

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4638

Appeal MA23-00536

Peel Regional Police Services Board

March 27, 2025

Summary: An individual made a request to the Peel Regional Police Services Board under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to a specified occurrence. The police granted partial access to an Incident Details Report and two video recordings and withheld two videos in their entirety.

The police stated that disclosure of the withheld information would be an unjustified invasion of other individuals' personal privacy (section 38(b)). In this order, the adjudicator upholds the police'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 M-444 and MO-1868-R.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of a specified occurrence report, including details of the related allegations.

[2] The police issued a decision, providing partial access to an Incident Details Report

and denying access to the remainder of the information¹ under section 38(b) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] A mediator was assigned to explore resolution. During mediation, the appellant noted that the police officers he spoke with had been wearing body cameras. The appellant stated that he wanted access to the footage from these cameras. The police then conducted a search for body-worn camera footage and located four responsive records. The police issued a supplementary access decision, in which they granted partial access to two videos and withheld the other two videos in their entirety pursuant to section 38(b) of the *Act*.

[5] The file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. As the adjudicator in this appeal, I sought and received representations from the police and the appellant.²

[6] In this order, I uphold the police's decision to deny access to the withheld information under section 38(b).

RECORDS:

[7] Remaining at issue is the information that the police have withheld from an Incident Details Report and four video recordings, two of which the police withheld in their entirety.

ISSUES:

- A. Do the records 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 The police also withheld police code information pursuant to section 8(1)(l) (facilitate commission of an unlawful act). During mediation, the appellant stated that he was not seeking this information, so it was removed as an issue to the appeal.

² The police's representations were shared with the appellant in accordance with the IPC's *Code of Procedure*.

DISCUSSION:

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

[8] The police rely on the discretionary personal privacy exemption at 38(b) of the *Act* to withhold the information at issue. Before I consider whether this exemption applies, 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.”

[9] 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.³ Section 2(1) of the *Act* gives a list of examples of personal information.

[10] The police state that the records contain the personal information of the appellant and multiple other individuals. The police state that this includes full names, home addresses, dates of birth, home phone numbers, and video footage of the other individuals, as well as comments they made to the police. The police submit that these other individuals can be clearly identified from the withheld information in the records.

[11] The appellant’s representations do not address whether the records contain personal information, though they speculate that the records may contain information about a named individual.

[12] I have reviewed the Incident Details Report and the four video recordings. I find that the Incident Details Report and all of the videos include the personal information⁴ of

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁴ 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,

both the appellant and other individuals.

[13] The Incident Details Report contains the appellant's name, address (paragraph (d)), and approximate age (paragraph (a)). This report also contains the name, date of birth, address, telephone number, and personal opinions or views (paragraph (e)) of another identified individual.

[14] The four videos are taken from two different body-worn cameras, worn by the police officers in attendance. As such, they depict the same interactions. All of the videos include audio and video recordings of identifiable individuals other than the appellant, including their personal opinions or views, as well as the views or opinions of other individuals about the appellant.

[15] Two of the videos also include audio and video recordings of the appellant. These two videos include the appellant's name, address, and approximate age, as well as the appellant's personal opinions or views.

[16] I note that the police have provided the appellant with his own personal information except where it is mixed with that of the other identifiable individuals. I have considered whether any of the appellant's personal information that remains at issue can be severed and disclosed to him. I find that it cannot because it is intermingled with the personal information of the other identifiable individuals.

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

[17] 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.

[18] 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.

[19] Sections 14(1) to (4) provide guidance in deciding whether the disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the five

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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;

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.

exceptions in sections 14(1)(a) to (e) apply, the disclosure would not be an unjustified invasion of other individual's personal privacy, and the information is not exempt from disclosure under section 38(b).

[20] Otherwise, in deciding whether disclosure of personal information would be an unjustified invasion of personal privacy under section 38(b), the factors and presumptions in sections 14(2) and (3) must be considered, weighed and balanced with the interests of the parties.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.

[21] 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 of the parties

[22] The police's position is that disclosing the withheld information would constitute an unjustified breach of the privacy of the identifiable individuals whose personal information is within the records. The police state that the personal information of these individuals was compiled and is identifiable as part of an investigation into a possible violation of law. The police state that disclosure of their personal information is therefore presumed to be an unjustified invasion of personal privacy, pursuant to section 14(3)(b).

[23] The police state that the statutory presumption only requires an investigation into a possible violation of law and can apply even if court or tribunal proceedings were never formally initiated. They state that the personal information was captured while the police were conducting a quasi-criminal investigation, noting that in the disclosed portions of the video, a police officer informed the appellant that he could face a potential charge of criminal harassment if his behaviour escalated.

[24] The police state that none of the 14(2) factors weighing in favour of disclosure apply to the present situation, but that two of the factors weighing against disclosure do apply: 14(2)(f) (highly sensitive information) and 14(2)(h) (information supplied in confidence).

[25] The police state that none of the exceptions set out in section 14(4) of the *Act* apply to the present case. Finally, the police take the position that withholding the information at issue does not lead to an absurd result. The police state that withholding the personal information is consistent with the purpose of the section 38(b) exemption, as some of the information does not relate to the appellant and the appellant was not

⁶ Order MO-2954.

present when the information was collected.

[26] The appellant states in his representations that the police visit was not warranted. He states that he is already aware of the complaint against him, and "it would be absurd to argue that full disclosure is denied under the guise of privacy concerns." The appellant cites IPC Orders M-444 and MO-1868-R for the proposition that withholding the personal information from him would lead to an absurd result.

[27] The appellant's representations largely focus on rebutting the underlying allegations of the complaint, including asking me to review footage that he describes as relating to an underlying incident. I make no comment on the specifics of the underlying complaint, which is not at issue in this appeal, and the only records that I have reviewed are those before me in this appeal.

[28] In his representations, the appellant also sought to amend his request to include disclosure of five additional items. At the end of mediation, the mediator issued a report to the parties that identified the records at issue as the Incident Details Report and four video recordings. There is no reference in the mediator's report to any additional records being at issue. If the appellant seeks disclosure of other records, he may submit an access request relating to those records to the police.

Analysis and findings

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

Presumption again disclosure: section 14(3)(b)

[30] 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.

[31] 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.⁷ Based on my review, I accept that the Incident Details Report and the videos were compiled by the police in the course of their investigation into incidents that were reported to them. Based on their nature and content, the information at issue was clearly compiled as part of an investigation into a possible violation of law. As previously noted, the fact that no charges

⁷ Orders P-242 and MO-2235.

were laid is not a bar to the application of the presumption. Accordingly, I find that all of the personal information that has been withheld falls under section 14(3)(b) of the *Act* and its disclosure constitutes a presumed unjustified invasion of the personal privacy of individuals other than the appellant.

Factors weighing for or against disclosure: sections 14(2)(f) and 14(2)(h)

[32] The police claim that the factors at 14(2)(f) (highly sensitive information) and 14(2)(h) (information supplied in confidence) apply in the circumstances to weigh against disclosure of the personal information.

[33] Section 14(2)(f) weighs against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.⁸ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.⁹

[34] I agree with the police that the personal information in the records is highly sensitive. This information is personal information about witnesses, complainants, or suspects in a police investigation, and includes footage of these individuals' interactions with the police. I find that the disclosure of this personal information could reasonably be expected to cause significant personal distress to those individuals. I find that the factor in section 14(2)(f) applies and weighs against disclosure.

[35] The police have also claimed that section 14(2)(h) applies in the circumstances. This factor weighs against disclosure 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. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."¹⁰

[36] The police state that the professional nature of the roles of the recipient police officers implies an expectation of confidentiality. The police state that based on the situation – information disclosed to police, during a police investigation into a possible violation of law – this expectation of confidentiality is reasonable.

[37] From my review of the personal information at issue in the records and the police representations, I agree with the police that both the individuals supplying the information and the police officers had a reasonable expectation that the information would be treated as confidential. I find that the factor in section 14(2)(h) applies and weighs against disclosure.

[38] In conclusion, I find that the presumption at section 14(3)(b) and the factors at

⁸ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

⁹ Order MO-2980.

¹⁰ Order PO-1670.

section 14(2)(f) and (h) apply to the information at issue and support non-disclosure of the withheld information. I also find that there are no factors that support disclosure of the information. I have also reviewed the exceptions set out in section 14(4) and find that none of them apply in the circumstances of this appeal.

[39] As a result, I find that the withheld personal information qualifies for exemption under section 38(b), because its disclosure would constitute an unjustified invasion of the other individuals' personal privacy.

Absurd result

[40] While I have found that the withheld information is exempt from disclosure, I must also consider if the absurd result principle applies to 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.¹¹

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

- the requester sought access to their own witness statement,¹²
- the requester was present when the information was provided to the institution,¹³ and
- the information was or is clearly within the requester's knowledge.¹⁴

[42] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.¹⁵

[43] The appellant states that he is already aware of the complaint against him, such that it would be absurd to withhold the information at issue from him. In making this argument, he cites IPC Orders M-444 and MO-1868-R.

[44] However, those orders describe fact situations different to the one at hand. In Order M-444, the adjudicator determined that it would be an absurd result to withhold access to information that an appellant himself had provided to police. Order MO-1868-R addressed a situation in which a police force withheld a witness statement, despite the witness having consented to its disclosure.

[45] In this case, there is no indication that the individuals whose personal information

¹¹ Orders M-444 and MO-1323.

¹² Orders M-444 and M-451.

¹³ Orders M-444 and P-1414.

¹⁴ Orders MO-1196, PO-1679 and MO-1755.

¹⁵ Orders M-757, MO-1323 and MO-1378.

has been withheld consent to the disclosure of this information. Further, while I appreciate that the appellant has expressed some knowledge regarding the complaint against him, there is no evidence that the particular information at issue is clearly within the appellant's knowledge.

[46] The records at issue document other individuals' interactions with the police. The two fully withheld videos and the redacted portions of the other videos do not include any footage that the appellant was present for and only depict other individuals. The portions of the Incident Details Report that were withheld do not include any information that the appellant supplied to the police. The withheld portions instead capture information supplied to the police by other individuals.

[47] Withholding personal information that the police obtained from other individuals, and which is not clearly within the requester's knowledge, is not inconsistent with the purpose of the exemption – namely, to prevent an unjustified invasion of another individual's personal privacy. Rather, disclosure of such information is consistent with the purpose of the exemption. I find that applying the section 38(b) exemption to the withheld information does not lead to an absurd result.

Exercise of Discretion

[48] 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.

[49] In addition, the IPC may find that 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.¹⁶ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁷

[50] The police state that they exercised their discretion appropriately in the circumstances, given the sensitive nature of the underlying investigation and the unjustified invasion of the privacy interests of the identified individuals, who did not consent to disclosure. The police state that they exercised their discretion in good faith and for a proper purpose, only taking into account relevant considerations. The police also submit that they disclosed as much of the records as they could while remaining compliant with their obligations under the *Act*.

[51] The appellant did not provide representations addressing the police's exercise of

¹⁶ Order MO-1573.

¹⁷ Section 43(2) of the *Act*.

discretion.

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

[53] In examining the portions of the records that were provided to the appellant, it is apparent that the police took into account the appellant's right of access to his own information, that the information was collected in the course of an investigation into a possible law enforcement matter, and the belief of the identified individuals that they were providing their personal information with an expectation of confidentiality. I find these were relevant considerations. I uphold the police's exercise of discretion to claim section 38(b) to withhold the information in the records at issue.

ORDER:

The appeal is dismissed.

Original Signed by: _____

Jennifer Olijnyk
Adjudicator

March 27, 2025