

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4678

Appeal MA23-00157

Waterloo Regional Police Services Board

July 17, 2025

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to a specified incident.

The police granted partial access to two reports, withholding some information on the basis that disclosure would be an unjustified invasion of another individual's personal privacy (section 38(b)).

In this order, the adjudicator upholds the police's decision to withhold information from the reports under section 38(b) and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56

OVERVIEW:

[1] This order determines whether the disclosure of personal information contained in two police reports would constitute an unjustified invasion of personal privacy under section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The Waterloo Regional Police Services Board (the police) received the following request pursuant to the *Act*:

- 911 call from [specified address], November 2007 – Requesting audio recorded 911 call
- Copy of police report from November 2007 911 call at [specified address]
- Requesting the name of the staff sergeant who entered the home at 3:30am for the 911 call
- Copy of police report for the final home investigation after the 911 call at [specified address] in November 2007
- Requesting name of police officers and the other (civilian or officer) present for the home damages investigation
- Copy of police report for the in-person interview on the first Sunday after the 911 call at [specified address] in November 2007
- Requesting names of the officers at the interview. 3 officers, one of those officers at the interview was a constable present at the 911 call and was partnered with the staff sergeant entering the home without knocking on the external door. Inside doors were knocked heavily with a police officer flashlight

[3] The police issued a decision denying access to the requested information on the basis that the records are excluded from the scope of the *Act* pursuant to section 52(3) (employment or labour relations).

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

[5] The police subsequently issued a revised decision granting partial access to an occurrence report, citing the discretionary exemption at section 38(b) (personal privacy) to deny access to the remaining information.¹

[6] During mediation, the appellant explained that he is most interested in obtaining the names of the officers who attended the 911 call in 2007, and especially the name of a female staff sergeant who entered the home. The appellant also indicated that in addition to requesting the 911 call itself² and the names of the officers who responded to the call, he wishes to access as much information as possible in the occurrence report, which was disclosed to him in part.

[7] The police conducted an additional search for responsive records and located a report of the 911 call (Computer Aided Dispatch "CAD" report) from 2007, which included the names of the officers who attended the call. The police issued a supplementary

¹ As a result of the police's revised decision, the section 52(3) exclusion is no longer at issue in this appeal.

² Based on the appellant's comments, the appellant appears to believe that no 911 call was ever made and therefore no record of the 911 call should exist.

decision granting partial access to the CAD report, again citing the discretionary exemption at section 38(b) to deny access to the remaining information.

[8] The information withheld from the occurrence report and CAD report included information related to an affected party. Using the contact information listed in the occurrence report, the mediator attempted to seek consent from the affected party to the disclosure of their information to the appellant. The mediator was not successful in obtaining consent.

[9] The appellant advised that he continues to seek access to the withheld information in both the occurrence report and the CAD report.

[10] As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where the adjudicator may conduct an inquiry under the *Act*.

[11] As the adjudicator assigned to the appeal, I decided to conduct an inquiry into this matter and sought and received representations from both parties.

[12] For the reasons that follow, I uphold the police's decision to withhold the information from both the occurrence report and the CAD report under section 38(b) and dismiss the appeal.

RECORDS:

[13] The records at issue consist of an occurrence report (3 pages) and a CAD report (2 pages) (the reports).

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

[14] Before I consider whether section 38(b) applies, I must first determine whether the records contain “personal information”. If they do, I must determine whether the personal information belongs to the appellant, the affected party, or both.

[15] 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 they do not.³ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁴

[16] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual”. Recorded information is information recorded in any form, including paper and electronic records.⁵

[17] Information is “about” an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about that individual. Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁶

[18] Section 2(1) of the *Act* contains some examples of personal information⁷, though this list is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

Representations

[19] The police submit that the records contain an affected party’s personal information, including their name, date of birth, address, telephone number, driver’s license number, and statements. The police also state that during the appeal process, they discovered that some of the personal information that is attributed to the affected party in the occurrence report (date of birth, address, telephone number, and driver’s license number) is incorrect and is actually associated with another individual. The police state that they have not been able to rectify this issue as their last documented interaction with the affected party was over 10 years ago. The police submit that any personal

³ 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.

⁴ See sections 14(1) and 38(b).

⁵ See the definition of “record” in section 2(1) of the *Act*.

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

⁷ Specifically, paragraphs (a) to (h) of the definition of personal information at section 2(1).

information in the records relating to the appellant has been disclosed to him.

[20] The appellant does not explicitly state whose personal information he believes is in the records, but appears to accept that the records contain his own personal information, as well as the information of at least one other affected party. Specifically, the appellant submits that a named individual has consented to the disclosure of his information to the appellant and therefore, any information relating to this individual should be disclosed.

Analysis and findings

[21] I have reviewed the records and find that they contain both the appellant's and at least one other affected party's personal information as defined by section 2(1) of the *Act*, including dates of birth (paragraph (a) of the definition of "personal information" in section 2(1)), addresses (paragraph (d)), telephone numbers (paragraph (d)), as well as statements made to police officers (paragraphs (e) and (g)). I find that both the affected party and the other individual whose information was erroneously attributed to the affected party in the occurrence report are identifiable from the information in the records, and that this information is personal in nature.

[22] Having found that the records contain the personal information of both the appellant and at least one other affected party, I will consider the application of the personal privacy exemption at section 38(b) to the information remaining at issue.

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

[23] 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.

[24] 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.

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

[26] 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).

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

- If any of the section 14(1)(a) to (e) exceptions apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).
- Section 14(2) contains a non-exhaustive list of factors that may be relevant in determining whether the disclosure of personal information would be an unjustified invasion of personal privacy. Some of the factors weigh in favour of disclosure, while others weigh against disclosure.
- Section 14(3) lists circumstances where disclosure of personal information is presumed to be an unjustified invasion of personal privacy.
- Section 14(4) lists circumstances where disclosure of personal information is not an unjustified invasion of personal privacy, even if one of the section 14(3) presumptions exists.

[28] In determining whether the disclosure of the personal information would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the relevant factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁸

Representations

[29] The police submit that the personal information in the records was compiled as part of an investigation into a possible violation of law, therefore engaging the presumption in section 14(3)(b). The police also submit that the factors at section 14(2)(g) (unlikely to be accurate or reliable) and 14(2)(h) (supplied in confidence) apply and weigh against disclosure of the withheld information.

[30] The appellant does not provide substantive representations on the application of the section 38(b) exemption, including the section 14(2) factors or the section 14(3) presumptions, but submits generally that he is seeking access to the withheld information in the records. The appellant alleges that serious police misconduct took place during the incident referenced in his request and states that his goal is to have the offenders convicted of "serious criminal offences". I find that this raises the possible application of section 14(2)(d) (fair determination of rights).

Analysis and findings

[31] For the reasons below, I find that disclosure of the withheld information would constitute an unjustified invasion of the affected party's personal privacy and therefore, this information is exempt under section 38(b).

⁸ Order MO-2954.

Do any of the exceptions listed in 14(1) apply?

[32] Before I consider and weigh the relevant factors and presumptions in sections 14(2) and (3), I must consider whether any of the exceptions listed in section 14(1) apply. If any of the section 14(1)(a) to (e) exceptions apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

[33] As previously indicated, the appellant claims that a named individual has consented to the disclosure of his personal information to the appellant and therefore, any information relating to this individual should be disclosed. I find that this raises the possible application of the exception at section 14(1)(a).

[34] For section 14(1)(a) to apply, the individual whose personal information is in the record must have consented to the release of their personal information. This consent must be in writing. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.⁹

[35] In the present case, although the appellant states that a named individual has consented to the disclosure of his personal information, I have not received evidence that any individual has provided consent in writing, either to the appellant or to the police. Furthermore, there is no evidence before me to suggest that any consent was given in the specific context of the access request. As a result, I find that the exception at section 14(1)(a) does not apply.

Do any of the presumptions listed in 14(3) apply?

[36] The police claims that the section 14(3)(b) presumption against disclosure applies to the information at issue. Section 14(3)(b) states:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation[.]

[37] Even if no criminal proceedings were commenced against an individual, as is the case in this appeal, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹⁰

[38] The police submit that the information was compiled as part of an investigation

⁹ Order PO-1723.

¹⁰ Orders P-242 and MO-2235.

into a complaint about an unwanted police presence and property damage, following the police's response to a 911 hang-up call. The police argue that the presumption applies, even though there were no grounds for charges in this case.

[39] I have reviewed the records and find that the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The records at issue consist of an occurrence report and a CAD report, which reflect the contents of an in-person interview that took place following the 911 hang-up call and the actual 911 call, respectively. I accept that the police compiled the withheld information as part of an investigation into a possible violation of law, including an investigation into the complaint about an unwanted police presence. As the presumption only requires that there be an investigation into a possible violation of law, the fact that no criminal proceedings were initiated does not affect my finding.

[40] As a result, I am satisfied that section 14(3)(b) applies and that disclosure of the personal information in the records is presumed to be an unjustified invasion of the affected parties' personal privacy.

[41] Under section 38(b), the section 14(3)(b) presumption must be weighed and balanced with any other factors in section 14(2) that apply in the circumstances.

Do any of the factors listed in section 14(2) apply?

[42] Section 14(2) lists factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

Section 14(2)(g): Unlikely to be accurate or reliable

[43] The police submit that section 14(2)(g) (unlikely to be accurate or reliable) applies to the withheld information. This section is intended to weigh against disclosure when the evidence shows that the personal information is unlikely to be accurate or reliable.

[44] The police submit that during the appeal process, they determined that some of the personal information in the occurrence report is unlikely to be accurate or reliable. Specifically, the police state that the date of birth, address, telephone number, and driver's license number that is attributed to the affected party in the occurrence report is incorrect and belongs to another individual who bears no relation to the incident, the appellant, or the affected party. The police indicate that they do not currently have the affected party's correct or updated contact information.

[45] Based on the information before me, including the fact that the mediator attempted to seek consent from the affected party using contact information listed in the occurrence report and was not able to do so, I accept the police's position that the date of birth, address, telephone number, and driver's license number that is attributed to the affected party in the occurrence report is unlikely to be accurate or reliable. However, I note that the police do not claim and there is no evidence before me to suggest that

there are concerns with the accuracy or reliability of the remainder of the withheld information in the occurrence report or CAD report.

[46] As a result, I find that the factor at section 14(2)(g) applies and weighs against disclosure of the date of birth, address, telephone number, and driver's license number that is attributed to the affected party in the occurrence report. With respect to the remainder of the withheld information in the occurrence report and CAD report, I find that the factor at section 14(2)(g) does not apply.

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

[47] The police submit that section 14(2)(h) (supplied in confidence) applies to the withheld information. This factor requires an institution to consider whether "the personal information has been supplied by the individual to whom the information relates in confidence".¹¹ This factor weighs against disclosure.

[48] For this factor to apply, I must be satisfied that both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that this expectation is reasonable in the circumstances. Section 14(2)(h) requires an objective assessment of "reasonableness".¹²

[49] The police submit that in this case, the attending officer and the affected party would have shared the expectation that the withheld information would be treated confidentially. The police submit that the attending officer would have made assurances of confidentiality, either explicitly or implicitly, to the affected party when the report was being made. The police also submit that victims, complainants, and witnesses expect the police to maintain confidentiality when they provide information, and that their failure to do so would undermine community trust, which is a fundamental element of policing.

[50] In the circumstances, I find that it is reasonable for the affected party to expect that they provided their personal information to the police in confidence. In my view, the context of the affected party's statements to the police are such that a reasonable person would expect that the information they were providing to the police would be subject to a degree of confidentiality. I also accept that this expectation would have been shared by the police, as the recipient of that information. Previous orders of this office have found section 14(2)(h) to apply where the police have referenced public trust as a relevant consideration.¹³ I agree with and adopt these findings. Also relevant to my finding is the fact that I have not received evidence of written consent from the affected party to the disclosure of their personal information.

[51] As a result, I find that the factor at section 14(2)(h) applies to the withheld

¹¹ Section 14(2)(h) of the Act.

¹² Order PO-1670.

¹³ See, for example, Orders MO-4657, MO-4656, and MO-4618.

information and weighs against disclosure.

Section 14(2)(d): Fair determination of rights

[52] While the appellant did not explicitly cite this factor, he accuses the police of misconduct and indicates that his goal is to have the offenders convicted of “serious criminal offences”. In stating this, I understand the appellant to be engaging section 14(2)(d) (fair determination of rights).

[53] This section requires an institution to consider whether “the personal information is relevant to a fair determination of rights affecting the person who made the request”.¹⁴ This factor weighs in favour of disclosure, if it is found to apply.

[54] In order for the section 14(2)(d) factor to apply, the appellant must establish all four parts of the following test:

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 which the appellant is seeking access to 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

[55] The appellant did not address the four-part test in his representations. However, it is clear that the appellant believes that the police have engaged in misconduct, including unlawful entry, destruction of property, and destruction of evidence. The appellant states that the incident which he references in his request has been highly detrimental to his well-being, and that in addition to holding the police accountable, he is looking for information on the “true story of what actually happened”.

[56] Based on the information before me, it is not clear whether there is a proceeding which is either existing or contemplated. In his representations, the appellant discusses a complaint that he made to the Office of the Independent Police Review Director (OIPRD) and references the investigation as open or ongoing. The police appear to confirm that the appellant submitted a complaint to the OIPRD, but indicate in their representations that the complaint file has been closed. At the same time, the police also state that the

¹⁴ Section 14(2)(d) of the *Act*.

¹⁵ 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.).

appellant has been in contact with their Professional Standards Branch, possibly with the intent of filing another complaint against them.

[57] Even if I were to accept that there is an existing proceeding or that the appellant is contemplating a proceeding, I find that the appellant has not provided evidence to demonstrate that the personal information at issue is required in order to prepare for the proceeding or to ensure an impartial hearing, particularly given the appellant's assertion that he is already aware of the affected party's identity. I also find that the appellant has not clearly explained how the information he is seeking access to is significant to the determination of the right in question.

[58] As the four parts of the test under section 14(2)(d) have not been met, I find the factor at section 14(2)(d) is not relevant and does not favour the disclosure of the withheld personal information in the circumstances of this appeal.

Balancing the relevant presumption and factors

[59] I have found that disclosure of the affected parties' personal information would result in a presumed unjustified invasion of their personal privacy under section 14(3)(b). I have also found that the section 14(2)(g) factor weighs against the disclosure of the unrelated individual's date of birth, address, telephone number, and driver's license number in the occurrence report, while the section 14(2)(h) factor weighs against the disclosure of all of the withheld information. I am not convinced that any factors weighing in favour of disclosure apply.

[60] Overall, I find that the balance weighs in favour of protecting the affected parties' personal privacy, rather than the appellant's access rights. As a result, I find that the information at issue is exempt from disclosure under section 38(b) of the *Act*.

Absurd result

[61] An institution may not be able to rely on the section 38(b) exemption where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In these cases, withholding the information might be absurd and inconsistent with the purpose of the exemption.¹⁶ This is referred to as the absurd result principle.

[62] The police submit that they released the majority of the CAD report to the appellant based on the absurd result principle, specifically given the appellant's insistence that he was present at the time of the 911 call.

[63] The appellant submits that he was present at the time of the incident and therefore is already aware of some of the withheld information.

¹⁶ Orders M-444 and MO-1323.

[64] Based on my review of the records, I find that the absurd result principle does not apply to the information remaining at issue. Previous IPC orders have found that the absurd result principle may not apply if disclosure is inconsistent with the purpose of the exemption, even if the information is otherwise known to the requester.¹⁷

[65] While the record contains some information that the appellant may have knowledge of, it also includes information that the appellant may not know. Given my earlier finding that disclosure would be an unjustified invasion of personal privacy, I find that to apply the absurd result principle would be inconsistent with the purpose of the section 38(b) exemption.

[66] As a result, I find that it would not be absurd to withhold the personal information of the affected parties in the circumstances of this appeal.

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

[67] The section 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. Having found that portions of the record are exempt from disclosure under section 38(b), I must next determine if the police properly exercised their discretion in withholding the information. An institution must exercise its discretion. On appeal, the IPC may determine whether an institution has failed to do so.

[68] The IPC may find that an 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.

[69] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁸ The IPC may not, however, substitute its own discretion for that of the institution.¹⁹

Representations, analysis and finding

[70] The police submit that they exercised their discretion in good faith and in consideration of the purposes of the *Act*. The police submit that they relied on a number of factors when exercising their discretion to withhold the information, including but not limited to the appellant's right of access to his own personal information, the affected

¹⁷ Orders M-757, MO-1323 and MO-1378.

¹⁸ Order MO-1573.

¹⁹ Section 43(2) of the *Act*.

parties' privacy rights, and whether the appellant had a sympathetic or compelling need to receive the information. The appellant does not specifically address the police's exercise of discretion in his representations, but makes it clear that he believes that the police have deliberately withheld information and are acting in bad faith.

[71] I have reviewed the considerations relied upon by the police and find that they properly exercised their discretion in withholding portions of the occurrence report and CAD report under section 38(b). Based on the police's representations, it is clear that they considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the entire record with the protection of the affected parties' privacy when making their decision.

[72] I find that the police did not exercise their discretion to withhold portions of the report in bad faith or for any improper purpose, and that there is no evidence that they failed to take relevant factors into account or considered irrelevant factors. Accordingly, I uphold the police's exercise of discretion in denying access to the information at issue.

ADDITIONAL ISSUES

[73] I have reviewed and considered the entirety of the appellant's representations and have discussed the relevant portions above. I conclude with a few comments.

[74] This order dispenses with the issues arising from the appellant's request for information and the issues arising from the police's subsequent decisions, which were established at the mediation and inquiry stages of the appeal process.

[75] In his representations, the appellant identifies concerns with the accuracy of certain information in the records and asks for corrections to be made. However, there is no evidence that the appellant made a correction request to the police before raising it in his representations. An appellant must first make a correction request to the institution before the IPC will consider whether the correction should be made.²⁰ As there is no evidence that the appellant made a request for correction, I do not consider the issue of correction in this order.

[76] Similarly, the appellant includes in his representations a list of "missing items", which includes additional records that the appellant believes should exist, as well as explanations that the appellant is seeking from the police regarding the incident and/or the records. While I understand that the appellant is seeking access to this information, the reasonableness of the police's search is not at issue in this appeal. The issue of search was not raised during the mediation stage (or included in the Mediator's Report), nor was it canvassed during the inquiry. As a result, I do not consider the issue of search in this order.

²⁰ Orders PO-3571 and MO-2005.

ORDER:

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

Original Signed by: _____

Anda Wang
Adjudicator

July 17, 2025