Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4681

Appeal MA23-00049

London Police Services Board

July 22, 2025

Summary: An individual made a request to the London Police Services Board under the *Municipal Freedom of Information and Protection of Privacy Act* for a police report relating to an incident where he had been apprehended under the *Mental Health Act*. The police granted partial access to the records, but withheld portions under the personal privacy exemption in section 38(b) of the *Act*.

In this order, the adjudicator upholds the police's decision to withhold the information under section 38(b) of the *Act* because disclosure would be an unjustified invasion of personal privacy of an identifiable individual other than the requester.

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") and 38(b).

Orders and Investigation Reports Considered: Orders PO-1731, PO-1750, and MO-2318.

Cases Considered: *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd.*, [1999] RPC 367 (UK High Court of Justice – Chancery Division).

OVERVIEW:

[1] The London Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "release of third-party information" for a specified police report number.

[2] The police located a Call Report and associated General Occurrence Report and issued a decision granting partial access to those reports. The police denied access to parts of the records under section 38(a) (discretion to refuse a requester's own information), read with sections 8(1)(d) (confidential source), 8(1)(e) (endanger life or safety), and 13 (threat to safety or health), as well as under section 38(b) (personal privacy) of the *Act*.[1]

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

[4] A mediator was assigned to explore resolution. During mediation, the police disclosed additional information on one page of the records. The appellant advised that he was seeking access to all of the responsive records and the police maintained their decision regarding the withheld information.

[5] As a mediated solution was not possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. As the adjudicator in this appeal, I sought and received representations from the police and the appellant.[2]

[6] In the discussion that follows, I uphold the police's decision to withhold the information in the records under section 38(b) and dismiss the appeal.

RECORDS:

[7] At issue is the information that the police have withheld from pages 3-4 of the Call Hardcopy Report, and from pages 1-4, 6-9, and 11 of the General Occurrence Hardcopy Report.

ISSUES:

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

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[1] The police also withheld information pursuant to section 38(a), read with 8(1)(c)(investigative techniques) and claimed that the exclusion at section 52(3) applied to some information in the records. The police have since stated that they are no longer claiming that exemption or exclusion. In addition, the police withheld information pursuant to section 38(a), read with 8(1)(l)(facilitate commission of an unlawful act) and the appellant has since stated that he is not seeking information that is withheld on that basis. As such, section 38(a), read with sections 8(1)(c) and 8(1)(l), and section 52(3) have been removed as issues to this appeal.

[2] These representations were shared in accordance with the *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.*

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

DISCUSSION:

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

[8] The police rely on the discretionary exemptions at sections 38(a) and (b) of the *Act* to withhold the information at issue. Before I consider whether these exemptions apply, I must first determine whether the records at issue contain "personal information." If a record does, I must determine whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[9] Information is "about" the individual when it refers to them in their personal capacity, revealing something of a personal nature about the individual. Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[3] Section 2(1) of the *Act* gives a list of examples of personal information.[4]

[10] The police state that the records contain the personal information of the appellant and other identifiable third parties, including a caller who made a complaint to the police. This includes names, addresses, telephone numbers, and statements made to the police. The police state that they also collected the personal information of hospital staff involved

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

[4] The definition of "personal information" is found in s. 2(1) of the *Act*, and reads as follows:

> "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,
>
> (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,
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> (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;

in the occurrence.

[11] The appellant agrees that the records contain personal information belonging to him and others.

[12] From my review of the records at issue, I find that the records contain the personal information of the appellant and other identifiable individuals, including the complainant and those working at the hospital at the time of the incident. The personal information in the withheld portions of the records include the complainant's name, age, contact and address information, as well as their statements and other information relating to their interactions with the police. For those working at the hospital, the withheld portions of the records include[5] their dates of birth, contact information, and, for one person, their driver's license number, all of which I find to be personal information belonging to those individuals.

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

[13] 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 a number of exemptions from this right.

[14] Under section 38(b), where a record contains personal information of both the appellant 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 appellant. Section 38(b) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information … if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[15] Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual's personal privacy. Section 14(2) provides some criteria for the police to consider in making this determination, section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy, and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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[5] The police provided access to these individuals' names and occupations, pursuant to section 2(2.1) of the *Act*, which states that "[p]ersonal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity."

Section 14(3)(b)

[16] The police note that section 14(3)(b) sets out a presumption under which 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 the law. However, the police state that because the responsive records relate to an apprehension under the *Mental Health Act*,[6] rather than a violation of law, this section 14(3)(b) presumption does not apply.

[17] The appellant takes the position that section 14(3)(b) applies to the information at issue, as he infers from the police's representations that the police were investigating him for alleged trespassing and harassment. Moreover, the appellant states that the individual who he believes reported him to the police committed public mischief under the *Criminal Code,*[7] which would also involve an investigation into a possible violation of law. As part of his argument that section 14(3)(b) applies, the appellant states that he requires access to the withheld information, as it is necessary to prosecute this individual, as well as to continue investigations relating to cybercrime that he has previously brought to the police.

[18] The appellant's position in this matter appears to be that the circumstances set out in section 14(3)(b) may be present, but that this does not necessarily mean that there should be a presumption against disclosure of the information at issue. Rather, the appellant argues that section 14(3)(b) may apply and weigh in favour of disclosure, similar to some of the 14(2) factors (addressed below). However, section 14(3)(b) functions only to establish a presumption against disclosure if certain circumstances are met (if the personal information "[is] compiled and is identifiable as part of an investigation into a possible violation of law"). The application of 14(3)(b) cannot weigh in favour of disclosure of the personal information at issue, only against.

[19] Regardless, based on my review of the records, I find that they were not compiled or identifiable as part of an investigation into a possible violation of law. The records document an apprehension under the *Mental Health Act*, as described by the police. This is also confirmed within the portions of the records that the appellant was granted access to, which list "Mental Health" under the General Occurrence Information.

[20] 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*,[8] as is the case here. I agree with the reasoning set out in these orders and apply it to the case at hand.

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

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[6] R.S.O 1990, c. M.7.
[7] R.S.C., 1985, c. C-46 at section 140(1).
[8] See Orders MO-1384, MO-1428, MO-3063, and MO-3465.

disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy will be determined by the consideration of the factors at section 14(2), and if applicable, the limitations set out in section 14(4).

Section 14(2)

[22] 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.[9] Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[23] 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.[10]

[24] The police state that none of the 14(2) factors weighing in favour of disclosure apply to the present situation, but that two of the factors weighing against disclosure do apply: 14(2)(e) (pecuniary or other harm) and 14(2)(h) (information supplied in confidence).

[25] The complainant states that section 14(2)(e) does not apply in the present circumstances but takes the position that the following factors do apply: 14(2)(a) (public scrutiny), 142)(b) (promote public health or safety), 14(2)(d) (fair determination of rights), 14(2)(g) (unlikely to be accurate or reliable), and 14(2)(h) (supplied in confidence). The complainant also states that other factors favouring disclosure apply, which the appellant describes as: inherent fairness issues, ensuring public confidence in an institution, and personal information about a person who has died.

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[9] Order P-239.

[10] Section 14(2) states:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> (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;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> (d) 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;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
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> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Factors weighing in favour of disclosure

Section 14(2)(a): disclosure is desirable for public scrutiny

[26] The appellant argues that disclosure of the personal information is necessary for public scrutiny of police activities relating to mental health matters. In this case, the appellant states that it is important for him to know both the information that was presented to the police that led to the police visit, and how the police documented this information.

[27] The appellant states that he believes either the complainant or another individual had inappropriate communications with his neighbour, a former member of the police. The appellant also states the police officer who attended was already known to him and other involved parties and should therefore be subject to greater scrutiny. The appellant referred to his previous involvement with the police in other matters as reasons for disclosure of the information being desirable for public scrutiny.

[28] The appellant states that the police should be subjected to additional scrutiny, due to lack of assistance with his other legal matters. The appellant states that in 2023, an anonymous caller made a frivolous call to the police regarding his mental health, and he requires this caller's name to lay a private information at the courts. The appellant notes that he also raised cybercrime and harassment allegations to the police and the police failed to consider these allegations.

[29] Section 14(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[11] It promotes transparency of government actions.

[30] 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).[12]

[31] 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.[13]

[32] Having reviewed the records, I do not agree with the appellant's position that disclosure of the withheld information is desirable for scrutiny of the police or the attending officers. The records are about the police's attendance to the appellant's residence, his later transport to a hospital, and the documentation of the complainant's concerns leading to the police attendance. These are fundamentally private matters relating to the appellant and the complainant. There is no evidence that the call leading

[11] Order P-1134.
[12] Order PO-2905.
[13] Order P-256.

to the police's attendance was made for the purposes of harassment or mischief, and even if that were the case, that would not be a reason why disclosure of that information would be desirable for public scrutiny of the *police's* actions.

[33] Furthermore, while the appellant has concerns about how the police have approached other matters that he has brought to their attention in the past, that does not bolster the appellant's argument that disclosure of the personal information related to the present matter is desirable for reasons of public scrutiny.

[34] Accordingly, I find that the factor in section 14(2)(a) does not apply.

Section 14(2)(b): disclosure may promote public health and safety

[35] The appellant states that for police actions relating to mental health but not involving a possible violation of law "the appellant's right to access the information in the report should be on par with the complainant's right to report the occurrence." The appellant states that not knowing what is alleged in occurrence reports has exacerbated his symptoms of mental illness. The appellant describes feeling fear and apprehension when he speaks to people, as he is concerned that anything he says could be reported to the police. The appellant also states that those suffering from mental illness are "open to a potentially unlimited number of wellness/check welfare calls to the police without ever being privy to the allegations."

[36] Despite the appellant's claim that the factor favouring disclosure at section 14(2)(b) applies, I find that this factor, which contemplates disclosure to promote public health or safety, does not apply in this appeal. The appellant submits that not knowing all of the information in the occurrence report has had a detrimental effect on his mental illness symptoms. However, this is a matter relating to his personal health, rather than public health or safety.

[37] The appellant also raises the possibility that people suffering from mental illness face a reality in which they may experience multiple wellness checks without knowing the source of the complaint those checks resulted from. However, this is a general concern, not one specifically related to the disclosure of the information at issue. The appellant has not connected this concern to any explanation as to how disclosure of the particular information at issue in this case may promote public health or safely.

[38] In my view, I have been provided with no basis upon which to conclude that the disclosure of the specific personal information at issue in this appeal – including the concerns of a complainant that prompted the police to conduct a mental health check – would promote public health and safety. I find that section 14(2)(b) is not a relevant factor in this appeal.

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

[39] The appellant states that it is likely that the person who contacted the police

regarding the relevant incident has committed a public mischief offence under section 140(1) of the *Criminal Code*. The appellant states that he requires the name of the individual in order to lay this charge with the courts. The appellant states that he previously attempted to lay a similar charge in relation to an individual who called the police in 2023, but was not able to do so because he did not have the name of that individual.

[40] In addition, the appellant states that he has drafted a CPSO complaint against a third party he believes to be in the records, and that he has engaged in a medical malpractice lawsuit against the psychiatrist responsible for his care after he was transported to the hospital. The appellant states that he requires the information in the records to substantiate his civil claims. Specifically, he states that he requires the names of the individual who contacted the police and other third parties, as well as personal narrative information on specified pages.

[41] Section 14(2)(d) weighs in favour of disclosure of the personal information of another individual to a requester where the information is needed to allow them to participate in a court or tribunal process. Past IPC orders have 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;

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

3. The personal information that 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.[14]

[42] The police disclosed the names and occupations of a physician and security officer at the hospital, but withheld their other personal information, including their contact information, dates of birth, and identifying numbers. I am not satisfied that the withheld personal information relating to the physician or security officer "has some bearing on or is significant to the determination of the right in question." Accordingly, the appellant has not met the third part of this test and section 14(2)(d) does not apply to the personal information of the physician and the security officer.

[43] The police have withheld all of the complainant's personal information, including

[14] PO-1764, in which the relevant considerations for the application of section 14(2)(d) were adopted from the test set out in 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.).

their name. Based on the appellant's statement that he intends to bring a mischief charge against the complainant, I am satisfied that the appellant has met the first two parts of the test. Further, I am satisfied that if the appellant wishes to lay a private information against the complainant, the complainant's name would have some bearing on the right in question and would be necessary for the information to be laid. However, I am not satisfied that the remainder of the complainant's personal information, including narrative portions of the records, would have some bearing on or be significant to the determination of the right in question. I am also not satisfied that the appellant requires this narrative information for the contemplated proceeding or to ensure an impartial hearing. Accordingly, the appellant has satisfied the requirements of the section 14(2)(d) test, but only in relation to the complainant's name. This section does not apply to any other withheld personal information in the records.

[44] Moreover, I note that the occurrence at issue happened in 2012, and that the appellant has not provided evidence that he has yet attempted to begin the contemplated proceeding. I therefore find that, though the section 14(2)(d) factor applies to the name of the complainant, it carries little weight.

Section 14(2)(g): the personal information is unlikely to be accurate or reliable

[45] The appellant argues that the withheld information in the records likely includes some faulty information. He bases this on hospital records he obtained regarding his attendance after being apprehended. The appellant states that the hospital records contain unreliable or inaccurate information, and he believes the police records would similarly contain personal information that is unlikely to be accurate or reliable. The appellant states that in his circumstances, this should weigh as a factor in favour of disclosure of the withheld information, not against it.

[46] In general, section 14(2)(g), if applicable, is a factor that weighs against disclosure of the information at issue. In this case, the appellant cites Order PO-1731, in which the adjudicator found that the equivalent provision of the *Freedom of Information and Protection of Privacy Act*[15] could weigh in favour of disclosure in certain circumstances, stating:

> It is apparent from the records themselves that the accuracy and/or reliability of the information provided by the affected persons was questionable and/or incapable of being verified. Therefore, I find that the factor in section 21(2)(g) is relevant in the circumstances of this appeal. Previous orders of this office have generally held that the likelihood that information is inaccurate or unreliable is a factor which weighs against disclosure. However, in this case, I found that the comments made about the appellants by the affected persons qualifies as the personal information

[15] R.S.O. 1990, c. F.31 at section 21(2)(g).

> of the appellants. In this context, I find that the fact that the information may be inaccurate or unreliable weighs in favour of disclosure.

[47] The context PO-1731 differs significantly from the case at hand, as it involved affected parties contacting the now Ministry of Children, Community and Social Services,[16] questioning the suitability of a prospective adoptive parent. It is not clear to me that the same rationale applies in the case at hand, in which the personal information is inextricably intertwined between that of the complainant and of the appellant.

[48] Even if this factor could weigh in favour of disclosure, rather than against, the appellant has not demonstrated that it applies in this case. The appellant has obtained some records from the hospital, and states that some of the information within those records is faulty. The appellant has included a redacted version of these hospital records with his representations. The non-redacted portions largely include descriptions of the appellant's interaction with his neighbour, while the information that the appellant appears to allege is inaccurate or unreliable are statements made by the complainant or other information related to the complainant. From my review of the records, the information from the hospital records is unrelated to the withheld personal information in the police records and does not establish that the information in the police records is unlikely to be accurate or reliable. I find that the factor in section 14(2)(g) does not apply.

Other factors

[49] The appellant states that the police have used his personal information, some of which was provided by third parties, to profile him in subsequent reports. The appellant states that "without an opportunity to access and validate this information, my ability to control the dissemination and use of my own personal information has been unfairly compromised." The appellant cites Order PO-1750, in which the adjudicator, in the context of a request for Family Responsibility Office (FRO)[17] records, stated:

> [In] the circumstances of this appeal, 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*.

[50] In this case, the police have disclosed the information that relates only to the appellant. The remaining information withheld under section 38(b) is either personal

[16] Then called the Ministry of Community and Social Services.
[17] The government of Ontario's webpage (https://www.ontario.ca/page/child-and-spousal-support) states that "FRO is a program of the Government of Ontario that helps families get the support they are entitled to by collecting, distributing and enforcing child and spousal support payments."

information belonging to other individuals, or information wherein the personal information of the appellant and another individual is inextricably intertwined. I find that the inherent fairness factor cited by the appellant does not apply to the case at hand.

[51] The appellant also states that further information should be disclosed to him to ensure confidence in the police documentation, especially as it relates to occurrences involving mental health matters.[18] This argument was already raised by the appellant in his arguments regarding the application of section 14(2)(a), as he stated that it was important that he be provided with information regarding the documentation of the complaint made against him. Having reviewed the records, I find this factor does not apply to weigh in favour of disclosure of the withheld information in the records.

Factors weighing against disclosure

Section 14(2)(e): unfair pecuniary or other harm

[52] Section 14(2)(e) 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.

[53] The police state that section 14(2)(e) applies in circumstances where the disclosure of personal information could expose an individual unfairly to unwanted contact or could expose the individual to repercussions or a fear of harm, such as harassment.[19] In the confidential portions of their representations, the police note the reasons they believe that it is foreseeable that an individual would suffer unfair harm, were their personal information to be disclosed.

[54] The appellant disputes that there is any certainty that any individual would be exposed to pecuniary harms were the information disclosed, and even if they were, such pecuniary harms would not be unfair. The appellant provided an example of his respecting an individual's wish to not have contact with him, stating that he ceased writing to this individual's lawyer after they threatened to seek a restraining order if he continued writing to that law office. He states that he ceased contact despite all correspondence being legal in nature.

[55] For the factor in section 14(2)(e) to apply, the police are required to provide evidence that the harm resulting from disclosure is present or foreseeable, not that it is certain to occur. Regarding the requirement that such harm be unfair, former Commissioner Brian Beamish provided guidance on this point in Order MO-2318, stating:

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[18] The appellant also speculates that the records contain information relating to his deceased father, and states that this information should be disclosed to him. I will address this argument in my consideration of whether section 14(4)(c) applies to the personal information at issue.
[19] Orders M-1147, P-597, and P-213.

> Turning to the factor at section 14(2)(e), this office has held that although the disclosure of personal information may be uncomfortable for those involved in an already acrimonious matter, this does not mean that harm would result within the meaning of this section, or that any resulting harm would be unfair [Order PO-2230]. However, it has also been held 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 [Order M-1147], or where such disclosure could expose the individuals concerned to repercussions as a result of their involvement in an investigation by the institution [Order PO-1659].

[56] I agree with former Commissioner Beamish's reasoning and apply it here. In this case, the appellant himself recounted a situation in which an individual found it necessary to threaten a restraining order against him in order to stop his communications. This information, together with the information in the confidential portions of the police's representations, supports that disclosure of the personal information is likely to expose identified individuals to unwanted contact with the appellant.

[57] On this basis, I find that the unfair harm contemplated by section 14(2)(e) is foreseeable in regard to the identified individuals' personal information. The factor at section 14(2)(e) applies to weigh against disclosure of this withheld personal information.

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

[58] Section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[20]

[59] The police state that individuals who seek police assistance regarding their personal safety may reasonably assume that their personal information is supplied in confidence and expect that the police treat it as such. The police note that to maintain trust with the public, the police must be able to protect personal information obtained during service calls and investigations.

[60] The appellant states that he agrees that this section applies but argues that it should not weigh against disclosure in this case. The appellant states that the non-confidential portions of the police's representations do not indicate that assurances of confidence were given, or who gave them. The appellant also notes that it is possible that an individual could supply information to the police that was fabricated or frivolous, with the knowledge that they would not be held accountable, due to the assumption that such information would be provided in confidence.

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[20] Order PO-1670.

[61] Having reviewed the personal information provided by the complainant and those working at the hospital that the appellant was transported to, I accept that this information was provided to the police with a reasonable expectation that it would remain in confidence, regardless of whether the police explicitly told them so. In addition, I have reviewed both sets of representations and the records at issue, and I find no evidence that the information provided by the complainant or other identified individuals was fabricated or provided for a frivolous purpose. Given this, I find that the personal information was supplied in confidence and that the factor at section 14(2)(h) applies to weigh against disclosure of the personal information.

Initial Conclusion

[62] I have found that the section 14(3)(b) presumption does not apply to the withheld personal information, as the records resulted from a wellness check and were therefore not compiled or identifiable as part of an investigation into a possible violation of law.

[63] Regarding the name of the complainant, I have found that the factors at 14(2)(e) and 14(2)(h) weigh against disclosure of the personal information. The factor at 14(2)(d) weighs in favour of disclosure, but I have found that it does not carry much weight. In the circumstances of this appeal, I am not persuaded that the appellant's desire to obtain access to the complainant's name in order to commence proceedings relating to an incident that occurred in 2012 outweighs the privacy interests of the complainant.

[64] Regarding the other personal information within the records belonging to the complainant and the other individuals, I have found that the section 14(2) factors raised either carry no weight or weigh against disclosure.

[65] I still must consider the application of section 14(4) to the circumstances at hand, as disclosure does not constitute an unjustified invasion of personal privacy if section 14(4) applies. However, I find that there are no 14(2) factors favouring disclosure that would outweigh considerations favouring privacy protection under the *Act* and pending my analysis on the possible application of section 14(4)(c), the withheld information in the records is exempt under section 38(b).

Does the compassionate reasons exception at section 14(4)(c) apply?

[66] Section 14(4)(c) states:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it … discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[67] The appellant states that 14(4)(c) may apply to some of the personal information in the records, that which may relate to his deceased father. He states that he and his

father had unresolved issues when his father passed away, and the information relating to his father in the records may help the appellant come to terms with these issues.

[68] I have reviewed the records at issue, and did not identify any information relating to the appellant's father. As a result, I find that this exception does not apply to the withheld information within the records.

Absurd result

[69] While I have found that the withheld information is exempt from disclosure, I must also consider if the absurd result principle applies to information in the records. An institution might not be able to rely on the section 38(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[21]

[70] For example, the "absurd result" principle has been applied when:

- the requester sought access to their own witness statement,[22]
- the requester was present when the information was provided to the institution,[23] and
- the information was or is clearly within the requester's knowledge.[24]

[71] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[25]

[72] The police have provided the appellant with access to the portions of the records detailing the appellant's interactions with the police. However, the appellant states that it would be absurd to continue to withhold any of the remaining information in the records, if that information overlapped with the hospital records from the same time that he has access to. Moreover, the appellant states that there are "uncertainties" in the hospital records that could be clarified via disclosure of the information in the police report. These include what the appellant describes as vague or incomplete references to a neighbour complaint within the hospital records.

[73] The appellant provided me with a redacted copy of the hospital records. As I noted above, the information in these records describes interactions with his neighbour, though the appellant appears to dispute the veracity of these descriptions. Based on my review of the records, the appellant's representations, and the unredacted portions of the

[21] Orders M-444 and MO-1323.
[22] Orders M-444 and M-451.
[23] Orders M-444 and P-1414.
[24] Orders MO-1196, PO-1679 and MO-1755.
[25] Orders M-757, MO-1323 and MO-1378.

hospital records, there is no apparent overlap between those hospital records and the police records in this case. The appellant has not provided evidence that demonstrates that the withheld evidence is information that is clearly within his knowledge. Accordingly, I find that the absurd result principle does not apply to the personal information in the records before me.

[74] My initial conclusion regarding the records is unaffected by section 14(4)(c) and the absurd result principle does not apply to the records in this instance. Therefore, I uphold the police's decision that the withheld portions of the records are exempt under section 38(b) of the *Act*. Given this finding, I do not need to address whether the withheld personal information is also exempt under section 38(a), read with sections 8(1)(d), 8(1)(e), and 13 of the *Act*.

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

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

[76] In addition, the IPC may find the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[26] The IPC cannot, however, substitute its own discretion for that of the institution.[27]

[77] The police states that in exercising their discretion under section 38(b), they considered the following factors:

- Individuals should have a right of access to their own personal information;
- The privacy of individuals/third parties should be protected;
- The relationship between the requester and the affected person(s);
- The privacy interest of the affected person(s);
- The source of the information;
- The type of record under consideration;

[26] Order MO-1573.
[27] Section 43(2) of the *Act*.

- The nature of the information and extent to which it is significant and/or sensitive to the institution, the requester or any affected person(s); and

- Any impact or harm that could be related to disclosure.

[78] The police state that the majority of the factors mitigate in favour of withholding the personal information at issue, noting that access to the information could hinder police operations and the confidence of the public in assisting the police investigations. The police submit that they exercised their discretion in accordance with the intended purposes of the *Act* and did not act in bad faith or for an improper purpose.

[79] The appellant states that the police did not consider all relevant factors or the totality of circumstances in exercising its discretion. The appellant states that because they failed to do so, one cannot be certain that the police acted in good faith in exercising its discretion. The appellant cites a United Kingdom case relating to a trademark dispute, *Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd.*,[28] (*Gromax*) as an appropriate test for whether bad faith occurred. In that case, the court stated:

> How far a dealing must so fall short in order to amount to bad faith is a matter best left to be adjudged...by reference to the words of the Act and upon a regard to all material surrounding circumstances.

[80] The appellant notes that while the police listed the factors they considered, they did not attribute weight to each of these factors. The appellant states that many of these factors could also argue in favour of disclosure, and that these factors should hold greater weight, as they represent some of the primary purposes of the *Act* – namely, that information should be available to the public and that exemptions from the right of access should be limited and specific. The appellant also states that he has a sympathetic and compelling need to receive the withheld information, stating that he is unable to lay the matter to rest and that the uncertainty regarding the occurrence continues to affect his mental health. The appellant states that he requires this information for an ongoing investigation into cybercrime, as he believes it will be useful in determining both suspects and motivation. The appellant states that the police should have taken into account the age of the information in exercising its discretion. Finally, the appellant states that the police have exhibited a pattern of general unwillingness to assist with his investigations.

[81] I have considered the parties' representations, the information at issue, and the circumstances of this appeal. The appellant correctly notes that one of the purposes of the *Act* is to provide a right of access to information with limited and specific exemptions. However, another purpose of the *Act* is to protect the privacy of individuals with respect to the personal information that institutions hold. The police have set out the factors that they considered in exercising their discretion; they were not asked to provide the specific weight they attributed to each factor. I am satisfied that the police considered relevant

[28] [1999] RPC 367 (High Ct. – Chancery Div.)

factors when exercising their discretion, including the purposes of the *Act* and the personal privacy exemption at section 38(b), together with the nature of the information at issue and its sensitivity in relation to affected persons, the affected persons' privacy interests, and the appellant's right of access.

[82] Regarding the appellant's allegations that the police acted in bad faith, I do not agree that the test set out in *Gromax* is relevant. The circumstances in that case involved a commercial dispute between parties, wholly unrelated to the present situation relating to access to information. Moreover, even if the test set out in *Gromax* was applicable, the circumstances in this case do not indicate bad faith on the part of the police. I understand that the appellant disagrees with the police's exercise of discretion, but police have cited the factors they considered in exercising their discretion and their reasons for the exercise of their discretion under section 38(b). I am satisfied that the police considered the relevant factors and did not take irrelevant factors into account when it made its decision.

[83] In conclusion, I find the police appropriately exercised their discretion under section 38(b) to withhold the information at issue from the appellant. I uphold the police's decision.

ORDER:

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

Original Signed by:	July 22, 2025
Jennifer Olijnyk Adjudicator	