

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4683

Appeal MA24-00119

Thunder Bay Police Services Board

August 12, 2025

Summary: The appellant sought access to a police occurrence report. The police granted partial access to the report, but withheld the personal information of affected parties under section 38(b) (personal privacy). The adjudicator finds that disclosing the withheld information would be an unjustified invasion of the affected parties' personal privacy and that this information is exempt under section 38(b). She upholds the police's decision and dismisses the appeal.

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

OVERVIEW:

[1] The appellant made a request to the Thunder Bay Police Services Board (the police) for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to a police occurrence report. The request identified the report by incident number and was for an incident in which the appellant was involved.

[2] The police located a responsive record and issued a decision granting the appellant partial access to it. The police denied access to some information in the

record under the discretionary personal privacy exemption in section 38(b).¹

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation. The appeal was not resolved and was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. I decided to conduct an inquiry, during which I received representations from the appellant and the police.

[4] In this order, I find that the record contains personal information belonging to the appellant and to other, identifiable, individuals (the affected parties). I find that the affected parties' personal information is exempt under section 38(b) because its disclosure would constitute an unjustified invasion of their personal privacy, and I find that the police properly exercised their discretion under section 38(b). I uphold the police's decision and dismiss the appeal.

RECORD:

The record is a two-page general occurrence report. At issue is access to the withheld portions of the report.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*, and if so, whose?
- B. Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 38(b)? If so, should the police's exercise of discretion in denying access to this information be upheld?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) of the *Act*, and if so, whose?

[5] Before considering the personal privacy exemption in section 38(b), I must determine whether the records contain "personal information." If they do, I must determine whether the personal information belongs to the appellant, others, or both.

[6] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is about the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature

¹ With reference to the presumption in section 14(3)(b) for records compiled and identifiable as part of an investigation into a possible violation of law.

about them,² or if it is reasonable to expect that the individual can be identified from the information either by itself or if combined with other information.³ Section 2(1) of the *Act* contains examples of personal information.

[7] The appellant did not comment on the types of personal information in the record, except to say that she has a right to all of her own.

[8] The police submit that the record contains the appellant's and affected parties' personal information, including their statements to the police containing their views and opinions of what happened.

[9] I have reviewed the record and the police's representations and find that the record contains personal information belonging to both the appellant and to affected parties. The record contains their addresses⁴ and their personal opinions or views about the incident about which the police were called.⁵ The record also contains their names, which I find would reveal other personal information about them if disclosed, including the nature of their involvement with each other and the police.⁶

Issue B: Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 38(b)? If so, should the police's exercise of discretion in denying access to this information be upheld?

[10] 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.

[11] 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.

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

[13] 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).

² Generally, information about an individual in their professional, official or business capacity is not considered to be "about" any individual. See orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

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

⁴ Paragraph (d) of section 2(1) of the *Act*.

⁵ Paragraphs (g) and (e) of section 2(1).

⁶ Paragraph (h) of section 2(1).

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

- if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 38(b);
- section 14(2) lists relevant circumstances, or factors, that weigh for or against disclosure and that must be considered;
- section 14(3) lists circumstances in which disclosure of another's personal information is presumed to constitute an unjustified invasion of their personal privacy; and,
- section 14(4) lists circumstances where disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[15] The parties do not rely on paragraphs (a) to (e) of section 14(1) or on section 14(4), and I find that they do not apply in this appeal.

[16] Since the appellant seeks access to the affected parties' personal information contained in the records, I will consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in deciding whether disclosure would be an unjustified invasion of personal privacy under section 38(b).

Representations

[17] The appellant submits that she knows the parties involved and that she should have "full access" to her personal information in the record.

[18] The police submit that the record was created as part of an investigation into a possible violation of law triggered by a call for assistance at a specific location. They say that the presumption against disclosure in section 14(3)(b) (investigation into possible violation of law) applies because the investigation could have led to *Criminal Code* or provincial offence charges. The police also submit that the affected parties gave their statements to the investigating officer in confidence, so that the factor in section 14(2)(h) (supplied in confidence) applies and weighs in favour of protecting their privacy. They say that they have already given the appellant access to her own personal information in the record, including her statements.

Analysis and findings

[19] For the following reasons, I find that disclosure of the affected parties' personal information contained in the records would constitute an unjustified invasion of their personal privacy and that this information is exempt under section 38(b).

The presumption against disclosure in section 14(3)(b)

[20] As noted above, the police claim that the presumption in section 14(3)(b) applies to the information at issue and weighs against its disclosure in the circumstances. Section 14(3)(b) states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information “was compiled and is identifiable as part of an investigation into a possible violation of law.”

[21] I am satisfied that the personal information in the record was compiled and is identifiable as part of the police’s investigation into a possible violation of law. The police responded to a call for assistance and conducted an investigation that could have led to charges, either under the *Criminal Code* or a provincial statute. Although the investigation ended without charges, section 14(3)(b) requires only that there be an investigation into a possible violation of law.⁷ As a result, I find that section 14(3)(b) applies and that disclosure of the affected parties’ personal information is presumed to constitute an unjustified invasion of their personal privacy.

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

[22] Under section 38(b), because the record contains personal information that belongs to both the appellant and others, the presumption in section 14(3)(b) must also be weighed and balanced with any factors in section 14(2) that may apply.

[23] Section 14(2) lists factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁸ The police submit that the factor in section 14(2)(h) – that the information was supplied in confidence – applies and weighs against disclosure, as the affected parties provided their statements and information to the police during an investigation with the understanding that it would be kept confidential.

[24] Section 14(2)(h) states that the police, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether “the personal information has been supplied by the individual to whom it relates in confidence.”

[25] For the factor at section 14(2)(h) to apply, I must be satisfied that the individuals supplying the information and the recipient – in this case, the affected parties and the police – 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 the reasonableness of the expectation of confidentiality.⁹

[26] From my review of the records, I find that the context and circumstances were

⁷ Orders P-242 and MO-2235.

⁸ Order P-239.

⁹ Order PO-1670.

such that a reasonable person would expect that the information they were providing to the police would be subject to a degree of confidentiality. The records suggest that the affected parties' statements – setting out their views and opinions about the incident and its underlying issues – were taken outside the appellant's presence and in a law enforcement context that implied confidentiality. Accordingly, I find that the factor in section 14(2)(h) applies and weighs against disclosing the affected parties' personal information.

[27] I have also considered whether any other factors apply to weigh either in favour of disclosure or against it. I find that the factor in section 14(2)(f) (highly sensitive) also applies and weighs against disclosure.

[28] Section 14(2)(f) requires the police (or the IPC on appeal) to consider whether the information is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed. Given the nature of the investigation and the reasons the police were called, I am satisfied that disclosure of the affected parties' personal information could reasonably be expected to cause them significant personal distress.

[29] The appellant did not identify any factors, whether listed in section 14(2) or unlisted, that would support disclosure of the withheld information. I find that there are none.

[30] Having weighed the relevant factors in section 14(2) and the presumption in section 14(3)(b) and balanced the interests of the parties, I find that the information at issue is exempt under section 38(b) and I uphold the police's decision to deny access to it.

Absurd result principle does not apply

[31] Past IPC orders have held that denying a requester access to information that they are otherwise aware of could lead to an absurd result. This principle has been applied where, for example, a requester was present when the information was provided to the institution,¹⁰ or where the information is clearly within the requester's knowledge.

[32] The appellant submits that she listened as one of the affected parties made derogatory statements about her "in front of all present that had absolutely nothing to do with the matter at hand."

[33] The police argue that the absurd result principle does not apply because the withheld information is not information that the appellant either supplied or would otherwise have knowledge of. They further argue that, even if the appellant has some knowledge, the protection of others' privacy rights is a fundamental principle of the *Act*

¹⁰ Orders M-444 and P-1414.

and that applying the absurd result principle where disclosure is not justified would be inconsistent with the objective of protecting the privacy of affected individuals.¹¹

[34] I agree and find that the absurd result principle does not apply in this case. Hearing some comments made in front of others does not establish that the appellant knows the substance of the statements the affected parties gave to the police. While the appellant may have knowledge of the underlying incident because she was involved and gave her own account to the police, there is no evidence before me that she knows the contents of the affected parties' statements. Additionally, as I have noted above, the record itself suggests that the police interviewed the parties separately, and the appellant has not demonstrated knowledge of the contents of others' statements in the record other than her own.

The police exercised their discretion to withhold information properly

[35] Section 38(b) gives the police discretion to disclose information even when they could withhold it. On appeal, the IPC cannot substitute its own discretion for the police's, but may order a re-exercise of discretion if the police relied on improper considerations or ignored relevant ones.¹²

[36] The police state that they balanced the appellant's right of access against the affected privacy interests. They say that they considered the relationships between the appellant and the affected parties, and that the affected parties' personal information was provided to them in confidence. In exercising their discretion, the police say they disclosed all of the appellant's own personal information to her while withholding only that belonging to affected parties.

[37] The appellant made no submissions on the police's exercise of discretion.

[38] I find that the police exercised their discretion properly. I am satisfied that they considered relevant factors in exercising their discretion to deny access to the affected parties' personal information under section 38(b), and that, in doing so, they disclosed the appellant's personal information to her without disclosing information that is exempt. I find no basis to conclude that the police exercised their discretion in bad faith or that they took into account irrelevant considerations.

[39] For these reasons, I find that the information at issue is exempt under section 38(b). I uphold the police's decision and dismiss this appeal.

ORDER:

[40] I uphold the police's decision and dismiss this appeal.

¹¹ Citing Order PO-1524-I.

¹² Order MO-1573.

Original Signed by: _____
Jessica Kowalski
Adjudicator

August 12, 2025 _____