Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4657

Appeal MA22-00247

Toronto Police Services Board

May 26, 2025

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to witness statements for a specified incident. The police denied access in full to a video recording of a witness statement because its disclosure would constitute an unjustified invasion of another individual's personal privacy (section 38(b)).

In this order, the adjudicator upholds the police's decision. She finds that the police properly withheld another individual's personal information under section 38(b) and that the public interest override does not apply to permit its disclosure. The adjudicator also finds that the police's search was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) ("definition of personal information"), 16, 17 and 38(b).

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to original witness statements for a specified incident.

[2] As the police did not issue an access decision, the appellant filed a deemed refusal

appeal with the Information and Privacy Commissioner of Ontario (IPC).[1]

[3] Subsequently, the police issued an access decision, denying access (in full) to a video recording of a witness statement based on the personal privacy exemption at section 38(b) of the *Act*.

[4] Dissatisfied with the police's decision, the appellant appealed it to the IPC. A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the appellant advised that he believes the police have additional records that have not been disclosed to him. As such, the police conducted a second search for records but did not locate any additional responsive records.

[6] Despite the police's second search for records, the appellant continues to believe that the police have additional records that have not been disclosed to him. As a result, the issue of whether the police conducted a reasonable search has been added to the scope of this appeal.

[7] In addition, the appellant believes that there is a compelling public interest in the disclosure of the video. As such, public interest was added to the scope of this appeal.

[8] As mediation was not able to resolve the appeal, it was transferred to the adjudication stage of the appeal process, where I conducted an inquiry under the *Act*. I invited and received representations from the police and the appellant.[2]

[9] For the reasons that follow, I find that the disclosure of the video recording of the witness statement to the appellant would be an unjustified invasion of personal privacy under section 38(b) and I uphold the police's decision not to disclose it to the appellant. I also find that the police's search for records responsive to the appellant's request was reasonable.

RECORDS:

[10] The record at issue is a video of a witness statement (the video).

ISSUES:

A. Does the video contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

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[1] Appeal MA19-00201 was opened to address the issue of deemed refusal. Once an access decision was issued Appeal MA19-00201 was closed.

[2] The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Code of Procedure*.

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

C. Is there a compelling public interest in disclosure of the video that clearly outweighs the purpose of the section 38(b) exemption?

D. Did the police conduct a reasonable search for records?

DISCUSSION:

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

[11] In order to decide whether section 38(b) applies to the video, I must first decide whether it contains "personal information," and if so, to whom this personal information relates.

[12] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Recorded information is information recorded in any format, including paper and electronic records.[3]

[13] Information is "about" the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual if it does not reveal something of a personal nature about them.[4]

[14] 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.[5]

[15] Section 2(1) of the *Act* gives a list of examples of personal information. All of the examples that are relevant to this appeal are set out below:

> "personal information" means recorded information about an identifiable individual, including,

[3] The definition of "records" in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The record before me is a paper record located by searching a police database.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.
[5] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> …
>
> (e) the personal opinions or views of the individual except if they relate to another individual
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> …
>
> (g) the views or opinions of another individual about the individual, and
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> (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.

[16] 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."[6]

[17] It is important to know whose personal information is in the records. If the records contain the requester's own personal information, their access rights are greater than if it does not.[7] Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.[8]

[18] The police submit that the video contains personal information, such as the witness's full name, their views and opinions about other individuals and views of other individuals about them.

[19] The appellant submits that the video contains his personal information and the personal information of other identifiable individuals.

[20] On my review of the video, I find that it contains information that qualifies as the personal information of the appellant as well as that of other identifiable individuals which would fall under paragraphs (a), (e), (g) and (h) of the definition of "personal information" under section 2(1) of the *Act*. Specifically, the video contains the date of birth, ethnicity, and the name of individuals along with other personal information.

[21] As I have found that the withheld information in the video contains the personal information of the appellant along with other identifiable individuals, I will consider the appellant's access to the video under the discretionary personal privacy exemption at

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[6] Order 11.
[7] Under sections 47(1) and 49 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.
[8] See sections 21(1) and 49(b).

section 38(b) of the *Act*.

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

[22] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[23] Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If the information fits within any of the exceptions in sections 14(1)(a) to (e), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[24] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[9] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[10]

[25] In determining whether the disclosure of the personal information would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[11]

Representations, analysis and findings

[26] None of the parties have claimed that any of the withheld information fits within either the exceptions set out in section 14(1)(a) to (e) or the situations in section 14(4) of the *Act*. From my review, I find that neither of these sections apply. As such, to determine whether disclosure would be an unjustified invasion of personal privacy under section 38(b), I must consider whether any of the factors or presumptions under sections 14(2) and (3) apply.

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[9] Order P-239.
[10] Order P-99.
[11] Order MO-2954.

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

[27] The police rely on the presumption at section 14(3)(b), which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> > (b) was compiled and is identified 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;

[28] The police submit that the withheld information was compiled as part of an investigation into a shooting and, therefore, the investigation was being conducted in relation to a possible violation of the *Criminal Code of Canada* (the *Criminal Code*).[12]

[29] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[13] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[14]

[30] Based on my review of the video, I find that the presumption at section 14(3)(b) applies to it. The video relates to a police investigation relating to a shooting incident at a night club. The withheld information was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*. Although the police did not state whether charges were laid, criminal proceedings do not need to be commenced for this presumption to apply. Section 14(3)(b) therefore weighs in favour of non-disclosure of the withheld personal information.

[31] I note that the parties have not claimed any other presumptions in section 14(3) apply. On my review, none of the other presumptions apply.

Sections 14(2)(d) and (h) factors

[32] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant.

[33] The appellant relies on the factor at section 14(2)(d) while the police rely on the factor at section 14(2)(h). They state:

> 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,

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[12] R.S.C., 1985, c. C-46.
[13] Orders P-242 and MO-2235.
[14] Orders MO-2213, PO-1849 and PO-2608.

> …
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> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
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> …
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence …

Section 14(2)(d) factor: fair determination of rights

[34] The IPC has found that for section 14(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3. the personal information to which the appellant seeks access has some bearing on or is significant to the determination of the right in question; and

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[15]

[35] The appellant submits that the factor at section 14(2)(d) applies because he requires the withheld information for the fair determination of his rights. He submits that his rights to life, liberty and security under section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*)[16] and his right to make full answer and defence under section 11(d) of the *Charter* are impacted by the police's decision to deny access to the video. The appellant submits that the reference to him as a "boss" in the video was clearly an offensive tactic to insulate the perpetrators of crime against him, his family and his friends, from reprisal by implicating him in the shooting incident. He also submits that the withheld information is evidence of sustained criminal subculture efforts to implicate him in several crimes to which he was not a party in order to avoid police attention arising

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

[16] *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the *Charter*). Section 7 states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

from the criminal conduct of those who were a party to the events of 2007.

[36] In addition, the appellant submits that disclosure of the video would assist him in responding to a number of allegations against him in relation to his current federal conviction. He relies on *R. v. Barton*[17] for the principle that rules of natural justice clearly dictate that no privilege can attach to evidence that would help to further the defence of an accused man. The appellant also submits he is entitled to any evidence that might enable him to establish his innocence or to resist an allegation by the Crown.

[37] The police submit that section 14(2)(d) does not apply. They submit that the video relates to a case where the appellant is not the accused party. The police submit that the appellant's name was briefly mentioned in the video but not in the context described by the appellant.

[38] In order for section 14(2)(d) to apply, all four parts of the test must be established. I am not persuaded by the appellants' representations that section 14(2)(d) applies to the withheld information in this appeal. Under part 2 of the test, the appellant must establish that a legal proceeding is being contemplated or exists. In his representations, the appellant alludes to allegations made against him. However, he does not provide evidence of a legal proceeding that is either being contemplated or that exists whether in relation to his stated current federal conviction or any other matter.

[39] Moreover, there is no evidence to suggest that the video itself has some bearing on or is significant to the determination of a proceeding addressing a legal right held by the appellant, including any proceeding that might relate to his stated legal rights under sections 7 and 11(d) of the *Charter*.[18] As the police state in their representations, the appellant was only briefly mentioned in the video and was never accused of any criminal charges due to the shooting incident to which the video relates.

[40] Accordingly, I find that part 2 of the test has not been established.

Section 14(2)(h) factor: supplied in confidence

[41] Section 14(2)(h), if it applies, is a factor which weighs against disclosure of personal information. In order for section 14(2)(h) to apply, both the individual supplying the information and the recipient must have an expectation that the information will be treated confidentially, and that expectation must be reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[19]

[42] The police submit that the withheld information was supplied to the investigating

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[17] [1973] 1 W.L.R. 115, at page 118.
[18] Below I will address in more detail, the appellant's allegations that the police's refusal to disclose the video to him raise infringements on his legal rights under sections 7 and 11(d) of the *Charter*.
[19] Order PO-1670.

officers by a witness (an affected party) who believed there to be a certain degree of confidentiality. They submit that personal information provided by any individual to any law enforcement agency is implicitly provided in confidence. The police submit that if such information is routinely disclosed, it could heavily impact the trust members of the public have in the police, which will deter the public from coming forward to provide information to them.

[43] In the circumstances, I accept that given the nature of the police investigation the withheld information was supplied by the witness in confidence to the police. I also accept that the witness had a reasonable expectation that the information was going to treated as confidential by the police. Accordingly, I find that the factor in section 14(2)(h), which weighs against disclosure, applies and I give it some weight.

Balancing the factors and presumptions

[44] Above I have found that the presumption at section 14(3)(b) and the factor at section 14(2)(h) apply and weigh against disclosure of the video. I also found that no factors (listed or unlisted) weighing in favour of disclosure apply. In balancing the factors and presumptions and the interests of the parties, I find that disclosure of the withheld information would be an unjustified invasion of the affected parties' personal privacy.

[45] Accordingly, I find that disclosure of the withheld information in the video would be an unjustified invasion of the personal privacy of the individuals to whom that information relates. Subject to my findings below on the application of the absurd result principle and the police's exercise of discretion, I find that it is exempt under section 38(b).

Absurd result

[46] The appellant submits that it would be absurd to withhold the information at issue as he has seen the transcript of the video.

[47] The police explain that the IPC mediator advised that the transcript shown to the appellant was of a witness statement of a different affected party than from the one whose statement is at issue in this appeal.

[48] The absurd result principle may apply where the appellant originally supplied the information at issue or is otherwise aware of it. Where circumstances are present, the information may not be exempt under section 38(b) because withholding the information might be absurd and inconsistent with the purpose of the exemption.[20]

[49] The absurd result principle has been applied in appeals where, for example, the requester was seeking access to his or her own witness statement;[21] where the requester

[20] Orders M-444 and MO-1323.
[21] Orders M-444 and M-451.

was present when the information was provided to the institution;[22] or where the information was clearly within the requester's knowledge.[23] However, the absurd result principle may not apply even if the information was supplied by the requester or is clearly within the requester's knowledge, if disclosure would be inconsistent with the purpose of the section 14(1) exemption or section 38(b) exemption.[24]

[50] On my review of the withheld information, I find that the absurd result principle does not apply in the circumstances of this appeal. As the record at issue is a video recording of a witness statement, it is clear that the information in the video was not supplied by the appellant. Also, although the appellant states that he has seen the transcript of the video, he has not demonstrated that the specific personal information that is at issue in the video is within his knowledge.

[51] Furthermore, previous IPC orders have held that, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is otherwise known to the requester.[25]

[52] Given that the personal information at issue appears in the video of a shooting investigation, and my finding that disclosure of that withheld personal information contained in the video would be an unjustified invasion of personal privacy of identifiable individuals other than the appellant under section 38(b), I find that disclosure under the absurd result principle would be inconsistent with the purpose of the section 38(b) exemption.

[53] Therefore, based on the circumstances of this appeal, I find that the absurd result principle does not apply.

Exercise of discretion

[54] The exemption in section 38(b) is discretionary and permits an institution to disclose the information subject to the exemption despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[55] The police submit that they properly exercised their discretion in applying section 38(b) to the video. They submit that they took into account their mandate and the spirit of the *Act*. The police also submit that they took into account privacy protection of individuals and the public's right to know. They submit that they weighed all these factors in making their decision not to disclose the video to the appellant. Moreover, the police submit that as the majority of the information contained in the video is sensitive information, and they balanced the access interests of the appellant with the privacy

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[22] Orders M-444 and P-1414.
[23] Orders MO-1196, PO-1679, and MO-1755.
[24] Orders M-757, MO-1323, MO-1378.
[25] Orders M-757, MO-1323 and MO-1378.

rights of the other individuals.

[56] Although the appellant provided representations, his representations did not address the police's exercise of discretion.

[57] Having considered the parties' representations and the circumstances of this appeal, I find that the police did not err in their exercise of discretion not to disclose the information that is exempt under section 38(b) of the *Act*. I am satisfied that the police considered relevant factors and did not consider irrelevant factors in their exercise of discretion. In particular, I am satisfied that the police considered the appellants' right to access his own information but also the interests of the affected parties that are protected by the personal privacy exemption. I am also satisfied that the police did not act in bad faith or for an improper purpose. Accordingly, I uphold the police's exercise of discretion in deciding to withhold the video pursuant to section 38(b).

Other Issue – Constitutional Question

[58] As set out above, in his representations on the possible application of the factor at section 14(2)(d) the appellant states that he has a right to know what was said about him by the witness as it impacts his sections 7 and 11(d) *Charter* rights. Section 7 of the *Charter* guarantees individuals the right to life, liberty and security of the person. Section 11(d) guarantees individuals a right to be presumed innocent until proven guilty.

[59] The IPC has the authority to decide constitutional issues, including those arising under the *Charter*[26]. The rules governing the raising of constitutional questions in appeals are set out in section 13 of the IPC's *Code of Procedure* (the *Code*)[27] and include the requirement that a party who is raising a Constitutional Question serve a notice of Constitutional Question on the Attorneys General of Canada and Ontario and file the notice with the IPC.[28]

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[26] See Order PO-3686. In N*ova Scotia* (*Workers' Compensation Board*) *v. Martin,* 2003 SCC 54 at para. 3, the Court stated, in part: "Administrative tribunals which have jurisdiction — whether explicit or implied — to decide questions of law arising under a legislative provision are presumed to have concomitant jurisdiction to decide the constitutional validity of that provision. This presumption may only be rebutted by showing that the legislature clearly intended to exclude Charter issues from the tribunal's authority over questions of law." The Commissioner's powers at sections 39 through 44 of the *Act* clearly include the power to decide questions of law including, for example, the interpretation and application of the exemptions at sections 6-15 and section 38, and the interpretation and application of the exclusions in section 52. There is no evidence that the legislature intended to exclude Charter considerations from the Commissioner's mandate.

[27] Please note the IPC's revised *Code of Procedure* came into force on September 9, 2024.

[28] The relevant subsections are the following:

> 13.01 Where a Party intends to raise a Constitutional Question, the Party shall serve a notice of Constitutional Question on the Attorney General of Canada and the Attorney General Ontario and file the notice with the IPC.
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> 13.02 A notice of Constitutional Question shall be in the **form posted on the IPC's website**, or in a similar form that contains the same information.

[60] The appellant has not provided the Attorneys General of Canada and Ontario with a Notice of Constitutional Question and filed the notice with the IPC as required by section by section 13.01 of the *Code.* Section 13.08 of the *Code* states that if a party fails to provide a notice of Constitutional Question in accordance with its provisions, the IPC will not address the question.

[61] Even if the appellant was to have correctly followed the IPC's procedural rules governing the raising of constitutional questions, I find that the appellant has not provided sufficient evidence to establish that his *Charter* rights under sections 7 and 11(d) are being infringed by the police's decision not to disclose the video to him under section 38(b) because disclosure would be an unjustified invasion of the personal privacy of the individual who made that statement, among others.

[62] As indicated above, section 7 of the *Charter* protects the right to life, liberty and security of the person. There is no evidence before me to suggest that the appellant's rights to life, liberty or security of his person would be violated if the withheld personal information that is at issue in this appeal is not disclosed to him.

[63] Section 11(d) of the *Charter* provides that:

> [a]ny person charged with an offence has the right:
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> > d. to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent impartial tribunal.

[64] There is no evidence before me to suggest that the police's decision not to disclose the video to the appellant would infringe his *Charter* rights in this respect. Moreover, the police submit that the appellant was never accused of any criminal charges in relation to the shooting incident to which the video witness statement relates.

[65] Accordingly, I find that there is no evidence before me to suggest the appellant's sections 7 and 11(d) *Charter* rights are infringed by the police's decision to not disclose the video.

Issue C: Is there a compelling public interest in disclosure of the video that clearly outweighs the purpose of the section 38(b) exemption?

[66] Section 16 of the *Act* is the "public interest override" that provides for the disclosure of records that would otherwise be exempt under another section of the *Act*.

13.04 A Party shall serve and file a notice of Constitutional Question as soon as the circumstances requiring it become known and, in any event, no later than 15 days after the day on which the Notice of Inquiry was sent to the Party.
13.05 The IPC will consider a Constitutional Question only if the Appellant or the other Party, as the case may be, complies with the time limit specified in section 13.04.
13.08 If a Party fails to provide a notice of a Constitutional Question in accordance with section 13, the IPC will not address the question.

It states:

> An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[67] Although section 38(b) is not listed, section 16 may apply to override section 38(b) because it may apply to override the application of section 14 of the *Act*.[29] If section 16 were to apply in this case, it would have the effect of overriding the application of section 38(b) and the appellant would have a right of access to the information at issue.[30]

[68] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[69] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[31]

[70] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[32] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[33]

[71] The police submit that there is no compelling public interest in the disclosure of the video. They submit that the video relates to a case where the appellant was not the accused party. The police explain that his name was mentioned briefly in the statement but not in the context described by the appellant. They submit that if any police misconduct is believed to have happened, the appellant can request a misconduct investigation which would not involve the disclosure of the video.

[72] The appellant submits that the public interest override applies. He submits that the disclosure of the video will demonstrate that prosecutorial tunnel vision occurred during his trial and/or police misconduct occurred. The appellant relies on Order P-347,

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[29] See, for example, Order PO-2246 which deals with the equivalent sections of the provincial *Act*.
[30] Order MO-2854.
[31] Order P-244.
[32] Orders P-984 and PO-2607.
[33] Orders P-984 and PO-2556.

where the adjudicator found that a "cloud of impropriety or wrongdoing" regarding the activities of the police override the personal privacy of the affected parties.

[73] A "public interest" does not exist where the interests being advanced are essentially private in nature.[34] However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.[35]

[74] On my review of the video and my considerations of the parties' representations, I find that disclosure of the withheld information would not serve the purpose of informing or shedding light on the operations of the police. I find that the information at issue in the video would not shed light on any decision made by the police. I am also not persuaded that the disclosure of the withheld information would help members of the public to express opinions or to make political choices in a more meaningful manner. In my view, disclosure of the video will not demonstrate tunnel vision or police misconduct.

[75] Moreover, I find that there is a private interest in the withheld information in the video. It is clear the appellant wants the disclosure of the video for the purpose of finding out the context in how his name was mentioned. As mentioned previously, the appellant's name was briefly mentioned by the witness and not in the context he described in his request.

[76] Accordingly, I find that there is no public interest in the disclosure of the video.

Issue D: Did the police conduct a reasonable search for records?

[77] The appellant claims that records responsive to his request exist.

[78] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[36] If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[79] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.[37] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.[38]

[80] Although a requester will rarely be in a position to indicate precisely which records

[34] Orders P-12, P-347 and P-1439.
[35] Order MO-1564.
[36] Orders P-85, P-221 and PO-1954-I.
[37] Orders P-624 and PO-2559.
[38] Orders M-909, PO-2469 and PO-2592.

the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.[39]

[81] In the police's representations, they provided details of their searches. They explained that they searched their database with the information provided in the access request, which resulted in one document (a report) being responsive to the request. As the report mentioned witness statements being provided to the police, they submit that they contacted the video evidence unit and received all video statements. After reviewing all the video statements, they explain that they discovered that only one statement referred to the appellant by name but not in the context described in his request.

[82] The police submit that during mediation they contacted one of the officers named in the report to request that they search for responsive records. The officer did not find any responsive records but suggested contacting 55 Division as the investigation was conducted from there. Staff at 55 Division did not locate any responsive records but suggested contacting legal services unit, who located memorandum book notes which mentioned the appellant's name. A review of these notes revealed that they were made by officers during the investigation.

[83] In his representations, the appellant submits that his request was for all police statements. As such, he submits that the notes are responsive to his request.

[84] In response, the police submit that in the spirit of transparency, they disclosed portions of the notes where the appellant's name is mentioned to him.

Analysis and findings

[85] For the following reasons, I find that the police conducted a reasonable search for responsive records for the appellant's request.

[86] The police have described where they searched and the results of their search. In my view, the police's search was logical and comprehensive. As noted above, a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[40] I am satisfied that the police have provided sufficient evidence to establish this.

[87] Moreover, in this case, I find that the appellant has not provided a reasonable basis for concluding such records exist.

[88] Accordingly, I find that the police have conducted a reasonable search for records responsive to the appellant's request.

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[39] Order MO-2246.
[40] Orders M-909, PO-2469 and PO-2592.

ORDER:

1. I uphold the police's decision to deny access to the video.
2. I uphold the police's search for responsive records.

Original Signed by: May 26, 2025

Lan An
Adjudicator