

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4700

Appeal MA22-00687

Toronto Police Services Board

September 30, 2025

Summary: An individual made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for a report and photographs relating to one specified incident, and a report relating to a second specified incident.

The police granted partial access to the responsive records, withholding some information on the basis that it was not responsive to the request (section 17) and other information on the basis that disclosure would be an unjustified invasion of another individual's personal privacy (section 14(1)). Following the police's access decisions, the individual contacted the police for additional records relating to the second specified incident. The police advised the individual that she would need to make a new request for additional records, as they fall outside the scope of her request.

In this order, the adjudicator finds that additional records relating to the second specified incident fall outside the scope of the individual's request. The adjudicator also finds that while the police properly withheld the information, the discretionary personal privacy exemption at section 38(b) should apply instead of the mandatory personal privacy exemption at section 14(1). She dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(2)(d), 14(2)(h), 14(3)(a), 14(3)(b), 17, and 38(b).

OVERVIEW:

[1] This order determines whether the Toronto Police Services Board (the police)

properly withheld information that was identified as non-responsive to the request from a police record, as well as whether the disclosure of personal information from that record 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*). It also considers whether the police improperly narrowed the scope of the request.

[2] The police received a request pursuant to the *Act* for a report and photographs relating to a specified incident involving the requester that took place in August 2008. The police indicated that after receiving the request, they had a telephone call with the requester, who asked for an occurrence report relating to a separate incident which took place in May 2022. The police agreed to search for the occurrence report and to respond to the access request in stages.

[3] The police issued an initial decision granting partial access to the report relating to the August 2008 incident. In their decision, the police cited section 14(1) of the *Act* to deny access to some information. The police also indicated that they ordered the photographs (and later disclosed them to the appellant in full).

[4] Following the police's initial decision, the police received an email from the requester in which she stated:

[W]hen we spoke, you also located an incident whereby a guy stole lawn equipment from me, including my expensive lawn mower, from my home at [specified address]. I believe that was in May of 2022. His name is [named individual]. You offered to e-mail me that report as well.

[5] The police subsequently issued a second decision granting partial access to the occurrence report relating to the May 2022 incident, citing section 14(1) to deny access to some information. The police also indicated that some information was removed from the records as it was deemed non-responsive to the request.

[6] Following the police's second decision, the police received another email from the requester in which she stated:

I need the recording of my 911 call to the police, please, as well as a video recording of the body worn camera footage of [two named police officers] re the theft of my lawnmower this spring, please.

[7] In response, the police indicated that they had already provided the requester with the records that were responsive to her request. The police advised that the requester would need to make a new request to obtain any additional records.

[8] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). A mediator was assigned to attempt to reach a resolution between the parties.

[9] During mediation, the appellant confirmed that she is only seeking access to the withheld information in the occurrence report disclosed pursuant to the police's second decision (relating to the May 2022 incident).¹

[10] The appellant further advised that she is seeking access to additional records relating to the May 2022 incident, including all written, audio, or visual information relating to the occurrence, and that she disagrees with the police's decision that any additional records fall outside the scope of her request.

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

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

[13] For the reasons that follow, I uphold the police's decision to withhold information identified as non-responsive, as well as portions of the records under the personal privacy exemption at section 38(b).² I also find that the appellant's request for additional records relating to the May 2022 incident fall outside the scope of the request. I dismiss the appeal.

RECORDS:

[14] The record remaining at issue consists of a general occurrence report (specifically, portions of pages 1-2 and 4-6).

ISSUES:

- A. What is the scope of the request? Which records are responsive to the request?
- B. Is the information removed from page 6 of the occurrence report responsive to the request?
- C. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- D. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

¹ The appellant confirmed that she is not seeking access to the information in the report relating to the August 2008 incident that was withheld by the police.

² As will be discussed below, although the police claimed that some information is exempt under the mandatory personal privacy exemption at section 14(1), I have determined that this information is properly exempt under the discretionary personal privacy exemption at section 38(b).

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

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[15] The appellant is seeking access to additional records relating to the May 2022 incident, including written, audio, or visual information. The police argue that any additional information relating to the May 2022 incident falls outside the scope of the appellant's request.

[16] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to access requests. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[17] To be considered responsive to the request, records must "reasonably relate" to the request.³ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.⁴

Representations

[18] The police submit that the appellant's initial request for a report and photographs relating to the August 2008 incident was clear and unambiguous, and provided sufficient detail to enable an experienced employee to identify the records.

[19] The police indicate that while processing the request, the appellant sought to

³ Orders P-880 and PO-2661.

⁴ Orders P-134 and P-880.

expand the scope of the request by asking the police to provide another report relating to a separate incident which took place in May 2022. The police submit that they accommodated this request, despite having no obligation to do so. The police submit that the appellant's expanded request was also clear and unambiguous.

[20] The police indicate that while it is not their normal practice, they agreed to release the records in stages. The police submit that they released the August 2008 report first, followed by the August 2008 photographs and the May 2022 report. The police submit that once they provided all of the responsive records to the appellant, her file was closed.

[21] The police submit that the appellant then sought to expand the scope of the request again when she asked the police to provide additional records relating to the May 2022 incident. The police informed the appellant that her request was closed and that she would need to submit a new request in order to receive additional information.

[22] The appellant indicates that she is asking for all records relating to the May 2022 incident, including a recording of her original telephone call to the police, body-worn camera footage from the attending officers, and any and all communications (written, audio, visual). The appellant submits that the occurrence report contains numerous inaccuracies and that she requires the complete record to prove what actually happened.

Analysis and findings

[23] I accept that the appellant's initial request was clear and unambiguous. I agree with the police that in her initial request, the appellant clearly requested a report and photographs relating to the August 2008 incident. I also understand that during the processing of the initial request, the police agreed to provide the appellant with the occurrence report relating to the May 2022 incident. I acknowledge that following the police's initial decision, the requester made a written request for the occurrence report relating to the May 2022 incident and the police issued a second decision letter granting her partial access to that report. I accept that the appellant's request for the May 2022 occurrence report was also clear and unambiguous.

[24] While it is the general practice of the IPC to interpret requests liberally and to resolve ambiguities in the requester's favour, I find that both the appellant's initial request and her subsequent request (which the police agreed to process) are clear and unambiguous. In my view, the appellant's later request for call recordings, body-worn camera footage, and any and all communications relating to the May 2022 incident does not fall within a broad and liberal interpretation of her initial request or her second request, which the police agreed to process. I find that in providing the appellant with the two reports and the photographs, the police provided the appellant with all of the records responsive to her requests.

[25] As a result, I uphold the police's interpretation and find that the appellant's request for call recordings, body worn camera footage, and any and all communications relating

to the May 2022 incident fall outside the scope of both of the requests that the police responded to. If the appellant continues to seek access to this information, she is not precluded from making a new request under the *Act*.

Issue B: Is the information removed from page 6 of the occurrence report responsive to the request?

[26] The police withheld some information from a heading on page six of the occurrence report as non-responsive to the request. The appellant indicated that she is seeking access to this information.

Representations

[27] The police submit that they withheld the information from the heading as non-responsive because it does not directly relate to the request. The police explain that the information is part of the standard template in their Records Management System and serves as guidance for when members write their reports. The police submit that the withheld information does not relate to the incident involving the appellant.

[28] The appellant does not directly reference the issue of responsiveness in her representations, but states that she is seeking access to all of the redacted information in the occurrence report.

Analysis and findings

[29] I have reviewed the occurrence report and find that the police correctly identified and withheld part of the heading on page six of the occurrence report as non-responsive to the appellant's request. The withheld information contains information that is not related to the appellant or to the incidents identified by the appellant and is therefore not reasonably related to the appellant's request.

[30] Accordingly, I uphold the police's decision to withhold part of a heading on page six of the occurrence report on the basis that this information is not responsive to the appellant's request.

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

[31] In their decision, the police cite the mandatory personal privacy exemption at section 14(1) to withhold some information from the occurrence report. However, if the record contains the appellant's own personal information, the discretionary personal privacy exemption at section 38(b) applies instead. As a result, I must determine whether the record contains "personal information" and if so, whether the personal information belongs to the appellant, the affected party, or both.

[32] 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.⁵ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁶

[33] 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.⁷

[34] 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.⁸ Section 2(1) of the *Act* contains some examples of personal information, though this list is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

Representations

[35] The police indicate that while the occurrence report contains the personal information of both the appellant and an affected party, they have only withheld the personal information of the affected party. The police submit that the occurrence report contains the affected party's name, date of birth, address, telephone number, and driver's license number.

[36] The appellant does not explicitly state whose personal information might be in the occurrence report, but appears to accept that it contains her own personal information, as well as the information of an affected party. For instance, the appellant indicates that the occurrence report relates to the theft of her property and contains details of her interactions with the police. Additionally, the appellant states that the information that she is seeking access to includes a named individual's address.

Analysis and findings

[37] I have reviewed the occurrence report and find that it contains both the appellant's and the affected party's personal information as defined by section 2(1) of the *Act*, including their date of birth and other demographic information, such as age, sex, and ethnicity (paragraph (a) of the definition of personal information in section 2(1)), their address (paragraph (d)), their telephone number (paragraph (d)), as well as the affected party's email address and driver's license number (paragraph (c) or (d)). The affected

⁵ 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.

⁶ See sections 14(1) and 38(b).

⁷ See the definition of "record" in section 2(1) of the *Act*.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

party is identifiable from the information in the report, and the information is personal in nature.

[38] Having found that the occurrence report contains the personal information of both the appellant and an affected party, I will determine whether the discretionary personal privacy exemption at section 38(b) applies to the information at issue.

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

[39] 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.

[40] 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.⁹

[41] 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 doing so would result in an unjustified invasion of the other individual's personal privacy.¹⁰

[42] 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).

[43] Sections 14(1) to (4) provide guidance in deciding 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.

⁹ However, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy; Order PO-2560.

¹⁰ In contrast, under the mandatory personal privacy exemption at section 14(1), where a record contains personal information of another individual but *not* the requester, the institution cannot disclose that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or if disclosure would not be an "unjustified invasion" of the other individual's personal privacy under the section 14(1)(f) exception.

- 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.

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

Representations

The police's representations

[45] In their decision letter, the police claim that the mandatory personal privacy exemption at section 14(1) applies to portions of the occurrence report. In my Notice of Inquiry to the parties, I explained that if the occurrence report was found to contain the personal information of the appellant in addition to the personal information of an affected party, section 38(b) may apply instead of section 14(1).

[46] In their representations, the police explain why they applied section 14(1) to the occurrence report instead of section 38(b):

In order to address whether section 38(b) applies to the records in this appeal, it is worth mentioning that the IPC seems to treat all responsive records as a whole, meaning that if any portion of any responsive record contains the personal information of the Requester, section 38(b) applies to all records. In processing the Appellant's request for information, this institution applied a different view, considering how the sections of the *Act* apply to the withheld information only.

[47] The police explain that although the occurrence report contains the appellant's personal information, the withheld information relates exclusively to the affected party. As a result, the police indicate that they relied on section 14(1) and not section 38(b). However, the police submit that even if section 38(b) were found to apply, their decision would not change.

[48] The police submit that the personal information was compiled as part of an investigation into a possible violation of law (specifically an investigation into a reported theft), therefore engaging the presumption at section 14(3)(b). The police also submit that the presumption at section 14(3)(a) applies.

[49] The police submit that the factor at section 14(2)(h) (supplied in confidence) applies and weighs against disclosure of the withheld information. The police also submit that the factor at section 14(2)(d) (fair determination of rights) does not apply to weigh in favour of disclosure. The police argue that in this case, disclosing the withheld

information would be an unjustified invasion of the affected party's personal privacy, as it consists of their personal information, not the appellant's.

The appellant's representations

[50] The appellant does not provide substantive representations on the application of the exemptions at section 14(1) or section 38(b), or on the section 14(2) factors and section 14(3) presumptions. However, the appellant indicates that she requires the perpetrator's address in order to initiate a proceeding against them. I find that this argument raises the possible application of section 14(2)(d) (fair determination of rights).

[51] In her representations, the appellant also describes the incident and the impact that it had upon her. The appellant indicates that she called the police for assistance after an individual stole her lawnmower. Although the police located the perpetrator, the appellant alleges that they allowed the perpetrator to leave with her property and were therefore complicit in the theft. The appellant alleges that the perpetrator continues to demand money from her without returning her property and that the police have therefore "put her in a position where she is being extorted".

[52] The appellant indicates that this experience has had a serious negative impact on her physical, mental, and financial well-being. The appellant describes the police's unfair treatment of her as more traumatic than the theft itself and provides details about the pain and suffering that she has experienced. The appellant also indicates that the amount of time that she has dedicated to this matter translates into thousands of dollars in financial losses.

Analysis and findings

[53] In their representations, the police indicate that in determining whether section 14(1) or section 38(b) applies, the IPC "seems to treat all responsive records as a whole, meaning that if any portion of any responsive record contains the personal information of the Requester, section 38(b) applies to all records".

[54] To be clear, the IPC applies a "record-by-record" approach in determining whether section 14(1) or section 38(b) applies.¹¹ If a record contains the personal information of both the requester and another individual, then the record is subject to the discretionary personal privacy exemption at section 38(b) even if the requester's personal information has already been disclosed to them. Conversely, if a record contains the personal information of another individual, but not the requester, then it is subject to the mandatory personal privacy exemption at section 14(1). If there is more than one record at issue, each record should be reviewed separately to determine whether section 14(1) or section 38(b) applies in each case.

[55] As I have previously determined that the occurrence report contains both the

¹¹ See, for example, Orders MO-4625, MO-4610, and PO-4563.

appellant's and an affected party's personal information, the discretionary personal privacy exemption at section 38(b) applies. 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 section 14(2) and (3) and balance the interests of the parties.¹²

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

[56] As previously stated, the police claim that the section 14(3)(a) and 14(3)(b) presumptions against disclosure apply to the information at issue. These sections state:

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

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(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[.]

[57] 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.¹³

[58] The police submit that the information was compiled as part of an investigation into a reported theft, and that during the investigation, officers interviewed and took information from the involved parties. I have reviewed the record and agree that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The record at issue consists of an occurrence report, which contains details about the incident and the involved parties. 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.

[59] Based on my review of the occurrence report, I also accept that the section 14(3)(a) presumption applies to a small portion of one page of the record. Given my finding that the section 14(3)(b) presumption applies to all of the withheld information in the record and the section 14(3)(a) presumption applies to a portion of the withheld information, I am satisfied that disclosure of the personal information in the occurrence report is presumed to be an unjustified invasion of the affected party's personal privacy.

[60] Under section 38(b), the section 14(3) presumptions must be weighed and

¹² Order MO-2954.

¹³ Orders P-242 and MO-2235.

balanced with any other factors in section 14(2) that apply in the circumstances.

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

[61] 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)(d): Fair determination of rights

[62] The appellant indicates that although the police advised that that she could attempt to resolve this matter through the courts, she does not have the alleged perpetrator's address and is therefore unable to serve them with documents. In stating this, I understand the appellant to be engaging section 14(2)(d) (fair determination of rights).

[63] 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.¹⁴

[64] The appellant did not address the four-part test in her representations. However, it is clear that the appellant believes that she requires at least some of the affected party's personal information in order to initiate a proceeding against them. Conversely, the police submit that section 14(2)(d) does not apply as the affected party also has the right to have their privacy protected. The police submit that if they were to disclose an affected party's personal information each time a requester indicated that they wished to pursue a civil action, this would potentially transform the access regime into one of routine disclosure.

[65] Based on the information before me, I am willing to accept that the appellant is contemplating a proceeding, and that the basis of this proceeding is a legal right drawn from the concepts of common law or statute law (parts 1 and 2 of the test). I also

¹⁴ 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.).

acknowledge that some of the affected party's personal information, namely their name and address, is significant to the determination of the right in question and is arguably required to commence a lawsuit (parts 3 and 4 of the test).

[66] The appellant does not state, and I have not received evidence to suggest that any of the affected party's personal information outside of their name and address is either significant to the determination of the right in question or required in order to prepare for the proceeding. Therefore, while I am willing to accept that the four-part test has been met with respect to the affected party's name and address, I find that it has not been met with respect to the affected party's other personal information.

[67] Previous orders of the IPC have considered whether the existence of other disclosure processes or alternative means for the appellant to obtain the requested information is relevant to the weight that is given to the section 14(2)(d) factor. These orders have generally found that the existence of disclosure processes available to parties under the *Rules of Civil Procedure* reduces the weight given to section 14(2)(d).¹⁵ Based on these orders and given the limited representations from the parties on the application of this factor, to the extent that I have found that the factor at section 14(2)(d) applies to the affected party's name and address, I assign it reduced weight.

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

[68] 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".¹⁶ This factor weighs against disclosure.

[69] 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".¹⁷

[70] The police submit that in providing their information to the investigating officers, the affected party would have had an expectation that the information would be held in confidence. The police also submit that as a law enforcement agency, there is an implied trust that they will act responsibly in dealing with information recorded during a police investigation. The police submit that their failure to do so would impact public trust and deter the public from providing information to the police, thereby hindering police investigations and preventing the police from properly exercising their mandate.

[71] In the circumstances, I find that it is reasonable to expect that the affected party provided their personal information to the police in confidence, and that this expectation

¹⁵ Orders MO-2943 and PO-1715.

¹⁶ Section 14(2)(h) of the Act.

¹⁷ Order PO-1670.

was shared by the police as the recipient of that information. In my view, the circumstances of the police investigation 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. This is especially true given the nature of the incident and the discussions that took place between the police and the involved parties. Previous orders of this office have also found section 14(2)(h) to apply where the police have referenced public trust as a relevant consideration.¹⁸ I agree with and adopt these findings.

[72] As a result, I find that the factor at section 14(2)(h) applies to the withheld information and weighs against disclosure.

Other factors

[73] As previously indicated, section 14(2) lists factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. This list is not exhaustive – the institution must consider any other circumstances that are relevant, even if those circumstances are not listed.

[74] I find that some of the appellant's representations potentially raise issues of "inherent fairness"¹⁹. Previous IPC orders have found inherent fairness to be a relevant consideration under section 14(2). For this unlisted factor of inherent fairness, I am required to consider whether withholding the personal information at issue would be inherently unfair to the appellant.

[75] The appellant describes the incident and her subsequent interactions with the police as "traumatic". The appellant submits that the occurrence report does not contain an accurate depiction of the events and ascribes statements to her that she never made. The appellant also submits that she requires all of the withheld information to dispel these falsehoods and to rebut the allegations against her. The appellant states that she has continually been revictimized in her attempts to seek justice and that this process has cost her time and health.

[76] I previously found that the personal information at issue consists of the affected party's date of birth and other demographic information, their address, telephone number, email address, and driver's license number. Based on my review of the record, I agree with the police that the appellant received all of the responsive information, with the exception of the affected party's personal information. While I understand that the appellant believes that the occurrence report contains inaccuracies, I do not see how disclosing the personal information at issue would assist the appellant in resolving these concerns. As a result, I do not find that withholding the personal information at issue is inherently unfair.

[77] I find that the unlisted factor of inherent fairness, which would weigh in favour of

¹⁸ See, for example, Orders MO-4657, MO-4656, and MO-4618.

¹⁹ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

disclosure, is not relevant in this appeal.

Balancing the relevant presumptions and factors

[78] I have found that disclosure of the affected party's personal information would result in a presumed unjustified invasion of their personal privacy under sections 14(3)(a) and 14(3)(b). I have also found that the section 14(2)(d) factor weighs in favour of disclosure, but with reduced weight, while the section 14(2)(h) factor weighs against the disclosure of the affected party's personal information.

[79] Overall, I find that the balance weighs in favour of protecting the affected party's 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

[80] 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.²⁰ This is referred to as the absurd result principle.

[81] The police submit that the absurd result principle does not apply in this case. The police indicate that based on the records, it is not clear that the appellant was present when the affected party provided their personal information to the police. The police submit that the fact that the appellant is specifically requesting a named individual's personal information suggests that this information is not currently within her knowledge. The appellant does not make representations on the absurd result principle.

[82] Based on my review of the occurrence report, I find that the absurd result principle does not apply. 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.²¹

[83] While the occurrence report contains some information that the appellant may have knowledge of, it also includes information that the appellant likely does 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.

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

²⁰ Orders M-444 and MO-1323.

²¹ Orders M-757, MO-1323 and MO-1378.

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

[85] 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 occurrence report 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.

[86] 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.

[87] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²² The IPC may not, however, substitute its own discretion for that of the institution.²³

Representations, analysis and findings

[88] The police submit that they did not exercise their discretion in bad faith or for an improper purpose. The police also submit that in responding to the access request, they balanced the requester's right of access with the privacy rights of other individuals, as mandated by the *Act*. The police indicate that they relied on a number of factors when exercising their discretion to withhold the information, including but not limited to the purposes of the *Act*, the nature of the institution, and the nature of the information and its relationship with the institution.

[89] The appellant does not specifically address the police's exercise of discretion in her representations, but repeatedly states that she believes that the police have acted unfairly and are telling falsehoods to cover up their own misbehaviour.

[90] I have reviewed the considerations relied upon by the police and find that they properly exercised their discretion in withholding portions of the report under section 38(b). Based on the police's representations, I am satisfied 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 party's privacy when making their decision.

²² Order MO-1573.

²³ Section 43(2) of the *Act*.

[91] 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 under section 38(b).

ORDER:

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

Original Signed by: _____
Anda Wang
Adjudicator

September 30, 2025