

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4639

Appeal MA21-00817

York Regional Police Services Board

March 28, 2025

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for information about a fire in the home occupied by her and her family. The police disclosed most of the investigation file to her, but withheld records related to statements made by an affected party, because their disclosure would be an unjustified invasion of the affected party's personal privacy (section 38(b)). The appellant also sought to correct some of the information and asked for records from a meeting with the police that took place after she made the access request.

The adjudicator upholds the police's decision, finding that the withheld information is exempt under section 38(b), the corrections should not be made to the information at issue, and the records from the meeting are outside of the scope of the original request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1), 36(2), and 38(b).

OVERVIEW:

[1] An individual made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the York Regional Police Services Board (the police) for information about a fire in the home occupied by her and her family. Two of her children died in the fire, and she, along with another one of her children, was injured. She sought the following:

Full report, disclosure and investigation details regarding the house fire that occurred on [specified date] at [specified address]. ...

[2] The police located records and granted partial access to them, with some information denied under section 38(b) (personal privacy) of the *Act*. The individual (now the appellant) appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant claimed that the records she received contained errors, and she asked that they be corrected. The appellant also stated that she was seeking access to additional records and information not yet disclosed or denied. Some additional records and information were disclosed and are no longer at issue in the appeal.

[4] However, the appellant also asked about the existence of records relating to a meeting she had with the police on a specified date.

[5] The police denied the appellant's correction request but stated that the appellant could submit a statement of disagreement to be attached to a record in accordance with section 36(2)(b) of the *Act*. Although the police wrote in the supplementary decision that they had conducted a search (and that no responsive records were located), the request for records relating to the meeting on the specified date was made after the request and the police claimed that it is therefore outside the scope of the appellant's request. The right of correction and the scope of the request were added as issues to the appeal.

[6] Before the conclusion of mediation, the police granted further access to information of individuals who consented to the release all or parts of their statements contained in the responsive records. However, the appellant continued to seek access to the statements and polygraph test information of one affected party.

[7] The adjudicator originally assigned to the appeal conducted an inquiry where she sought and received representations from the police and the appellant. The affected party was invited to provide representations, but none were received.

[8] The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[9] For the reasons that follow, I uphold the police's decision and dismiss the appeal.

RECORDS:

[10] The records at issue consist of a statement provided by an affected party, the affected party's polygraph exam report, a polygraph summary, and two video recordings

of an interview with the affected party.¹

ISSUES:

- A. What is the scope of the request for records?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Should the police correct the appellant's personal information under section 36(2)?

DISCUSSION:

Issue A: What is the scope of the request for records?

[11] To be considered responsive to the request, records must "reasonably relate" to the request.² Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.³

Representations, analysis, and finding

[12] The police provided an overview of the history of the request, explaining which records they released prior to the IPC appeal and which records were released during mediation. They explain that the appellant is seeking records related to a meeting that took place after the initial request was made. They state that no records were created during this meeting, and state that because the request was made after the request, it is outside of the scope of the original request.

[13] The appellant confirmed that she continues to seek the records at issue, but did not provide specific representations on if records related to the meeting were within the scope of the original request.

[14] Considering that the records the appellant is seeking, if they exist, relate to a meeting that took place after the request was made, I find that they are outside the scope of the request. While I understand the appellant's desire to obtain as much information as possible about the fire and surrounding investigations, the *Act* does not require the police to conduct ongoing searches for records created after a request was

¹ The video statements appear to be from the same interview of the affected party, but recorded by different cameras in the same interview room.

² Orders P-880 and PO-2661.

³ Orders P-134 and P-880.

made.⁴ Accordingly, I find that the records the appellant is seeking are outside of the scope of the original request.⁵

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

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

[15] Before I consider the exemption claimed by the police for the records, I must first determine if the records contain “personal information.” If they do, I must determine if 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.”

[16] 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.⁶ Section 2(1) of the *Act* gives a list of examples of personal information.

[17] Neither party disputes, and I find, that the records at issue, consisting of statements made by the affected party to the police, primarily contain information about the affected party’s activities on the date of the fire. I find that this information qualifies as the affected party’s personal information. However, it also contains some information that qualifies as the personal information of the appellant and her children. As such, I will consider the application of the personal privacy exemption at section 38(b).

Section 38(b)

[18] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides some exemptions from this right.

[19] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual’s personal information to the requester if disclosing that information would be an “unjustified invasion” of the other individual’s personal privacy.

⁴ Section 17(3) of the *Act* does have provisions for continuing access in certain circumstances, but the appellant did not state that she was seeking continuing access in the original request, nor was a schedule showing dates in a specified period provided with the request.

⁵ While the police generally assert that no records for this meeting exist, the appellant could make a new request for any records, and the police’s search efforts could then be assessed by the IPC.

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[20] 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 other individual's personal privacy.⁷

[21] 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.⁸

[22] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 38(b). None of the parties' claim, and I find, that none of the exceptions in section 14(1) apply to the information at issue. 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 relied on the presumption in section 14(3)(b) and the factors in sections 14(2), (f), and (h):

(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

(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,

(f) the personal information is highly sensitive

(h) the personal information has been supplied by the individual to whom the information relates in confidence

[23] The appellant also generally stated that the information will help determine appropriate legal measures, potentially engaging the section 14(2)(d) factor (fair determination of rights), but she did not provide additional information on how the information will be used or how the factor applies. As such, I will not consider this factor.

[24] In determining whether the disclosure of the information of the other party would be an unjustified invasion of personal privacy under section 38(b), therefore, I will

⁷ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 49(b).

⁸ Order PO-2560.

consider and weigh the relevant factors and presumptions in sections 14(2) and (3) discussed above, and balance the interests of the parties.⁹ The appellant and police also discussed the application of section 14(4)(c), disclosure for compassionate reasons, which I will address below.

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

[25] This presumption requires only that there be an investigation into a *possible* violation of law.¹⁰ So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.¹¹ The police submit that the records at issue were created as part of an investigation into arson, a possible *Criminal Code* violation. They submit that the investigation ultimately concluded that the cause of the fire was accidental, rather than intentional, but the presumption still applies.

[26] The appellant did not provide specific representations on this section. Reviewing the records, I find that the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law, and the presumption against disclosure therefore applies.

14(2)(f) and 14(2)(h): highly sensitive information and supplied in confidence

[27] To be considered “highly sensitive” in the context of section 14(2)(f) there must be a reasonable expectation of significant personal distress if the information is disclosed.¹² The section 14(2)(h) 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.¹³

[28] The police submit that the information at issue is highly sensitive and was supplied in confidence. They submit that release of the information could cause a reasonable expectation of significant distress to the affected party, and state that the information was supplied in confidence to the police. The appellant did not provide specific representations for these sections.

[29] Information provided to the police in an investigation can generally be considered highly sensitive, and this factor therefore applies.¹⁴ This is particularly true considering the nature of the records which relate to a very sensitive subject, the fire being investigated by the police. Similarly, previous IPC decisions have found that personal

⁹ Order MO-2954.

¹⁰ Orders P-242 and MO-2235.

¹¹ 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).

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

¹³ Order PO-1670.

¹⁴ See, for example, Order MO-2980.

information provided to the police is generally done so in confidence.¹⁵ I find that this applies to the present appeal and find that both factors apply.

Balancing the factors

[30] 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 affected party respectively. Considering that there are no factors that favour disclosure, I find that disclosing the information at issue, which generally only provides information about the affected party's activities, would be an unjustified invasion of the affected party's personal privacy.

Exercise of discretion

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

[32] In addition, the IPC may find that the 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.

[33] 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

[34] The police submit that they looked to the purpose of the *Act*, which they submit is that individuals should have a right of access to their own personal information while protecting the privacy of individuals. They explain that the appellant received a significant number of records, including additional records that were not requested. They also state that they sought the consent of third parties to provide information to the appellant. They submit that the withheld records are the personal and sensitive information of an individual who was also affected by the fire.

[35] The appellant did not provide specific representations on the police's exercise of discretion but generally explained why it is important for her to have access to the records.

[36] I have reviewed the considerations relied upon by the police and I find that they properly exercised their discretion in deciding to withhold the records under section 38(b). The police withheld only a limited amount of information related to an affected party who

¹⁵ See, for example, Order MO-3028.

¹⁶ Order MO-1573.

¹⁷ Section 43(2).

specifically did not consent to its disclosure. I find that the police did not exercise their discretion to withhold the 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 records under section 38(b).

Section 14(4)(c): disclosure for compassionate reasons

[37] The appellant generally raised the application of section 14(4)(c), stating that the information should be disclosed to her for compassionate reasons because the information contains her deceased children's personal information. The police submit that it does not apply.

[38] This section provides for the disclosure of the personal information of a deceased individual, if disclosure to a "close relative" would be desirable for compassionate reasons. In order for this section to apply, the following conditions must apply:

1. The records contain the personal information of someone who has died,
2. The requester is a spouse or "close relative" of the deceased individual, and
3. The disclosure of the personal information of the deceased individual is desirable for compassionate reasons given the circumstances of the request.¹⁸

[39] The institution (or on appeal, the IPC) must determine whether, "in the circumstances, disclosure is desirable for compassionate reasons," taking into account factors such as the need to assist the requester in the grieving process.¹⁹ After the death of an individual, it is generally that person's spouse or close relatives who are in the best position to know if disclosure of particular kinds of personal information is in their "best interests."²⁰ Compassionate reasons have generally been found to exist where information will assist a close relative in understanding the events leading up to and surrounding the death of an individual.²¹

[40] As discussed above, the information at issue, by implication, is about the fire that resulted in the deaths of two of the appellant's children. However, the specific information at issue is predominantly about the affected party. Having reviewed it, there is very limited information related to the circumstances of the deaths in the withheld information, and the information about the children is not about them in relation to the fire.

[41] The information solely relates to the affected party's activities prior to the fire and general information he provided the police during the investigation and would not provide

¹⁸ Orders MO-2237 and MO-2245.

¹⁹ Order MO-2245.

²⁰ Order MO-2245.

²¹ Order MO-3753.

any additional information related to the circumstances surrounding the deaths of the children. I find that disclosure of the information would not be desirable for compassionate reasons, and based on this, I find that the section 14(4)(c) exception does not apply.

Issue C: Should the police correct the appellant's personal information under section 36(2)?

[42] Section 36(2) gives the individual a right to ask the institution to correct their personal information. It states:

Every individual who is given access under subsection (1) to personal information is entitled to,

(a) request correction of the personal information if the individual believes there is an error or omission;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made

...

Representations

[43] During mediation, the appellant requested that some of the information in the police investigative report that she received be corrected. The police submit that some of the information that she is seeking to have corrected relates to other parties. The police acknowledge that some of the information the appellant wants corrected, such as an officer's notes about the age of her child and the location of a room in the home, is inaccurate. However, they state that this information reflected the views of individuals whose impressions were being set out in the report, and note that the correct information appears later in the report. The appellant also sought to have various facts in the report changed, as well as the investigating officer's conclusion.

[44] The police submit that the information at issue and as recorded in the records is based on what was collected during the investigation, and their refusal to make the corrections is reasonable in the circumstances. They also note that they offered to attach a statement of disagreement that would be attached to the records, and the appellant did not provide one.

[45] The appellant did not provide any representations on whether the requested corrections should be made.

Analysis and finding

[46] For there to be an error or omission in the personal information within the meaning of section 36(2)(a), the information must be "inexact, incomplete or ambiguous." If the

information sought to be corrected is someone's opinion, section 36(2)(a) does not apply and there is no basis for correction.²²

[47] Also, records of an investigatory nature cannot be said to be "incorrect," "in error" or "incomplete" if they simply reflect the views of the person whose impressions are being set out. In other words, the IPC must only decide whether the information accurately reflects the observations and impressions of the person whose impressions are being set out at the time the information was recorded or noted, and not whether the information is actually true or not.²³ Here, based on the information before me, the records that the appellant seeks to have corrected are of an investigatory nature and, even if in some cases incorrect, accurately reflect the information that was collected during the investigation.

[48] Additionally, section 36(2)(a) gives the institution the discretion to accept or reject a correction request.²⁴ This means that even if there is an error or omission in the personal information, the IPC may uphold the institution's decision to not make the correction, as long as there are valid reasons for its decision.²⁵

[49] I find that the police have adequately explained why they are choosing to not correct the information, and I uphold their exercise of discretion.

[50] The police offered to attach a statement of disagreement to the records. Although the appellant has not yet provided such a statement of disagreement, she continues to have that right under section 36(2)(b).

ORDER:

I dismiss the appeal.

Original Signed by: _____

Chris Anzenberger
Adjudicator

March 28, 2025

²² Orders P-186, PO-2079 and PO-2549.

²³ Orders M-777, MO-1438 and PO-2549.

²⁴ Order PO-2079.

²⁵ Order PO-2258.