

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4684

Appeal MA24-00006

Toronto Police Services Board

August 13, 2025

Summary: An individual made a request, under the *Municipal Freedom of Information and Protection of Privacy Act*, to the Toronto Police Services Board for access to records relating to a specified incident on a specified date. The police granted partial access to two general occurrence reports, explaining that disclosure of some information to the requester would be an unjustified invasion of another individual's personal privacy (section 38(b)).

In this order, the adjudicator upholds the police's decision that disclosure of the withheld information in the general occurrence reports is an unjustified invasion of personal privacy and it is exempt under section 38(b).

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

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for records relating to a specified incident on a specified date.

[2] The police issued a decision granting partial access to two general occurrence hardcopy reports (the reports), relying on the discretionary exemption at section 38(b) (personal privacy) of the *Act* to withhold the remaining portions.

[3] Dissatisfied with the police's decision, the requester (now the appellant) appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to explore the possibility of resolution.

[4] As mediation was not able to resolve the appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.¹

[5] In this order, I uphold the police's decision that the withheld information in the reports is exempt under section 38(b).

RECORDS:

[6] The records at issue are two general occurrence hardcopy reports, totaling 23 pages (the reports). The information that remains at issue is that which has been withheld from the reports.

ISSUES:

- A. Do the reports 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 in the reports?

DISCUSSION:

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

[7] In order to decide whether section 38(b) applies to the reports, I must first decide whether they contain "personal information," and if so, to whom this personal information relates.

[8] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Recorded information is information recorded in any

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7*.

format, including paper and electronic records.²

[9] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them.³

[10] 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.⁴

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

“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,

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, symbol or other particular assigned to the individual,

(e) the personal opinions or views of the individual except if they relate to another individual

...

(g) the views or opinions of another individual about the individual, and

² The definition of “records” in section 2(1) includes paper records, electronic records, digital photographs, videos and maps. The record before me is a paper record located by searching a police database.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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.

[12] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁵

[13] It is important to know whose personal information is in the records. If the records contain the requester's own personal information, their access rights are greater than if it does not.⁶ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁷

[14] The police submit that the reports contain the personal information of the appellant and an affected party. Specifically, the police submit that the reports contain their names, dates of birth, telephone numbers, home address and the views/opinions of these individuals about one another.

[15] The appellant submits that the reports contain her personal information and the affected party's personal information.

[16] On my review of the reports, I find that they contain information that qualifies as the personal information of the appellant as well as that of another identifiable individual, the affected party. I find that this personal information would fall under paragraphs (a), (c), (d), (e), (g) and (h) of the definition of "personal information" under section 2(1) of the *Act*. Specifically, I find that the reports contain the dates of birth, address, phone numbers, and the names of the appellant and an affected party along with other personal information about them.

[17] I note that the police have disclosed all of the appellant's personal information to her except where her personal information and the affected party's personal information is so intertwined that it is impossible to disclose the appellant's personal information without disclosing the affected party's personal information as well.

[18] As I have found that the reports contain the personal information of the appellant along with an identifiable individual, I will consider the appellant's access to the reports under the discretionary personal privacy exemption at section 38(b) of the *Act*.

⁵ Order 11.

⁶ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁷ See sections 21(1) and 38(b).

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

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

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

[21] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁸ The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁹

[22] In determining whether the disclosure of the personal information would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹⁰

Representations, analysis and findings

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

⁸ Order P-239.

⁹ Order P-99.

¹⁰ Order MO-2954.

Presumptions

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

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

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

[25] The police submit that the withheld personal information in the first report was compiled as part of an investigation, which resulted in the creation of an incident report. They submit that, subsequently, the withheld personal information in the second report was compiled as part of an investigation, which resulted in a charge of criminal harassment under the *Criminal Code of Canada* (the *Criminal Code*).¹¹

[26] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹² The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹³

[27] Based on my review of the reports, I find that the presumption at section 14(3)(b) applies to them. The first report relates to a police investigation relating to the creation of an incident report although no charges were laid. The second report resulted in a criminal harassment charge. The withheld personal information in both reports was compiled and is identifiable as part of investigations into a possible violation of the *Criminal Code*. Section 14(3)(b) therefore weighs in favour of non-disclosure of the withheld personal information.

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

Factors

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

[30] The appellant relies on the factors at sections 14(2)(b), (d), (e), (g), (h) and (i) while the police rely on the factors at section 14(2)(e) and (h).

[31] These sections state:

¹¹ R.S.C., 1985, c. C-46.

¹² Orders P-242 and MO-2235.

¹³ Orders MO-2213, PO-1849 and PO-2608.

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,

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

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

(e) disclosure of the personal information will result in exposure to unfair pecuniary or other harm;

(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

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[32] As noted above, in her representations the appellant raised the factors at sections 14(2)(e), (g), and (i) as factors supporting disclosure of the withheld personal information. These factors do not support disclosure but instead favour non-disclosure. Therefore, I will not consider the appellant's submissions on these factors. I will, however, consider and discuss the factor at section 14(2)(e) as the police rely on it.

Section 14(2)(b): public health and safety

[33] The appellant submits that her safety is at issue. She alleges that the affected party threw her over his balcony, which caused her to receive staples in her head and steri-strips over her right eye. The appellant explains that the affected party is aware of her phone number and home address. She submits that she is afraid of the affected party.

[34] I have reviewed the appellant's representations and the withheld personal information. Although I acknowledge that the appellant believes that her safety is at issue, I am not persuaded that disclosure of the withheld personal information would promote public health or safety. As previously noted, much of the reports have been disclosed to the appellant and the information that has been withheld is the personal information of affected party, either alone or intertwined with that of the appellant. From my review, none of the withheld personal information relates to the health or safety of the public and therefore, its disclosure would not serve to promote it. As such, I do not find that section 14(2)(b) applies.

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

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

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information to which the appellant seeks access has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.¹⁴

[36] The appellant submits that the factor at section 14(2)(d) applies because she requires the withheld personal information for the fair determination of her rights. She submits that she wants to participate in a court or tribunal proceeding. The appellant submits that the affected party got away with assaulting her as he lied to the police about what happened during the incident in the first report.

[37] The police submit that section 14(2)(d) does not apply. They submit that the appellant has the information needed to commence a court or tribunal process as she has the affected party's name.

[38] In order for section 14(2)(d) to apply, all four parts of the test must be established. I am not persuaded by the appellant's representations that section 14(2)(d) applies to the withheld personal information in this appeal. Under part 2 of the test, the appellant must establish that a legal proceeding is being contemplated or exists. In her representations, the appellant alleges that the affected party assaulted her. However, she does not provide evidence of a legal proceeding that is either being contemplated or that exists.

[39] Moreover, there is no evidence to suggest that the withheld personal information has some bearing on or is significant to the determination of a proceeding addressing a legal right held by the appellant.

[40] Accordingly, I do not find that section 14(2)(d) applies.

¹⁴ Order PO-1764; see also Order P-312, upheld on judicial record in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

Section 14(2)(e): exposed unfairly to pecuniary or other harm

[41] As noted above, the police raised the factor at section 14(2)(e). They submit that if the withheld personal information is disclosed to the appellant she may continue to harass the affected party.

[42] For section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm with disclosure that is envisioned by the clause be present or foreseeable, and that this damage or harm would be “unfair” to the individual involved.

[43] In Order MO-2318, former Commissioner Brian Beamish provided guidance on “unfair harm” as contemplated by section 14(2)(e). He stated:

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].

[44] I agree and adopt the analysis set out by former Commissioner Beamish in this appeal. Due to the circumstances of the reports before me, I do find that the unfair harm contemplated by section 14(2)(e) is foreseeable. Therefore, I find that the factor at section 14(2)(e) does apply and give it some weight.

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

[45] The police also raised the factor at section 14(2)(h) but did not provide further submissions on how this factor applies to the withheld personal information.

[46] In order for the factor at section 14(2)(h) to apply, both the individual supplying the information and the recipient must have an expectation that the information will be treated confidentially, and that expectation must be reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹⁵

[47] In the circumstances, I accept that given the nature of the police investigation the withheld personal information was supplied by the affected party in confidence to the police. I also accept that the affected party had a reasonable expectation that the

¹⁵ Order PO-1670.

information was going to be treated as confidential by the police. Therefore, I find that the factor in section 14(2)(h), which weighs against disclosure, applies.

Balancing the factors and presumptions

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

[49] Accordingly, I find that disclosure of the withheld personal information in the reports would be an unjustified invasion of the personal privacy of the individual to whom that information relates. Subject to my findings below on the police's exercise of discretion, I find that it is exempt under section 38(b).

Exercise of discretion

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

[51] The police submit that they properly exercised their discretion under section 38(b). They submit they considered the mandate and the spirit of the *Act* in balancing the privacy protection of individuals with the public's right to know. The police submit that as the reports contain sensitive information, they balanced the access interests of the appellant with the privacy rights of the affected party.

[52] The police submit that they did not exercise their discretion in bad faith or for an improper purpose. They also submit that they took into account all relevant considerations.

[53] The appellant submits that she should have access to her own personal information. She submits that her privacy should be protected.

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

ORDER:

I uphold the police's decision to deny access to the reports.

Original Signed by: _____

August 13, 2025 _____

Lan An

Adjudicator