Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3020

Appeal PA10-179

Ministry of Community Safety and Correctional Services

December 9, 2011

Summary: The appellant sought access to records relating to an accident in which he was involved that had been investigated by the OPP. The ministry granted access to most of the information contained in the responsive records but denied access to "ten code" information and personal information of the appellant, two affected parties and the investigating officer on the basis of sections 49(a) and 49(b). The ministry's decision to deny access to the withheld portions of the records was upheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1), 14(1)(l), 21(2)(d), 21(2)(e), 21(2)(f), 21(3)(b), 49(a), 49(b).

Orders Considered: P-1282, PO-2066, PO-2282, PO-2563.

OVERVIEW:

[1] This order disposes of the issues raised from an appeal of an access request made to the Ministry of Community and Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant sought access to a complete copy of an investigating officer's notes in relation to a snowmobile accident in which he was involved.

[2] The ministry identified a police officer's notes as being responsive to the request and granted partial access to them. The ministry relied on sections 49(a) (discretion to refuse to disclose requester's own information), in conjunction with section 14(1)(l)

(facilitate commission of an unlawful act) with respect to the OPP's "ten code" information and section 49(b) (personal privacy) with respect to personal information to deny access to portions of the records. The ministry also took the position that other portions of the notes were not responsive to the request.

[3] The requester (now the appellant) appealed the decision to this office.

[4] During the mediation of the appeal, four persons whose interests might be affected (the affected parties) by the release of the records were contacted by this office, seeking their position on disclosure. One affected party provided their consent, which the mediator then provided to the ministry. The ministry subsequently issued a second decision letter disclosing additional information relating to the consenting affected party to the appellant. The appellant also advised that access was no longer being sought to the name and contact information of one of the three affected parties who did not consent to the disclosure of their information. Therefore, that individual's name and contact information is no longer at issue in this appeal and will not be referred to again in this order. In addition, the appellant advised that he still sought access to all of the remaining information that was withheld, including the information identified by the ministry as being non-responsive to the request.

[5] Mediation did not resolve the appeal and it was then moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. The adjudicator assigned to this appeal commenced the inquiry by seeking representations from the ministry and the three affected parties who had not previously provided their consent to the disclosure of their information. Only the ministry provided responding representations, which included a third decision letter setting out that, after a further review of the record, the ministry reconsidered its initial position and decided to disclose additional information to the appellant. The adjudicator also sought and received representations from the appellant, which were shared with the ministry in accordance with the IPC's *Practice Direction 7*.

[6] Following its receipt of the appellant's representations, the ministry issued a fourth decision letter, granting further access to information contained in the police officer's notes. In addition, at this time the ministry granted access to records that were the subject matter of a separate access request for witness statements and notified the appellant of his right to appeal that decision to this office. The appellant's representative subsequently wrote to this office, advising that he wished to appeal the ministry's decision in regard to the witness statements. The appellant also asked the adjudicator to rely on the representations submitted in this appeal for all of the outstanding issues respecting both requests. Accordingly, scope of the appeal was added as an issue.

[7] The appeal was then transferred to me to make a final disposition. For the reasons that follow, I uphold the ministry's decision and dismiss the appeal.

RECORD:

[8] The information at issue consists of the withheld portions of 9 pages of a police officer's notes.

ISSUES:

Issue A: What is the scope of the appeal?

Issue B: Are portions of the records not responsive to the request?

Issue C: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

Issue D: Does the discretionary exemption at section 49(b) apply to the information at issue?

Issue E: Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) exemption, apply to the information at issue?

Issue F: Did the institution exercise its discretion under sections 49(a) and (b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: What is the scope of the appeal?

[9] The appellant's initial request to the ministry was for access to "a complete copy of the investigating officer's notes" with respect to the appellant. The ministry located responsive records and responded to the request by way of a decision letter. The appellant subsequently appealed the ministry's decision to the IPC. When the matter moved to the adjudication stage of the process, the adjudicator initially assigned to this appeal sought and received representations on the issues raised on appeal from the request for the police officer's notes.

[10] After the adjudicator received representations from the parties, the ministry issued a fourth decision letter, granting further access to the records at issue in this appeal and also granting partial access to records relating to a separate request made by the appellant for access to witness statements. The ministry also provided this office with a copy of its decision letter respecting access to the witness statements. The appellant then advised the IPC that he wished to include the ministry's decision respecting the separate request for witness statements in this appeal and that the adjudicator could rely on the representations submitted in this appeal.

[11] However, no further steps were taken by any party or this office to incorporate the issues arising from the second request into this appeal. Accordingly, I find that this appeal and order are limited to the issues raised as a result of the original request, which was for access to the investigating police officer's notes only.

Issue B: Are portions of the records not responsive to the request?

[12] In its representations, the ministry submits that there is non-responsive information on pages 1, 7, 8 and 9 of the notes. The information on page 1, the ministry argues, concerns other law enforcement activities that do not relate to the investigation of the accident involving the appellant. The information on page 7 (lines 29 to 31) is administrative information concerning the conclusion of the investigating officer's shift and does not concern the appellant or the accident in which he was involved. Similarly, the ministry states that there is non-responsive information on pages 8 (lines 1 to 6) and 9 (lines 8 to 31), which concerns other law enforcement incidents and administrative work undertaken by the officer that is unrelated to the appellant or the accident in which he was involved.

[13] I have reviewed the records and I agree that the portions described above do not relate to the appellant in any way or to the accident in which he was involved. Therefore, I find that these portions fall outside of the scope of the request and this appeal as they are not responsive to the request, as submitted.

Issue C: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[14] In order to determine whether sections 49(a) or (b) of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. The ministry relies on paragraphs (a), (b), (d), (e), (g) and (h) of the definition of personal information in section 2(1) of the *Act*, which state:

> "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,
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> . . .
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (e) the personal opinions or views of the individual except if they relate to another individual,
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> . . .
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where 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;

[15] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

[16] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

[18] The ministry submits that the information remaining at issue consists of the type of personal information listed above and that it relates to the appellant and the affected parties. In addition, the ministry submits that the information withheld at lines 18 and 19 of page 4 of the records qualifies as the investigating officer's personal information.

[19] The appellant is involved in civil litigation as a result of the snowmobile accident that forms the subject matter of the record. The appellant submits that an individual's name, their "identity", is not statutorily defined as "personal information" despite the fact that this information has been found to quality as personal information and, therefore, subject to exemption under sections 21(1) and/or 49(b) in past orders. The appellant argues that this office may "carve out" a reasonable exception from its prior interpretation when adequate safeguards are offered and assumed by the requester. In particular, the appellant states that his counsel will protect the withheld information as if it were in this case governed by the deemed undertaking rule[1] under the Rules of Civil Procedure.

[20] In my view, the records contain personal information relating to the affected parties, the appellant and the investigating officer as defined in the *Act*. With respect to the affected parties, I find that the records contain more personal information of the affected parties than simply their names. In particular, one affected party's name appears with other personal information relating to that individual and falls within the ambit of paragraph (h) of the definition of that term in section 2(1). In addition, the records contain a second affected party's name, address and telephone number, which falls within the ambit of paragraph (d) of the definition of that term in section 2(1).

[21] In addition, I find that the records contain the personal information of the appellant, specifically, the views or opinions of the affected parties about the appellant, which falls within the ambit of paragraph (g) of the definition of that term in section 2(1).

[22] also find that the information at lines 18 and 19 on page 4 qualifies as the personal information of the investigating officer, as it reveals something of a personal nature about the officer, specifically, certain medical information, which falls within the ambit of paragraph (b) of the definition of that term in section 2(1).

[23] I will consider the appellant's argument with respect to the deemed undertaking rule in my analysis under section 49(b).

[1] Rule 30.1 of the Rules of Civil Procedure.

Issue D: Does the discretionary exemption at section 49(b) apply to the information at issue?

[24] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access, including section 49(b). Section 49(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the ministry must look at the information and weigh the appellant's right of access to his own personal information against the affected parties' right to the protection of their privacy. If the ministry determines that release of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 49(b) gives the ministry the discretion to deny access to the appellant's personal information.

[25] In determining whether the exemption in section 49(b) applies, sections 21(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 21(2) provides some criteria for the ministry to consider in making this determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy under section 49(b).

[26] The ministry argues that disclosure of the remaining personal information would constitute an unjustified invasion of the privacy of other individuals. In reaching this conclusion, the ministry states that the relevant factors, presumptions and exceptions in sections 21(2), (3) and (4) were reviewed. The ministry relies on the factor in section 21(2)(f) and the presumption in section 21(3)(b) of the *Act* to deny access to the personal information contained in the records.

[27] Section 21(3)(b) of the *Act* states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
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> . . .
>
> 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] The ministry states that the withheld personal information documents and describes the law enforcement investigation undertaken by the OPP into the accident involving the appellant. The ministry argues that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, in this case the *Criminal Code* or the *Motorized Snow Machines Act.* As noted on page 8 of the records, the ministry argues, the appellant was investigated for a possible impaired driving offence and was ultimately charged under the *Motorized Snow Machines Act*.

[29] Section 21(2)(f) of the *Act* states:

> 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,
>
> . . .
>
> (f) the personal information is highly sensitive;
>
> . . .

[30] The ministry is of the view that the remaining personal information is highly sensitive, as it relates to certain sensitive information provided by witnesses during the course of a law enforcement investigation, which, if disclosed, would cause excessive personal distress to these individuals. Therefore, the ministry submits that the factor set out in section 21(2)(f) is a relevant consideration favouring non-disclosure of the withheld personal information.

[31] The appellant submits that the factors weighing in favour of disclosure at sections 21(2)(d) and 21(2)(e) are applicable. These sections state:

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

> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> . . .

[32] With respect to the factor at section 21(2)(d), the appellant states that he is involved in civil litigation as a result of the accident and must locate and prepare witnesses in advance of the trial. The appellant argues that the denial of access to the withheld information will also deny him a "fair determination of rights" in the civil case as he requires the withheld information to conduct his legal action.

[33] With respect to the factor at section 21(2)(e), the appellant submits that the information in the records relates to himself as much as it does the affected parties. The appellant argues that he will be exposed unfairly to pecuniary harm if the identities of the "hidden witnesses" are not disclosed to him.

[34] The appellant also submits that if the withheld information is disclosed to him, the confidentiality and privacy of the witnesses' identities will be fully protected, as the request for disclosure was made by legal counsel collecting information for the purposes of litigation and, therefore, the deemed undertaking rule applies. The appellant also states that the deemed undertaking rule ends if the information is disclosed in court and forms part of the court's record. In support of his position, the appellant provided a copy of a decision issued by the Supreme Court of Canada,[2] which emphasized the "robust nature" of the protection afforded by the deemed undertaking rule.

[35] In reply, the ministry states that section 64 of the *Act* states that the *Act* does not impose any limitation on the information otherwise available by law in litigation, does not affect the power of a court or tribunal to compel production of a document and provides that access may be considered under two separate regimes,[3] access requests made under the *Act* and the disclosure requirements of civil litigation.

[36] In sur-reply, the appellant states that the legislature did not intend section 64 of the *Act* to obstruct the disclosure needed by civil litigants and that disclosure should be allowed where counsel for the requester makes an undertaking to treat the identity and statements of witnesses disclosed under the *Act* as if they were governed by the deemed undertaking rule.

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[2] *Doucette (Litigation Guardian of) v. Wee Watch Day Care Systems Inc.* [2008] 1 S.C.R. 157.
[3] Order PO-2066.

Analysis and findings

[37] I have carefully reviewed the withheld portions of the records. I note that most of the information contained in the responsive records has been disclosed to the appellant, and that the withheld portions consist of brief severances to the records comprised of the personal information of the affected parties, the appellant, the investigating officer and police "ten" codes. I find that disclosure of the severed portions of the records would reveal the identity of the affected persons to whom this personal information relates.

[38] The portions of the records which the ministry claims qualify for exemption under section 49(b) include the name, address, telephone number and brief statements made by one affected party and other personal information about another affected party and the investigating officer.

[39] It is clear that the records at issue in this appeal were compiled by the OPP in the course of its investigation of the snowmobile accident involving the appellant. On the basis of the representations provided by the ministry, I am satisfied that the personal information remaining at issue was compiled and is identifiable as part of the police investigation into a possible violation of law, and that it falls within the ambit of the presumption in section 21(3)(b). I note that in Order P-1282, personal information compiled in the context of a snow mobile accident also met the requirements of the presumption at section 21(3)(b). In addition, the presumption can also apply to a record created as part of a law enforcement investigation where charges are subsequently withdrawn,[4] which was the case with the appellant.

[40] Turning to the factor at section 21(2)(f) claimed by the ministry, I am satisfied that some of the personal information contained in pages 6 and 7 of the records is highly sensitive. In my view, there is a reasonable expectation that the disclosure of this information would cause significant personal distress to the affected parties. However, I do not find that section 21(2)(f) applies to the remaining portions of the withheld information.

[41] The appellant has raised the factors at sections 21(2)(d) and 21(2)(e) and claims that they favour disclosure of the information at issue. For section 21(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

[4] Orders MO-2213, PO-1849 and PO-2608.

(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.[5]

[42] I am satisfied that all of the above requirements have been met by the appellant because he is involved in an ongoing civil action concerning the accident, which is also the subject matter of the information contained in the records. In addition, I find that the information is required to assist in locating possible witnesses for trial. Therefore, I find that the factor at section 21(2)(d), which favours disclosure, applies.

[43] The appellant has also claimed section 21(2)(e) as a factor in favour of disclosure. In order for section 21(2)(e) to apply, the appellant must demonstrate that the damage or harm envisioned by the disclosure is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. The appellant argues that the *non-disclosure* of the information will cause him pecuniary harm. In my view, the appellant appears to misunderstand the evidentiary burden of this section. The harms described in section 21(2)(e) must result from the disclosure of the information, not the non-disclosure of the information. Therefore, this factor is not applicable in the circumstances of this appeal.

[44] Consequently, I find that the factor favouring disclosure in section 21(2)(d), as well as the presumption in section 21(3)(b) applies to all of the personal information at issue and the factor in section 21(2)(f) applies to some of the personal information. Balancing the factor favouring disclosure against the consideration in favour of privacy protection, along with the presumption in section 21(3)(b), I am satisfied that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties and the investigating officer. Accordingly, I find that the withheld portions of the records are exempt from disclosure under section 49(b), subject to my review of the ministry's exercise of discretion.

[5] 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.).

[45] I note that the appellant argued in his representations that the disclosure of the personal information at issue would not constitute an unjustified invasion of privacy because he would treat the information as if it were subject to the deemed undertaking rule in the Rules of Civil Procedure. The *Act* does not impose any limitations on subsequent use or disclosure of records that have been disclosed under the *Act*.[6] Consequently, I do not have the jurisdiction to make an order compelling an appellant to treat disclosed records as though subject to the deemed undertaking rule. In addition, if an exemption applies to a record, the record is not subject to disclosure notwithstanding any assurances or undertakings made by the recipient of the record that it will be treated confidentially.

Issue D: Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) exemption, apply to the information at issue?

[46] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[47] Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[48] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information [Order M-352].

[49] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[50] In this case, the institution relies on section 49(a) in conjunction with section 14(1)(l), which reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,

[6] Order PO-2282.

> . . .
>
> facilitate the commission of an unlawful act or hamper the control of crime.

[51] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[7]

[52] Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[8]

[53] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[9]

[54] The ministry submits that it has applied section 14(1)(l) to the "ten" codes contained in the records. Police "ten" codes are operational police codes that are used by Ontario Provincial Police (OPP) officers in their radio communications with each other and their detachments and provincial communication centres. The ministry states that the disclosure of the "ten" codes would compromise the effectiveness of police communications and jeopardize the safety and security of OPP officers.

[55] In particular, the ministry argues that the public disclosure of these operational police codes would leave police officers more vulnerable and compromise their ability to provide effective policing services. For example, if individuals engaged in illegal activities were monitoring police radio communications and had access to the meanings of the various police codes, it would be easier for them to carry out illegal activities and would jeopardize the safety of police officers. The ministry states that:

> Intimate knowledge of the whereabouts of a given officer and of the activities that he/she is involved with at any given time would be a powerful aid to individuals involved with criminal activities.

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[7] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[8] Order PO-2037, upheld on judicial review in Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner), [2003] O.J. No. 2182 (Div. Ct.), Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 (C.A.).

[9] Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

[56] The appellant submits that, as a result of the incident that is the subject matter of the record, he was charged, but that the charges were subsequently withdrawn. The appellant states that there are no outstanding matters of law enforcement, and that the ministry's section 14(1)(l) claim is without merit. The appellant also submits that this provision of the *Act* is not meant to protect investigations of lawful activities.

Analysis and findings

[57] The IPC has issued many orders regarding the release of police codes and has consistently found that section 14(1)(l) applies to "ten" codes.[10] These orders adopted the reasoning in Order PO-1665, where Adjudicator Laurel Cropley found:

> In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

[58] Similarly, Adjudicator Cropley found that the rationale and conclusions in that order continued to be applicable in Order PO-2563, where she stated:

> Moreover, given the difficulty of predicting future events in the law enforcement context and the nature of the information at issue, I find that the ministry provided "detailed and convincing" evidence to establish a "reasonable expectation of harm" with respect to the ten-codes, alerts, location and zone codes.

[59] I adopt Adjudicator Cropley's reasoning for purposes of this appeal with respect to the "ten" code information contained in the records. I conclude that the ministry has provided "detailed and convincing" evidence to establish a reasonable expectation of harm with respect to disclosure of the "ten" codes. Therefore, I find that the "ten" codes contained in the records qualify for the exemption under section 49(a), in conjunction with section 14(1)(l) of the *Act*.

Issue F: Did the institution exercise its discretion under sections 49(a) and (b)? If so, should this office uphold the exercise of discretion?

[60] The sections 49(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An

[10] See Orders M-93, M-757, MO-1715 and PO-1665.

institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[61] In addition, the Commissioner may find that the 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
- it fails to take into account relevant considerations.

[62] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[63] The ministry submits that, in exercising its discretion, it took into consideration the purposes and objects of the *Act*, and that it considers each request on an individual, case-by-case basis. In this appeal, the ministry states that it decided to exercise its discretion to release a substantial portion of the requested information to the appellant, including issuing subsequent decision letters with further disclosure each time.

[64] The ministry also submits that it carefully weighed the appellant's right of access against the privacy right of the affected parties, taking into consideration the relationship between the appellant and the affected parties and the lack of consent on the part of two of these individuals.

[65] The ministry states that its historic practice in regard to requests for access to accident reports is to release as much information as possible. In this case, the only information withheld was the police's "ten" codes and personal information relating to the affected parties.

[66] In the exercise of discretion, the ministry argues, it carefully considered the potential benefits to the requester should additional information be disclosed. The ministry is satisfied that the information remaining at issue is subject to the presumption in section 21(3)(b) of the *Act*, as it was compiled and identifiable as part of an investigation into a possible violation of law or consists of the police's "ten" codes. The ministry ultimately concluded that further release of information is not possible as the personal information remaining at issue relates to individuals who declined to provide consent to the disclosure of their personal information and also due to the "intertwined" manner in which the personal information was recorded.

[67] The appellant submits that he is in the best position to determine whether the withheld information is of importance to the civil litigation arising from the accident.

[68] I have reviewed the circumstances surrounding this appeal and the ministry's representations on the manner in which it exercised its discretion. I note that much of the information in the records was disclosed to the appellant by way of four decision letters with further information disclosed each time. Only very small portions of the records were withheld. Accordingly, I am satisfied that the ministry did not err in the exercise of its discretion not to disclose the remaining information contained in the records.

[69] Accordingly, I find that the withheld portions of the records qualify for exemption under sections 49(a) and 49(b) of the *Act*.

ORDER:

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

Original Signed by: December 9, 2011
Cathy Hamilton
Adjudicator