

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-4625

Appeal MA21-00400

Toronto Police Services Board

February 7, 2025

**Summary:** A person asked the police under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to a specific police report. The police provided responsive records to the person, withholding some information on the basis that it consists of other individuals' personal information (section 14(1)) and that it is non-responsive.

In this order, the adjudicator upholds the police's decision not to disclose the withheld information on the basis that both the mandatory and discretionary personal privacy reasons (exemptions) (sections 14(1) and 38(b)) apply and that some information is non-responsive. She dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1), 14(1)(a), 14(2)(a), 14(2)(b), 14(2)(d), 14(3)(b), 17, 21(1), and 38(b).

**Orders Considered:** M-720, MO-4598, M-352 and PO-3129.

### OVERVIEW:

[1] This order determines whether the withheld information is exempt under personal privacy exemptions pursuant to sections 14(1) and 38(b)<sup>1</sup> of the *Municipal Freedom of*

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<sup>1</sup> Both sections 14(1) and 38(b) contain personal privacy exemptions. Section 14(1) applies to records which do not contain requester's personal information. Section 38(b) applies to records which contain personal information of a requester and other individuals.

*Information and Protection of Privacy Act* (the *Act*). This order also determines if some information is non-responsive.

[2] The appellant<sup>2</sup> filed a request under the *Act* with the Toronto Police Services Board (the police) for access to a police report and all associated documents, notes, and videos related to the execution of a search warrant at a specified address and on a specified date. The appellant also sought the names of police constables involved in the events.

[3] As background, the search warrant executed at the specified address was one of three search warrants executed on the same day. The other two search warrants were executed at a separate address. The appellant says that they were seriously injured during the execution of the search warrant at the specified address.

[4] The police identified a number of records as responsive to the request. The police granted partial access to the records. The police withheld some information from the records on the basis of section 14(1) (personal privacy) of the *Act*. The police also withheld some information from the records on the basis that it was non-responsive to the request.

[5] The appellant sought access to all withheld information and appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[6] The matter did not resolve at mediation and was moved to the adjudication stage of the appeal process to adjudicate the police's decision to withhold information on 43 pages located by the police. An IPC adjudicator decided to conduct an inquiry, and they sought, received and shared the parties' representations in accordance with the IPC's *Code of Procedure* and the *Practice Direction Number 7*. The appeal was then transferred to me to continue the inquiry. I reviewed the materials and determined that I did not require further representations before making my decision.

[7] For the reasons that follow, I find that some withheld information is exempt under the mandatory personal privacy exemption at section 14(1), and other withheld information is exempt under the discretionary personal privacy exemption at section 38(b). I also find that two portions of the records are non-responsive to the request. I therefore dismiss the appeal.

## **RECORDS:**

[8] The information at issue consists of withheld portions of event details reports, a police occurrence report, search warrant documents, and police officers' memorandum notes. While the records contain 77 pages, only 43 of those pages contain the withheld

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<sup>2</sup> The request and the appeal were filed by a legal representative of the requester. I will use "appellant" to refer to any action or statement made by the requester's representative on behalf of the requester.

information.

## **ISSUES:**

- A. Is the withheld information on pages 41 and 48 responsive to the request?
- B. Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- C. Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

## **DISCUSSION:**

### **Issue A: Is the withheld information on pages 41 and 48 responsive to the request?**

[9] The police withheld two small portions of the records as non-responsive (on pages 41 and 48). The appellant challenges this aspect of the police’s decision.<sup>3</sup> To be considered responsive to the request, records must “reasonably relate” to the request.<sup>4</sup> Institutions should interpret requests liberally in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.<sup>5</sup>

[10] The police did not specifically argue that the information on pages 41 and 48 is responsive to the request, although they argued that the request was sufficiently clear to identify responsive information. In response, the appellant opined about the types of information that they expected to receive in response to their request.

[11] I agree with the police that the request was sufficiently clear. The appellant was seeking access to a police report and associated records related to the execution of a search warrant at a specified address on a specified date. Based on my review of the two portions of the records withheld as non-responsive on pages 41 and 48 (portions of police officers’ notes), I am satisfied that they do not relate to the execution of the search warrant at the specified address on the specified date. Therefore, I find that these portions do not reasonably relate to the request and the appellant has no right of access to them.

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<sup>3</sup> The issues that moved forward to adjudication were set out in the Mediator’s Report.

<sup>4</sup> Orders P-880 and PO-2661.

<sup>5</sup> Orders P-134 and P-880.

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

[12] The police withheld information in the records on the basis of section 14(1) because it constitutes personal information of individuals other than the appellant. However, if any of the records contain the appellant’s own personal information, the appellant’s access rights are greater than if they do not and section 38(b) applies instead.<sup>6</sup> To decide whether section 14(1) or 38(b) applies, I must first decide whether the records contain “personal information,” and if so, to whom the personal information relates.

[13] 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>7</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>8</sup>

[14] Section 2(1) of the *Act* gives a list of examples of personal information and states, in part:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

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<sup>6</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>7</sup> See the definition of “record” in section 2(1).

<sup>8</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[15] 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>9</sup>

[16] Sections 2(2), (2.1) and (2.2) of the *Act* exclude some information from the definition of personal information. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.<sup>10</sup> However, in some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.<sup>11</sup>

### ***Police's representations***

[17] The police submit that the records contain "personal information" of several individuals. First, the police say that the information about individuals who were subject to separate search warrants constitutes their "personal information" because these individuals were subject to search warrants executed at a separate address and the information relates to them in their personal capacity. Second, the police say that the name of a security guard who was present at the scene constitutes the guard's "personal information". The police argue that while the security guard was present at the scene in their professional capacity, they are an affected party and are entitled to the same privacy protections as other affected parties.

[18] The police further submit that the appellant is not listed in a police occurrence report in which all three search warrants are referenced. The police say that the appellant is only mentioned with respect to the search conducted at the specified address.

### ***Appellant's representations***

[19] The appellant agrees that some withheld information appears to constitute "personal information." For example, the appellant says that the records contain names and phone numbers of individuals who witnessed the events at the specified address. These individuals acted in their personal capacity and their names would constitute "personal information."

[20] However, the appellant disputes that the name of the security guard is personal information on the basis that the security guard was acting in their professional capacity.

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<sup>9</sup> Order 11.

<sup>10</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>11</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

The appellant also questions whether the information about the individuals who were subject to separate search warrants relates to them in their personal capacity.

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

[21] I find that all records contain personal information of other individuals, and that some records also contain the appellant's personal information.

[22] I am satisfied that all records contain personal information of other individuals, including individuals who were subject to separate search warrants, a security guard who was present at the scene, and witnesses to the events. The records contain these individuals' names, dates of birth, phone numbers, addresses, and other information that constitutes "personal information" in accordance with paragraphs (a), (b), (c), (d), (h) of section 2(1) of the *Act* and the introductory wording of the definition of "personal information". The records also contain information that, together with the information that has been disclosed, would allow to identify these individuals and would reveal something of a personal nature about them.

[23] While the security guard was at the scene in their professional capacity, I find that their name constitutes "personal information" under the *Act*. The appellant named the security guard as a party in a legal proceeding, thereby raising concerns about the security guard's conduct during the events. Prior IPC orders held that where an individual's conduct in their professional capacity is questioned, the information about the individual qualifies as "personal information."<sup>12</sup>

[24] The appellant submits that the individuals who were subject to separate search warrants might have been acting in their professional capacity. Even if this is the case, the fact that they were subject to a search warrant makes information about them of personal nature, which qualifies as "personal information" under the *Act*.

[25] I am also satisfied that some records contain the appellant's personal information. Those records contain the appellant's name, address, date of birth and other information of personal nature in accordance with paragraphs (a), (d), (h) of section 2(1) of the *Act* and the introductory wording of the definition of "personal information".

[26] The IPC applies a "record-by-record" approach to determining if the withheld information in a record is subject to Part I or Part II analysis.<sup>13</sup> If a record as a whole contains requester's personal information, it is subject to the discretionary personal privacy exemption at section 38(b) in Part II of the *Act*, even if all requester's personal information was disclosed and the only information remaining at issue is personal information of other individuals. If the record does not contain the requester's personal information, it is subject to the mandatory personal privacy exemption at section 14(1)

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<sup>12</sup> Orders M-720 and MO-4598.

<sup>13</sup> Orders M-352 and PO-3129. This is significant because some exemptions, including personal privacy exemption, is mandatory in Part I and discretionary in Part II.

in Part I of the *Act*.

[27] With respect to the records that contain appellant's personal information, I will consider whether the appellant has a right of access to the withheld information under the discretionary personal privacy exemption at section 38(b). I will consider whether the appellant has a right of access to the withheld information in the remaining records under the mandatory personal privacy exemption at section 14(1). I confirm that all of the appellant's personal information that is contained in the records has been disclosed to them, and therefore I do not need to consider whether any additional appellant's personal information should be severed and disclosed.

**Issue C: Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the personal information at issue?**

[28] 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.

[29] Under the section 38(b) exemption, if a record contains the personal information of both the requester (in this case the appellant) and another individual, the institution 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.<sup>14</sup>

[30] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to the appellant even if doing so would result in an unjustified invasion of other individual's personal privacy.<sup>15</sup>

[31] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the appellant, the institution cannot disclose that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or the section 14(1)(f) exception applies, because disclosure would not be an "unjustified invasion" of the other individual's personal privacy.

[32] Sections 14(1) to (4) provide guidance in deciding whether the information is exempt under section 14(1) or 38(b), as the case may be.

[33] If any of the five exceptions in sections 14(1)(a) to (e) apply, neither the section 14(1) exemption nor the section 38(b) exemption applies. I find that none of the

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<sup>14</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>15</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

exceptions in sections 14(1)(a) to (e) apply.

[34] Sections 14(2), (3), and (4) provide guidance in deciding whether the disclosure would constitute an unjustified invasion of another individual's personal privacy (under both section 14(1)(f) and section 38(b)). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy. Some of the factors weigh in favour of disclosure, while others weigh against disclosure. The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).<sup>16</sup> Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. I find that none of the situations in section 14(4) apply in this appeal.

[35] With respect to records that do not contain appellant's personal information, if a presumption at section 14(3) applies, the factors outlined in section 14(2) cannot be used to disprove a presumed unjustified invasion of personal privacy under section 14(3).<sup>17</sup> If the personal information at issue does not fit within any presumptions in section 14(3), I must consider the factors set out in section 14(2) to determine whether disclosure of the personal information would be an unjustified invasion of personal privacy. If no factors favouring disclosure in section 14(2) are present, the section 14(1) exemption applies because the section 14(1)(f) exception has not been proven.<sup>18</sup>

[36] With respect to records which contain appellant's personal information, the decision-maker must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in deciding whether the disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.<sup>19</sup>

### ***Police's representations***

[37] The police submit that the exception at section 14(1)(a) does not apply because they do not have consent from individuals whose personal information is in the records to disclose their personal information.

[38] The police further submit that the withheld information is exempt from disclosure because a presumption at section 14(3) applies, and none of the factors at section 14(2) weigh in favour of the disclosure of the information. The police argue that the presumption at section 14(3)(b) applies because the withheld information was compiled as part of an investigation into one or more indictable offences.

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<sup>16</sup> Order P-99.

<sup>17</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

<sup>18</sup> Orders PO-2267 and PO-2733.

<sup>19</sup> Order MO-2954.



[39] In addition, the police submit that it would not be an absurd result to withhold other individuals' personal information from the appellant because the appellant was not present when search warrants were executed at a separate address.

***Appellant's representations***

[40] The appellant submits that a consent from individuals whose personal information is in the records must be sought. (The appellant does not argue that there is consent.)

[41] The appellant relies on a number of factors at section 14(2) to argue that disclosure of the withheld information would not constitute an unjustified invasion of personal privacy. First, the appellant submits that disclosure of the withheld information will subject the police's conduct to public scrutiny (factor at section 14(2)(a)). The appellant asserts that the police failed to follow a certain procedure during the execution of the search warrant at the specified address. The appellant refers to a complaint they made to a police oversight agency about the police's actions. The appellant submits that following its review of the appellant's complaint, the police oversight agency sent a reminder to police chiefs about search warrant procedures. The appellant explains that because the police failed to follow the procedure, they sustained injuries. The appellant believes that the withheld information will provide a full account of the events. Having a full account of the events, the appellant argues, will ensure that police's actions are scrutinized with the goal of ensuring that similar events do not occur in the future.

[42] Second, the appellant submits that the withheld information is relevant to a fair determination of their rights (factor at section 14(2)(d)). The appellant initiated a legal proceeding against, in part, the police alleging negligent investigation and assault, which resulted in injuries and losses. The appellant submits that they require the withheld information to meaningfully participate in the legal proceeding. The appellant seeks personal information of witnesses to contact them to potentially testify in the legal proceeding. While the appellant says that they know who the security guard is and already named them as a party in the legal proceeding, the appellant seeks the name of the guard to confirm that they named the correct person. The appellant says that they were unable to obtain the withheld information through the legal proceeding because the police withheld full version of the records from their own legal counsel.

[43] Third, the appellant submits that access to the withheld personal information will promote public health and safety (factor at section 14(2)(b)).

[44] Aside from the factors listed at section 14(2), the appellant lists other factors to support their position that the withheld information must be disclosed. The appellant submits that it appears the police connected them to other individuals whose personal information is in the records, and therefore the disclosure of these individuals' personal information would not constitute an unjustified invasion of their personal privacy. The appellant also provides arguments about why they ought to receive the complete search warrant with respect to the specified address and emphasizes that the events had a

significant impact on them. With respect to the name of the security guard, the appellant says that the guard's name is already public knowledge because they are a party to the legal proceeding initiated by the appellant.

[45] The appellant makes other arguments to support their position. The appellant disagrees that the disclosure of other individuals' personal information obtained as part of a police investigation would constitute an unjustified invasion of personal privacy (presumption at section 14(3)(b)). The appellant says that the withheld information is not highly sensitive, and therefore its disclosure would not cause significant personal distress (factor at section 14(2)(f)).

[46] Overall, the appellant submits that the personal privacy exemption should not be used by the police to avoid accountability for their actions or to prevent the appellant from preparing for a legal proceeding. The appellant submits that by doing so the police do not instill public confidence in them.

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

#### *Consent*

[47] The appellant submits that a consent from individuals whose personal information is in the records must be sought. Pursuant to section 21(1) of the *Act*, an institution must notify a person to whom the information relates about the request if the institution intends to grant access to the record, the information at issue is personal information, and there is a reason to believe that the disclosure of the information might constitute an unjustified invasion of personal privacy. The police decided to withhold other individuals' personal information. There is no onus in the *Act* on the police or the IPC to seek consent.

#### *Records that do not contain appellant's personal information*

[48] I find that the withheld information in the records that do not contain the appellant's personal information is exempt under the mandatory personal privacy exemption at section 14(1) because its disclosure is presumed under section 14(3)(b) to constitute an unjustified invasion of personal privacy of the individuals whose information is in the records.

[49] Under section 14(3)(b), disclosure of personal information of an individual other than a requester is presumed to constitute an unjustified invasion of the individual's personal privacy when the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The presumption at section 14(3)(b) requires only that there be an investigation into a *possible* violation of law.<sup>20</sup> Even if criminal proceedings were never started against the individual, section 14(3)(b) may still

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<sup>20</sup> Orders P-242 and MO-2235.

apply.<sup>21</sup>

[50] The records previously disclosed to the appellant support a conclusion that the police were carrying out an investigation into a possible violation of law. The records confirm that in the process of investigating one or more indictable offences, the police obtained several search warrants and executed them. The personal information that appears in the records was compiled for the purpose of or during the execution of the search warrants.

[51] Since a presumption under section 14(3) cannot be rebutted by any factors at section 14(2) when the application of the mandatory personal privacy exemption at section 14(1) is at issue, it is not necessary for me to consider factors at section 14(2) and any other relevant circumstances with respect to these records. I therefore uphold the police's decision that the section 14(1) exemption applies to these records.

*Records that contain appellant's personal information*

[52] I find that the withheld information in the records that contain the personal information of the appellant and others is exempt under the discretionary personal privacy exemption at section 38(b), and I uphold the police's decision.

Factors and presumptions at sections 14(2) and 14(3)

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

[53] As I have found above, the police compiled other individuals' personal information during an investigation into a possible violation of law. The records that contain both the personal information of the appellant and other individuals are part of the same investigation. As a result, I find that the presumption at section 14(3)(b) applies to these records as well. Although this factor is not determinative in the case of these records, it does weigh against disclosure.

**14(2)(a): public scrutiny of government activities**

[54] I find that the appellant has not established that the disclosure of other individuals' personal information is desirable to subject police's activities to public scrutiny.

[55] Section 14(2)(a) supports disclosure when it would subject the activities of the government to public scrutiny.<sup>22</sup> It promotes transparency of government actions. For section 14(2)(a) to apply, a requester must provide evidence demonstrating that the activities of an institution have been publicly called into question and that disclosure of personal information at issue is necessary to subject the institution's activities to public

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<sup>21</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>22</sup> Order P-1134.

scrutiny.<sup>23</sup>

[56] The appellant did not provide sufficient evidence to establish that the police's conduct during the execution of search warrants has been publicly called into question. The appellant's concerns about the police's conduct during the execution of the search warrant at the specified address are personal and are not sufficient to establish that the factor at section 14(2)(a) applies.<sup>24</sup> I considered the appellant's submissions about their complaint to the police oversight agency; however, when I consider the personal information at issue, I am not persuaded that its disclosure is necessary to subject the police's activities to scrutiny, and I find that section 14(2)(a) is not a relevant factor.

**14(2)(b): promotion of public health and safety**

[57] This factor can apply when disclosure of the personal information would promote public health and safety. Other than referring to the language of section 14(2)(b), the appellant has not explained how disclosure could advance public health and safety. In my view, the appellant has not established that the disclosure of other individuals' personal information would promote public health and safety.

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

[58] The appellant submits that they require the withheld information to meaningfully participate in a legal proceeding. The appellant alleges that the police conducted a negligent investigation which resulted in the execution of the search warrant at the specified address during which the appellant sustained injuries. The appellant started a legal proceeding, in part, against the police related to the events. The appellant submits that the withheld information will assist them to identify potential witnesses and gather relevant information to determine what occurred, all of which will support their position in the legal proceeding.

[59] 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?

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<sup>23</sup> Order M-84.

<sup>24</sup> Order M-84.

- d. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?<sup>25</sup>

[60] I find that the first two parts of the test are met. The appellant started a legal proceeding alleging that the police conducted a negligent investigation and assaulted them. The basis of the appellant's legal proceeding is a right that exists in law.

[61] I further find that the third part of the test is met with respect to the personal information of the witnesses and other individuals subject to separate search warrants. The personal information of these individuals might allow the appellant to obtain possibly relevant information for their legal proceeding. With respect to the name of the security guard, the appellant already named the security guard as a party in their legal proceeding. There is no evidence before me that the person named in the proceeding asserted that they were not a security guard at the scene. Therefore, I do not accept that the personal information of the security guard is significant to or has some bearing on the appellant's determination of the right in question.

[62] Finally, I find that the fourth part of the test is met with respect to the withheld information about the witnesses and individuals subject to separate search warrants. The appellant says that the police have not disclosed the withheld information to them in that proceeding despite the appellant's request. I have considered that the withheld information is important to the appellant's position and that they made efforts in that proceeding to obtain it. However, the appellant did not provide me with evidence about any further efforts to obtain the withheld information through the disclosure and discovery procedures available under the *Rules of Civil Procedure*.<sup>26</sup> Therefore, I afford this factor less weight.

#### **14(2): Other factors referred to by the appellant**

[63] With respect to the name of the security guard, the appellant submits that since the guard is already named in a legal proceeding, their name is within the public knowledge and ought to be disclosed. I do not find that this is a relevant factor in this appeal because it was the appellant who named the security guard in the proceeding. The police have a distinct obligation under the *Act* to protect individuals' personal information in their possession.

#### Balancing the factors

[64] 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).

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<sup>25</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.).

<sup>26</sup> R.R.O. 1990, Reg. 194.

[65] To reach this conclusion, I balanced the interests of the appellant and the other individuals, and considered and weighed the relevant presumptions and factors. Specifically, I considered the appellant's interests in gathering all information about the events to understand what occurred. I also considered that the individuals whose personal information is in the records have an interest in their information being protected. I then considered that one presumption weighs against the disclosure of the other individuals' personal information and one factor weighs in favour of the disclosure. However, as described above, I assigned less weight to the factor that weighs in favour of the disclosure.

#### Exercise of discretion

[66] Because the section 38(b) exemption is discretionary, I must also consider whether the police exercised their discretion to apply the exemption. Even if information qualifies for exemption, an institution must decide whether to apply the exemption in the particular circumstances of the request. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[67] 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>27</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>28</sup>

[68] The police submit that they appropriately exercised their discretion. The police considered the following factors:

- a. Privacy interests of the individuals whose personal information is in the records;
- b. The relationship between the appellant and the other individuals;
- c. The fact that other individuals' personal information does not intertwine with that of the appellant;
- d. The circumstances under which the information was compiled and used, specifically that it was compiled and is identifiable as part of an investigation into a possible violation of law;
- e. Portions of the records were withheld after the police considered the circumstances;

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<sup>27</sup> Order MO-1573.

<sup>28</sup> Section 43(2).

- f. Absence of the consent from the individuals whose personal information is in the records to the disclosure of their personal information; and
- g. The disclosure of the withheld information would not assist the appellant with understanding what had occurred but would be an unjustified invasion of the other individuals' privacy.

[69] The appellant submits that the police exercised their discretion for improper purpose because they relied on personal privacy exemption to avoid liability. The appellant says that they have a right to know what occurred in their own case given the extent of the injury and the impact of the events on them.

[70] I find that the police properly exercised their discretion. The police considered the exemption at issue and the interests it seeks to protect; the reasons that the appellant is seeking access to the records; the relationship between the appellant and the individuals whose personal information is in the records; and the circumstances under which the personal information was collected and used. All the factors that the police considered are relevant considerations. Further, having considered the circumstances, the police only withheld from the appellant those portions that contain other individuals' personal information.

[71] I disagree with the appellant that the police exercised their discretion for improper purpose. The police are permitted under the *Act* to balance the right of access with protection of the personal privacy of others. The considerations listed above are appropriate considerations, and when I consider the information that the police disclosed, I am satisfied that the police did not exercise their discretion for improper purpose.

**ORDER:**

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

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

February 7, 2025 \_\_\_\_\_