

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4654

Appeal MA23-00285

City of Hamilton

May 20, 2025

**Summary:** The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to an identified address. The city located records relating to by-law complaints and granted the appellant partial access to them. The city withheld portions of the records claiming that disclosure would be an unjustified invasion of the personal privacy of individuals other than the appellant under section 38(b), among other exemptions.

In this decision, the adjudicator upholds the city's decision to withhold portions of the records under the personal privacy exemption and dismisses the appeal.

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

**Orders and Investigation Reports Considered:** Interim Order MO-2552-I.

### OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Hamilton (the city) for all records relating to a specific address.

[2] The city located responsive records and issued a decision to the appellant granting him partial access to them. The city claimed the discretionary law enforcement

exemptions in section 8(1)(d) (confidential source) and 8(2)(a) (law enforcement report) and the mandatory personal privacy exemption in section 14(1) of the *Act* to withhold portions of the records. The city also withheld some information as not responsive to the appellant's request.

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

[4] During mediation, the appellant confirmed he seeks access to the information the police withheld from the records. The appellant confirmed he does not pursue access to the information identified as not responsive and the employee personnel numbers severed from the records.

[5] The city maintained its access decision. However, it clarified that because the records contain the appellant's personal information it relies on the discretionary exemption at sections 38(a), read with the exemptions at section 8(1) and the discretionary personal privacy exemption at section 38(b) of the *Act* to withhold information from disclosure.<sup>1</sup>

[6] Mediation did not resolve the appeal, and it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. In my inquiry, I sought and received representations from the appellant, the city, and one affected party.<sup>2</sup> These representations were shared in accordance with the IPC's *Code of Procedure*. I note the police withdrew its section 8(2)(a) exemption claim in its representations.

[7] In the discussion that follows, I uphold the city's decision to withhold information under the discretionary personal privacy exemption at section 38(b) and dismiss the appeal.<sup>3</sup>

## **RECORDS:**

[8] There are five records at issue that were withheld, in part, by the police. The records are comprised of the following:

- three Service Request Information forms (the first at pages 1 and 2, the second at pages 3 to 6, and the third at pages 7 to 8),
- a Statement of By-Law Infraction (pages 9 to 10), and

---

<sup>1</sup> If the records do not contain the personal information of the requester, sections 8 and 14(1) would apply on their own to the personal information relating to identifiable individuals.

<sup>2</sup> I notified a second affected party, but they did not respond to the notice.

<sup>3</sup> Given my finding regarding section 38(b), it is not necessary to consider whether section 38(a), read with section 8(1)(d), also applies to the information at issue.

- handwritten notes (page 11).<sup>4</sup>

[9] The police withheld the following information from these records: the name and contact information of complainants, the information supplied by the complainants as part of their complaints, information regarding the complaint compiled by city employees, such as by-law officers.

## **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?
- C. Did the city exercise its discretion in withholding information under section 38(b) and if so, should the IPC uphold its exercise of discretion?

## **DISCUSSION:**

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

[10] In order to decide which sections of the *Act* may apply, the IPC must first decide whether the records contain “personal information” and, if so, to whom it relates. It is important to know whose personal information is in the records. If the records contain the requester’s personal information, their access rights are greater than if they do not.<sup>5</sup> The term *personal information* is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.”

[11] To qualify as “personal information”, the information must be about the individual in a personal capacity. Generally, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the individual.<sup>6</sup> Therefore, the information relating to individuals in their professional capacities is not their personal information.

[12] However, even if information relates to an individual in a professional, official or

---

<sup>4</sup> During my inquiry into this appeal, the city issued a revised decision granting the appellant access to additional portions of page 5 and all of page 13.

<sup>5</sup> Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning the institution can still choose to disclose the information even if the exemption applies.

<sup>6</sup> See sections 2(2.1) and (2.2) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>7</sup>

[13] The city submits the severed portions of the records contain a complainant's name, home and email addresses, telephone numbers and statement they made to the city. The city submits this information falls under the introductory wording of the definition of personal information in section 2(1) as well as paragraphs (d) (the complainant's address and contact information), (e) (their personal views or opinion), and (h) (their name as it appears with other personal information relating to them). The city submits the information would, if disclosed, reasonably be expected to identify this individual and relates to them in a personal capacity.

[14] In their representations, the affected party submits the records contain their personal information and they will be identified if their personal information is disclosed to the appellant.

[15] The appellant does not directly address whether the records contain personal information. He states the only information that was disclosed to him was his own personal information, thereby indicating that he agrees that the records contain his personal information. The appellant notes he is agreeable to "all redactions for actual personal information, i.e. email addresses, telephone numbers, residential addresses and names."

[16] I have reviewed the records at issue and find they all contain the appellant's personal information. Specifically, I find they contain recorded information about him.<sup>8</sup> Some of the records contain his name<sup>9</sup> and contact information,<sup>10</sup> and all of them contain views or opinions of other individuals about him.<sup>11</sup>

[17] In addition, I find the records contain the personal information of two identifiable individuals other than the appellant. While the appellant appears to believe "actual personal information" is limited to the names and contact information of an identifiable individual, it is not. Relevant to this appeal, paragraph 2(1)(e) of the definition of personal information expressly includes the views or opinions of an identifiable individual. I have reviewed the records and find they contain the recorded information about two identifiable individuals, including their names, their contact information, and their views or opinions.<sup>12</sup> Based on my review, this information relates to these individuals in their personal capacities and does not relate to them in their business or professional capacities.

---

<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>8</sup> See the introductory language of section 2(1).

<sup>9</sup> Considered "personal information" under section 2(1)(h).

<sup>10</sup> Considered "personal information" under section 2(1)(d).

<sup>11</sup> Considered "personal information" under section 2(1)(g).

<sup>12</sup> Considered "personal information" under section 2(1)(e).

[18] I find the records contain both the appellant's personal information as well as the personal information of other identifiable individuals. I note that some of this personal information is mixed in that it contains the personal views or opinions of identifiable individuals about the appellant. Given these circumstances, I must consider whether the information withheld from these records is exempt under the discretionary personal privacy exemption at section 38(b) of the *Act*.

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

[19] 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. Under the section 38(b) exemption, if a record contains the personal information of both the requester and other individuals, the institution may disclose the other individuals' personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individuals' personal privacy.<sup>13</sup> Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant.

[20] If any of the exceptions in sections 14(1)(a) to (e) applies to the personal information at issue, disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b). None of the exceptions in section 14(1)(a) to (e) are applicable here.

[21] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), sections 14(2) to (4) offer guidance.

[22] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b). None of the circumstances listed in section 14(4) are present here.

[23] If, as in this case, section 14(4) does not apply, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>14</sup>

[24] Section 14(3) lists several situations in which disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[25] Section 14(2) lists various factors that may be relevant in determining whether

---

<sup>13</sup> However, 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; Order PO-2560.

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

disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>15</sup> The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).<sup>16</sup>

### ***Parties' representations***

[26] The city submits the presumption in section 14(3)(b)<sup>17</sup> applies to the records. The city submits the personal information of the identifiable individuals was compiled in response to complaints regarding a dog roaming at large and not being cleaned up after by its owner. The city submits the personal information was used in their investigation into a possible contravention of the City's *Responsible Animal Ownership By-law No. 12-031*. The city submits it is standard practice for the city to collect a complainant's personal information during an investigation and retain this information in confidence so that members of the public will continue to report by-law contraventions. The city notes its website states that complainants' "personal information will remain confidential unless required for court." As such, the city submits the presumption in section 14(3)(b) applies to the personal information at issue.

[27] The city also submits the factors weighing against disclosure in section 14(2)(f) (highly sensitive) and (h) (supplied in confidence) apply to the personal information. With regard to section 14(2)(f), the city submits there is a reasonable expectation of significant personal distress if the information is disclosed. With regard to section 14(2)(h), the city submits the complainant provided their personal information to the city to report a possible contravention of a by-law and in response to questions asked by by-law officers during an investigation. The city submits this information was supplied in confidence and it is reasonable for the complainant to believe this information would remain confidential and the city has treated such information confidentially in its by-law complaints process.

[28] The affected party confirms they did not consent to the disclosure of their personal information. They claim the factor in section 14(2)(e) (unfair exposure to pecuniary or other harm) applies in favour of non-disclosure because the disclosure of the information could reasonably expose them to harm. The affected party states they do not know the identity of the appellant or the incident it relates to and is concerned about a safety risk that may arise if the information is disclosed. The affected party also claims the information is highly sensitive, referring to the factor weighing against disclosure in section 14(2)(f). Finally, the affected party claims they provided the information to the city in confidence; as such, they claim section 14(2)(h) applies weighing against

---

<sup>15</sup> Order P-239.

<sup>16</sup> Order P-99.

<sup>17</sup> Section 14(3)(b) of the *Act* reads: "A disclosure of personal information is presumed to constitute 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 or to continue the investigation."

disclosure.

[29] The appellant submits he should have access to the information at issue. He submits the purpose of redacting information from disclosure is meant to protect the privacy of individuals but “not meant to be used as a tool to negate the disclosure requirements of the Act and... render the Act useless from the standpoint of the [requester].” The appellant submits he seeks nothing but his own information and does not seek access to the “actual personal information” of identifiable individuals, which he has characterized as their names and contact information. As discussed above, the definition of personal information in section 2(1) is more expansive than the appellant claims and includes the views and opinions of identifiable individuals.

[30] The appellant refers to the purposes of the *Act*, which include the principles that information should be available to the public and necessary exemptions from the right of access should be limited and specific.<sup>18</sup>

### ***Analysis and findings***

[31] Based on my review of the records, I find the information at issue is exempt under the personal privacy exemption in section 38(b).

[32] As previously noted, in deciding whether section 38(b) applies, section 14(2), (3), and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. I have already noted that none of the exceptions in section 14(4) are relevant in this appeal. Therefore, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>19</sup>

[33] In this case, the city claims the application of the presumption in section 14(3)(b), which presumes 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 or to continue the investigation. The presumption in section 14(3)(b) does not require that charges be filed in relation to the violation of law; it only requires that there be an investigation into a possible violation of law.<sup>20</sup> In this case, I accept the city’s evidence that the information was collected as part of an investigation into a possible contravention of the City’s *Responsible Animal Ownership By-law No. 12-031*. The city collected the information from two identifiable individuals as part of its investigation into complaints of possible contraventions of the by-law. Given these circumstances, I find section 14(3)(b) applies to the personal information in the records because it was compiled and is

---

<sup>18</sup> Section 1 of the *Act*.

<sup>19</sup> Order MO-2954.

<sup>20</sup> Orders P-242 and MO-2235.

identifiable as part of an investigation into a possible violation of law.

[34] I also find the factors weighing against disclosure in sections 14(2)(f) and (h) apply to the records. With regard to section 14(2)(f), I accept the city and affected party's claim that the disclosure of the personal information at issue would result in significant personal distress to the individuals whose personal information is contained in the record. The personal information was collected in relation to complaints filed regarding a possible by-law violation. I find this includes the complainants' views or opinions regarding the circumstances that led to their filing the by-law complaints. As the city states, its website guarantees that complainants' "personal information will remain confidential unless required for court." Given this context, I find the information is highly sensitive and could reasonably be expected to result in significant personal distress if it was disclosed to the appellant and I give the factor some weight.

[35] With regard to section 14(2)(h), I accept the city's evidence that the personal information in the records was supplied in confidence. Given the nature of the personal information at issue, it is clear the complainants submitted their complaints and concerns regarding the possible by-law violations in confidence. Therefore, I find section 14(2)(h) weighs against disclosure of the personal information at issue.

[36] The affected party raises the application of the factor in section 14(2)(e), which weighs against disclosure of the personal information at issue if the disclosure will result in unfair pecuniary or other harm. I acknowledge the affected party's concern that they may suffer pecuniary or other harm if their personal information is disclosed to the appellant. However, there is no evidence before me to suggest that the disclosure of this personal information will result in this harm. Given these circumstances, I will give this factor minimal weight.

[37] I have considered the remaining factors in section 14(2) as well as any unlisted factors and find none apply.

[38] In summary, I am satisfied the presumption in section 14(3)(b) applies to the information at issue. I further find the factors in sections 14(2)(e), (f), and (h) weigh in favour of nondisclosure of the personal information at issue, although as discussed above, I give section 14(2)(e) minimal weight. I find further that none of the factors favouring disclosure of the personal information at issue apply. Overall, I find the balance weighs in favour of protecting the personal information at issue, rather than the appellant's access rights. As a result, subject to my consideration of the board's exercise of discretion, I find the personal information at issue qualifies for exemption under section 38(b) of the *Act*.

[39] In its representations, the city considered the application of the absurd result principle to the records. The absurd result principle applies in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In these situations, withholding the information may be absurd



and inconsistent with the purpose of the exemption.<sup>21</sup> I reviewed the personal information at issue and the appellant's representations. There is no indication that the information was provided by the appellant or is clearly within his knowledge. Given these circumstances, I find the absurd result principle does not apply.

[40] In conclusion, I find the personal information at issue is exempt under section 38(b) of the *Act*, subject to my review of the city's exercise of discretion below. Given this finding, I do not need to consider whether section 38(a), read with section 8(1)(d), also applies to the information withheld from disclosure.

**Issue C: Did the city exercise its discretion in withholding information under section 38(b) and if so, should the IPC uphold its exercise of discretion?**

[41] The exemption in section 38(b) is discretionary, which means the city can decide to disclose the information at issue even though it qualifies for exemption. The IPC reviews an institution's exercise of discretion to determine if it did so properly.

[42] The city submits it acted in good faith and for an appropriate purpose in exercising its discretion to deny the appellant access to the personal information at issue. The city submits it applied the exemptions in a limited and specific manner, and considered the following:

- The purposes of the *Act*, including the principle that individuals should have a right of access to their own personal information
- The wording of the exemption and the interests it seeks to protect, such as the importance of protecting the personal privacy of individuals
- The fact the appellant seeks access to his own personal information in some of the records; in that regard, the city submits it disclosed as much of the appellant's personal information to him as possible
- Whether there is a sympathetic or compelling need for the appellant to receive the information at issue; the city decided there was not
- Disclosure would not increase public confidence in the city's operation since the information relates to a matter that is primarily of a private nature between the parties
- The nature and sensitivity of the information as it relates to the affected parties

---

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

- The historic practice of the city with respect to similar information, which is to not disclose the personal information of complaints which is compiled through the by-law complaint process

[43] The appellant did not directly address the city's exercise of discretion. However, the appellant submits the city should "uphold the primary purpose of the *Act*" and not "completely circumvent this primary purpose" by applying the personal privacy exemption which would negate the purpose of the *Act*. While the appellant does not directly indicate which is the primary purpose of the *Act*, it appears it is that "information should be made available to the public."<sup>22</sup>

[44] I have reviewed the parties' representations and find the city considered relevant and appropriate factors in exercising its discretion to deny the appellant access to the personal information that remains at issue. Specifically, the city considered the appellant's right of access to his own personal information, the purposes of the *Act* and the personal privacy exemption, and the privacy rights of individuals whose personal information is at issue. I find the city did not consider irrelevant factors in its exercise of discretion.

[45] In his representations, the appellant appears to take the position that the "primary purpose" of the *Act* is to ensure information is made available to the public. This is inaccurate; the *Act* has two purposes. In Order MO-2552-I, the adjudicator described the two purposes the *Act* as the transparency purpose and the privacy protection purpose. The adjudicator stated the transparency purpose serves to provide the public with a right to access to information under the control of institution in accordance with the following three principles:

- Information should be made available to the public
- Necessary exemptions from the right of access should be limited and specific; and
- Decisions on the disclosure of information should be reviewed independently of the institution controlling the information.

[46] The second purpose of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.<sup>23</sup>

[47] I acknowledge the appellant's desire to obtain access to the information provided by the affected parties. I also acknowledge his claim that the *Act* requires that information held by institutions be made available to the public. However, the protection of individuals' personal privacy is a second and equally important purpose and must be considered when determining whether personal information should be disclosed to a

---

<sup>22</sup> Section 1(a)(i).

<sup>23</sup> Interim Order MO-2552-I at page 10.

requester.

[48] In my view, the city has considered and balanced the purposes of the *Act* in exercising its discretion to withhold some of the personal information in the records from disclosure. The city considered the transparency purpose of the *Act* and disclosed certain portions of the records to the appellant. However, the city withheld the personal information relating to identifiable individuals from disclosure to protect their personal privacy. While the appellant takes issue with the result, I find the city balanced the appellant's right of access with the affected parties' right to personal privacy in exercising discretion. There is no indication the city acted in bad faith or considered inappropriate factors in exercising its discretion to withhold the information at issue.

[49] Accordingly, I uphold the city's exercise of discretion.

**ORDER:**

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

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

Justine Wai  
Adjudicator

\_\_\_\_\_  
May 20, 2025