

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4771

Appeal MA24-00451

Peel Regional Police Services Board

February 25, 2026

Summary: An individual made a request to the Peel Regional Police Services Board under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to two police incidents.

The police granted partial access to the responsive records, withholding some information under exemptions, including under the personal privacy exemptions at sections 38(b) and 14(1) of the *Act*.

In this order, the adjudicator finds that disclosure of the withheld information would be an unjustified invasion of personal privacy and that it is exempt under discretionary exemption at 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, and 38(b).

OVERVIEW:

[1] The appellant made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Peel Regional Police Services Board (the police) for records relating to two incidents in which he was involved, including field notes and incident reports.

[2] The police located responsive records and issued a decision granting access to

them in part. The police withheld some information pursuant to the personal privacy exemptions at sections 38(b) and 14(1) as well as the law enforcement exemptions at sections 8(1)(g) (intelligence information) and (l)(facilitate commission of an unlawful act) of the *Act*. The police also withheld some information on the basis that it is not responsive to the request.

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

[4] During mediation, the appellant confirmed that he seeks access to the information the police withheld under the personal privacy exemptions. However, he advised that he is not pursuing access to the portions of the records deemed to be non-responsive, nor to the portions severed pursuant to the law enforcement exemptions. Accordingly, the information the police withheld under sections 38(a), sections 8(1)(g) and (l), as well as the information it claims are not responsive to the request, are not before me in this appeal.

[5] As the matter was not resolved at mediation, the file was moved to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry.

[6] An IPC adjudicator conducted an inquiry and obtained representations from the police and the appellant. The appeal was then reassigned to me. After reviewing the appellant's and the police's representations, and the records at issue, I determined that I did not require further representations before making my decision.

[7] In this order, I uphold the police's decision to withhold portions of the records under section 38(b) as their disclosure would be an unjustified invasion of the personal privacy of an identifiable individual other than the appellant. I dismiss the appeal.

RECORDS:

[8] The records consist of police incident reports and officers' notes. The information at issue is the information severed from pages 5, 8, and 12 of the records.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Should the police's exercise of discretion under section 38(b) be upheld?

DISCUSSION:

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

[9] To determine which section of the *Act* applies, I must first determine whether the record contains “personal information” and, if so, whose personal information. If the record contains the appellant’s personal information, their access rights are greater than if they do not.¹ Also, if the record contains the personal information of other identifiable individuals, one of the personal privacy exemptions might apply.²

[10] “Personal information” is defined in section 2(1) of the *Act*, which states, in part:

“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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(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;

[11] The list of examples of personal information set out in section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.³

[12] To qualify as personal information, it must be reasonable to expect that an

¹ 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.

² Sections 49(b) and 21(1), discussed below.

³ Order 11.

individual may be identified if the information is disclosed.⁴

[13] The police submit that the information at issue contains the personal information of the appellant and other identifiable individuals.

[14] The appellant did not make submissions on this point.

[15] Based on my review of the records at issue, I find that they contain the personal information of the appellant and other identifiable individuals, including their sex, marital status, address, and history, along with other information about them. This personal information fits within paragraphs (a), (b), (d), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

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

[16] The police applied both the mandatory personal privacy exemption under section 14(1) and the discretionary personal privacy exemption under section 38(b) to withhold some of the information at issue from the records.

[17] Previous IPC orders have established that where a record contains both the personal information of the requester and another individual, or individuals as in this case, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b).⁵ Some exemptions, including the personal privacy exemption, are mandatory under Part I (section 14(1)), but discretionary under Part II (section 38(b)), so that in the latter case, an institution may disclose information under Part II that it would not disclose if Part I is applied.⁶

[18] Former Commissioner Brian Beamish wrote in Order PO-3129 that the correct approach is to review the entire record, and not only those portions at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole, rather than only certain portions of it, must be reviewed under Part I or Part II of the *Act*.⁷

[19] Applying a record-by-record approach, I find that the appropriate exemption to be applied is the discretionary exemption at section 38(b). This is because, as set out above, I have found that all of the records at issue (that is, the records containing the withheld information the appellant seeks) contain both the personal information of the appellant and another identifiable individual.

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

⁵ Order M-352.

⁶ Orders MO-1757-I and MO-2237.

⁷ Order M-352.

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

[20] 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.

[21] Under section 38(b), where 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. However, since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information. In determining whether disclosure would be an unjustified invasion of the other individual's personal privacy, the institution must weigh the appellant's right of access to her own personal information against the other individual's right to the protection of their privacy.

Sections 14(1) and (4) do not apply

[22] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 38(b). Similarly, if any of the situations in section 14(4) apply, disclosure would not be an unjustified invasion of personal privacy under 38(b).

[23] Neither party claims that the withheld information fits within any of the section 14(1) exceptions or that any of the situations in section 14(4) apply. Having reviewed the records, I find that none of the exceptions listed in section 14(1)(a) to (e) and none of the situations set out in section 14(4) apply in the circumstances before me.

[24] Sections 14(2) and (3) also help in deciding 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 is not exhaustive, and the institution must also consider circumstances that are relevant, even if they are not listed under section 14(2).⁹

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

⁸ Order P-239.

⁹ Order P-99.

of the parties.¹⁰

Presumed invasion of privacy under section 14(3)

[26] The police submit that the affected parties' information was compiled during an investigation into allegations of possible violation(s) of law. As a result, the police say that disclosure is presumed to be an unjustified invasion of the affected parties' personal privacy under section 14(3)(b) of the *Act*. The appellant did not make any submissions on this point.

[27] 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, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation[.]

[28] I find that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law. The record was created after the appellant contacted the police for help. The police responded to the appellant's report of being stalked by another individual, and to his request for police assistance. The police began an investigation into allegations that could have resulted in criminal charges. It is immaterial that no charges were laid, because the presumption only requires that there be an investigation into a possible violation of law.¹¹

[29] As a result, I find that the presumption against disclosure in section 14(3)(b) applies and that disclosure of the information at issue is presumed to constitute an unjustified invasion of the affected parties' personal privacy.

Section 14(2) factors weigh against disclosure

[30] The police submit that only the factors in section 14(2)(f) and (h) apply in the circumstances, both of which weigh against disclosure of the affected party's personal information. The appellant did not make submissions on the section 14(2) factors.

[31] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether the personal information is highly sensitive.

[32] To be considered highly sensitive, there must be a reasonable expectation of

¹⁰ Order MO-2954.

¹¹ Orders P-242 and MO-2235.

significant personal distress if the information is disclosed.¹²

[33] The police say that the information in the record is highly sensitive because it was compiled in the context of police investigations and its disclosure could result in distress to the individuals about whom the information relates.

[34] I disagree with the police's submissions on this point. The specific information at issue in this particular appeal – that is, the information withheld at pages 5, 8 and 12 of the records – is not *highly* personal per se, and given its content I find it is unlikely to cause *significant* distress to the individual about whom it relates. Given the particular circumstances of this appeal and the nature of the specific information at issue, I find that the factor at section 14(2)(f), while relevant, does not on the whole weigh heavily against disclosure.

[35] 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 would be treated confidentially and that this expectation is reasonable in the circumstances. As such, section 14(2)(h) requires an objective assessment of the reasonableness of the expectation of confidentiality.¹³

[36] I find that this factor applies in the circumstances and weighs against disclosure. I find that the context and surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied to the police by the individuals identified in the records, including the affected party, would be subject to a degree of confidentiality. Accordingly, I find that in the context of this appeal, the factor at section 14(2)(h) is a relevant consideration that weighs against disclosure.

[37] The appellant has not submitted that any other factors, either those listed in section 14(2) or unlisted, apply to weigh in favour of disclosure and I find that none do.

[38] Accordingly, for the reasons set out above, I find that the presumption in section 14(3)(b) and the factor in section 14(2)(h) apply to the information at issue and weigh against disclosure. I also find that no factors weighing in favour of disclosure apply.

[39] Having considered and weighed the factors and presumptions in sections 14(2) and (3), and having balanced the interests of the parties, I find that disclosure of the withheld information would constitute an unjustified invasion of the affected party's personal privacy under section 38(b).

Issue C: Should the police's exercise of discretion under section 38(b) be upheld?

[40] The section 38(b) exemption is discretionary and permits an institution to disclose

¹² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹³ Order PO-1670.

information despite the fact that the institution could withhold it. On appeal, I may determine if the police properly exercised their discretion in withholding the information at issue in this appeal.

[41] 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.

[42] The IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁴ The IPC may not, however, substitute its own discretion for that of the institution.¹⁵

[43] The police submit that they exercised their discretion under section 38(b) appropriately. The police say they reviewed, applied and weighed all the relevant considerations set out in section 14, as well as the parties' respective interests, the mandate to protect sensitive information, and the sensitive nature of the underlying investigations. The police further assert that it disclosed as much as the responsive records as possible with the result being that the appellant has received the vast majority of the requested records' contents. Finally, the police submit that they exercised their discretion in good faith, for a proper purpose, while only taking into account relevant considerations as set out in the *Act*.

[44] The appellant did not address the police's exercise of discretion.

[45] Having considered the parties' representations and the circumstances of this appeal, I find that the police did not err in their exercise of discretion with respect to their decision to deny access to the withheld personal information under section 38(b) of the *Act*. I am satisfied that the police considered relevant factors and did not consider any irrelevant factors in their exercise of discretion. It is evident that the police considered the fact that the records contain the appellant's own personal information, and that the police disclosed as much of the records as they could to him. I find that the police properly weighed the appellant's access rights against the affected party's right to privacy. There is no evidence before me that the police acted in bad faith.

[46] Accordingly, I find that, in applying section 38(b) to withhold the information at issue, the police exercised their discretion in an appropriate manner, and I uphold it.

¹⁴ Order MO-1573.

¹⁵ Section 43(2) of the *Act*.

ORDER:

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

Original Signed by: _____
Tamara Henderson
Adjudicator

_____ February 25, 2026