Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3013

Appeal PA11-106

Ministry of Community Safety and Correctional Services

November 23, 2011

Summary: The appellant sought access to records relating to criminal investigations and offences in which he was involved. The ministry granted access to many of the responsive records and, on the basis of sections 49(b) and 49(a), in conjunction with numerous discretionary exemptions, denied access to certain records or portions of records. Some of the withheld information contains the personal information of identifiable affected parties, and qualifies for exemption under section 49(b). The other withheld information qualifies for exemption under section 49(a), in conjunction with sections 14(1)(c), (e) and (l) of the *Act*.

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

OVERVIEW:

[1] Following an investigation, the Ontario Provincial Police (the OPP) arrested and charged the appellant with certain criminal offences. The appellant subsequently made an access request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records, including video and audio records, relating to the identified offences.

[2] In response to the request, the ministry issued a decision letter in which it indicated that partial access was granted to the records. Access to portions of the responsive information was denied on the basis of the exemptions in sections 49(a)

(discretion to deny access to requester's own information), in conjunction with sections 14(1)(c), (l) and 14(2)(a) (law enforcement) and 15(b) (relations with other governments), as well as sections 49(b) and 21(1) (personal privacy) of the *Act*. In addition, access to some information contained in the records was denied as it was not responsive to the request.

[3] The appellant appealed the decision and, during mediation, he confirmed that he was not seeking access to non-responsive portions of the records, nor to the severed portions of a 911 audio recording. The appellant also took the position that there should be an audio recording of a statement provided by an affected party and, as a result, the reasonableness of the ministry's search was raised as an issue in this appeal.

[4] Mediation did not resolve the appeal, and it was transferred to the inquiry stage of the process.

[5] I sent a Notice of Inquiry to the ministry, initially. In addition, I decided to identify the possible application of the discretionary exemptions in section 14(1)(e) (endanger life or safety) and section 20 (danger to safety or health) as issues in this appeal. Accordingly, I invited the ministry to address the possible application of these exemptions as well.

[6] The ministry provided representations in response to the Notice of Inquiry, and also provided representations in support of the position that section 14(1)(e) and 20 apply. Furthermore, because a further search located an additional record, it took the position that the issue of whether the search was reasonable was no longer relevant in this appeal. I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the ministry's representations, to the appellant, who also provided representations to me.

[7] I note that the appellant's representations do not address the issue of the reasonableness of the ministry's search. Because the ministry located the additional record, and because the appellant has not addressed this issue in his representations, I will not review this issue further.

[8] In the discussion that follows, I find that some of the records contain the personal information of the appellant and other identified individuals, and qualifies for exemption under section 49(b). I also find that the other withheld information qualifies for exemption under section 49(a).

RECORDS:

[9] The records remaining at issue consist of the undisclosed portions of an Occurrence Summary, General Occurrence Report, Domestic Violence Supplementary

Report, Witness Statements, Police Officer's notes, a video statement and an audio statement.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1)?

B. Does the discretionary exemption at section 49(b) apply to the information?

C. Does the discretionary exemption at section 49(a) in conjunction with section 14(1)(c), (e) and/or (l) apply to the information?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1)?

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "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,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual

> that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (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 ministry states that the records at issue contain the personal information of the appellant as well as that of other identified individuals. They state:

> The ministry claims that almost all of the records contain personal information within the meaning of the definition in section 2 of [the *Act*]. The personal information includes names, addresses, phone numbers, images of individuals, and statements that individuals provided to the OPP….
>
> The ministry submits that due to the subject matter of the records (ie: a law enforcement investigation where the appellant and other affected parties know each other), severing information such as names and dates of birth would not serve to remove personal information from the records….

[12] The appellant does not directly address this issue, but his representations seem to support the view that the records contain both his personal information and that of other identifiable individuals.

[13] On my review of the records, I find that all of the records contain the personal information of the appellant, as they relate to incidents involving him, and reveal other personal information about him (paragraph (h) of the definition).

[14] I also find that many of the withheld records or portions of records (identified in more detail below) also contain the personal information of a number of other identifiable individuals, including their addresses and telephone numbers [paragraph (c)], their personal views and opinions [paragraph (e)], and their names, along with other personal information relating to them [paragraph (h)]. In some instances, this information includes brief personal information relating to named police officers, such as personal scheduling information and employment history information.

B. Does the discretionary exemption at section 49(b) apply to the information?

Preliminary matter

[15] I note that the ministry has not claimed section 49(b) for certain police codes or other information. In addition, there is some evidence that one of the affected parties consented to the disclosure of that affected party's information to the appellant, and much of this affected person's personal information has already been disclosed to the appellant. To the extent that the severances made to the records at issue contain police codes or other non-personal information, or contain only the personal information of the appellant and this affected party, I will not be reviewing the possible application of section 49(b) to this information, but will review this information under section 49(a), below.

Section 49(b)

[16] Section 49(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 persons' 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.

[17] 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).

Representations

[18] The ministry states that section 49(b) applies to the information remaining at issue. It also refers to the factor in section 21(2)(f) and the presumption in section 21(3)(b) in support of its decision.

[19] Section 21(2)(f) reads:

> 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,
>
> > the personal information is highly sensitive;

[20] The ministry states that this factor applies given the context in which the records were created, and that "any disclosure of the records could be expected to cause these individuals significant distress."

[21] Section 21(3)(b) reads:

> 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;

[22] The ministry states that it relies on this presumption because:

> All of the personal information that is being withheld was created because of an OPP investigation into a possible violation of law, where charges were considered under the *Criminal Code*.

[23] The appellant does not address this issue in his representations. However, he does identify the reasons why he believes he ought to have access to the withheld information, including his belief that the withheld information contained in the records was read to him by his lawyer. I will address this issue below in my discussion of the absurd result principle and the exercise of discretion

Findings

[24] I have carefully reviewed the withheld portions of the records for which the section 49(b) exemption is claimed. I note that many of the responsive records have been disclosed to the appellant, and that the withheld portions consist, for the most part, of brief severances to the records. As indicated above, all of the withheld portions of the records for which the section 49(b) exemption is claimed contain the personal information of identifiable individuals other than the appellant. Furthermore, disclosure of many of the severed portions of the records would reveal the identity of the affected persons to whom the information relates.

[25] The portions of the records which the ministry claims qualify for exemption under section 49(b) include the identity, address, telephone number and statements made by the affected parties.

[26] It is clear that the records at issue in this appeal were compiled by the OPP in the course of its investigation of the matter involving the appellant. On the basis of the representations provided by the ministry, I am satisfied that the personal information remaining at issue for which the section 49(b) exemption is claimed was compiled and is identifiable as part of the police investigation into a possible violation of law, and falls within the presumption in section 21(3)(b). In addition, I am satisfied that, because of the nature of the charges and the personal information contained in the withheld portions of the records, the personal information is highly sensitive.

[27] Because the factor in section 21(2)(f) and the presumption in section 21(3)(b) apply to the withheld information, I am satisfied that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties. More specifically, I find that the following information qualifies for exemption under section 49(b):

> page 1: the names, addresses, phone numbers and a date of birth of certain identified affected parties severed from this page
>
> page 3: a brief statement made by a named affected party
>
> page 4: two brief statements made by an affected party
>
> page 10: two brief severances containing references to two affected parties, and two brief severances containing the personal information of a named police officer
>
> page 11: six brief severances containing references to three affected parties, including brief statements and information about their actions
>
> page 12: one brief severance containing the personal information of a named police officer
>
> page 13: two references to an address
>
> page 14 (duplicated on page 30): three references to an address or information which may disclose an address
>
> page 15: one reference to an affected party (including an address) and two brief severances containing the personal information of a named police officer

page 16: one reference to an address

page 22: two references to an address

page 33: three references to an address

page 36: one reference to an address

page 41: one reference to an affected party and that affected party's address

pages 53 and 54: two brief references to an affected party and that affected party's address and other information

pages 55, 56 and 57: three severed portions which contain two addresses of affected persons, and statements made by the affected persons, as well as other personal information about them.

Page 59: three references to three affected persons

Page 63: one brief severance

The videotaped interview of an affected person

[28] Accordingly, I find that the withheld portions of the records listed above are exempt from disclosure under section 49(b) of the *Act*, subject to my discussion of the absurd result principle as well as my review of the ministry's exercise of discretion, below.

C. Does the discretionary exemption at section 49(a) in conjunction with section 14(1)(c), (e) and/or (l) apply to the information?

[29] Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

[30] The ministry takes the position that sections 14(1)(c), (e), (l), 14(2)(a), 15(b) and/or 20 apply to the records or portions of records remaining at issue. Because I have found that all of the records remaining at issue contain the personal information of the appellant, I will examine the application of these exemptions in the context of section 49(a). I will begin by reviewing the application of the exemptions in sections 14(1)(c), (e) and (l).

Sections 14(1)(c), (e) and (l)

[31] Sections 14(1)(c), (e) and (l) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[32] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* [1]].

[33] 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.[2]

[34] In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[3]

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

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[1] (1994), 19 O.R. (3d) 197 (Div. Ct.).

[2] See 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.).

[3] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

Law enforcement

[36] The term "law enforcement" is used in sections 14(1)(c) and (e), and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b)

[37] The ministry states:

> The Ministry initially claimed the exemptions in sections 14(l)(c), 14(1)(l) and 14(2)(a) for most of the records at issue in this appeal because they were created during an OPP investigation to determine whether a criminal offence was committed. The Ministry submits as a result that these records fit squarely within the definition of "law enforcement" as it is set out in [the *Act*]. The Ministry has also made submissions with respect to the exemption in section 14(1)(e) in response to the Notice of Inquiry.

[38] Previous orders have confirmed that the OPP is an agency which has the function of enforcing and regulating compliance with the law (see Order PO-2474). In this appeal, I am satisfied that the records at issue were prepared in the course of law enforcement.

Section 14(1)(c)

[39] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487].

[40] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

[41] The ministry submits that pages 8 and the withheld portions of pages 46-47 qualify for exemption under section 14(1)(c). It identifies that page 8 is a checklist of

risk factors used to assess the threat posed by domestic violence, and that pages 46 and 47 are an officer's notes with responses to the questions contained in the checklist. It then states:

> The checklist is currently in use by the OPP when investigating alleged domestic violence.
>
> The Ministry submits that the questions in the checklist are not in the public domain and that it is in the public interest that they not be. If the questions were publicized, individuals being questioned by the police might prepare for the questioning in advance, which might interfere with the answers being given and the integrity of an investigation.
>
> Similarly, the disclosure of the answers in pages 46 and 47 could reveal the questions contained in the checklist.
>
> In Order MO-1786, the IPC upheld the decision by the Ottawa Police to withhold investigative techniques and procedures that the police follow when attending a victim's residence to investigate an allegation of domestic assault. The Ministry submits that this same reasoning ought to apply to the records at issue in this appeal.

[42] The appellant does not address this issue in his representations.

[43] On my review of the ministry's representations and the information on pages 8 and 46-47 for which section 14(1)(c) is claimed, I find that the disclosure of the checklist of risk factors used to assess the threat posed by domestic violence could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. (see Order MO-1786). As a result, I find that this information qualifies for exemption under section 49(a) in conjunction with 14(1)(c), subject to my review of the absurd result principle and the ministry's exercise of discretion, below.

Section 14(1)(e)

[44] The ministry identifies that the records at issue in this appeal were created during an OPP investigation to determine whether a criminal offence was committed. It also refers to the fact that the Ontario Court of Appeal has drawn a distinction between the requirements for establishing the harms under section 14(1)(e), and the requirements for establishing the harms in the other parts of section 14.

[45] With respect to the specific application of section 14(1)(e) to the circumstances of this appeal, the ministry has provided confidential representations in support of its position that section 14(1)(e) applies to the portions of the records remaining at issue.

It also identifies its concern that if the records were to be released, potential victims of crime would lose confidence in the ability of police services such as the OPP to protect them. The ministry goes on to state that this could endanger the safety of such individuals, since they would hesitate to seek police protection, or might not seek it at all. The ministry also states that it is in the public interest for victims of crime to be able to turn to the police for assistance.

[46] The appellant has also provided representations in support of his position that this exemption ought not to apply.

Findings

[47] Previous orders have identified that, generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg*]. In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[4]

[48] As identified above, both the ministry and the appellant have provided representations on the application of section 14(1)(e) to the records. The ministry has also provided confidential representations in support of its position that section 14(1)(e) applies to the records, and also refers to the nature of the offences in support of its position that disclosure of the records could reasonably be expected to result in the harms identified in section 14(1)(e).

[49] In the circumstances of this appeal, and on my review of the representations of the parties and my review of the portions of the records at issue, I am satisfied that the evidence provided to me by the parties establishes a reasonable basis for believing that a person's safety could be endangered by disclosing the records. In particular, I find that this exemption applies to certain brief severances contained on pages 3, 4, 7, 10, 13, 16, 33-36, 55 and an audiotape of an interview.

[50] I also note that in a few of the severances made to the records, the ministry has also severed some snippets of information which may, separately, not qualify for exemption under section 14(1)(e) (for example, brief references on pages 1 and 10). The ministry has provided the appellant with much of the information relating exclusively to him, or that he was aware of, but has severed some information on the basis of the exemptions claimed. I find that there is some overlap in some items of information contained in the records which were disclosed by the ministry in one portion of the records, but not disclosed in another portion of the records. However, on

[4] See footnote 3.

my review of this information, I have decided that no useful purpose would be served in ordering disclosure of these snippets of information. Furthermore, as identified in previous orders, the ministry is not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets," or "worthless" or "meaningless" information.[5]

[51] Accordingly, I am satisfied that the records and portions of records identified above qualify for exemption under section 14(1)(e). As a result, I find that these records or portions of records are exempt under section 49(a), in conjunction with section 14(1)(e), subject to my review of the absurd result principle and the ministry's exercise of discretion, below.

Section 14(1)(l)

[52] The ministry takes the position that certain severed portions of the records fall within the scope of section 14(1)(l), which reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

[53] As section 14(1)(l) uses the words "could reasonably be expected to," the ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[6]

[54] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)]. However, it is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Representations

[55] The ministry takes the position that the disclosure of the operational police codes and some other information found on pages 1, 3, 4, 7, 8, 12, 13, 15, 16, 21, 22, 23, 24, 25, 26, 27, 29, 30, 33, 34, 35, 36, 41, 43, 44, 45, 46, 47, 48, 53, 55, and 58 would

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[5] See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 102 O.A.C. 71 (Div. Ct.).
[6] See footnote 2.

result in the harm contemplated by section 14(1)(l). It states that many of the pages contain police codes, and that a long line of previous orders of this office (including Order PO-2571) affirm that police codes qualify for an exemption under subsection 14(1)(l) because of the reasonable expectation of harm that would result from the release of this information. It also refers to its concern that the release of this information could facilitate the commission of an unlawful act. In addition, it states that the disclosure of these records could hamper the control of crime because the disclosure of sensitive details concerning the law enforcement investigation could set a precedent and thereby have a chilling effect on the ability of the OPP to conduct other law enforcement investigations.

[56] The appellant does not address this issue in his representations.

Findings

[57] A number of previous orders have found that police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm which may result from their release (see, for example, M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339). This includes 10-codes, as well as codes which reveal identifiable zones from which officers are dispatched for patrol and other law enforcement activities. In the circumstances of this appeal, I am satisfied that the ministry has provided sufficient evidence to establish that disclosure of the operational codes, found on the listed pages, could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[58] I find that the operational codes and other police code information severed from pages 1 (three severances), 12, 14, 21, 22, 27 (two severances), 29, 30, 33, 41, 47, 48 (two severances) and 58 are exempt under section 49(a), in conjunction with section 14(1)(l), subject to my review of the absurd result principle and the ministry's exercise of discretion, below.

Absurd result

[59] In this appeal, some of the severances from the records relate to incidents in which the appellant was present or involved in some way. In addition, the appellant states that his lawyer has reviewed the information and that his lawyer "has read all of this to him" so "it won't be anything new."

[60] Previous orders have determined that, where a requester originally supplied the information, or a requester is otherwise aware of it, the information may be found not exempt under section 49(b) and/or 21, because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

[61] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451, M-613]
- the requester was present when the information was provided to the institution [Order P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO- 1755]

[62] Previous orders have also stated that, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is in the requester's knowledge [Orders M-757, MO-1323, MO-1378].

[63] With respect to whether or not disclosure is consistent with the purpose of the section 21(3)(b) exemption, former Senior Adjudicator Goodis reviewed this issue in Order PO-2285. He stated:

> Although the appellant may well be aware of much, if not all, of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester.

[64] Senior Adjudicator Goodis went on to refer to the following excerpt from Order MO-1378:

> The appellant claims that [certain identified photographs] should not be found to be exempt because they have been disclosed in public court proceedings, and because he is in possession of either similar or identical photographs.
>
> In my view, whether or not the appellant is in possession of these or similar photographs, and whether or not they have been disclosed in court proceedings open to the public, the section 14(3)(b) presumption may still apply. In similar circumstances, this office stated in Order M-757:
>
> > Even though the agent or the appellant had previously received copies of [several listed records] through other processes, I find that the information withheld at this time is still subject to the presumption in section 14(3)(b) of the *Act*.
>
> In my view, this approach recognizes one of the two fundamental purposes of the *Act*, the protection of privacy of individuals [see section

> 1(b)], as well as the particular sensitivity inherent in records compiled in a law enforcement context. The appellant has not persuaded me that I should depart from this approach in the circumstances of this case.

[65] I adopt the approach taken to the absurd result principle set out above, as well as the approach taken by the Senior Adjudicator in Orders MO-1378 and PO-2285.

[66] In this appeal, the ministry takes the position that the absurd result principle does not apply to the records remaining at issue. It states that the appellant has been provided with his own personal information, or other information which can be severed without disclosing the personal information of other identifiable individuals. It also takes the position that, in the circumstances, disclosure of the records would lead to an outcome that the *Act* was enacted to prevent in the first place.

[67] The appellant states that his lawyer has read all of the information to him, and that he ought to have access to it, as it will not be new information for him.

[68] I have carefully reviewed the circumstances of this appeal, including 1) the specific records at issue, 2) the background to the creation of the records, 3) the significant amount of information that has been disclosed to the appellant, and the limited amount of information remaining at issue, 4) the nature of the exemption claims made for this information and, 5) the nature of the offences. I find that, in the circumstances, there is a particular sensitivity inherent in the information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act,* as identified by Senior Adjudicator Goodis in Order MO-1378 (including the protection of privacy of individuals, and the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, I find that the absurd result principle does not apply in this appeal.

Exercise of discretion

[69] The exemptions in sections 49(a) and 49(b) are discretionary and permit the ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

[70] The ministry made detailed submissions in support of its decision to exercise discretion not to disclose the information which is exempt under sections 49(a) and 49(b) to the appellant. It states:

> The Ministry submits it has exercised its discretion properly in not releasing the records that are the subject of this appeal. The Ministry notes that many of the responsive records were disclosed to the

> appellant, especially those containing his own personal information, and that those that the Ministry withheld are based on the following considerations:
>
> > (a) The public policy interest in protecting the privacy of personal information belonging to third parties, that is contained in law enforcement investigation records;
> >
> > (b) The public policy interest in protecting victims of crime; and
> >
> > (c) The concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the public cooperation that the OPP depend upon when they conduct law enforcement investigations.

[71] The ministry's representations were shared with the appellant, who did not provide representations on this issue.

[72] In considering all of the circumstances surrounding this appeal, I am satisfied that the ministry has taken the appropriate factors into consideration in exercising its discretion, and has not erred in the exercise of its discretion not to disclose the records under sections 49(a) and 49(b) of the *Act*.

[73] Having found that the records qualify for exemption under sections 49(a) and/or 49(b) of the *Act*, it is not necessary for me to also consider the possible application of the other exemptions claimed by the ministry, including sections 14(2)(a), 15 and 20.

ORDER:

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

Original Signed by: November 23, 2011
Frank DeVries
Adjudicator