

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4631

Appeal MA23-00552

Ottawa Community Housing Corporation

February 26, 2025

Summary: An individual submitted a request to the Ottawa Community Housing Corporation (the housing corporation) under the *Municipal Freedom of Information and Protection of Privacy Act* for the name of an individual involved in a theft. The housing corporation granted partial access to the records, withholding some information.

The housing corporation denied access to an individual's name and apartment number because disclosure of that information would be an unjustified invasion of that individual's personal privacy (section 38(b)). In this order, the adjudicator upholds the housing corporation's decision not to disclose the withheld information and dismisses the appeal.

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

Orders Considered: Orders MO-1629 and PO-3172.

OVERVIEW:

[1] The Ottawa Community Housing Corporation (the housing corporation) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request described an incident of theft and asked for the name of a party involved in the theft.

[2] The housing corporation located one record responsive to the request, a one-page

Incident Report, and issued a decision in which it denied access to the record in full under section 14(1) of the *Act* (personal privacy).

[3] The appellant appealed the housing corporation's decision to the Information and Privacy Commissioner of Ontario (the IPC). The IPC appointed a mediator to explore resolution. During mediation, the appellant stated that she was seeking access to the affected party's name.

[4] As mediation did not resolve the appeal, it was transferred to the adjudication stage where an adjudicator may conduct an inquiry.

[5] I decided to conduct an inquiry. After reviewing the Incident Report, I added the potential application of section 38(b) (personal privacy) as an issue in the appeal as the record appeared to contain the personal information of the appellant. I sought representations from the housing corporation, the appellant, and the affected party. The housing corporation provided representations.¹ The appellant did not provide representations but provided a response stating that she wanted the housing corporation to provide her with information unrelated to the information withheld in this appeal. The affected party did not provide representations.

[6] During the inquiry, the housing corporation issued a revised decision, granting access to some information within the Incident Report. The housing corporation withheld the affected party's name and apartment number, granting access to the remainder of the Incident Report under the *Act's* personal privacy provisions.

[7] In the discussion that follows, I uphold the housing corporation's decision to withhold portions of the Incident Report under section 38(b) of the *Act* and dismiss the appeal.

RECORDS:

[8] The responsive record is a one-page Incident Report. Remaining at issue are a name and an apartment number.

ISSUES:

- A. Does the Incident Report contain personal information as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

¹ These representations were shared in accordance with the IPC's *Code of Procedure*.

- C. Did the housing corporation exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the Incident Report contain personal information as defined in section 2(1) and, if so, whose personal information is it?

[9] The housing corporation relies on the mandatory personal privacy exemption at 14(1) and the discretionary personal privacy exemption at 38(b) of the *Act* to withhold the information at issue. Before I consider whether these exemptions apply, I must first determine whether the record at issue contains "personal information." If the record does, I must determine 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."

[10] Information is "about" the individual when it refers to them in their personal capacity, revealing 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.² Section 2(1) of the *Act* gives a list of examples of personal information.

[11] Neither the housing corporation nor the appellant directly addressed whether the records at issue contain personal information. However, the housing corporation's representations did include a reference to "the personal information (name and unit number) of the affected party."

[12] I have reviewed the Incident Report and find that it includes the personal information³ of both the appellant and the affected party. The Incident Report contains

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

³ The definition of "personal information" is found in s. 2(1) of the *Act*, and reads as follows:
"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,
(e) the personal opinions or views of the individual except if they relate to another individual,
(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

the names, addresses (paragraph (d)), and personal opinions or views (paragraph (e)) of both the appellant and the affected party. This report also includes information outlining the interaction between the affected party and housing corporation staff, such that the disclosure of the affected party's name would reveal other personal information about that individual (paragraph (h)).

[13] In its initial decision, the housing corporation stated that it relied on section 14(1) to deny access to the withheld information. Subsequently, the housing corporation stated that it was also relying on section 38(b) of the *Act*.

[14] Previous IPC orders have established that where a record contains both the personal information of the requester and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b).⁴

[15] In this case, the sole record at issue contains the personal information of the appellant and the affected party. Accordingly, for the severed information within the Incident Report, I will consider the application of the discretionary personal privacy exemption in sections 38(b) found in Part II of the *Act*.

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

[16] 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 a number of exemptions from this right.

[17] Under section 38(b)⁵ of the *Act*, 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 requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant.

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

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- (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;

⁴ Order M-352.

⁵ Section 38(b) reads:

A head may refuse to disclose to the individual to whom the information relates personal information ... if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

disclosure under section 38(b).

[19] Otherwise, in deciding whether disclosure of personal information would be an unjustified invasion of personal privacy under section 38(b), the factors and presumptions in sections 14(2) and (3) must be considered, weighed, and balanced with the interests of the parties.⁶ Sections 14(3)(a) to (h) list situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists other factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy.

[20] Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. If any of the paragraphs in section 14(4) apply, disclosure of the personal information is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b).

Representations, analysis, and findings

[21] The housing corporation's position is that disclosing the name and apartment number would constitute an unjustified breach of the affected party's privacy. It states that the affected party's personal information was compiled as part of an investigation into a possible violation of law – namely, the theft of an item. The housing corporation states that disclosure of that information is presumed to be an unjustified invasion of personal privacy pursuant to section 14(3)(b).

[22] The housing corporation notes that section 14(3)(b) can apply even if no criminal proceedings arise from an investigation⁷ and takes the position that investigations under section 14(3)(b) can also include those conducted by security services.⁸

[23] The housing corporation also takes the position that the factors set out in sections 14(2)(f)(highly sensitive) and 14(2)(h)(supplied in confidence) apply and weigh against disclosure of the withheld information.

[24] The section 38(b) presumption requires only that there be an investigation into a *possible* violation of law.⁹ It may apply even if criminal charges are not filed.¹⁰ Further, this presumption can apply to different types of investigations, such as by-law enforcement.¹¹ As the housing corporation notes, in Order PO-3172 this presumption was applied to records created by security staff.

[25] In Order PO-3172, a university's security staff investigated a reported incident of

⁶ Order MO-2954.

⁷ Citing Order MO-3653.

⁸ Citing Order PO-3172.

⁹ Orders P-242 and MO-2235.

¹⁰ 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).

¹¹ Order MO-2147.

theft by reviewing existing video footage and retaining the relevant portions, which were then prepared for the police. The present case also involves an allegation of theft, but as reflected in the occurrence synopsis, the report in this case largely addresses the return of the stolen item. There is no reference to security staff providing information to the police; the staff involved instead refers the victim to the police to make a report if she wishes.

[26] The housing corporation has not provided any legislative authority for its authority to perform investigations into violations of law, beyond its citation of Order PO-3172. While I understand that security staff in this case assisted in the return of a stolen item, I am not persuaded that staff in this case were involved in an investigation into a violation of law. Rather, I find the situation to be comparable to that described in Order MO-1629, also involving security staff at a housing corporation. In that case, the adjudicator found that the requirements for the application of the section 14(3)(b) presumption had not been met, stating:

I acknowledge that the role of the security guard is, at least in part, to ensure the “reasonable enjoyment of the premises by the landlord or the tenants”, but this is not sufficient to establish that his was a “law enforcement” function. Rather, the presence of the security guard appears to be to respond to, deal with and document the complaint. It may be that the incident report would be used in a subsequent law enforcement investigation pursuant to the [*Tenant Protection Act*], but I am not satisfied, based on the Corporation’s representations and the record itself, that the initial response by the security officer can be characterized as a law enforcement investigation.

[27] I adopt and apply this reasoning to the case at hand. Accordingly, I find that the presumption at section 14(3)(b) does not apply in the present circumstances.

[28] The housing corporation takes the position that other factors weighing against disclosure apply to the withheld information, stating that the information is highly sensitive (s. 14(2)(f)) and was supplied in confidence (s. 14(2)(h)).

[29] I find that both of these factors apply to the withheld information. To be considered highly sensitive, there must be a reasonable expectation of personal distress if the information were disclosed.¹² Such distress could reasonably be expected to occur if the identity of the individual involved in the alleged theft were disclosed. In addition, the affected individual was provided with assurances that the security staff would not share the information, evidencing that the information was provided in confidence.

[30] Accordingly, I find that both the section 14(2)(f) and 14(2)(h) factors favouring privacy protection apply in the circumstances of this appeal and give both of these factors

¹² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

significant weight.

[31] I have reviewed the remaining factors regarding whether a disclosure constitutes an unjustified invasion of personal privacy, as set out in section 14(2). I find that none of the factors favouring disclosure apply in the circumstances at hand.

[32] Neither the housing corporation nor the appellant claim that any of the section 14(4) exceptions apply to the withheld information. From my review of the section 14(4) exceptions, I find that none of them apply in the circumstances of this appeal.

[33] Accordingly, I find that disclosure of the withheld information would constitute an unjustified invasion of personal privacy of an identifiable individual.

Issue C: Did the housing corporation exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

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

[35] In addition, the IPC may find the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁴

[36] The housing corporation states that it properly applied its discretion in denying the release of the affected individual's personal information to the appellant. The housing corporation states that there are no grounds to support disclosing the personal information to the appellant. The housing corporation also refers to the limited information that it withheld from the appellant.

[37] The appellant did not provide representations addressing the housing corporation's exercise of discretion.

[38] I have considered the housing corporation's representations, the information at issue, and the circumstances of this appeal. I am satisfied that the housing corporation considered the relevant factors and did not take irrelevant factors into account when it made its decision. There is no evidence to demonstrate that the housing corporation exercised its discretion in bad faith or for an improper purpose.

¹³ Order MO-1573.

¹⁴ Section 43(2) of the *Act*.

[39] I find that the housing corporation properly exercised its discretion under section 38(b) to withhold the information at issue from the appellant and I uphold its decision.

ORDER:

I uphold the housing corporation's decision and dismiss the appeal.

Original Signed by: _____
Jennifer Olijnyk
Adjudicator

February 26, 2025 _____