

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4598

Appeal MA21-00348

Algoma District Services Administration Board

November 25, 2024

Summary: The appellant wanted information about an investigation of a childcare centre overseen by the Algoma District Services Administration Board. The investigation followed allegations of financial misconduct at the Centre. Algoma granted the appellant access to two records and denied access to the rest because they contained personal information of other individuals. The appellant challenged Algoma's access decision and asserted that additional responsive records exist.

In this order, the adjudicator largely upholds Algoma's decision that most of the records should not be disclosed to the appellant because disclosure would be an unjustified invasion of the personal privacy of other individuals. However, she orders Algoma to disclose three records that do not contain personal information of other individuals and do not qualify for exemption from disclosure. She also finds that there is no reasonable basis to believe that additional responsive records exist, and she dismisses that claim.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56, sections 2(1) [definition of "personal information"], 12, 14(1), 14(2)(e), (f), (h) and (i), 14(3)(b), (d) and (f), 38(a) and 38(b).

OVERVIEW:

[1] The appellant submitted a request to the Algoma District Services Administration Board (Algoma) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information regarding investigations following a complaint he

made to Algoma about a specific childcare centre (the Centre).¹ In his request, the appellant sought access to information about the investigation, including the individuals and/or organization that conducted it, the timeline, procedures, protocols, activities, notes, correspondence, reports and results, and copies of any policies regarding a complaint process.

[2] In response to the access request, Algoma issued a decision denying the appellant's access request as vexatious under section 4(1)(b) of the *Act*. In the alternative, Algoma said that it denied access based on the exemptions in the *Act*. Algoma later advised that some requested records do not exist. Algoma added that the existing records relate to the Centre's interests and include information about current and former employees and parents of the Centre, and consent to disclose them had not been obtained. The appellant was dissatisfied with Algoma's decision and appealed it to the Information and Privacy Commissioner (IPC). The IPC attempted to mediate the appeal.

[3] During mediation, Algoma issued a revised decision claiming that it did not have custody or control of the responsive records, only "bare possession." In its revised decision, Algoma explained that the responsive records relate to business and personnel affairs of the Centre, which is not an institution under the *Act* and not subject to access to information requests. Algoma added that the information the appellant seeks is not Algoma's to disclose and was gathered only as a result of complaints made by the appellant. Algoma also noted that the Centre does not consent to disclosure of its information in the responsive records. In its revised decision, Algoma stated that, in the alternative, it was denying access to the responsive records under the mandatory personal privacy exemption in section 14(1), the discretionary solicitor-client privilege exemption in section 12 and the discretionary personal privacy exemption in section 38(b) of the *Act*.

[4] Algoma provided an index of records listing 15 responsive records. Algoma disclosed two records (records 1 and 14) to the appellant. It withheld the remaining eleven records under section 14(1) of the *Act*. It also claimed sections 14(1) and 38(b) to withhold record 9 and section 12 to withhold record 13.

[5] The appellant told the mediator that he maintained his objection to Algoma's denial of access to the listed responsive records, and he raised the issue of reasonable search, asserting that more investigation records exist and are in Algoma's custody or control. A mediated resolution was not achieved. The appeal was moved to adjudication where an adjudicator may conduct an inquiry.

[6] I conducted an inquiry receiving representations from the parties that I shared in accordance with the IPC's *Code of Procedure*. In this order, I find that most of the records are exempt from disclosure under section 38(b) of the *Act*, since their disclosure is

¹ Algoma delivers specified programs in its jurisdiction, including funding for childcare services. Algoma provides funding to the Centre in accordance with a contract, and the Centre uses that funding for childcare services and subsidies.

presumed to be an unjustified invasion of privacy of the Centre's employees. I also find that one record is exempt under section 14(1) and another under section 38(a) read with section 12. However, I find that three records should be disclosed in full because they do not qualify for exemption. I also find that there is no reasonable basis to believe additional responsive records exist, and I dismiss the reasonable search issue.

RECORDS:

[7] There are 13 records at issue, numbered 2-13 and 15. These records consist of emails, letters, meeting notes, memos, credit card transaction details and other documents.

ISSUES:

- A. Are the records "in the custody" or "under the control" of Algoma?
- B. Whose personal information do the records contain?
- C. Would the disclosure of the personal information in records 2, 3, 4, 5, 8, 9, 10, 11 and 12 be an unjustified invasion of personal privacy under section 14(1) or section 38(b)?
- 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 12 solicitor-client privilege exemption, apply to record 13?
- E. Did Algoma exercise its discretion under sections 38(a) and (b), and, if so, should its exercise of discretion be upheld?
- F. Did Algoma conduct a reasonable search for records?

DISCUSSION:

Issue A: Are the records "in the custody" or "under the control" of Algoma?

[8] Section 4(1) of the *Act* provides a general right of access to records that are in the custody or under the control of an institution governed by the *Act*. In this appeal, Algoma asserts that the records at issue are not in its custody or control within the meaning of section 4(1) and, therefore, the general right of access in section 4(1) is not established. Algoma claims that it has only bare possession of the records, and not custody or control.

[9] The courts and the IPC have applied a broad and liberal approach to the custody

or control question,² and considered many factors in context and in light of the purposes of the *Act*.³ When an institution holds the records, as Algoma does in this appeal, the IPC considers the factors set out below to decide if a record is in an institution's "custody or control."⁴

- Was the record created by an officer or employee of the institution?⁵
- What use did the creator intend to make of the record?⁶
- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?⁷
- Is the activity in question a "core," "central" or "basic" function of the institution?⁸
- Does the content of the record relate to the institution's mandate and functions?⁹
- Does the institution have physical possession of the record, because its creator provided it voluntarily or pursuant to a statutory or employment requirement?¹⁰
- If the institution does have possession of the record, is it more than "bare possession"? In other words, does the institution have the right to deal with the record in some way and does it have some responsibility for its care and protection?¹¹
- If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of their duties as an officer or employee?¹²
- Does the institution have a right to possession of the record?¹³

² *Ontario Criminal Code Review Board v. Hale*, 1999 CanLII 3805 (ON CA); *Canada Post Corp. v Canada (Minister of Public Works)*, 1995 CanLII 3574 (FCA), [1995] 2 FC 110; and Order MO-1251.

³ *City of Ottawa v Ontario*, 2010 ONSC 6835 (Div Ct), leave to appeal refused (March 30, 2011), Doc M39605 (CA).

⁴ Orders 120, MO-1251, PO-2306 and PO-2683.

⁵ Order 120.

⁶ Orders 120 and P-239.

⁷ Order P-912, upheld in *Ontario Criminal Code Review Board v Hale*, 1999 CanLII 3805 (ON CA).

⁸ Order P-912.

⁹ *Ministry of the Attorney General v Information and Privacy Commissioner*, 2011 ONSC 172 (Div Ct); *City of Ottawa v Ontario*, cited above, and Orders 120 and P-239.

¹⁰ Orders 120 and P-239.

¹¹ Order P-239 and *Ministry of the Attorney General v Information and Privacy Commissioner*, cited above.

¹² Orders 120 and P-239.

¹³ Orders 120 and P-239.

- Does the institution have the authority to regulate the record's content, use and disposal?¹⁴
- Are there any limits on the ways the institution may use the record? If so, what are those limits, and why do they apply to the record?¹⁵
- To what extent has the institution relied on the record?¹⁶
- How closely is the record integrated with other records held by the institution?¹⁷
- What is the usual practice of the institution and similar institutions in relation to possession or control of records of this nature?¹⁸

[10] In its representations, Algoma explains that the Centre is an independent entity that is not subject to the *Act*. It states that while it provides funding to the Centre, it has no oversight of how the Centre administers that funding; and while it may withhold funding in limited circumstances, it cannot make binding recommendations or order the Centre to comply with any of its recommendations.

[11] Algoma states that its employees created most of the records with the Centre and shared the cost of creating the records with the Centre, which created records 9 and 15 alone. It explains that the records were used exclusively and confidentially for the purposes of the investigation. Algoma states that it does not have a statutory power or duty to carry out the activity (investigating potential financial fraud) that resulted in the creation of the records; it generated the records and investigated the matter with the Centre's cooperation based on its contractual relationship with the Centre.

[12] Algoma adds that the contents of the records do not relate to its mandate or function, and it does not have the right to deal with the records unless the Centre consents. Algoma explains that it only relied on the records as part of the investigation, and it has not integrated the records with its record holdings.

[13] Finally, Algoma states that the records were created based on an understanding with the Centre that they would remain confidential because they relate to employment law matters and allegations of misappropriation of funds, and they refer to the Centre's internal financial administration and the employees involved in that administration. Algoma stresses that the Centre does not consent to disclosure of the records to the appellant.

[14] In his representations, the appellant does not directly address the custody or

¹⁴ Orders 120 and P-239.

¹⁵ *Ministry of the Attorney General v Information and Privacy Commissioner*, cited above.

¹⁶ *Ministry of the Attorney General v Information and Privacy Commissioner*, cited above, and Orders 120 and P-239.

¹⁷ Orders 120 and P-239.

¹⁸ Order MO-1251.

control issue or Algoma's representations on it. The appellant disputes Algoma's description of its relationship to the Centre. He asserts that, as a major funder of the Centre, Algoma continuously monitors the Centre's finances and programming. He argues that Algoma is responsible for ensuring that the funding, which comes from Ontario taxpayers, is spent properly for its intended purposes.

Algoma has custody of the records at issue

[15] Having reviewed the records at issue and considered the parties' representations, I am satisfied that Algoma has custody of the records for the reasons that follow. Algoma's possession of the records – correspondence and memos that it authored, and notes it took at meetings it attended with the Centre – is not bare possession. Algoma possesses most of the records because it created them or assisted in their creation and partly paid for the cost of creating them. Algoma used the records for the purpose of investigating allegations of fund misappropriation against the Centre, and it relied on the records. I do not accept Algoma's representations that it does not have the ability to deal with these records – that it helped create and pay for, and that it used and relied on – absent the Centre's consent.

[16] While I accept that the Centre agreed to participate in the investigation and provided certain information and records to Algoma in confidence for the investigation, this does not void Algoma's custody of the records. Similarly, the fact that the records are confidential does not void Algoma's custody of them. I find that the records at issue are in Algoma's custody within the meaning of section 4(1) of the *Act* and the general right of access applies to them.

Issue B: Whose personal information do the records contain?

[17] To decide which sections of the *Act* may apply to the records, I must first determine whether they contain "personal information" and, if so, to whom the personal information relates. Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

[18] Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.¹⁹ However, information relating to an individual in a professional, official or business capacity may still be "personal information" if it reveals something of a personal nature about the individual.²⁰

[19] Section 2(1) of the *Act* lists eight examples [at paragraphs (a) through (h)] of

¹⁹ Section 2(2.1) states, "Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity." Also see Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

personal information including information about an identifiable individual's: (b) employment history [paragraph (b)], and 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 [paragraph (h)].

[20] In its representations, Algoma asserts that the records contain the personal information of current and former employees of the Centre and identify financial transactions that involved those employees. Algoma also argues that the records do not contain personal information about the appellant. The appellant does not address this issue in his representations.

[21] Having reviewed the records at issue, I find that all but three of them contain personal information about the appellant, including his name and other personal information about him within the meaning of paragraph (h) of the definition in section 2(1) of the *Act*. Records 6, 10 and 15 do not contain personal information about the appellant.

[22] Records 6, 7 and 15 contain no personal information at all; they are correspondence that contain professional information only. Because records 6, 7 and 15 contain no personal information, they cannot be exempt under section 14(1) of the *Act*. Algoma has not claimed any other exemption for records 6, 7 and 15. Accordingly, I will order them disclosed to the appellant.

[23] Record 13 contains only the appellant's personal information. Algoma has claimed the section 12 solicitor-client privilege exemption to withhold it. However, record 13 must be considered under the discretionary exemption in section 38(a) (discretion to refuse requester's own information) read with section 12. At issue E, below, I consider the application of section 38(a), read with section 12, to record 13, since it contains the appellant's personal information alone.

[24] Records 2, 3, 4, 5, 8, 9, 10, 11 and 12 identify employees of the Centre, by name or by role, who were investigated for potentially misappropriating funds belonging to the Centre. This information is about identifiable individuals. It qualifies as personal information within the meaning of paragraphs (b) and (h) because it reveals something personal about these identifiable individuals.

[25] Having found that records 2, 3, 4, 5, 8, 9, 10, 11 and 12 contain personal information about the appellant and other individuals, I consider, below, whether section 38(b) applies to these records. Because I have found that record 10 does not contain personal information of the appellant, I consider, below, whether section 14(1) applies to it.

Issue C: Would the disclosure of the personal information in records 2, 3, 4, 5, 8, 9, 10, 11 and 12 be an unjustified invasion of personal privacy under section 14(1) or section 38(b)?

[26] When a record contains personal information of another individual but not the appellant, as record 10 in this appeal does, section 14(1) prohibits Algoma from disclosing that personal information unless: one of the exceptions in sections 14(1)(a) to (e) applies; one of the section 14(4) situations is present; or, disclosure would not be an unjustified invasion of personal privacy under the exception in section 14(1)(f). None of the exceptions in sections 14(1)(a) to (e) applies in this appeal, and none of the section 14(4) situations is present in this appeal.

[27] Under section 38(b), if records contain the personal information of both the appellant and another individual, Algoma may refuse to disclose the other individual's personal information to the appellant if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy. The section 38(b) exemption is discretionary. This means that Algoma can decide to disclose another individual's personal information to the appellant even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[28] In applying either of the section 14(1) or 38(b) exemptions, sections 14(2) and (3) provide guidance in deciding whether disclosure would be an unjustified invasion of personal privacy. If any of paragraphs (a) to (h) of section 14(3) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy under 14(1).

[29] Where a presumption in section 14(3) applies to records that do not contain the appellant's personal information, the factors in section 14(2) cannot displace the presumption and the records are exempt under section 14(1).

[30] For records containing the appellant's personal information that are claimed to be exempt under section 38(b), the applicable presumptions in section 14(3), factors in section 14(2), and the interests of the parties must be weighed and balanced to determine whether disclosure of the personal information at issue would be an unjustified invasion of personal privacy.²¹

Algoma's claim of the presumptions in sections 14(3)(b), (d) and (f)

[31] Algoma argues that three presumptions apply to the records and, thus, disclosure is presumed to constitute an unjustified invasion of personal privacy of the individuals whose personal information is contained in the records. It submits that the presumptions in sections 14(3)(b) (investigation into a possible violation of law), (d) (employment or

²¹ Order MO-2954.

educational history) and (f) (information relating to finances) apply to the records.

The section 14(3)(b) presumption does not apply

[32] The section 14(3)(b) presumption reads:

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] Algoma argues that section 14(3)(b) applies to records 4 and 11²² because the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law – namely, the misuse of the Centre’s funds contrary to the fraud and theft provisions of the *Criminal Code*²³ and the distribution of property provision of the *Not-for-Profit Corporations Act*.²⁴ The appellant does not address the presumption or Algoma’s representations on it.

[34] I reject Algoma’s claim that section 14(3)(b) applies because its investigation is not the type of investigation contemplated by section 14(3)(b). Previous IPC orders have confirmed that the section 14(3)(b) presumption can apply to different types of investigations, including those relating to by-law enforcement,²⁵ and enforcement of environmental laws,²⁶ occupational health and safety laws,²⁷ or violations of the Ontario *Human Rights Code*.²⁸ These types of investigations are all law enforcement matters undertaken by institutions or investigative bodies that have the statutory authority to impose and enforce penalties for the violation of the law they are investigating. For example, police services that can bring charges, municipalities that can issue orders and by-law infractions, and ministries that can issue orders and recommend prosecutions. There is no suggestion that Algoma is such an institution, or that it has statutory authority to impose and enforce penalties for possible fraud or theft under the *Criminal Code* or for the inappropriate distribution of property provision of the *Not-for-Profit Corporations Act*. For these reasons, I find that 14(3)(b) does not apply to the records at issue.

²² Algoma also claims section 14(3)(b) applies to records 6 and 7, which do not contain personal information; I have ordered records 6 and 7 disclosed to the appellant in Issue B, above.

²³ RSC, 1985m, C-36, sections 380(1) (fraud) and 322(1) (theft).

²⁴ 2010, DO 2010. C 15, section 89(1) which reads:

No part of a corporation’s profits or of its property or accretions to the value of the property may be distributed, directly or indirectly, to a member, a director or an officer of the corporation except in furtherance of its activities or as otherwise permitted by this Act.

²⁵ Order MO-2147.

²⁶ Order PO-1706.

²⁷ Order PO-2716.

²⁸ RSO 1990, c H19; Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

The section 14(3)(d) and (f) presumptions do not apply

[35] Algoma's claims that the section 14(3)(d) and (f) presumptions apply to the records are addressed together in its representations. Algoma submits that records 2, 3, 5, 8, 9, 10 and 12 refer to specific employees of the Centre by name and their corresponding financial transactions.

[36] The section 14(3)(d) and (f) presumptions read:

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

(d) relates to employment or educational history;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness[.]

[37] Having reviewed the records at issue, I am not satisfied that they contain information that qualifies as employment history within the meaning of section 14(3)(d) or as information relating to individuals' personal finances within the meaning of section 14(3)(f).

[38] Previous IPC orders have confirmed that information that relates to employment history for the purposes of section 14(3)(d) includes retirement eligibility dates, employment start and end dates, total years of service, the last day worked, entitlement to sick leave and annual leave, and restrictive covenants.²⁹ Information contained in resumes³⁰ and work histories³¹ also falls within the scope of section 14(3)(d). None of this kind of information is contained in the records.

[39] Previous IPC orders have found that the section 14(3)(f) presumption covers information about an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, such as contributions to a pension plan.³² I do not see any information in the records that describes an individuals' personal finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness within the meaning of section 14(3)(f).

[40] I find that the presumptions in sections 14(3)(d) and (f) do not apply to the records.

²⁹ Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

³⁰ Orders M-7, M-319 and M-1084.

³¹ Orders M-1084 and MO-1257.

³² Orders M-173, P-1348 and PO-2050.

Do the factors in section 14(2) help in deciding if disclosure of records 2, 3, 4, 5, 8, 9, 10, 11 and 12 would be an unjustified invasion of personal privacy?

[41] Because the records 2, 3, 4, 5, 8, 9, 11 and 12 contain the appellant's personal information and section 38(b) applies to them, while record 10 does not and section 14(1) applies to it, and because I have found that no section 14(3) presumption applies to any of the remaining records, I will consider and weight the applicable factors in section 14(2) and the parties' interests to decide if disclosure would be an unjustified invasion of personal privacy.

[42] Algoma submits that the factors in sections 14(2)(e), (f), (h) and (i) are relevant in this appeal. It explains that the personal information of other individuals in the records reveals that they were investigated for alleged theft and fraud and, therefore, it is highly sensitive, engaging the factor in section 14(2)(f). Algoma states that this highly sensitive personal information was provided in confidence for the investigation, engaging the factor in section 14(2)(h), and disclosing it will expose those individuals to unfair pecuniary or other harm and may unfairly damage those individuals' reputations, engaging the factors in sections 14(2)(e) and (i). Algoma submits that these factors all weigh in favour of protecting the privacy of the individuals whose personal information is contained in records 2, 3, 4, 5, 8, 9, 10, 11 and 12. I agree with Algoma that the factors in sections 14(2)(e), (f), (h) and (i) apply to the records and weigh against disclosure of the records.

[43] The appellant does not directly address this issue or Algoma's claim of the section 14(2) factors in his representations. His position in this appeal aligns with the factor in section 14(2)(a), that disclosure is desirable for public scrutiny. However, even if I were to accept that this factor applies and weighs in favour of disclosure, it would not be sufficient to overcome the four factors that I have found apply and weigh against disclosure.

[44] Having found that the factors in sections 14(2)(e), (f), (h) and (i) apply and weigh in favour of privacy protection, I find disclosure of records 2, 3, 4, 5, 8, 9, 11 and 12 would be an unjustified invasion of personal privacy under section 38(b) of the Act, and disclosure of record 10 would be an unjustified invasion of personal privacy under section 14(1) of the Act. I uphold Algoma's decision to withhold these records, subject to my consideration of its exercise of discretion below.

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 12 solicitor-client privilege exemption, apply to record 13?

[45] Section 38 provides exemptions from individuals' general right under section 36(1) of the *Act* to access their own personal information held by an institution. Section 38(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 9.1, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[46] Because Algoma claims that record 13 is solicitor-client privileged, I consider whether section 38(a), read with section 12, applies to it. Section 12 exempts from disclosure records that are subject to solicitor-client privilege or were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[47] Algoma argues that while record 13 contains personal information belonging to the appellant, it is subject to solicitor-client privilege because it contains information that falls within the continuum of solicitor-client communications made for the purpose of seeking and receiving legal advice. The appellant does not address this issue or record 13 in his representations.

[48] Having reviewed record 13, I agree that it contains legal advice that falls within solicitor-client communication privilege under section 12. I find that section 38(a), read with section 12, applies to record 13. I uphold Algoma's decision to withhold this record, subject to my consideration of its exercise of discretion below.

Issue E: Did Algoma exercise its discretion under sections 38(a) and (b), and, if so, should its exercise of discretion be upheld?

[49] The section 38(a) and (b) exemptions are discretionary, meaning that Algoma can decide to disclose information even if the information qualifies for exemption. Algoma must exercise its discretion taking relevant considerations into account. These include the purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected. Also relevant are:

- the words of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,

- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

[50] Algoma submits that in denying access to the records it exercised its discretion under sections 38(a) and (b). It submits that it took relevant considerations into account and exercised its discretion properly and in good faith.

[51] Algoma explains that it balanced the purposes of the *Act*, including: protecting the privacy of other individuals while recognizing that the appellant should have a right of access to his own personal information; the gravity of the information contained in the records, and the fact that information relating to other individuals in the records is highly personal and sensitive since it reveals that certain individuals were investigated for potentially fraudulent activities and theft of funding provided to the centre. Algoma states it also considered the possible consequences of disclosing the information in the records, including public scrutiny and judgment of the individuals investigated, particularly in the context of the small community in which these individuals reside, the potential embarrassment and mental or emotional distress in having such personal information disclosed to neighbors and community members, and the long-term reputational ramifications.

[52] Algoma states that it also considered that the disclosure of information would negatively impact its relationship with the Centre, and it is imperative that the relationship of trust and confidence between it and the Centre remain intact. It adds that it considered the fact that there is no compelling reason to provide the information to the appellant since it has recognized that the appellant's concerns were serious and has provided the results of the investigation to the appellant (record 14). Algoma says that it also considered that the appellant's interest in obtaining his minimal personal information in the records was outweighed by the sensitivity of the personal information of other individuals in the records, which requires protection.

[53] The appellant does not directly address this issue in his representations.

[54] I am satisfied that Algoma's representations establish that it exercised its discretion under sections 38(a) and (b) appropriately, taking into account relevant considerations. I uphold Algoma's exercise of discretion under sections 38(a) and (b) of the *Act*.

Issue F: Did Algoma conduct a reasonable search for records?

[55] As noted in the overview above, the appellant claimed that additional responsive records exist beyond those found by the Algoma. Because he raised that issue, I included it in the Notice of Inquiry I sent to the parties and invited representations on whether Algoma has conducted a reasonable search for records as required by section 17 of the *Act*.³³ 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.³⁴

[56] Algoma provides representations on its search. Algoma states that its employees, including senior management, conducted a review of email and other correspondence, and the file related to the complaint against the Centre. Algoma adds that all the responsive records it located are included in its index of records in this appeal. Algoma maintains that it conducted a reasonable search for records reasonably related to the appellant's access request. I shared Algoma's representations with the appellant and invited his response. However, the appellant did not provide any representations to support his claim that additional responsive records exist.

[57] When addressing the issue of reasonable search, IPC orders have consistently held that an institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records,³⁵ and an appellant must provide a reasonable basis for concluding that additional records exist.³⁶ In this appeal, I have Algoma's assertion that its employees made reasonable efforts to search for responsive records and located 15 such records. However, I have no information from the appellant that would lead me to conclude that additional records exist. Accordingly, I find that there is no reasonable basis for concluding that additional records exist, and I dismiss this issue.

ORDER:

1. I order Algoma to disclose to the appellant records 6, 7 and 15, in full, by **January 6, 2025**, but not before **December 27, 2024**.
2. To verify compliance with order provision 1, I reserve the right to require Algoma to provide me with a copy of the records disclosed to the appellant in accordance with that provision.
3. I dismiss the rest of the appeal.

Original Signed by: _____

November 25, 2024 _____

³³ Orders P-85, P-221 and PO-1954-I.

³⁴ Orders M-909, PO-2469 and PO-2592.

³⁵ Orders P-624 and PO-2559.

³⁶ Order MO-2246.

Stella Ball
Adjudicator