 8, section 8(1)(l) applies where a certain event or harm "could reasonably be expected to" result from disclosure of the record. However, parties resisting disclosure of a record cannot simply assert that the harm is obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. Harm can sometimes be inferred from the records themselves or the surrounding circumstances.<sup>15</sup>

[41] The police submit that they withheld the police codes under section 38(a) read with section 8(1)(l), taking the position that their disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[42] The appellant's representations did not address the withheld police codes.

[43] Previous IPC orders have determined that the use of operational codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning, and that if the public were to learn these codes and their meanings, the effectiveness of the codes would be compromised. This could result

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<sup>13</sup> Order M-352.

<sup>14</sup> As noted above, I do not need to consider the police's section 38(a) read with section 8(1)(a) claim.

<sup>15</sup> Orders MO-2363 and PO-2435.



in the risk of harm to police personnel and members of the public with whom the police engage, such as victims and witnesses.<sup>16</sup> I agree with this approach and adopt it in this appeal. I find that these considerations apply to the withheld police codes at issue in this appeal and accept that their disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime as contemplated by section 8(1)(l).

[44] Therefore, I uphold the police's decision to withhold the police codes contained in the records under section 38(a), read with section 8(1)(l), subject to my review of the police's exercise of discretion below.

**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?**

[45] The police state that they properly exercised their discretion under sections 38(a) and 38(b) to withhold the personal information and police codes at issue. They state that they took into consideration the nature of the information contained in the records and considered the personal privacy of the other identifiable individuals.

[46] The appellant's representations do not specifically address the police's exercise of discretion.

[47] The sections 38(a) and 38(b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. Having found that the information at issue in this appeal is exempt under sections 38(a) and 38(b), I must determine if the police properly exercised their discretion in withholding it. The police must exercise their discretion. On appeal, I may determine whether the police failed to do so.

[48] 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.

[49] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>17</sup> The IPC may not, however, substitute its own discretion for that of the institution.<sup>18</sup>

[50] After considering the representations and the circumstances of this appeal, I find

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<sup>16</sup> See, for example, Orders MO-3622, MO-3815, MO-3977, and MO-4439.

<sup>17</sup> Order MO-1573.

<sup>18</sup> Section 43(2) of the *Act*.

that the police did not err in their exercise of discretion with respect to their decision to deny access to the withheld personal information and police codes under sections 38(a) and 38(b) of the *Act*. I am satisfied that the police considered relevant factors and did not consider irrelevant factors in their exercise of discretion. In particular, it is evident that the police considered the fact that the records contain the appellant's own personal information, and I am satisfied that the police disclosed as much of the information contained in the records as they could to her.

[51] Accordingly, I find that the police exercised their discretion in an appropriate manner in this appeal, and I uphold it.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ October 28, 2024