

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-4605

Appeal MA21-00811

Barrie Police Services Board

December 17, 2024

**Summary:** A person asked the Barrie Police Services Board for a report related to the death of the person's parent. The police gave the person partial access to two records. The police denied access to some information in the records because they contain another person's personal information [section 38(b)]. The person seeks full access to one of the records.

The adjudicator agrees with the police's decision not to share some information in the record at issue 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 and 38(b).

**Cases Considered:** P-16, P-709, MO-1323, PO-1723, PO-2052, MO-3713, PO-2052, MO-4122.

### OVERVIEW:

[1] This appeal determines whether the withheld information in the letter written by the appellant's parent prior to their death is exempt under section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant's parent died suddenly, leaving a letter addressed to an affected party. Following the deceased's passing, an estate proceeding began. The appellant objected to the manner in which the estate was distributed.

[3] While the estate proceeding was ongoing, the appellant made a request to the Barrie Police Services Board (the police) for access to any report that the police had related to the death of the deceased. The police issued a decision, granting partial access to sudden death report. The police withheld some information pursuant to section 38(b) (personal privacy) of the *Act*.

[4] Having reviewed the sudden death report, the appellant learned that the deceased left a letter. The appellant requested that the police provide her with access to the letter. The police refused to provide the letter to the appellant.

[5] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant confirmed that she was seeking access to a copy of the letter. After notifying an affected party, the police issued a supplemental decision granting the appellant partial access to the letter. The police granted the appellant access to her personal information and to some personal information of the deceased. The police withheld some information in the letter pursuant to section 38(b).

[6] Since the appellant was seeking full access to the letter, the file was transferred to the adjudication stage of the appeals process. An IPC adjudicator decided to conduct an inquiry. The adjudicator sought representations from the police, an affected party, and the appellant. The affected party did not make representations. The appeal was then transferred to me to continue the inquiry. Having reviewed the representations provided by the police and the appellant, I determined that I did not need to hear from the parties before making my decision.

[7] For the reasons that follow, I uphold the police's decision to withhold the information at issue.

## **RECORD:**

[8] At issue in this appeal is the withheld information in the letter written by the deceased shortly before their death.

## **ISSUES:**

- A. Does the letter 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?

## **DISCUSSION:**

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

[9] In order to decide which sections of the *Act* apply to a specific case, I must first decide whether the record contains “personal information,” and if so, to whom the personal information relates. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>1</sup> If the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>2</sup>

[10] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>3</sup> 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. 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>4</sup>

[11] Section 2(1) of the *Act* gives a list of examples of personal information. 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.”<sup>5</sup>

#### ***Parties’ representations***

[12] The police submit that the letter contains information of identifiable individuals, including their first and last names and medical information.

[13] The appellant submits that the letter contains “personal information” because it has family information of the deceased. Specifically, the appellant relies on section 2(1)(e) of the *Act* stating that the views and opinions expressed in the letter are about family finances.

#### ***Analysis and finding***

[14] I find that the letter contains personal information of the appellant, the deceased

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

<sup>3</sup> See the definition of “record” in section 2(1).

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>5</sup> Order 11.

and other individuals (affected parties). This personal information includes names (first and last), medical history, views and opinions of the deceased about affected parties, and other information of personal nature, in accordance with sections 2(1)(a), (b), (g), (h) of the *Act* and the introductory wording of the definition "personal information."

[15] Given that the letter overall contains personal information of the appellant, I will consider the appellant's right of access to the letter under section 38(b) of the *Act*.

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

[16] The appellant's overarching position is that she is entitled to receive access to a full copy of the letter because she is a beneficiary of the deceased's estate and is responsible for ensuring that a complete will is before a court. The appellant says that the letter is part of the deceased's will. The IPC's jurisdiction is limited to determining whether a requester has access to a record in accordance with the *Act*.

[17] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. However, section 38 provides some exemptions from this right.

[18] 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.<sup>6</sup>

[19] Sections 14(1) to (4) provide guidance in deciding whether the disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the five exceptions in sections 14(1)(a) to (e) apply, the disclosure would not be an unjustified invasion of other individual's personal privacy, and the information is not exempt from disclosure under section 38(b).

[20] Otherwise, in deciding whether disclosure of personal information would be an unjustified invasion of personal privacy under section 38(b), the factors and presumptions in sections 14(2) and (3) must be considered, weighed and balanced with the interests of the parties.<sup>7</sup> Sections 14(3)(a) to (h) list situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists other factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy.

[21] Section 14(4) lists situations where disclosure would not be an unjustified invasion

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<sup>6</sup> However, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy; Order PO-2560.

<sup>7</sup> Order MO-2954.

of personal privacy. If any of the paragraphs in section 14(4) apply, disclosure of the personal information is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b).

***Representations, analysis and findings***

*Exceptions at section 14(1)*

[22] The police submit that none of the exceptions at sections 14(1)(a) to (e) apply to the withheld information. The appellant, however, argues that the exceptions at sections 14(1)(a) and (d) apply and therefore the withheld information must be disclosed to her.

14(1)(a): request or consent of an individual concerned

[23] I find that there is no prior written consent from any affected party, including the deceased, to the disclosure of their personal information.

[24] The appellant submits that the deceased provided an implied consent to the disclosure of the letter to the appellant because the deceased named the appellant a beneficiary of the estate. The appellant says that as a beneficiary, she is entitled to have access to the deceased's financial information, including her will. She further says that the letter is part of the will. While the deceased named the appellant a beneficiary of the estate, it was for the purpose of the distribution of the deceased's estate. In my view, this does not create a consent for the purpose of the access request under the *Act*. Prior IPC orders held that section 14(1)(a) requires that the consent be in writing and must be given in the specific context of the access request.<sup>8</sup> There is no evidence that the deceased provided a consent to the disclosure of the letter as required by section 14(1)(a) of the *Act*.

[25] The appellant also submits that an affected party that initially objected to the disclosure of the letter to her has since withdrawn their objection. The appellant says that the affected party withdrew their objection by not appealing the police's decision to provide her with partial access to the letter and by not participating in the inquiry. The appellant concludes that if there is no objection, the letter can be disclosed to her.

[26] I find that the affected party's decision not to appeal the police's decision to partially disclose the letter and not to participate in the inquiry does not create a consent under section 14(1)(a) of the *Act*. The affected party provided the police with their position when the police informed them that they intended to partially disclose the letter. The affected party is not required to appeal the police's decision to partially disclose the letter and their decision not to do so does not mean that they consented to the release of the full letter. The affected party also is not required to participate in the inquiry. The affected party's decision not to do so cannot create a presumption that the consent was

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<sup>8</sup> Order PO-1723.

given.<sup>9</sup>

14(1)(d): expressly authorized by another act

[27] The appellant says that as a beneficiary of the deceased's estate, she is entitled by law to have access to the deceased's will to ensure that a complete will is presented as part of an application for probate.

[28] I find that exception at section 14(1)(d) does not apply. The appellant does not indicate under which statute she has such right. If such right is under the common law, section 14(1)(d) does not apply. Section 14(1)(d) only applies if 1) a statute specifically allows for the disclosure of the type of personal information at issue; or 2) there is a general reference in a statute and a specific reference in a regulation with regards to the type of personal information at issue.<sup>10</sup> Even if such right exists in a statute, the IPC does not have jurisdiction to decide whether the letter is a will.

*Presumptions and factors at sections 14(2) and (3)*

14(3)(b): investigation into a possible violation of law

[29] The police submit that the letter was compiled and is identifiable as part of an investigation into a possible violation of law. The appellant submits that the presumption at section 14(3)(b) does not apply because the police opened an investigation file only until they confirmed the cause of death. After the coroner's office confirmed the cause of death, the file was closed. The appellant further says that if access to the letter could impede the investigation into a possible violation of law, the police should not have permitted an affected party to keep the original of the letter.

[30] I find that the letter was compiled and is identifiable as part of an investigation into a possible violation of law and therefore the presumption at section 14(3)(b) applies. This presumption requires only that there be an investigation into a *possible* violation of law.<sup>11</sup> There is no dispute that the letter was gathered by the police during their response to a call about the deceased's sudden death. The appellant confirms that the police opened an investigation file pending the results of the coroner's report. The file was closed when the police received coroner's report, which presumably ruled out a possibility that the death was a result of a criminal offence. Section 14(3)(b) applies even when criminal proceedings were never started.<sup>12</sup> In prior orders, the IPC applied the presumption at section 14(3)(b) to the police records related to investigations into sudden deaths.<sup>13</sup>

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<sup>9</sup> Order P-709.

<sup>10</sup> Orders M-292, MO-2030, PO-2641 and MO-2344.

<sup>11</sup> Orders P-242 and MO-2235.

<sup>12</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

<sup>13</sup> Orders MO-1323, MO-3713, PO-2052.

[31] The fact that the police permitted an affected party to keep the original letter does not affect my decision about whether the presumption applies. Section 14(3)(b) applies to any record that was gathered during an investigation. It does not speak to police's practices during an investigation and whether the police ought to confiscate a record from an individual who has it in their possession if the record is relevant to an investigation. (It is my understanding that the affected party had the document in their possession prior to the police's arrival.) Once the record or copy of it is in the police's possession, the police's decision to disclose the record must comply with the *Act*.

14(2)(d): fair determination of rights

[32] The appellant submits that the withheld portions of the letter are relevant to the proceeding related to the deceased's estate. First, the appellant says that the letter confirms the deceased's wishes as they relate to the distribution of the estate. Second, the appellant says that having the letter could have allowed her to persuade an affected party to engage in mediation. It is unclear from the appellant's representations if the estate proceeding is still ongoing or whether she can resume it once she is in receipt of the full letter. I understand that the discussions about the mediation occurred in the past.

[33] The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

- a. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
- b. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
- c. Does the personal information have some bearing on or is it significant to the determination of the right in question?
- d. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?<sup>14</sup>

[34] I find that the first part of the test is met. The appellant asserts a testamentary right to the deceased's assets. This is the kind of claim that exists in law in the form of estate litigation and proceedings. For the purpose of this appeal, I will assume that the second part of the test is also met: either that the estate proceeding is still ongoing or that it can be resumed. Generally speaking, I find that some withheld information may have some bearing on the determination of the appellant's right to a portion of the deceased's estate.

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<sup>14</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.).

[35] However, I am not satisfied that the disclosure of this portion of the letter is *required* to allow the appellant to prepare for the proceeding or to ensure an impartial hearing. In the vast majority of orders where the IPC ordered personal information to be disclosed, the personal information only included name and address of an identifiable individual and was required to commence litigation.<sup>15</sup> In the appellant's case, the estate litigation was or is ongoing and therefore the appellant does not need the withheld information to commence a legal proceeding.

[36] As all four parts of the test have not been met, I find that the factor at section 14(2)(d) does not apply.

14(2)(f): highly sensitive personal information

[37] The police submit that the disclosure of the withheld information would constitute an unjustified invasion of personal privacy of affected parties because the letter contains highly sensitive information.

[38] The appellant objects that any information in the letter is highly sensitive. First, the appellant submits that the deceased intended the letter to be seen by both the appellant and the affected party to whom the letter is addressed. In support of her position, the appellant relies on the fact that she is a beneficiary of the deceased's estate. She also says that the letter contains information meant for the appellant and that her personal information is intertwined with that of the affected party. Second, the appellant says that any deceased's medical information in the letter is not sensitive because she already has substantial medical information about the deceased. Finally, the appellant says that since the information in the letter is about deceased's assets and wishes, it cannot be sensitive within a family circle.

[39] I find that some of the withheld information in the letter is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>16</sup> Given the subject matter of the withheld information, the context in which the letter was gathered, and the relationship between the appellant and an affected party, I conclude that the disclosure of some of the withheld information could result in a reasonable expectation of significant personal distress to an affected party and the deceased. In reaching my decision, I took into account the appellant's submission that she is aware of some of the deceased's personal information. However, the fact that the letter contains the appellant's personal information (all of which was disclosed to her) or that the appellant is a beneficiary of the deceased's estate or a family member of the deceased does not affect my finding that some personal information of affected parties is highly sensitive.

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<sup>15</sup> Order MO-4122.

<sup>16</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.



Factor at section 14(2)(i): unfair damage to reputation

[40] The police submit that the disclosure of the withheld information in the letter could unfairly damage the reputation of the deceased. The appellant submits that the police's decision not to disclose the full letter harms the appellant and the deceased's reputation. The appellant's representations explain how the deceased's reputation is being harmed.

[41] I find that the factor at section 14(2)(i) does not apply to the withheld information. The police do not indicate how the disclosure of the withheld information would unfairly damage the reputation of the deceased. Considering the information that has been disclosed to the appellant to date, I do not see how the disclosure of the withheld information could unfairly damage the reputation of the deceased.

[42] The factor at section 14(2)(i) tends to support the non-disclosure of the information at issue.<sup>17</sup> For this reason, I have not considered the appellant's arguments about the harm that the non-disclosure of the withheld information could have on her and the deceased's reputation.

14(2): other factors referred to by the appellant

[43] The other factors relied on by the appellant – factors at sections 14(2)(e), (g) and (h) – also weigh in favour of privacy protection.<sup>18</sup> Therefore, they cannot be relied on to favour the disclosure. However, I will consider the appellant's representations about her circumstances as part of the unlisted factors, discussed below.

14(2): unlisted factors

[44] In addition to relying on the presumption at section 14(3)(b) and factors in section 14(2), the police submit that the letter was addressed to an affected party, who did not provide consent to its release. The police say that they disclosed to the appellant portions of the letter that only contained the deceased's or appellant's personal information. The police rely on IPC Order MO-3343 to support their decision.

[45] The appellant submits that while the letter might be addressed to an affected party, the deceased intended that the appellant have access to the letter as well. To support her position, the appellant relies on the fact that she is a beneficiary of the deceased's estate; that the letter contains her personal information intertwined with that of an affected party; and that the letter contains information the deceased wanted to communicate to the appellant. The appellant's representations describe in detail the importance of the letter to her and the circumstances surrounding the estate dispute. I have reviewed the appellant's representations, but due to confidentiality reasons will not reproduce more details.

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<sup>17</sup> PO-2265.

<sup>18</sup> *Ibid.*

[46] The police cannot rely on the fact that the letter is addressed to an affected party and that the affected party has not provided their consent as unlisted factors because I have already considered these factors as part of section 14 analysis. The fact that the letter is addressed to someone other than the appellant is a factor that I took into account in determining whose personal information is in the letter. Having determined that the letter contains personal information of several affected parties, including an individual to whom the letter is addressed, and given that these affected parties have not provided consent to the disclosure of their personal information, I considered the application of presumptions and factors at sections 14(3) and (2).

[47] I have also already addressed as part of section 14 analysis the appellant's argument that the deceased intended that the appellant have access to the letter. I found that there is no consent as contemplated by section 14(1)(a) of the *Act* from the deceased that would permit the appellant to have access to the letter. The fact that the letter contains the appellant's personal information only provides her with the right to access her personal information. The appellant received access to all her personal information that could be severed from the letter. None of the appellant's personal information is intertwined with that of an affected party.

[48] I have considered the importance of the letter to the appellant and weigh this factor in favour of the disclosure. I accept the appellant's representations about the importance of the letter to her without making any findings that relate to the distribution of the deceased's estate as it is outside the IPC jurisdiction.

#### *Balancing the factors*

[49] I find that the disclosure of the withheld information would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and therefore qualifies for an exemption under section 38(b). To reach this conclusion, I considered that the letter contains the appellant's personal information. I also considered that the affected parties have an interest in their personal information being protected. The interest in privacy protection weighed more heavily because one of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.<sup>19</sup> I then considered that one presumption and one factor weigh against the disclosure and one unlisted factor weighs in favour of the disclosure. Taking these considerations into account and balancing the interests of the parties, I conclude that the disclosure of the withheld information would constitute an unjustified invasion of affected parties' personal privacy.

#### *Situations listed in section 14(4)*

[50] The Notice of Inquiry included a description of section 14(4)(c), which permits an institution to disclose a record to a close relative of a deceased for compassionate

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<sup>19</sup> Section 1(b) of the *Act*.

reasons. The appellant does not submit that she is seeking access to the letter to assist her with grieving. As a result, section 14(4)(c) is not engaged.

[51] Having found that the disclosure of the withheld information would constitute an unjustified invasion of affected parties' personal privacy, the information is exempt from disclosure, subject to my review of the police's exercise of discretion.

#### *Exercise of discretion*

[52] The section 38(b) exemption is discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[53] In addition, the IPC may find that the institution erred in exercising its discretion where 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. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>20</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>21</sup>

#### Police's representations

[54] The police submit that they made the decision to partially release the letter after careful consideration of the letter and prior IPC orders. The police balanced the appellant's right of access to the information held by the police and the need to protect personal privacy of other individuals. The police also considered that they provided the appellant with a full copy of the sudden death report (with a date of birth of one individual withheld) and partial access to the letter. The withheld portions of the letter contain information that does not relate to the appellant or that is highly sensitive.

#### Appellant's representations

[55] The appellant questions the police's motivations behind not disclosing the withheld information to her. In her view, it is unreasonable for the police to continue to withhold the full letter in light of the appellant's detailed submissions to the police about the impact on the appellant of not having access to the letter, the circumstances surrounding the estate dispute, the content of the letter, and an affected party's failure to appeal the police's decision. The appellant says that the police's decision to withhold portions of the letter prejudices her.

[56] The appellant also submits that the police failed to investigate potential criminal offences that she brought to their attention. This issue is outside of the IPC jurisdiction,

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<sup>20</sup> Order MO-1573.

<sup>21</sup> Section 43(2).

and I will not consider it.

Analysis and finding

[57] I find that the police properly exercised their discretion. The police took into account the appellant's interests in accessing the letter and affected parties' interests in their personal privacy being protected, all of which are relevant factors. In consideration of the interests of the appellant and the affected parties, the police disclosed to the appellant significant amount of information and withheld only limited affected parties' information.

[58] The appellant has not established that the police acted for improper purpose or in bad faith. As set out above, one of the purposes of the *Act* is to protect personal information of individuals held by institutions. There is also no evidence before me that the police took into account irrelevant considerations.

[59] In summary, I uphold the police's decision to withhold the information at issue under the personal privacy exemption at section 38(b) of the *Act*.

**ORDER:**

The appeal is dismissed.

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

December 17, 2024 \_\_\_\_\_