

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-4627

Appeal MA22-00649

York Regional Police Services Board

February 12, 2025

**Summary:** Two individuals made a request to the York Regional Police Services Board (the police) for access to a specified incident report and the related police officers' notes. The police granted partial access to the report and police officers' notes explaining that disclosure of some of the information would be an unjustified invasion of other individuals' personal privacy (section 38(b)).

In this order, the adjudicator finds that disclosure of the withheld information would be an unjustified invasion of personal privacy and upholds the police's decision not to disclose.

**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"), 24 and 38(b).

### OVERVIEW:

[1] The York Regional Police Services Board (the police) received a request, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to a report relating to a specified incident involving the appellants, as well as the notes of two named police officers in connection with the same incident.

[2] The police issued a decision granting partial access to a general occurrence report (the report) and police officers' notes (the notes) for the identified incident, citing section 38(b) (personal privacy) to withhold some information.

[3] Dissatisfied with the police's decision, the appellants appealed it to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to explore the possibility of resolution.

[4] During mediation, it was established that the police also withheld some information on the basis that it was not responsive to the request. The appellants confirmed they seek access to all of the information that the police withheld, including the information the police identified as not responsive. As such, responsiveness was included in the scope of this appeal.

[5] As mediation did not resolve the appeal, it was transferred to the adjudication stage of the appeal process.

[6] As the adjudicator assigned to this appeal, I decided to conduct an inquiry under the *Act*. I invited and received representations from the police and the appellants.<sup>1</sup> I also invited an affected party to provide representations but did not receive representations from them.<sup>2</sup>

[7] For the reasons that follow, I find that the information that the police withheld from the records is either not responsive to the request or subject to the personal privacy exemption at section 38(b) and I uphold their decision not to disclose it.

## **RECORDS:**

[8] The records at issue are a general occurrence hardcopy report (pages 1-5) (the report) and police officers' notes (pages 6-14) (the notes) (collectively, the records).

## **ISSUES:**

- A. Which portions of the notes are responsive to the request?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, whose information is it?
- C. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

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<sup>1</sup> The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Code of Procedure*.

<sup>2</sup> In a telephone call, the affected party confirmed to the IPC that they did not consent to the disclosure of their personal information in the records.

## **DISCUSSION:**

### **Issue A: Which portions of the notes are responsive to the request?**

[9] The police withheld certain portions in the notes on the basis that they fall outside the scope of the appellants' request.

[10] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>3</sup> Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.<sup>4</sup>

[11] The police submit that they responded literally to the request and provided the appellants with a copy of the specific incident report and the notes of the two named police officers who attended the specified incident. The police submit that during their search they discovered that there were two additional police officers who were involved, and, as such, their notes were included as responsive to the request.

[12] In their representations, the appellants confirmed their agreement with the police's representations on this issue. They also stated that the police provided all the responsive records.

[13] Although the police did not explain why they withheld some portions of the notes as not responsive to the request, on my review, I find the portions of the notes marked not responsive do not "reasonably relate" to the appellants' request. These portions relate to other incidents and calls which occurred either on the same date or other dates close to the incident in question. Accordingly, I uphold the police's decision not to provide access to these portions of the notes as they are not responsive to the appellants' request.

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

[14] In order to decide whether section 38(b) applies, I must first decide whether the report and the notes contain "personal information," and if so, to whom this personal information relates.

[15] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Recorded information is information recorded in any format, including paper and electronic records.<sup>5</sup>

[16] Information is "about" the individual when it refers to them in their personal

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

<sup>4</sup> Orders P-134 and P-880.

<sup>5</sup> The definition of "records" in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The record before me is a paper record located by searching a police database.

capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them.<sup>6</sup>

[17] 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>7</sup>

[18] Section 2(1) of the *Act* gives a list of examples of personal information. The relevant portions of that section are:

“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,

...

(e) the personal opinions or views of the individual except if they relate to another individual

...

(g) the views or opinions of another individual about the individual, and

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

[19] 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>8</sup>

[20] It is important to know whose personal information is in the records. If the records contain the requester’s own personal information, their access rights are greater than if it does not.<sup>9</sup> Also, if the records contain the personal information of other individuals, one

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<sup>6</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

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

<sup>8</sup> Order 11.

<sup>9</sup> Under sections 47(1) and 49 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.

of the personal privacy exemptions might apply.<sup>10</sup>

[21] The police submits that the report and notes contain personal information of identifiable individuals. Specifically, the police submit they contain the names, dates of birth, addresses, telephone numbers, sex, country of birth, ethnicity, email addresses, drivers licence information and information of the involved parties including personal opinions and views regarding the basis of the complaint.

[22] In their representations, the appellants submit that one of the affected parties is now deceased but he has not been deceased for more than 30 years.

[23] On my review of the report and notes, I find that they all contain information that qualifies as the personal information of the appellants as well as that of identifiable individuals which would fall under paragraphs (a), (b), (c), (d), (e), (g) and (h) of the definition of "personal information" under section 2(1) of the *Act*. Specifically, the report and the notes contain the address, phone numbers, date of birth, ethnicity, driver's license number, email address and the name of the individuals along with other personal information.

[24] I note that the appellants have been granted access to most of the information in the report, and the notes and the remaining withheld information contains information that would qualify as the personal information of the appellants and other identified individuals (the affected parties) within the meaning of that term as defined in section 2(1) of the *Act*.

[25] Although one of the affected parties is now deceased, his death did not occur more than 30 years ago. As such, personal information includes information about him as section 2(2)<sup>11</sup> of the *Act* does not apply.

[26] As I have found that the withheld information in the report and the notes contain the personal information of the appellants along with other identifiable individuals, I will consider the appellants' access to the report and the notes under section 38(b) of the *Act*.

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

[27] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is

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<sup>10</sup> See sections 21(1) and 49(b).

<sup>11</sup> Section 2(2) states: "Personal information does not include information about an individual who has been dead for more than thirty years."

discretionary, the institution may also decide to disclose the information to the requester.

[28] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If the information fits within any of the exceptions in sections 14(1)(a) to (e), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal, none of the parties have claimed and from my review I have determined that none of the exceptions set out in section 14(1)(a) to (e) nor the situations in section 14(4) of the *Act* apply. As such, I will not consider them in this order.

[29] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>12</sup> The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>13</sup>

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

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

#### *Section 14(3) presumption: investigation into a possible violation of law*

[31] The police rely on the presumption at section 14(3)(b), which states:

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

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

[32] The police submit that the withheld personal information was compiled as part of an investigation being conducted in relation to a possible violation of the *Criminal Code*

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<sup>12</sup> Order P-239.

<sup>13</sup> Order P-99.

<sup>14</sup> Order MO-2954.

of Canada (the *Criminal Code*),<sup>15</sup> specifically criminal harassment.

[33] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>16</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>17</sup>

[34] Based on my review of the report and the notes, I find that the presumption at section 14(3)(b) applies to them. The report and the notes concern a police investigation relating to a possible criminal harassment violation. The withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*. Although no charges were laid, there need only have been an investigation into a possible violation of law for the presumption at section 14(3)(b) to apply.<sup>18</sup> Section 14(3)(b) therefore weighs in favour of non-disclosure of the withheld personal information.

[35] I note that the parties have not claimed any other presumptions. On my review, none of the other presumptions apply.

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

[36] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant.

[37] The police do not rely on any of the factors in section 14(2). The appellants, however, argued that the factor at section 14(2)(d), which weighs in favour of disclosure, applies. That section states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

[38] This office has found that for section 14(2)(d) to apply, the appellants must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

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<sup>15</sup> R.S.C., 1985, c. C-46.

<sup>16</sup> Orders P-242 and MO-2235.

<sup>17</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>18</sup> Orders P-242 and MO-2235.

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information to which the appellant seeks access has some bearing on is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>19</sup>

[39] The appellants submit that the factor at section 14(2)(d) applies because the narrative information in the report and notes is required for the fair determination of their rights. Regarding part 1 of the four-part test, they submit that the right in question is their rights to life, liberty and security under section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*).<sup>20</sup> They acknowledge that section 7 of the *Charter* may not apply directly to civil cases, but submit that similar principles as those that are set out in section 7 of the *Charter* are generally upheld in civil litigation to ensure that all parties have a fair opportunity to present their case and respond to allegations made against them.

[40] Regarding part 2 of the test, the appellants submit generally that their section 7 *Charter* right is related to a legal proceeding that might be brought.

[41] Regarding part 3 of the test, the appellants submit that the withheld personal information is significant to the determination of their rights under section 7 of the *Charter*. They submit that the police contemplated criminal harassment charges under the *Criminal Code* and, therefore, the allegations put forth by the affected parties were serious enough to warrant such an investigation.

[42] Finally, with respect to part 4 of the test, the appellants submit that they intend to pursue legal civil remedies against the affected parties for malicious prosecution and the withheld personal information at issue is required to commence the proceeding and to ensure an impartial hearing.

[43] In order for section 14(2)(d) to apply, all four parts of the test must be established. I am not persuaded by the appellants' representations that section 14(2)(d) applies to the withheld personal information in this appeal. Although the appellants submit, under part 2 of the test, that a legal proceeding is being contemplated, they do not explain how such a proceeding might relate to their stated legal right under section 7 of the *Charter*. Although later in their representations the appellants suggest that they may initiate a

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<sup>19</sup> Order PO-1764; see also Order P-312, upheld on judicial record in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

<sup>20</sup> *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the *Charter*). Section 7 states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.



lawsuit for malicious prosecution. I note that the appellants acknowledge that the police only *contemplated* criminal harassment charges. As the appellants were never charged under the *Criminal Code*, there would be no grounds for the appellants to commence a malicious prosecution lawsuit. Accordingly, I find that part 2 of the test has not been established.

[44] Moreover, even if it were established that a legal proceeding related to a legal right belonging to the appellants is contemplated, I find that the appellants have not established that the specific information that has been withheld from the report and notes is required in order to prepare for the proceeding or to ensure an impartial hearing as required by part 4 of the test. It is clear that the appellants are aware of the affected parties' names and address, and, therefore, do not require the affected parties' contact information to commence a civil lawsuit. Having reviewed the remaining withheld information that appears in the narrative portion of the report and in the notes, it is not evident on their face nor have I have been provided with sufficient evidence to conclude that this information is either needed to prepare for a proceeding or to ensure an impartial hearing. Accordingly, I find that part 4 of the test has not been established.

[45] As the appellants have not persuaded me that all parts of the four-part test of section 14(2)(d) have been met, I find that the factor at section 14(2)(d) weighing in favour of disclosure does not apply.

[46] I have considered whether any of the other factors in section 14(2) or any unlisted factors might apply to weigh either in favour or against disclosure of the withheld information in this appeal. I find that none apply.

#### *Balancing the factors and presumptions*

[47] In balancing the factors for and against disclosure, above I have found that the presumption at section 14(3)(b) applies and weighs against disclosure of the withheld information. I also found that no factors (listed or unlisted) weighing in favour of disclosure apply. In balancing the interests of the parties, I find that disclosure of the withheld information would be an unjustified invasion of the affected parties' personal privacy.

[48] Accordingly, I find that disclosure of the withheld personal information in the report and the notes would be an unjustified invasion of the personal privacy of the individuals to whom that information relates. Subject to my findings below on the application of the absurd result principle and the police's exercise of discretion, I find that it is exempt under section 38(b).

#### ***Absurd result***

[49] The appellants submit that it would be absurd to withhold the information at issue as they have video recording which contains footage that is clearly contrary to what the affected parties said to the police. As well, they submit the police advised, within their

representations, that the appellants were informed of the complaint in detail.

[50] The absurd result principle may apply where the appellant originally supplied the information at issue or is otherwise aware of it. Where circumstances are present, the information may not be exempt under section 38(b) because withholding the information might be absurd and inconsistent with the purpose of the exemption.<sup>21</sup>

[51] The absurd result principle has been applied in appeals where, for example, the requester was seeking access to his or her own witness statement;<sup>22</sup> where the requester was present when the information was provided to the institution;<sup>23</sup> or where the information was clearly within the requester's knowledge.<sup>24</sup> However, the absurd result principle may not apply even if the information was supplied by the requester or is clearly within the requester's knowledge, if disclosure would be inconsistent with the purpose of the section 14(1) exemption or section 38(b) exemption.<sup>25</sup>

[52] On my review of the withheld personal information, I find that the absurd result principle does not apply in the circumstances of this appeal. Although the appellants state that they have certain related video footage and that the police have provided them with details of the complaint, they have not demonstrated that the specific personal information that is at issue in the report or notes is within their knowledge.

[53] Furthermore, previous IPC orders have held that, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is otherwise known to the requester.<sup>26</sup>

[54] Given that the personal information at issue appears in the report and notes regarding an incident, and my finding that disclosure of that withheld personal information contained in those report and notes would be an unjustified invasion of personal privacy of the two affected parties under section 38(b), I find that disclosure under the absurd result principle would be inconsistent with the purpose of the section 38(b) exemption.

[55] Therefore, based on the circumstances of this appeal, I find that disclosure of the withheld personal information would be inconsistent with the purpose of the section 38(b) exemption.

### ***Exercise of discretion***

[56] The exemption in section 38(b) is discretionary and permits an institution to disclose the information subject to the exemption despite the fact that it could withhold

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<sup>21</sup> Orders M-444 and MO-1323.

<sup>22</sup> Orders M-444 and M-451.

<sup>23</sup> Orders M-444 and P-1414.

<sup>24</sup> Orders MO-1196, PO-1679, and MO-1755.

<sup>25</sup> Orders M-757, MO-1323, MO-1378.

<sup>26</sup> Orders M-757, MO-1323 and MO-1378.

it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[57] The police submit that they exercised their discretion properly. They submit that they considered the purpose of the *Act* which states that individuals should have a right of access to their own personal information and that the privacy of individuals should be protected. The police explain that the appellants' personal information was disclosed to them. They submit that the personal identifiers of the affected parties and their opinions and views were withheld under section 38(b).

[58] The appellants submit that the police did not properly exercise their discretion as they failed to take into account the appellants' right to know the serious and malicious allegations made against them that prompted the police to contemplate criminal harassment charges.

[59] After considering the parties' representations and the circumstances of this appeal, I find that the police did not err in their exercise of discretion with respect to the exempt information under section 38(b) of the *Act*. I am satisfied that the police considered relevant factors and did not consider irrelevant factors in their exercise of discretion. In particular, I am satisfied that the police considered the appellants' right to access their own information but also the interests of the affected parties that are protected by the personal privacy exemption. I am also satisfied that the police did not act in bad faith or for an improper purpose. Accordingly, I uphold the police's exercise of discretion in deciding to withhold information pursuant to section 38(b).

### ***Other Issue – Constitutional Question***

[60] As set out above, in their representations on the possible application of the factor at section 14(2)(d) the appellants states that they have a right to know what was said by the affected parties in the portions of the report and notes that have been withheld as it impacts their section 7 *Charter* rights. Section 7 of the *Charter* guarantees individuals the right to life, liberty and security of the person.

[61] The IPC has the authority to decide constitutional issues, including those arising under the *Charter*<sup>27</sup>. The rules governing the raising of constitutional questions in appeals

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<sup>27</sup> See Order PO-3686. In *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54 at para. 3, the Court stated, in part: "Administrative tribunals which have jurisdiction — whether explicit or implied — to decide questions of law arising under a legislative provision are presumed to have concomitant jurisdiction to decide the constitutional validity of that provision. This presumption may only be rebutted by showing that the legislature clearly intended to exclude Charter issues from the tribunal's authority over questions of law." The Commissioner's powers at sections 39 through 44 of the *Act* clearly include the power to decide questions of law including, for example, the interpretation and application of the exemptions at sections 6-15 and section 38, and the interpretation and application of the exclusions in section 52. There is no evidence that the legislature intended to exclude Charter considerations from the Commissioner's mandate.

are set out in section 13 of the IPC's *Code of Procedure* (the *Code*)<sup>28</sup> and include the requirement that a party who is raising a Constitutional Question serve a notice of Constitutional Question on the Attorneys General of Canada and Ontario and file the notice with the IPC.<sup>29</sup>

[62] The appellants have not provided the Attorneys General of Canada and Ontario with a Notice of Constitutional Question and filed the notice with the IPC as required by section 13.01 of the *Code*. Section 13.08 of the *Code* states that if a party fails to provide a notice of Constitutional Question in accordance with its provisions, the IPC will not address the question.

[63] Even if the appellants were to have correctly followed the IPC's procedural rules governing the raising of constitutional questions, I find that the appellants have not provided sufficient evidence to establish that their *Charter* rights are being infringed by the police's refusal to disclose the personal information of other individuals to them. As indicated above, section 7 of the *Charter* protects the right to life, liberty and security of the person. There is no evidence before me to suggest that the appellants' rights to life, liberty or security of their persons would be violated if the withheld personal information that is at issue in this appeal is not disclosed to them.

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<sup>28</sup> Please note the IPC's revised *Code of Procedure* came into force on September 9, 2024.

<sup>29</sup> The relevant subsections are the following:

13.01 Where a Party intends to raise a Constitutional Question, the Party shall serve a notice of Constitutional Question on the Attorney General of Canada and the Attorney General Ontario and file the notice with the IPC.

13.02 A notice of Constitutional Question shall be in the **form posted on the IPC's website**, or in a similar form that contains the same information.

13.04 A Party shall serve and file a notice of Constitutional Question as soon as the circumstances requiring it become known and, in any event, no later than 15 days after the day on which the Notice of Inquiry was sent to the Party.

13.05 The IPC will consider a Constitutional Question only if the Appellant or the other Party, as the case may be, complies with the time limit specified in section 13.04.

13.08 If a Party fails to provide a notice of a Constitutional Question in accordance with section 13, the IPC will not address the question.

**ORDER:**

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

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

Lan An  
Adjudicator

February 12, 2025 \_\_\_\_\_