

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4590

Appeal MA22-00214

City of Greater Sudbury

November 5, 2024

**Summary:** An individual sought access under the *Municipal Freedom of Information and Protection of Privacy Act* to records relating to his residence. The city granted partial access to some records and denied access in full to emails and attachments on the basis that disclosure would be an unjustified invasion of another individual's personal privacy (section 38(b)). In this order, the adjudicator finds that the information in the emails and attachments is exempt under section 38(b). She upholds the city'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(2)(f), 14(2)(h), 14(2)(d), 14(3)(b), and 38(b).

**Orders Considered:** Orders MO-4562, MO-4535, MO-4477, MO-2147.

### OVERVIEW:

[1] This order determines whether the disclosure of personal information that was withheld from emails and their attachments 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*).

[2] The City of Greater Sudbury (the city) received a request pursuant to the *Act* for records relating to the requester's residence during a specified time frame.

[3] The city granted partial access to four records and denied access to a series of emails and their attachments in their entirety, citing section 38(b) (personal privacy) to withhold the remaining information.<sup>1</sup>

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

[5] During mediation, the appellant confirmed that he was only seeking access to the emails and attachments that the city withheld in their entirety.

[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*.

[7] The adjudicator originally assigned to the appeal sought and received representations from the city and the appellant. The appeal was subsequently transferred to me to complete the inquiry and issue a decision. After reviewing the parties' representations, I determined that I did not need to hear from the parties further before issuing this decision.

[8] For the reasons that follow, I uphold the city's decision to withhold the emails and attachments under section 38(b) and dismiss the appeal.

## **RECORDS:**

[9] The records remaining at issue consist of nine pages of emails and 11 corresponding attachments.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Did the city properly exercise its discretion in withholding the information in the records?

---

<sup>1</sup> The city initially cited section 14(1) to withhold the information. However, during mediation, the city confirmed that section 38(b) applies as the records contain the requester's personal information.

## **DISCUSSION:**

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

[10] Before I consider whether section 38(b) applies, I must first determine whether the records contain “personal information”. If they do, I must determine whether the personal information belongs to the appellant, the affected party, or both.

[11] 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 they do not.<sup>2</sup> Additionally, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>3</sup>

[12] 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.<sup>4</sup>

[13] 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.<sup>5</sup> 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***

[14] The city submits that the records consist of emails from a complainant (affected party) to a Municipal Law Enforcement Officer (MLEO). The city further submits that the records contain the personal information of both the appellant and the affected party, and that both are identifiable from the withheld information.

[15] The city submits that the affected party’s personal information includes their name, email address, and the descriptions that they provided of their experiences. The city further submits that the appellant’s personal information includes his name, and that both the affected party and the appellant are identifiable from the attachments to the emails. The city also argues that the withheld information constitutes the affected party’s personal information pursuant to paragraph (f) of the section 2(1) definition, which states

---

<sup>2</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>3</sup> See sections 14(1) and 38(b).

<sup>4</sup> See the definition of “record” in section 2(1) of the Act.

<sup>5</sup> Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

that an individual's personal information includes "correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence".

[16] The appellant points out that the records remaining at issue consist of emails and their attachments, not just the emails themselves. Based on his representations, the appellant appears to accept that the records contain his own personal information, as well as the personal information of the affected party. The appellant submits that the city should redact all references to the affected party and disclose the remaining information that is about him, as that is the only information that the appellant is interested in.

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

[17] I have reviewed the records, which consist of emails and their corresponding attachments, and find that they contain both the appellant's and the affected party's personal information as defined by section 2(1) of the *Act*, including the affected party's email address (paragraph (c) or (d) of the definition of personal information in section 2(1)), the affected party's views and opinions (paragraph (e)), correspondence sent by the affected party that is implicitly of a private or confidential nature (paragraph (f)), and both the appellant's and the affected party's names, along with other personal information relating to them (paragraph (h)). The parties are identifiable from the information in the records, and this information is personal in nature.

[18] The appellant submits that the city should redact all references to the affected party and disclose only the information that relates to him (the appellant). I have considered whether the affected party's personal information can be severed from the records in such a way that would allow the appellant's personal information to be disclosed. Based on my review of the records, I find that the affected party and the appellant's personal information is inextricably linked and that additional severances are not feasible. Because of how the affected party and the appellant's personal information is intertwined, the appellant's personal information cannot be reasonably separated from the other information contained within the records.

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

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

[20] 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.

[21] 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.

[22] 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.

[23] 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).

[24] 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.

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

[26] 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) and (3) and balance the interests of the parties.<sup>6</sup>

### ***Representations***

[27] The city submits that the personal information in the records was compiled as part of an investigation into a possible violation of law, engaging the presumption in section 14(3)(b). Specifically, the city submits that the information was compiled as part of an ongoing investigation into various by-law violations, including to the city's zoning and

---

<sup>6</sup> Order MO-2954.

noise by-laws. The city states that a series of complaints were made against the appellant and that MLEOs attended the property on several occasions regarding noise complaints, property standard issues, and the parking of a commercial vehicle on the property, the latter of which resulted in a Notice of Violation being issued. The city also notes that the Greater Sudbury Police Services had attended the property.

[28] The city submits that the factor at section 14(2)(f) (highly sensitive) applies and weighs against disclosure of the withheld information. The city argues that it is reasonable to consider the information highly sensitive given the concerns set out by the affected party, the safety measures taken by the by-law department, and the other circumstances of the case. The city also submits that the factor at section 14(2)(h) (supplied in confidence) applies and weighs against disclosure of the withheld information, arguing that both the city and the affected party shared the expectation that the information would be treated confidentially. Finally, the city submits that its decision to withhold the personal information at issue does not have any negative impact on the appellant's rights pursuant to section 14(2)(d) (fair determination of rights).

[29] The appellant does not provide substantive representations on the application of the exemption at section 38(b), including the section 14(2) factors or the section 14(3) presumptions, but submits generally that he is seeking access to the information about him that the affected party shared with the city. The appellant submits that he has a right to access any information that was used to "assassinate [his] character" and states that a named individual, whom he alleges to be the affected party, is guilty of slander and libel by writing to the city. I find that this argument raises the possible application of section 14(2)(d) (fair determination of rights).

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

[30] For the reasons below, I find that disclosure of the withheld information would constitute an unjustified invasion of the affected party's personal privacy and therefore, this information is exempt under section 38(b).

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

[31] As previously stated, the city claims that the section 14(3)(b) presumption against disclosure applies to the information at issue. Section 14(3)(b) states:

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

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

[32] 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.<sup>7</sup>

[33] The city submits that the information was compiled as part of an ongoing investigation into various by-law violations. The city cites Order MO-2147, in which the section 14(3)(b) presumption was found to apply to information (including a complaint and other background information) that was compiled as part of an investigation into an alleged contravention of a municipal by-law.

[34] I have reviewed the records and find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Previous IPC orders have held that the section 14(3)(b) presumption is not limited in application to criminal investigations, but may also apply to a variety of other investigations, including by-law investigations.<sup>8</sup> I agree with and adopt this reasoning. As previously stated, the records at issue consist of emails and attachments from an affected party to an MLEO. I accept that the city compiled the withheld information as part of its investigation into possible by-law violations. After receiving complaints, MLEOs attended the appellant's property to investigate a number of reported concerns, one of which led to a Notice of Violation being issued. 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.

[35] As a result, I am satisfied that section 14(3)(b) applies and that disclosure of the personal information in the records is presumed to be an unjustified invasion of the affected party's personal privacy.

[36] 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 section 14(2) apply?*

[37] 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)(f): Highly sensitive

[38] The city submits that section 14(2)(f) applies to the withheld information. This section 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.<sup>9</sup>

[39] Considering the nature of the records, the nature of the information at issue, and the circumstances under which the city conducted their investigation, I find that

---

<sup>7</sup> Orders P-242 and MO-2235.

<sup>8</sup> Orders MO-4562, MO-4535, MO-4477, and MO-2147.

<sup>9</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

disclosure of the withheld personal information could reasonably be expected to cause the affected party significant personal distress. I accept the city's argument that it is reasonable to consider the information highly sensitive given the concerns set out by the affected party, the safety measures taken by the by-law department, and the other circumstances of the case, including the fact that the affected party was requesting enforcement of city by-laws against the appellant.

[40] As a result, I find that the personal information at issue is highly sensitive and the factor at section 14(2)(f) applies and weighs against disclosure.

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

[41] The city submits that section 14(2)(h) (supplied in confidence) applies to the withheld information. This factor requires an institution to consider whether "the personal information has been supplied by the individual to whom the information relates in confidence".<sup>10</sup> This factor weighs against disclosure.

[42] 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".<sup>11</sup>

[43] The city submits that both the affected party, as the individual supplying the information, and the city as the recipient had an expectation that the information would be treated confidentially. The city states that the affected party specifically included wording in their emails to reflect this expectation of confidentiality. The city further submits that their position regarding all by-law complaints is that the complainant's information will remain confidential unless charges are laid, and the matter must be heard before the court. The city states that this is their standard position and that it is communicated to any person submitting a complaint or seeking access to information about a complainant.

[44] In the circumstances, I find that it was reasonable for the affected party to expect that they provided their personal information to the city in confidence. I accept that the affected party explicitly communicated their expectation of confidentiality to the city, and that this expectation was shared by the city as the recipient of that information. Also relevant to my finding is the fact that the affected party did not at any point consent to the disclosure of their personal information.

[45] As a result, I find that the factor at section 14(2)(h) applies to the withheld information and weighs against disclosure.

---

<sup>10</sup> Section 14(2)(h) of the Act.

<sup>11</sup> Order PO-1670.



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

[46] While the appellant did not explicitly cite this factor, he describes the complaints against him as attempts to “assassinate [his] character” and accuses a named individual, whom he alleges to be the affected party, of slander and libel. In stating this, I understand the appellant to be engaging section 14(2)(d) (fair determination of rights).

[47] 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”.<sup>12</sup>This factor weighs in favour of disclosure, if it is found to apply.

[48] 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.<sup>13</sup>

[49] The appellant did not address the four-part test in his representations. However, it is clear that the appellant believes that the named individual is intentionally targeting him by making repeated and unfounded allegations to the city and others.

[50] The appellant has not provided evidence of any existing proceedings. Even if I were to accept that the appellant is contemplating a proceeding, I find that the appellant has also not provided evidence to demonstrate that the personal information at issue is required in order to prepare for the proceeding or to ensure an impartial hearing, particularly given the appellant’s assertion that he is already aware of the affected party’s identity. I also find that the appellant has not clearly explained how the information he is seeking access to is significant to the determination of the right in question.

[51] As the four parts of the test under section 14(2)(d) have not been met, I find the factor at section 14(2)(d) is not relevant and does not favour disclosure of the personal

---

<sup>12</sup> Section 14(2)(d) of the *Act*.

<sup>13</sup> 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.).

information in the circumstances of this appeal.

### Other factors

[52] I have also considered whether any other factors, including unlisted factors, apply to weigh in favour of or against disclosure and find that none do.

### *Balancing the relevant presumption and factors*

[53] I have found that disclosure of the affected party's personal information would result in a presumed unjustified invasion of 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 party's personal information. I found that no factors weighing in favour of the disclosure of the affected party's personal information have been established.

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

### *Absurd result*

[55] 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.<sup>14</sup> This is referred to as the absurd result principle.

[56] The appellant submits that he is already aware of the affected party's identity. The appellant states that a named individual, whom he believes to be the affected party, made it clear that they were going to report the appellant to the by-law department. The appellant states that this same individual said that they were going to report him to the police, and that he also believes that this individual reported him to his employer and others.

[57] Based on my review of the information, 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.<sup>15</sup>

[58] While the records may contain some information that the appellant has knowledge of, it also includes information provided by the affected party that the appellant likely does not know. Given my earlier finding that disclosure would be an unjustified invasion

---

<sup>14</sup> Orders M-444 and MO-1323.

<sup>15</sup> Orders M-757, MO-1323 and MO-1378.

of personal privacy, I find that to apply the absurd result principle would be inconsistent with the purpose of the section 38(b) exemption.

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

**Issue C: Did the city properly exercise its discretion in withholding the information in the records?**

[60] 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 the withheld information is exempt from disclosure under section 38(b), I must next determine if the city properly exercised its 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.

[61] 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.

[62] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>16</sup> The IPC may not, however, substitute its own discretion for that of the institution.<sup>17</sup>

***Representations, analysis and finding***

[63] The city submits that it relied on a number of factors when exercising its discretion to withhold the information, including but not limited to the purposes of the *Act*, the wording of the exemption, the nature of the information, the relationship between the appellant and any affected persons, and the city's long-standing practice. The city argues that it exercised its discretion appropriately. The appellant does not address the city's exercise of discretion in his representations, but suggests that the city should not "hide" behind the cloak of confidentiality.

[64] Following my review of the considerations relied upon by the city, I find that the city properly exercised its discretion to withhold the emails and their attachments under section 38(b). Based on the city's representations, it is clear that it considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the

---

<sup>16</sup> Order MO-1573.

<sup>17</sup> Section 43(2) of the *Act*.

information with the protection of the affected party's privacy when making its decision. I accept the city's argument that it considered and concluded that partial disclosure of the records at issue is not feasible.

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

**ORDER:**

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

Original Signed by: \_\_\_\_\_

Anda Wang  
Adjudicator

\_\_\_\_\_  
November 5, 2024