

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4656

Appeal MA23-00496

Toronto Police Services Board

May 21, 2025

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for the names and contact information of her neighbours who called 911 about her. The Toronto Police Services Board denied access to the information relying on the discretionary personal privacy exemption in section 38(b).

In this order, the adjudicator upholds the police's decision and finds that disclosure of the information at issue, the names and contact information of the 911 callers, would be an unjustified invasion of personal privacy under section 38(b).

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

Orders Considered: Orders MO-2318, and PO-1750.

OVERVIEW:

[1] A requester sought access to the names and contact information of her neighbours who called 911 about her. She made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following information:

...a 911 call placed on [specified date and time in 2023], for the purpose of dispatching Toronto Fire Services to [specified address], Toronto, to conduct a wellness check of [the appellant]. We request all information relating to this call, including a recording of the 911 call.

[2] The police issued a decision¹ to the appellant advising that a police occurrence report was not generated for the specified incident. However, the police advised that they had located a 911 report and the attending officers' memorandum book notes. The police granted partial access to those records, withholding some information pursuant to section 14(1) (personal privacy) of the *Act*. In addition, the police advised that they withheld some information on the basis that it is non-responsive.

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

[4] During mediation, the appellant indicated that she was pursuing access to a recording or a transcription of the 911 call and a typed version of the attending officers' memorandum book notes. The police issued a supplemental decision,² providing the appellant with an updated copy of the responsive records, including a typed version of the attending officers' memorandum book notes. The police maintained that the 911 call recordings are exempt and stated that they would not provide a transcript of the calls.

[5] During mediation, the appellant advised that she was also seeking access to a specific police report from 2017. Although the police were of the view that the report is not responsive to the original request, they agreed to process the appellant's request as part of this appeal. At the police's request, the appellant requested: "any and all other police reports pertaining to [the appellant] or [specified address] since the year of 2014."

[6] The police issued a second supplemental decision,³ granting partial access to responsive records, withholding some information pursuant to sections 38(a) (discretion to refuse requester's own information) read with 8(1)(l) (facilitate commission of an unlawful act), and 38(b) or 14(1) (personal privacy)⁴ of the *Act*. The police also withheld some information on the basis that it was non-responsive to the request.

[7] The appellant confirmed that she did not wish to pursue access to the information withheld under sections 38(a) read with 8(1)(l) nor to the portions of the records deemed non-responsive. Therefore, the information withheld under these sections or deemed non-responsive is not at issue in the appeal. However, the appellant confirmed that she wishes to pursue access to the information and records withheld under the personal

¹ Decision dated June 8, 2023.

² Decision dated November 10, 2023.

³ Decision dated February 9, 2024.

⁴ Both sections 14(1) and 38(b) contain personal privacy exemptions. Section 14(1) applies to records which do not contain requester's personal information. Section 38(b) applies to records which contain personal information of a requester and other individuals.

privacy exemptions, including the withheld portions of the records and the 911 call recordings.

[8] As the appeal was not resolved through mediation, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[9] I decided to conduct an inquiry. I sought and received representations from the police and the appellant.⁵

[10] In her representations, the appellant confirmed that the only information that she continues to seek access to is the names and contact information of the callers who called 911 about her. Therefore, this is the only information that remains at issue.

[11] In this order, I uphold the police's decision not to disclose the names and contact information of the 911 callers to the appellant as they are subject to the personal privacy exemption at section 38(b).

RECORDS:

[12] The records at issue in this appeal are the withheld portions of police reports and police officer notes generated as a result of 911 calls concerning the appellant's behaviour made between January 1, 2014, and January 20, 2024. Also remaining at issue is one 911 call recording.

[13] The only information that remains at issue from these records is the names and contact information of the individuals who called 911 about the appellant.

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 police exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

⁵ The parties' representations were shared in accordance with the IPC's *Practice Direction 7*.

DISCUSSION:

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

[14] In this appeal, the police claim that information is exempt from disclosure under the discretionary exemption at section 38(a). For that exemption to apply the record must contain the personal information of both the appellant and other identifiable individuals.

[15] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[16] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁶

[17] 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. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁷

[18] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.⁸

[19] 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.⁹

[20] Section 2(1) of the *Act* gives a list of examples of personal information:

“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,

⁶ See the definition of “record” in section 2(1).

⁷ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(2), (2.1) and (2.2) of the *Act* which exclude some information from the definition of personal information. Sections 2(2.1) and (2.2) are described above. Section 2(2) states that personal information does not include information about an individual who has been dead for more than thirty years.

⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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,

(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.

[21] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."¹⁰

[22] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.¹¹ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.¹²

Representations

[23] The police submit that the records contain the personal information of identifiable individuals in their personal capacity. They do not indicate whether the records contain the appellant's personal information.

[24] The appellant submits that the records contain her personal information. She states that the records contain the types of personal information about her as described

¹⁰ Order 11.

¹¹ 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 that the institution can still choose to disclose the information even if the exemption applies.

¹² See sections 14(1) and 38(b).

in paragraphs (a), (b), (c), (d), (g), and (h) of the definition of personal information in section 2(1) of the *Act*.

[25] The appellant submits that the records also contain the personal information of the individuals who called the police (the callers). She submits that the records contain the types of personal information about these individuals as described in the definition of section 2(1) of the *Act*, including their addresses and telephone numbers (paragraph (d)).

[26] The appellant also submits that the records contain statements that the callers made to police about her psychiatric history, diagnoses, and conditions in accordance with paragraph (b). The appellant states that these personal opinions and views about her in the records does not constitute “personal information” of the callers but rather is her own personal information under paragraph (g).

[27] The appellant submits that the callers’ names are not personal information as defined in section 2(1). She refers to paragraph (h) of the definition of personal information in section 2(1) and states that a name on its own is generally not considered personal information. She submits that if the individuals’ addresses and phone numbers are severed, disclosure of their names alone is not personal information as it would not reveal any personal information about them.

Findings

[28] Based on my review of the records, which are police reports, police officers’ notes, and one 911 recording, I find that they contain the personal information of both the appellant and the callers in their personal capacity.

[29] The records include the appellant’s name, address, views, history, phone number, date of birth, and identifying number, in accordance with all of the paragraphs of the definition of personal information in section 2(1) of the *Act*, other than paragraph (f).

[30] The records include the callers’ names, addresses, views or opinions, history, phone numbers, dates of birth, and identifying numbers, in accordance with all of the paragraphs of the definition of personal information in section 2(1) of the *Act*, other than paragraph (f).

[31] With respect to the callers, the records contain the callers’ views or opinions about the appellant which constitutes the appellant’s personal information in accordance with paragraph (e) of the definition.

[32] The records also contain these callers’ views or opinions about other matters not related to the appellant or other individuals in accordance with paragraph (g), which is the callers’ personal information. The views or opinions of the callers about the appellant and about other matters are intertwined in the records.

[33] I disagree with the appellant’s position that disclosing only the names of the callers

would not constitute their personal information. In my view, disclosure of their names in the context of these records would reveal other personal information about them (paragraph (h)). In this case, as most of the records have been already disclosed to the appellant, disclosure of even the names of the callers alone would allow the appellant to ascertain other personal information about them.

[34] As the records contain the personal information of both the appellant and other identifiable individuals, the relevant personal privacy exemption that I must consider is the discretionary personal privacy exemption at section 38(b).

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

[35] 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.

[36] 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.

[37] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[38] 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).

[39] Also, 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.¹³

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

[41] If any of the sections 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 38(b). These exceptions do not apply in this appeal.

[42] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections

¹³ Order PO-2560.

14(2) or (3) apply. In this appeal, none of the parties have claimed that any of the circumstances in section 14(4) apply and from my review, they do not.

[43] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the decision-maker¹⁴ must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹⁵

Section 14(3)(b)

[44] The police state that section 14(3)(b) applies as the police conducted an investigation into complaints regarding the appellant and that each responsive record was created for an investigation into a possible violation of law. Section 14(3)(b) states:

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.

[45] This presumption requires only that there be an investigation into a possible violation of law.¹⁶ So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.¹⁷

[46] The appellant states that most of the records document the police's response to incidents that they have identified as responding to a "person in crisis", an "emotionally disturbed person", or a "check well-being." She submits that there is no reason to believe that the police's response to the 911 calls that generated these records related to investigations into any violations of the law. She submits that, as a result, the presumption at section 14(3)(b) should not apply to weigh against disclosure of the information and if it is found to apply, it should be accorded minimal weight.

[47] Based on my review of the records, I find that they were not compiled and are identifiable as part of an investigation into a possible violation of law. As submitted by the appellant, the records here concern the police's response to 911 calls requesting that they look into incidents involving mental health issues rather than possible violations of law.

[48] Previous orders have found that the requirements of section 14(3)(b) are not met when the police exercise their authority under the *Mental Health Act*, which is the case

¹⁴ The institution or, on appeal, the IPC.

¹⁵ Order MO-2954.

¹⁶ Orders P-242 and MO-2235.

¹⁷ 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).

here.¹⁸ I agree with the reasoning expressed in these orders and find that it is applicable to the records at issue in this appeal.

[49] Therefore, I find that section 14(3)(b) does not apply to the personal information at issue in this appeal as the records were not compiled or are identifiable as part of an investigation into a possible violation of law.

Section 14(2)

[50] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹⁹ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[51] Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2) (e) to (i), if established, would tend to support non-disclosure of that information.

[52] The appellant relies on sections 14(2)(a), (b) and (d). The police rely on sections 14(2)(e) and (h). These sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(b) access to the personal information may promote public health and safety;

...

(d) the disclosure is desirable for the purpose of subjecting the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

...

¹⁸ See Orders MO-1384, MO-1428, MO-3063, and MO-3465.

¹⁹ Order P-239.

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

[53] 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).²⁰

Factors weighing in favour of disclosure

Sections 14(2)(a): disclosure is desirable for public scrutiny and 14(2)(b): disclosure may promote public health and safety

[54] The appellant submits that section 14(2)(a), that disclosure is desirable for public scrutiny, applies and goes hand-in-hand with the promotion of public health and safety under section 14(2)(b), as the police are accountable to the public with regard to making Toronto a safer place.

[55] The appellant submits that the factor in section 14(2)(b) applies, since disclosing the identity of individuals who use emergency services for harassment, pranks, or similar improper purposes will provide an opportunity for those affected to seek remedies in civil court. She states that disclosure would help the public to adhere to their rights and responsibilities with regard to contacting emergency services, thereby reducing strain on the system.

[56] Section 14(2)(a) weighs in favour of disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.²¹ It promotes transparency of government actions.

[57] The issues addressed in the information that is being sought do not have to have been the subject of public debate in order for this section to apply, but the existence of public debate on the issues might support disclosure under section 14(2)(a).²²

[58] An institution should consider the broader interests of public accountability when considering whether disclosure is “desirable” or appropriate to allow for public scrutiny of its activities.²³

[59] Section 14(2)(b) supports disclosure where disclosure of the information would promote public health and safety.

[60] In my view, the police’s response to the complaints about the appellant are related to private matters, namely the appellant’s behaviour. There is no evidence in the records that the calls made to 911 about the appellant were made for the purpose of harassment

²⁰ Order P-99.

²¹ Order P-1134.

²² Order PO-2905.

²³ Order P-256.

of the appellant or were pranks, or were made for similar improper purposes. Nor do the records reveal that these calls were made for the purpose of misusing the 911 call system.

[61] Therefore, I find that neither of the factors in sections 14(2)(a) or 14(2)(b) apply. Disclosure of the personal information at issue is not desirable for the purpose of subjecting the activities of the institution to public scrutiny under section 14(2)(a). Nor do I accept that disclosure of the personal information at issue would promote public health and safety under section 14(2)(b).

Section 14(2)(d): the personal information is relevant to the fair determination of requester's rights

[62] Section 14(2)(d) supports disclosure of someone else's personal information where the information is needed to allow them to participate in a court or tribunal process.

[63] The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?²⁴

[64] The police state that section 14(2)(d) does not apply as the affected persons also have the right to have their privacy protected. They submit that in this appeal the rights of the appellant do not outweigh those of other individuals. They also submit that the existence of disclosure processes available to parties under the *Rules of Civil Procedure*²⁵ reduces the weight that should be given to the section 14(2)(d) factor.²⁶

[65] The appellant submits that the personal information is relevant to the fair determination of her rights.

[66] The appellant states that she began experiencing harassment by her former neighbours and instances of vandalism to her home within a few months of living there. She states that as she sought to secure her property and create a sense of safety and

²⁴ See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

²⁵ R.R.O. 1990, Reg. 194.

²⁶ Orders MO-2943, MO-2980, and PO-1715.

privacy for herself, the neighbours took to repeatedly contacting the authorities and requesting their presence at the appellant's property.

[67] The appellant states that the callers made inflammatory, humiliating, and untruthful statements to the police about her, and she has been adversely affected by the ongoing harassment and has suffered damages. She would like to pursue the appropriate civil remedies against the individuals responsible and requires the names and contact information of the callers in order to do so.

[68] The appellant claims that through inadvertent disclosure by the police she already knows the identity of one of the callers. She also states that she believes she knows the names of the other callers based on the language and circumstances of many of the complaints as set out in the portions of the records that were disclosed to her. Nevertheless, she submits that she requires confirmation of who made these calls.

[69] The appellant states that she will be unable to seek the appropriate legal remedies against the individuals if she cannot ascertain their identities. She states that the police have told her to seek a court order to obtain the identities of the callers. The appellant disagrees and submits that to seek a court order would be unnecessary, time-consuming and costly, creating a bottleneck in the road to justice.²⁷

[70] The appellant submits that all of the requirements of the IPC's four-part test (set out above) for section 14(2)(d) have been met:

- i. The appellant's right to sue and seek damages flows from the common law of torts;
- ii. This right is related to a proceeding the appellant intends to commence;
- iii. The personal information the appellant is seeking has a significant bearing on her right to sue, since she requires, at a minimum, the names of the callers to ensure she can seek redress from the correct individuals; and,
- iv. She requires the names and contact information of the callers to be able to prepare for, commence, and carry on an action against them.

[71] The appellant has not established that she requires the personal information of the callers for the fair determination of her rights. Specifically, she states she needs this information to sue the callers.

[72] The appellant has not provided sufficient evidence to demonstrate that the right she claims is in question, her right to sue the callers for calling 911, is a right existing in

²⁷ She relies on Order MO-2980, a case involving the name of a dog owner to pursue litigation under the *Dog Owners Liability Act*, R.S.O. 1990, c. D.16.

law.

[73] Although the appellant states that the callers made inflammatory, humiliating, and untruthful statements to police about her, from my review of the records such information is not found therein. As well, there is also no evidence before me from either the police or from my review of the records that these calls to 911 were made for a malicious, illegal or nefarious reason.

[74] Additionally, even if she could establish that the right in question is a legal right, the appellant has not provided sufficient evidence to support a conclusion that any such is right related to a legal proceeding that is ongoing or might be brought.

[75] As the appellant has not established that either parts 1 or 2 of the four-part test for this factor to be considered relevant have been met, I find that the factor in section 14(2)(d) is not a relevant factor and does not weigh in favour of disclosure of the information at issue to the appellant. Disclosure of the names and contact information in the circumstances of this appeal, in my view, is not relevant to a fair determination of the appellant's rights.

Factors weighing against disclosure

Section 14(2)(e): disclosure will result in exposure to unfair pecuniary or other harm

[76] The police refer to section 14(2)(e), which is intended to weigh against disclosure when the evidence shows that financial damage or other harm from disclosure is either present or foreseeable, and that this damage or harm would be "unfair" to the individual whose personal information is in the record.

[77] The police submit that based on the reported interactions and concerns raised by the other involved individuals, it is likely the other involved individuals would be exposed to unwanted contact.

[78] In support of their position, the police rely on Order MO-2318, where the adjudicator found that the unfair harm contemplated by section 14(2)(e) is foreseeable where disclosure of personal information is likely to expose individuals to unwanted contact with the requester, or where such disclosure could expose the individuals concerned to repercussions as a result of their involvement in an investigation by the institution.²⁸

[79] The appellant disputes that section 14(2)(e) applies. She states that she is already aware of the identity of one of the callers and despite this, she has not made or attempted to make any contact with them whatsoever. The appellant is only interested in pursuing legal remedies against the callers.

²⁸ The adjudicator relied on Orders M-1147 and PO-1659.

[80] Relying on the findings in Order MO-2318, which I agree with and find relevant to the circumstances in this appeal, and based on my review of the relationship between the appellant and the 911 callers as set out in the records and the representations, I find that disclosure of the names and contact information of the 911 callers could reasonably be expected to result in the callers being subject to unwanted contact from the appellant. It is clear from the appellant's representations that she is seeking the personal information of the callers in order to subject them to some sort of repercussions as a result of their involvement in the investigation by the police into the appellant's behavior.

[81] Accordingly, I find that the factor in section 14(2)(e) that favours privacy protection applies to the personal information at issue in this appeal, as the individuals to whom the information relates could be exposed to unfair pecuniary or other harm.

14(2)(h): the personal information was supplied in confidence

[82] The police rely on section 14(2)(h), which 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."²⁹

[83] The police state that every time an individual gives their personal information to the police, there is an expectation that the information will be held in confidence. They submit that the personal information collected from all individuals mentioned in the records was supplied to the investigating officers by individuals believing there to be a certain degree of confidentiality. The police further state that the information that fulfilled the appellant's right to access under the *Act* was released.

[84] The police also submit that other factors are relevant such as, ensuring public confidence in an institution, the possible relationship between the individuals, the sensitivity of the information withheld and the fact that at least one individual requested to remain anonymous were the primary factors considered.

[85] The appellant states that in the absence of any express assurance of confidentiality, the implied undertaking by the police is not to make an unauthorized disclosure. She submits that she is not persuaded that the callers held a reasonable expectation of absolute confidentiality concerning the information gathered in the course of the police investigation.³⁰

[86] I acknowledge the appellant's position. However, in this appeal, I must determine whether disclosure of the personal information of other individuals (the callers) to the appellant is authorized under the *Act*

²⁹ Order PO-1670.

³⁰ Order MO-4213

[87] Based on my review of the records and consideration of the representations, it is clear that the 911 callers supplied their personal information to the police in confidence. Each of the callers explicitly or implicitly communicated to the police that they were providing the information to them in confidence. Therefore, I find the factor in section 21(2)(h) applies and weighs in favour of privacy protection.

Other factors or relevant circumstances

[88] Other considerations (besides the ones listed in sections 14(2)(a) to (i)) must be considered under section 14(2) if they are relevant. The appellant has raised the application of the unlisted factor of inherent fairness as being relevant.³¹

[89] The appellant states that the callers made dozens of statements to police about her that were humiliating, degrading, untrue, and/or inflammatory. She refers to Order PO-1750, where the adjudicator stated:

... the fact that the information is actually about the appellant is a relevant consideration. In this regard, I find that there is an inherent fairness issue in circumstances where one individual provides detailed personal information about another individual to a government body. In my view, this goes to the autonomy of the individual and his ability to control the dissemination and use of his own personal information and is reflected in section 1(b) of the *Act* as one of the fundamental purposes of the *Act*.

[90] The appellant submits that the statements made by the callers resulted in her loss of autonomy, which is an inherent fairness issue.

[91] I agree with the appellant that the information is about her and that this is a relevant factor. However, the appellant, who has received disclosure of much of the information provided to the police by the callers, has not identified any untrue or inflammatory information in the records, nor is any such information apparent to me. Based on my review of the records, I do not agree with the appellant that the 911 calls in this case were made for an improper purpose. Therefore, I find that the unlisted factor of inherent fairness does not weigh in favour of disclosure.

Conclusion

[92] As indicated above, each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question. In this case, the appellant relies on the factors in sections 14(2)(a), (b) and (d). I have found that none of these factors apply in this appeal.

[93] Of the remaining five factors found in sections 14(2)(e) to (i), which if established, would tend to support non-disclosure of that information, I have found that sections

³¹ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

14(2)(e) and (h) referred to by the police apply.

[94] As well, I have found that the unlisted factor of inherent fairness favouring disclosure raised by the appellant does not apply.

[95] As stated above, 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 14(3) and balance the interests of the parties.³²

[96] In this case, none of the presumptions against disclosure in section 14(3) apply. After considering and weighing the factors in section 14(2) and balancing the interests of the parties, I find only the factors that favour privacy protection in sections 14(2)(e) and (h) apply. Therefore, on balance, I find that disclosure of the personal information at issue, the names and contact information of the 911 callers, is exempt under section 38(b), subject to my review of the police's exercise of discretion.

Issue C: Did the police exercise their discretion under section 38(b)? If so, should the IPC uphold the exercise of discretion?

[97] 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.

[98] 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.

[99] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³³ The IPC cannot, however, substitute its own discretion for that of the institution.³⁴

Representations

[100] In responding to the issue of whether the police exercised their discretion in a proper manner, both parties refer to their previous representations on section 38(b).

³² Order MO-2954.

³³ Order MO-1573.

³⁴ Section 43(2).

[101] In the case of the police, they also state that they:

- did not exercise its discretion in bad faith or for an improper purpose;
- took into account all irrelevant considerations; and,
- took into account all relevant considerations.

[102] The police state that they balanced the access interests of the appellant with the privacy rights of the other individuals in the records.

[103] As well, the police state that in exercising their discretion to exempt information in favour of protecting the privacy of another person, the police considered the nature and purpose of a law enforcement institution, which is in great part to gather and record information relating to unlawful activities, crime prevention activities, or activities involving members of the public who require assistance and intervention by the police.

[104] The police state that given the unique nature of law enforcement institutions and their unique authority to collect personal information, they generally view the spirit and content of the *Act* as placing a greater responsibility on them to safeguard the privacy interests of individuals where personal information is being collected.

[105] The appellant responds that while she agrees that the police took into account the relevant factors, it is her view that their balancing exercise was not comprehensive and that police's discretion was influenced by the misrepresentations made about her by the callers. She states that the police did not consider her rights under section 14(2)(d) and that they gave considerable weight to the upholding of their own practices, procedures, and reputation without considering that the primary focus should be her right to access.

Findings

[106] Considering the contents of the records and the parties' representations, I find that in exercising their discretion not to disclose the personal information that remains at issue, the police took into account relevant considerations and did not take into account irrelevant considerations.

[107] I find that the police took into account the contents of the records, and that the appellant is seeking records that contain her own personal information as well as that of other individuals. As well, they considered the purposes of the *Act*, as set out above, and in particular that the information is significant to the appellant and the principle that individuals should have a right of access to their own personal information. They also considered the privacy of the other individuals in the records should be protected.

[108] Finally, with respect to the applicability of the factor favouring disclosure in section 14(2)(d), the police did consider this factor and did consider the appellant's desire to institute civil proceedings against the callers. However, they ultimately exercised their

discretion to not disclose the personal information remaining at issue to the appellant, on balancing the appellant's rights to the information against the caller's rights to have their privacy protected with respect to their own personal information. In doing so, I find that the police exercised their discretion in a proper manner.

[109] Therefore, I uphold the police's exercise of discretion and find that the personal information remaining at issue in the records is exempt from disclosure under section 38(b).

ORDER:

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

Original Signed by: _____

Diane Smith
Adjudicator

May 21, 2025 _____