Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4628

Appeal MA21-00413

Kingston Police Services Board

February 14, 2025

Summary: An individual made a request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all records related to her. The police granted partial access to several records, withholding information about other individuals for the personal privacy reason (exemption) at section 38(b) and also claiming that the individual could not obtain certain records because the *Act* does not apply to them [section 52(3), the employment or labour relations exclusion].

In this order, the adjudicator finds that the information related to the police complaint is excluded from the *Act* as set out in section 52(3), and partially upholds the police's decision for the rest of the information. He finds that most of the information is exempt from disclosure under section 38(b), but also finds that withholding some information that the appellant provided to the police would lead to an absurd result. He orders this information disclosed.

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(3)(b), 38(b), and 52(3)3.

Orders Considered: Orders MO-4260, MO-1664, and MO-3370.

OVERVIEW:

[1] The Kingston Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all police records related to the requester. The police granted partial access to the responsive

records, withholding information under section 38(b) (personal privacy) of the *Act*. In the decision, the police explained that the requester made a complaint to the Office of the Independent Police Review Director (OIPRD)[1] and that responsive records relating to the OIPRD investigation are excluded from the *Act* under section 52(3) (employment or labour relations).

[2] The requester (now the appellant) appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant confirmed that she continued to seek access to the records, including the OIPRD records. An affected party was notified of the appellant's request, but they did not consent to releasing their information to the appellant.

[3] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeal process. An IPC adjudicator conducted an inquiry where she sought and received representations from the police, the appellant, and an affected party.[2] Representations were shared in accordance with the IPC's *Code of Procedure*.

[4] The file was then assigned to me to complete the inquiry. I reviewed the materials in the file and determined that I did not need to seek further representations from the parties.

[5] For the reasons that follow, I partially uphold the decision of the police. I find that some of the records are excluded from the scope of the *Act* by section 52(3)3, and I find that the remaining information is exempt from disclosure under section 38(b). However, I also find that some of the information withheld under section 38(b) should be disclosed to the appellant because withholding it would lead to an absurd result that is inconsistent with the purpose of the exemption.

RECORDS:

[6] The records at issue consist of police occurrence reports, officers' notes, and OIPRD investigation records (consisting of officers' notes and recorded statements).

ISSUES:

A. Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the OIPRD records?

[1] While it was called the OIPRD at the time of the appellant's complaint, the police civilian oversight agency was replaced by the Law Enforcement Complaints Agency in April 2024.
[2] I have reviewed all the representations of the parties, but I will only outline the most relevant portions below.

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

DISCUSSION:

Issue A: Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the records?

[7] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.[3]

[8] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[4]

[9] The police have claimed that section 52(3)3 applies to some of the records, specifically those related to an OIPRD investigation.[5] Section 52(3)3 states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[10] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*. None of the parties argued that these exceptions apply, and I find that they do not.

[11] The type of records excluded from the *Act* by section 52(3) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[6] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.[7] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the

---

[3] Order PO-2639.
[4] *Ontario* (*Ministry of Community and Social Services*) *v. John Doe*, 2015 ONCA 107 (CanLII).
[5] The police also claimed that section 52(3)1 applies, but as I find that the records are excluded under section 52(3)3, I have not outlined section 52(3)1.
[6] *Ontario* (*Ministry of Correctional Services*) *v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."
[7] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

Act, understood in their proper context. If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.[8]

[12] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to similar relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[9] The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[10]

[13] For section 52(3)3 to apply, the police must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[14] The IPC has previously taken a "whole record approach" to the section 52(3) exclusions, meaning that the exclusion may apply to complete records and not portions of information contained within records.[11] Either the entire record is excluded under section 52(3), or it is not. However, an institution may still decide to disclose records, in whole or in part, outside of the access regime in the *Act*.

Representations

[15] The affected party did not provide specific representations on the application of section 52(3). The representations of the police and the appellant are outlined below.

Police representations

[16] The police submit that the records for which they claimed section 52(3)3 relate to an OIPRD investigation following a complaint made by the appellant alleging misconduct by Kingston police officers. They state that the Professional Standards unit of the police, who have the authority to oversee disciplinary processes within the institution, collected the records while investigating the actions and performance of the members of the institution while on duty. They state that the investigation had the potential to lead to

---

[8] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*) (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.
[9] *Ontario* (*Minister of Health and Long-Term Care*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.
[10] Order PO-2157.
[11] See, for example, Order MO-4260.

disciplinary outcomes, and accordingly the records were collected due to proceedings or anticipated proceedings which relate to labour relations or to the employment of a person by the police. They explain that the excluded records include conversations with witnesses used in support of the professional misconduct investigation in which the police have an interest, and only records related to this investigation were considered to be excluded from the *Act* under section 52(3).

Appellant representations

[17] The appellant, referencing *Ontario* (*Ministry of Correctional Services*) *v. Goodis* (2008), submits that section 52(3) does not exclude all records concerning the actions or inactions of an employee of an institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable. She states that, within the context of a Human Rights Tribunal of Ontario (HRTO) complaint that she made against the police, the police redacted large portions of records and notes.

[18] With respect to the three-part test discussed above, she submits that the collection of the records was for basic investigation purposes, and none of the parties involved in the investigation were employed by the police, courts or other tribunals. She further submits that the HRTO complaint was not related to employment matters.

Analysis and finding

[19] The records for which section 52(3) was claimed are those related to the investigation of the appellant's OIPRD complaint. The appellant, while taking issue with the exclusion being applied to the records generally, does not dispute that records related to the OIPRD investigation are related to the employment relationship of the specified officers and the police.

[20] It has been found in previous IPC orders, such as MO-4260, that internal police investigations about possible officer misconduct are excluded from the *Act* under section 52(3)3.[12] I adopt and apply the reasoning of these orders to the present appeal.

[21] Here, the police records were, on their face, collected, prepared, maintained or used by the police, satisfying the first part of the test. For the second part, I accept the police's submission that the records at issue were collected, maintained or used in relation to meetings, consultations, discussions or communications about the investigation. For the third part, I find that the investigation activities were about whether the officers at issue engaged in misconduct, behaviour that could lead to disciplinary outcomes. Being records related to a professional standards investigation, they would not exist but for the potential for disciplinary proceedings against the specified officers. Disciplinary outcomes, on their face, relate to labour relations or the employment of the specified officers by the

[12] See also, for example, Order MO-3503.

police, satisfying the third part of the test.[13]

[22] The appellant's arguments about the purpose of an HRTO hearing are not relevant to the records at issue in this appeal. The police have only claimed that section 52(3) for records related to the OIPRD investigation. Regarding the appellant's arguments that vicarious liability is not sufficient for the section 52(3) exclusion to apply, the police have not argued that vicarious liability is the reason for the exclusion applying, and I agree that it is not relevant to this appeal.

[23] Having found that all three parts of the test are met, I uphold the police's decision that some of the records, specifically the call recordings and the officer's notes related to the professional standards investigation, are excluded from the scope of the *Act* under section 52(3)3.[14] For the remainder of the records, I will consider if the withheld portions are exempt from disclosure under section 38(b).

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

The records contain the personal information of the appellant and other parties

[24] Before I consider the exemption claimed by the police, I must first determine whether the records contain "personal information" and if so, whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[25] 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.[15] Section 2(1) of the *Act* gives a list of examples of personal information.

[26] The parties do not dispute, and I find, that the occurrence reports and notes contain the personal information of the appellant and other individuals, such as their names, contact information, and personal histories. As such, I will consider the application of the personal privacy exemption at section 38(b).

Personal Privacy

[27] Section 36(1) of the *Act* gives individuals a general right of access to their own

---

[13] See, for example, MO-4147.
[14] As I have found that section 52(3)3 excludes the records, I do not also need to consider section 52(3)1.
[15] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

personal information held by an institution. Section 38 provides some exemptions from this right.

[28] Under section 38(b), where a record contains personal information of both the appellant 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 appellant. This involves a weighing of the appellant's right of access to their own personal information against the other individual's right to protection of their privacy.

[29] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy. If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b). Additionally, 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.[16]

[30] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). If any of the five exceptions in sections 14(1)(a) to (e) apply, the section 38(b) exemption does not apply to the records at issue. Section 14(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. The police submit that none of the section 14(1) exceptions apply, and the other parties do not dispute this. Based on my review of the records at issue I agree that they are not relevant to the appeal. I also find that none of the section 14(4) exceptions apply to the information at issue.

[31] Section 14(2) provides a list of factors for the police to consider in making this determination, while section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. In their representations, the police, appellant, and affected party have relied on or discussed the presumption in section 14(3)(b) and the factors in section 14(2)(a), (b), (d), (f), (g), (h), and (i):

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

[16] Order PO-2560.

> (2) 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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny
>
> (b) access to the personal information may promote public health and safety
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request
>
> (f) the personal information is highly sensitive
>
> (g) the personal information is unlikely to be accurate or reliable
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record

[32] In determining whether the disclosure of the affected parties' information would be an unjustified invasion of personal privacy under section 38(b), therefore, I will consider and weigh the relevant factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[17]

Representations

Police representations

[33] The police submit that the records all relate to investigations into a possible violation of law, engaging the section 14(3)(b) presumption against disclosure. They state that none of the factors favouring disclosure in section 14(2)(a) to (d) apply, noting that the records relate to the actions of an individual, rather than the government.[18]

[34] They explain that the information in the records contain allegations that have "not been founded by a court of law" and information about witnesses. They state that this information is highly sensitive, engaging the section 14(2)(f) factor. The police further submit that the section 14(2)(g) factor applies as some of the information is unlikely to

[17] Order MO-2954.

[18] The police made more detailed arguments about why they say that section 14(2)(d) (fair determination of rights) does not apply; however, the appellant does not argue that this factor applies and so I do not discuss these arguments further.

be accurate or reliable.[19] They also state that the withheld information was supplied in confidence, engaging the 14(2)(h) factor. They submit that the nature of the information is such that it would unfairly damage the reputation of the parties in the records, engaging the 14(2)(i) factor. Lastly, the police also reference a confidential settlement involving the appellant, stating that the terms of it should be considered as an unlisted factor.

Appellant representations

[35] As will be discussed below, the appellant submits that the section 14(3)(b) presumption against disclosure should not apply. She also states that the section 14(2)(a) and (b) factors favouring disclosure apply, while the section 14(2)(f) factor does not apply. She references the absurd result principle, stating she and other parties are aware of the redacted information, and she further submits that the parties in the records should have been aware that their information would be used in some future legal proceeding.

[36] She also states that she obtained the consent of "her witnesses" to disclose the information, but did not specify who these individuals were, or what information they consented to being released.

Affected party representations

[37] The affected party provided submissions explaining why they did not consent to the information being released, stating that it is highly sensitive and would unfairly impact their reputation if it were disclosed. The affected party's representations were lengthy and very personal in nature. To maintain confidentiality, I have not summarized them here.

Analysis and findings

[38] As stated above, at issue in this appeal is whether disclosure of the personal information of the individuals would be an unjustified invasion of their personal privacy under section 38(b).

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

[39] Under section 14(3)(b), the disclosure of an individual's personal information to another individual is presumed to be an unjustified invasion of personal privacy if the personal information:

> … was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation of law or to continue the investigation.

[19] The police provided an example of information that they consider to be inaccurate in the records. In order to avoid disclosing the contents of the records, I have not reproduced it here.

[40] Even if no criminal proceedings were commenced against any individual, as is the case in this appeal, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.[20] Based on my review of the occurrence reports and police notes, they are, on their face, information that was compiled as part of a police investigations into various allegations raised by the appellant against other individuals. It is not disputed that police investigations qualify as "investigations into a possible violation of law," and the presumption against disclosure in section 14(3)(b) therefore applies.

[41] The appellant submits that this presumption should not apply because the records were created after the investigation, as part of the police's response to a human rights complaint and this access request. I agree that the records were compiled as a response to the human rights complaint and access request. However, their original creation was part of the police's investigation into the complaints that the police received. The fact that they were later compiled as part of the freedom of information process (or for the HRTO) does not stop the presumption from applying: even if they were later recompiled to be provided to the appellant, their original creation was as part of a police investigation. Accordingly, I find that the information at issue was compiled and identifiable as part of an investigation into a possible violation of law and the presumption applies.

14(2)(a): Subjecting institutions to public scrutiny

[42] The appellant submits that disclosure of the information would help subject the police to public scrutiny, engaging the section 14(2)(a) factor favouring disclosure. This section supports disclosure when disclosure of the personal information would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[21] It promotes transparency of government actions. The issues addressed in the information that is being sought do not have to have been the subject of public debate in order for this section to apply, but the existence of public debate on the issues might support disclosure under section 14(2)(a).[22]

[43] The appellant broadly states that the police's actions in dealing with her should be subject to scrutiny, particularly in light of the manner in which she says the police discriminate against vulnerable populations. I agree with the appellant's assertion that how the police treat vulnerable populations should be subject to scrutiny by the public, but I am unable to find that the disclosure of the personal information of other individuals would serve this purpose. In reaching this conclusion, I have considered that the appellant has received a significant amount of information regarding her interaction with the police. As such, I will only give factor minimal weight in determining if the disclosure of the withheld information is an unjustified invasion of personal privacy.

---

[20] Orders P-242 and MO-2235.
[21] Order P-1134.
[22] Order PO-2905.

14(2)(b): Promoting public health and safety

[44] This section supports disclosure where disclosure of the information would promote public health and safety. In Order MO-1664, the factor was described to be intended to address records that contain information about public health and safety issues, rather than personal information about a particular individual who the requester may view as being a risk to public safety. However, in Order MO-3370, it was given moderate weight favouring disclosure when a requester sought access to the name and address of the owner of a dog that bit her.

[45] The appellant generally claims that this section applies, stating that understanding the manner in which the police treat vulnerable populations is a public health and safety issue. While I understand the appellant's desire to obtain all of the information at issue, she has not demonstrated how the release of the personal information of other parties would promote public health and safety, aside from the general claim she made under section 14(2)(a) that scrutiny of the police is important. As such, and particularly considering that any support this gives for disclosure is already considered under section 14(2)(a), I give this factor no weight.

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

[46] The police state that the withheld information was provided by parties to a police investigation and was supplied in confidence. This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[23]

[47] The appellant disputes that this factor applies, stating that the involved parties were aware that their comments may be used in future legal proceedings. She also states that "her witnesses" consented to release of the information. However, she did not state who these witnesses were, or what specific information they agreed to the release of. Previous IPC decisions have found that personal information provided to the police is generally done so in confidence.[24] I agree with and find it to be relevant to the present appeal. Considering the circumstances underlying the request, where most of the withheld information consists of statements provided to the police by individuals other than the appellant, and the information primarily relates to a single affected party who strenuously objected to its disclosure, I find that the section 14(2)(h) factor applies, favouring withholding the information.

[23] Order PO-1670.
[24] See, for example, Order MO-3028.

14(2)(f), (g), and (i): Information is highly sensitive, unlikely to be accurate or reliable, and may unfairly damage the reputation of a person in the record

[48] The police, appellant, and affected party discussed the above factors. The police submit that the information is highly sensitive, that the allegations in the records have not been tested in court, and that the information in the records may unfairly damage the reputation of the persons that the information relates to. While the affected party did not specifically claim these factors, their representations broadly support this position, stating that the information in the records is not true, and its release would harm their reputation due to its sensitivity. The appellant disputes this, stating that she is already aware of the information in the records and the identities of the parties, and any sensitivity it has is therefore minimized. The appellant did not directly claim it in her representations, but it is also clear from the context of her submissions that she disagrees with the police's statement that the allegations are untrue.

[49] While I agree with the police's statement that the allegations in the records have not been tested in a court of law, I do not find that this necessarily means that they are unlikely to be accurate. Rather, it means that their accuracy has not been tested. As such, while making no specific finding on the accuracy of the information in the records, I find that the section 14(2)(g) factor does not apply. Similarly, while it is clear that some of the withheld information in the records would be injurious to the reputation of the individuals in it, it has not been established that any such injury would be unfair. Therefore, I find that the section 14(2)(i) factor favouring withholding the information does not apply.

[50] However, it is clear from the context of the information and the representations of the affected party that the information, relating to allegations of criminal conduct by the parties in the records, is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.[25] It has previously been found that personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive, and I make the same finding here.[26]

Balancing the factors

[51] I have considered and weighed the representations of the parties, the section 14(3)(b) presumption against disclosure, the factors discussed above, and the access and privacy rights of the appellant and the other individuals respectively. I understand the appellant's desire to obtain as much information about her interactions with the police as possible and the importance of subjecting police activity to scrutiny. However, I find that the presumption against disclosure, and the particularly sensitive nature of the information, means that disclosure of the information would be an unjustified invasion of

[25] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[26] Order MO-2980.

personal privacy under section 38(b).

Absurd result

[52] While I have found that the withheld information is exempt from disclosure, I must also consider if the absurd result principle applies to some of the information in the records. An institution might not be able to rely on the section 38(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[27]

[53] For example, the "absurd result" principle has been applied when:

- the requester sought access to their own witness statement,[28]
- the requester was present when the information was provided to the institution,[29] and
- the information was or is clearly within the requester's knowledge.[30]

[54] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[31]

[55] The records, specifically two of the occurrence reports, contain redactions of verbatim copies of correspondence that the appellant sent the police, or information that was directly copied from the appellant's correspondence. While the police disclosed most of the information in the reports, where the police are reproducing what the appellant specifically provided them, I find that withholding it would lead to an absurd result that is inconsistent with the purpose of the section 38(b) exemption. Accordingly, I will order this information disclosed.

[56] However, I find that this does not apply to the police officers' notes, where the much more limited information that is in the notes provides some insight into what the police believed to be relevant within the context of the investigation, which can subsequently provide insight into the personal information that I have found exempt from disclosure. Similarly, I find that it does not apply to the lengthy summaries of conversations that the police had with the appellant and other individuals, as these summaries reveal what the police deemed to be relevant to the investigation. Lastly, this finding does not apply to information that other parties provided to the police, even if the appellant is generally aware of the information.

---

[27] Orders M-444 and MO-1323.
[28] Orders M-444 and M-451.
[29] Orders M-444 and P-1414.
[30] Orders MO-1196, PO-1679 and MO-1755.
[31] Orders M-757, MO-1323 and MO-1378.

Exercise of discretion

[57] The section 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. Having found that much of the withheld information in the records is exempt from disclosure under section 38(b), I must next determine if the police properly exercised their discretion in withholding the information. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. The IPC may find that an institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[58] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[32] The IPC may not, however, substitute its own discretion for that of the institution.[33]

[59] The police submit that they properly exercised their discretion. They state that they considered all relevant considerations, including the appellant's desire to receive the information and the impact of disclosure on affected parties, in deciding to disclose the appropriate amount of information to the appellant. They note that they provided the appellant with all of her own personal information contained within the records that could be severed.

[60] Neither the appellant nor affected party provided specific representations on the polices' exercise of discretion.

[61] I have reviewed the considerations relied upon by the police and I find that they properly exercised their discretion in response to the access request. Based on their overall representations and the information that they disclosed, it is clear that they considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the full records with the protection of the privacy of other individuals when making their access decision.

[62] I find that the police did not exercise their discretion to withhold the individuals' personal information for any improper purpose or in bad faith, and that there is no evidence that they failed to take relevant factors into account or that they considered irrelevant factors. Accordingly, I uphold the police's exercise of discretion in denying access to the withheld information.

---

[32] Order MO-1573.
[33] Section 43(2) of the *Act*.

ORDER:

1. I uphold the decision of the police to withhold portions of the records under section 38(b) and their decision that other records are excluded under section 52(3).

2. I order the police to disclose portions of the occurrence reports containing information directly provided by the appellant to the police. I order the police to disclose this information by **March 26, 2025** but not before **March 19, 2025**. I have provided the police with copies of the reports, highlighting this information in blue. To be clear, only the information that is highlighted in blue should be disclosed to the appellant.

3. In order to verify compliance with Order provision 2, I reserve the right to require the police to provide me with a copy of the reports disclosed to the appellant.

Original Signed by: February 14, 2025

Chris Anzenberger
Adjudicator