Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3080

Appeal PA11-81

Ministry of Community Safety and Correctional Services

May 29, 2012

Summary: The appellant made a request to the ministry for all records relating to him while he was incarcerated at an identified correctional facility over a defined time period. The ministry provided partial access to the records, denying access to portions of them based on the exemptions in sections 49(b), 49(e) and 49(a) in conjunction with sections 14(1)(i), (j) and (k). The appellant appealed the ministry's decision and alleged that additional responsive records exist. The ministry's decision to deny access to the withheld records is upheld, and its search for responsive records is found to be reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1), 24, 49(b) and 49(e).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about the requester created while he was incarcerated in the Central East Correctional Centre (CECC). The request stated as follows:

> Requesting any and all security files, observation reports, security concerns and any other files that pertain to said inmate while he is housed

> at Central East Correctional Centre between [his admission date and the date of the request].

[2] The ministry responded to the request by issuing a decision in which it granted partial access to the responsive records. Access to portions of the responsive records was denied in accordance with the exemptions in section 49(b) (personal privacy), 49(e) (correctional records), and 49(a) (discretion to deny access to requester's own information), in conjunction with sections 14(1)(i), (j) and (k) and 14(2)(d) (law enforcement). The decision letter also indicated that portions of some records were considered non-responsive to the request and were not provided to the requester.

[3] The appellant appealed the decision.

[4] During mediation, the appellant stated that he believed that additional records ought to exist. The ministry then conducted an additional search for records and, as a result of this search, located 40 additional pages of records. The ministry issued a supplemental decision letter in which it granted partial access to the additional records, and denied access to portions of them on the basis of the exemptions in sections 14(2)(d), 49(a), 49(b) and 49(e) of the *Act*.

[5] In addition, the appellant maintained that an additional record, identified as an Offender Tracking Information Sheet (OTIS card) ought to exist, and that a purple sheet attached to this OTIS card ought to exist. The ministry confirmed that the OTIS card is a form that is created while an offender is incarcerated and that, attached to it, is a purple piece of paper called the Inmate Information Sheet. The ministry also confirmed that correctional officers make notes concerning an offender while he/she is in segregation but stated that, once the individual is released from segregation, the Inmate Information Sheet is destroyed. As a result, the ministry advised that the purple sheet of paper that the appellant referred to for the time period of his request no longer exists. In addition, the ministry advised that if the appellant is seeking a copy of the Inmate Information Sheet for a different time period than that covered by the request, he must make a new request for that information.

[6] With respect to the OTIS card, the ministry subsequently issued a further decision letter in which it granted partial access to the OTIS card, and denied access to portions of it on the basis of the exemptions in sections 49(b), 49(e), and 49(a), in conjunction with sections 14(1)(i), (j) and (k) and 14(2)(d). The letter also indicated that certain portions of this record were considered non-responsive to the request.

[7] The appellant confirmed that he wished to appeal the decision that no additional responsive records exist (including that no Inmate Information Sheet exists) for the time period covered by the request resulting in this appeal, and also that he wished to appeal the decision denying access to the remaining portions of the records. He also

indicated that he wished to appeal the decision that certain portions of the records were not responsive to the request.

[8] Mediation did not resolve this file, and it was transferred to the inquiry stage of the process where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the ministry, initially. The ministry provided representations in response. I then sent the Notice of Inquiry, along with a complete copy of the representations of the ministry, to the appellant, who also provided representations to me.

Preliminary matter

[9] As a preliminary matter, I note that the ministry has withheld brief portions of the records on the basis that they are not responsive to the request. These portions include the CECC office fax numbers on pages 80-84 to which the records were faxed during the appeal process, and certain staff shift hours on pages 23-25. The ministry refers to the wording of the request in support of its position that these records are not responsive. The appellant does not address the responsiveness issue, but states that information of this nature is "public knowledge." In the circumstances, I will not review issues regarding access to these brief portions of records in this order. As the brief portions of pages 81 and 82 were the only withheld portions of those two pages, those two pages are no longer at issue in this appeal.

RECORDS:

[10] The records at issue consist of the withheld pages or portions of pages 1-9, 12, 14-16, 18-30, 35-38, 52, 55, 68-70, 72, 80, 83 and 84. They consist of Offender Incident Reports, Observation Records, Segregation Decision/Review Forms, statements and photographs, as well as other occurrence reports and the withheld portions of the OTIS card.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1)?
B. Does the mandatory exemption in section 21(1) or the discretionary exemption in section 49(b) apply to the records?
C. Does the discretionary exemption in section 49(e) apply to the portions of records for which it is claimed?
D. Was the ministry's exercise of discretion proper?
E. Was the ministry's search for responsive records reasonable?

DISCUSSION:

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

[11] 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 if they relate to another individual,
> >
> > (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.

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[1]

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

[13] The ministry submits that the records contain the personal information of the appellant, as well as the personal information of other identifiable individuals. It states:

> The Ministry has located a number of records that contain personal information of individuals other than [the appellant], as defined in [the *Act*]. …
>
> The personal information in the records mostly describes alleged violence between [the appellant] and other inmates. The records include photographs, statements provided by other inmates, written observations of other inmates by Ministry staff, and numeric identifiers assigned to inmates.
>
> Page 19 of the records is different from the others as it contains a cell location sheet with personal information about each inmate inhabiting the wing of the unit nearest to where [the appellant] resided. Page 84 also differs as it contains personal information belonging to a victim.
>
> The [appellant] knows the other inmates whose personal information has been exempted. The Ministry submits therefore that the release of any personal information belonging to other inmates could identify them, even if identifying information such as their names was withheld.

[14] The appellant appears to accept that portions of the records may contain the personal information of other identifiable individuals, but states that those portions could be "blacked out" from the file, and the remaining portions disclosed. He also identifies some of the reasons why he is requesting this information.

[15] To begin, I find that many of the records at issue contain the personal information of the appellant. The request was for records that pertain to him, and many of the responsive records clearly contain his personal information, as they include his name along with other personal information relating to him.

[16] Some of the records, however, only relate to other identifiable individuals, and do not contain the personal information of the appellant. Applying a record-by-record analysis,[2] I find that records 7-9 and 35-38 contain only the personal information of identifiable individuals other than the appellant, and do not contain the appellant's personal information.

[17] With respect to the records that contain the personal information of the appellant, based on my review of them, I find that the withheld portions of records 2, 3, 4, 6, 12-16, 18-30, 68-70, 72, 80, and 84 also contain the personal information of

[2] See Order M-352.

identifiable individuals other than the appellant. As indicated by the ministry, this information includes the names and identifiers of other individuals, as well as information concerning activities these other individuals are engaged in. Furthermore, although some of the information does not name these other individuals, I am satisfied that, given the nature of the information, it is reasonable to expect that these individuals may be identified if the information is disclosed. Accordingly, I find that this information qualifies as the personal information of identifiable individuals under paragraphs (c) and (h) of the definition in section 2(1).

[18] Lastly, with respect to the appellant's position that the personal information of identifiable individuals could be "blacked out" and the remaining information disclosed, on my review of the portions of records remaining at issue, I accept the ministry's position that the release of information belonging to other inmates could identify them, even if identifying information such as their names is withheld. I also note that the ministry has largely disclosed to the appellant the information that relates exclusively to him, and has severed out information that belongs primarily to other identifiable individuals. I review these severances, and the possible application of section 49(b) to them, below.

[19] Because records 7-9 and 35-38 contain only the personal information of identifiable individuals other than the appellant, I will review the application of the mandatory exemption in section 21(1) to these records.

[20] With respect to the records that contain the personal information of the appellant and other identifiable individuals, I will consider whether the discretionary exemption in section 49(b) applies.

[21] I note that the ministry has claimed the application of several exemptions to a number of the records or portions of records remaining at issue. I will review these exemptions below; however, if I find that an exemption claim applies to a record, I will not consider it under the alternate exemption claims made for the same record.

B. Does the mandatory exemption in section 21(1) or the discretionary exemption in section 49(b) apply to the records?

[22] 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 exemptions from this right.

[23] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Section 49(b) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where the disclosure would constitute an unjustified invasion of another individual's personal privacy

[24] If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[25] Under section 21, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy". Section 21(1)(f) reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

[26] In both section 49(b) and 21 situations, 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 individual'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).

[27] The ministry submits that the disclosure of the information of other identifiable individuals would constitute an unjustified invasion of the personal privacy of the other individuals. The ministry refers to the factor in section 21(2)(f), as well as other factors, in support of its decision. 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;

[28] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[3]

[29] The ministry states it has:

> … claimed that the release of personal information in the records would create an unjustified invasion of the personal privacy belonging to other inmates or a victim, because the personal information is "highly sensitive". The Ministry has withheld the personal information in the records in accordance with section 21(2)(f) of [the *Act*].
>
> The Ministry submits that the release of personal information could be expected to be highly distressing given the fact that the personal information is contained in correctional records about incarcerated individuals (as well as a victim), … and most of the correctional records have been created in the context of alleged violence.

[30] In support of its position that this factor applies, the ministry refers to the decision in Order P-597, and states:

> … the adjudicator found in applying section 21(2)(f) that the fact that the confirmation that an individual had been detained at a Ministry detention centre "could cause to that individual extreme personal distress." The Ministry submits that the records at issue in this appeal not only confirm the detention of various inmates at the CECC, but are even more sensitive because of the context in which most of them were created, which involves alleged violence. The Ministry submits that the reasoning in Order P-597 ought to be applied to this appeal.

[31] The ministry also refers to the following factors in support of its decision to apply section 49(b) to portions of records at issue:

> The Ministry is concerned that the disclosure of these records would interfere with efforts by the inmates named in the records to reintegrate into society. Individuals who are incarcerated often must spend the rest of their lives shedding the stigma of having been an inmate. The Ministry believes that these inmates may never be able to shed this stigma, if their personal information is disclosed and is then posted or disseminated via the Internet in perpetuity. The Ministry is obviously deeply concerned about the disclosure of any personal information belonging to a victim of crime.

[3] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[32] The ministry further submits that:

> … inmates and the victim have little practical choice but to have their personal information captured in Ministry records, as part of the statutory responsibilities that the Ministry has for administering correctional institutions.

[33] The ministry submits that the absurd result principle does not apply to any of the records at issue, given that the information was not provided by the appellant.

[34] The appellant argues that he ought to have access to the withheld information. In his representations, he takes the position that the withheld information relates to him, and that he ought to have access to "any negative, false accusations that [he] has been accused of." He also identifies concerns he has about the investigations which resulted from the incidents described in the records, and states that the information in the records has affected his personal well-being, as it has restricted his ability to obtain certain work positions within the correctional facility. He also states that individuals ought to have the ability to defend themselves against allegations made against them. Furthermore, the appellant argues that individuals who make allegations would expect those allegations to be made public, and would not have the expectation of confidentiality. He refers to orders MO-1196, PO-1679 and MO-1755 in support of this position.

[35] In addition, the appellant argues that fairness dictates that he ought to have access to information relating to him, or about incidents that involve him. Furthermore, he states that complainants or witnesses who speak to institutional officers about incidents should expect that their personal information will be disclosed when Freedom of Information requests are made for that information.

[36] He also specifically refers to pages 19 and 84, and that the personal information of others on these pages could have been "blacked out."

[37] The appellant also states that, as he is still in custody, he would not be able to disclose the records to others, as his mail is screened. He also states that any concerns about retaliation are addressed because "the ministry has enough safeguards put in place concerning any interference that it may have concerns of."

[38] Lastly, the appellant argues that the absurd result principle applies to the information, because statements made about him ought to be disclosed to him, and he again refers to orders MO-1196, PO-1679 and MO-1755.

Analysis and findings

[39] I have reviewed in detail the withheld records or portions of records which the ministry claims qualify for exemption.

[40] In the first place, I note that for many of the withheld records or portions of the records, the only information withheld from the appellant is names, photographs, descriptions, identifiers, as well as information relating specifically to other identifiable individuals, including information such as where they were relocated, and their criminal records. For some of the records, the withheld information includes statements made by identifiable individuals about incidents the appellant was involved in.

[41] On my review of the records and withheld portions of records, I make the findings set out below.

Pages 7, 8, 9, 35, 36, 37 and 38 (pages withheld in full)

[42] As indicated above, the records that constitute these pages contain only the personal information of identifiable individuals other than the appellant. This includes their name, address, photographs and other information relating to them. I find that this information is the highly sensitive personal information of individuals other than the appellant for the purpose of section 21(2)(f), and find that these records qualify for exemption under the mandatory exemption in section 21(1) as their disclosure would result in an unjustified invasion of these individuals' personal privacy.

Withheld portions of pages 4, 6, 15, 20, 23, 24, 30, 68, 69, 70, 72 and 80

[43] With respect to these pages of records, I note that most of the information contained on these pages was disclosed to the appellant. On these pages, only the names or other identifying information (ie: numbers) of other individuals was severed from the records, and this is the only information on these pages for which the exemption in section 49(b) was claimed.

[44] I find that the names or other identifying information of these individuals contained on these pages, which involve incidents occurring in a correctional facility, is highly sensitive personal information about these other individuals for the purposes of section 21(2)(f). I also find that there are no factors favouring the disclosure of these names and identifiers to the appellant. Accordingly, I find that this information qualifies for exemption under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion, below.

Pages 14 and 18 (withheld in full)

[45] The information on pages 14 and 18 is information which relates almost exclusively to an individual other than the appellant. Page 14 contains only a brief, incidental reference to the appellant. The reference to the appellant on page 18 is somewhat more detailed but, because of the nature of this record and its context (relating to another individual), the reference to the appellant is also incidental. On my review of these records, I am satisfied that, because of the nature of the information in them, and because the information relates to the named individual in a correctional facility, it is the highly sensitive personal information of this other individual, as contemplated by section 21(2)(f).

[46] Furthermore, on my review of the information that has been disclosed to the appellant, and the nature of that information, I find that there are no factors favouring the disclosure of any information on pages 14 and 18 to the appellant. Accordingly, I find that these records qualify for exemption under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion, below.

Withheld portion of page 19

[47] The record which comprises page 19 is a Correctional Centre Cell location sheet identifying by name the individuals in a list of cell numbers, and indicating additional information relating to these individuals (ie: diet, clothing size, etc.). The portion of this sheet containing the appellant's information was disclosed to him. The severed portion of this sheet relates only to other named individuals.

[48] Because of the nature of this information, including the fact that it identifies individuals in a correctional facility, I find that the names and other information of individuals other than the appellant contained on page 19 is the highly sensitive personal information of these other individuals under section 21(2)(f). I also find that there are no factors favouring the disclosure of these names to the appellant. Accordingly, I find that this information qualifies for exemption under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion, below.

Withheld portions of pages 2, 16 and 21

[49] With respect to these pages of records, I note that, again, most of the information contained in these pages was disclosed to the appellant. On these pages, only the names and other identifying information and/or criminal history of other individuals, as well as brief statements or notations by or about these other individuals was withheld.

[50] On my review of the brief portions of these pages which were withheld, I am satisfied that this information including the names, identifiers, or the brief bits of

information concerning the activities of these individuals which involve incidents occurring in a correctional facility, is the highly sensitive personal information of these other individuals for the purpose of section 21(2)(f). I also find that there are no factors favouring the disclosure of these bits of information to the appellant. Very little of this withheld information relates directly to the appellant and, to the extent that it does relate to him, it is of a very general nature, and is clearly known to him based on the disclosure that has been provided to him in other portions of the records. Accordingly, I find that this information qualifies for exemption under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion, below.

Absurd Result

[51] The appellant has asked that I consider the application of the absurd result principle in the circumstances of this appeal.

[52] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444 and MO-1323].

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

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

[54] 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 within the requester's knowledge.[4]

[55] Based on my review of the withheld information, I find that the absurd result principle does not apply to the records or portions of records withheld under section 49(b). Although I have found above that small bits of information relating to the appellant are known to him, based on the sensitivity of records of this nature and on the nature of the records, I find that the absurd result principle does not apply, as disclosure would be inconsistent with the purpose of the section 49(b) exemption.

[4] Orders M-757, MO-1323 and MO-1378.

C. Does the discretionary exemption in section 49(e) apply to the portions of records for which it is claimed?

[56] The ministry takes the position that the exemption in section 49(e) applies to pages or portions of pages 1, 3, 5, 12, 16, 18, 22, 26-30, 52, 55, 80, 83, and 84. Section 49(e) reads:

> A head may refuse to disclose to the individual to whom the personal information relates personal information,
>
> > that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence;

[57] Previous decisions have confirmed that "correctional records" may include both pre- and post-sentence records. To qualify for exemption under section 49(e), the ministry need only show that the records it seeks to protect are "correctional" records, the disclosure of which "could reasonably be expected to reveal information supplied in confidence". It does not have to go further and demonstrate, on detailed and convincing evidence, that a particular harm would result if the information were to be disclosed.[5]

[58] The ministry was asked to provide representations on whether the information which it claims qualifies for exemption under section 49(e) is contained in a correctional record, and whether the disclosure of the information could reasonably be expected to reveal information supplied in confidence. In response, the ministry states that the pages or portions of pages which it claims qualify under section 49(e) are correctional records for the following reasons:

> 1) The records were created by CECC, which is a Ministry operated correctional institution as that term is defined in the *Ministry of Correctional Services Act* (*MCSA*);
> 2) the records are about one or more inmates, as that term is defined in the *MCSA*; and
> 3) the records were created as part of the duties of the correctional institution.

[59] The ministry also submits that the disclosure of the records could reveal information provided in confidence, and states:

> … First, the source of the information is revealed either expressly or implicitly in the records. Second, it is obvious from reading the records

[5] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.).

> that they were provided in confidence by staff or by inmates, given the sensitivity of the information, and the fact they were created by the CECC for internal purposes. There is no suggestion whatsoever that anyone provided the information with the expectation that it would subsequently be disclosed to another inmate.

[60] The ministry also refers to Order PO-2462 and states that, in that order, "some of the same types of records, including Offender Incident Reports and Misconduct Reports were exempted pursuant to section 49(e)." The ministry then submits that this same reasoning ought to be applied to this appeal.

[61] The appellant responds to the ministry's position by again referring to the fact that names or identifiers of individuals could be "blacked out" from the records, and the remaining information could be disclosed. He also states that these records contain "false allegations" which the ministry did not properly investigate, and which have resulted in negative consequences for him. The appellant also argues that, regardless of which individual provided the information, the individual would have known that a request for the information could be made under the *Act*, and therefore the individual would not have had an expectation that the information would remain confidential.

Analysis and findings

[62] Based on my review of records 12, 26, 27 and 28 in their entirety, and the withheld portions of records 1, 3, 5, 22, 25, 29, 52, 55, 83 and 84, as well as on the representations of the ministry, I am satisfied that these records or portions of records constitute "correctional records."[6] In addition, I am satisfied that disclosure of the withheld information in these records or portions of records could reasonably be expected to reveal information supplied in confidence.

[63] Records 12, 26, 27, 28 and the withheld portion of record 5 clearly contain or discuss information supplied in confidence to and/or by correctional officials.

[64] The brief withheld portions of records 1, 22, 25, 52 and 55, and the more detailed withheld portions of pages 83 and 84 contain information provided by correctional officers and relate to internal correctional facility practices.

[65] The withheld portions of records 3 and 29 contain information provided to the Superintendent of the correctional facility and include brief information provided by an identifiable individual as well as information provided by a correctional officer that relates to internal correctional facility practices.

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[6] See *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, *supra*, for a discussion of the term "correctional records" as referenced in section 49(e).

[66] I am satisfied that disclosure of the withheld information in these records or portions of records, which I find are correctional records, could reasonably be expected to reveal information supplied in confidence.

[67] The finding that the records are correctional records and that disclosure of the withheld information could reasonably be expected to reveal information supplied in confidence is sufficient to establish that these records and portions of records qualify for exemption under section 49(e).[7] Accordingly, I conclude that these records and portions of records qualify for exemption under section 49(e).

D. Was the ministry's exercise of discretion proper?

[68] The sections 49(b) and (e) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[69] 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.

[70] 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)].

[71] In support of its position that it properly exercised its discretion to withhold the identified records or portions of records, the ministry states that it took into account the following considerations:

> (a) The disclosure of the severed records could reveal information that would put the security of a correctional institution and others like it at risk. The Ministry believes that disclosure of the records would be contrary to public expectations, as well as contrary to the public interest.

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[7] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, *supra*.

(b) The Ministry is concerned that any release of the records could result in widespread public dissemination through the Internet, and the Ministry does not want this to happen, especially where it could result in further stigmatization of inmates or unwanted publicity for a victim.

(c) The Ministry believes that the release of personal information is an unjustified invasion of the privacy of individuals, including a victim.

[72] The appellant does not directly address this issue; however, in his representations the appellant does refer to the reasons why he ought to have access to the information. The reasons he gives include his concerns about accusations that have been made against him, the impact these allegations have had on him, and that he ought to be able to defend himself against these allegations. The appellant also argues that fairness dictates that he ought to have access to information about him. Furthermore, he states that complainants or witnesses who speak to institutional officers about incidents should expect that their personal information will be disclosed when Freedom of Information requests are made for that information.

[73] I have considered the appellant's arguments on the exercise of discretion. With respect to the appellant's contention that individuals ought to know that access to information requests could be made, these individuals would also be aware of the possible exemptions that could be claimed for certain information, including those relating to privacy protection. Regarding the appellant's concerns about the allegations made against him, and the fact that he needs access to this information, I have reviewed both the information that was disclosed and that which was not disclosed to him. I note that the ministry has severed portions of many of the records at issue, and provided them to the appellant. These disclosed portions include information relating to the allegations made against the appellant.

[74] Based on my review of the representations, the information remaining at issue, and the manner in which the ministry severed the records and provided many portions to the appellant, I find that the ministry's exercise of discretion to withhold the information remaining at issue was proper. The ministry properly considered the appellant's right to his own personal information, the privacy interests of the other individuals and the purpose of the sections 49(b) and (e) exemptions. As a result, I uphold the ministry's exercise of discretion.

E. Was the ministry's search for records reasonable?

[75] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a

reasonable search for records as required by section 24.[8] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[76] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[9] To be responsive, a record must be "reasonably related" to the request.[10]

[77] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[11]

[78] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[12]

[79] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[13]

[80] During the course of this appeal, the appellant maintained that a purple sheet attached to the OTIS card ought to exist. The ministry confirmed that the OTIS card is a form that is created while an offender is incarcerated and that, attached to it, is a purple piece of paper called the Inmate Information Sheet. The ministry also stated that correctional officers make notes on the purple sheet concerning an offender while he/she is in segregation but that, once the individual is released from segregation, the Inmate Information Sheet is destroyed. As a result, the ministry advised that the purple sheet of paper for the time period referred to in the appellant's request no longer exists. The appellant maintained that the purple sheet exists, and stated that he observed this purple piece of paper attached to his file even when he was not in segregation.

[81] In the Notice of Inquiry sent to the ministry, I asked the ministry to provide details of any searches carried out and the results of those searches. I also asked the ministry whether it was possible that such records existed but no longer exist, and to provide details of when such records were destroyed including information about record maintenance policies and practices.

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[8] Orders P-85, P-221 and PO-1954-I.
[9] Orders P-624 and PO-2559.
[10] Order PO-2554.
[11] Orders M-909, PO-2469, PO-2592.
[12] Order MO-2185.
[13] Order MO-2246.

[82] In its representations on the search issue, the ministry responded as follows:

> As set out in the Notice of Inquiry, Ministry representatives have searched for any Inmate Information sheets belonging to the inmate, which we were unable to locate. We believe that any sheets which existed have been destroyed.
>
> It has been a standard practice at CECC to destroy these sheets, because they are used by operations staff strictly for quick reference purposes. The sheets typically contain abbreviated information about an inmate, which tip off Ministry operations staff to look at the complete copies of the correctional records, which are kept elsewhere. Therefore, the Ministry believes that whatever information was kept on the sheet likely references other more comprehensive correctional records that exist.
>
> Ministry staff searched through the correctional file belonging to the inmate/requester because that is where paper copies of records are kept that are not health care records, and where the sheets would be found if they in fact existed. Searches were conducted in December 2010 and earlier in January 2012. A third search was conducted on January 18, 2012, by [an identified Deputy Superintendent]. None of the searches located Inmate Information sheets. The Ministry does not believe the sheets would be kept anywhere else in the Ministry.
>
> In addition, the Ministry also consulted with staff at the Toronto Jail, where the requester has since been transferred. Staff at the Toronto Jail advised they were also unable to locate any Inmate Information sheets belonging to the inmate/requester.

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

[84] Based on the ministry's submissions, and in the absence of representations from the appellant on this issue, I am satisfied that the ministry's search for responsive records was reasonable. Accordingly, I uphold the ministry's search for records.

ORDER:

1. I uphold the ministry's decision to withhold the records at issue on the basis of the exemptions in sections 21(1), 49(b) and 49(e).

2. I find that the ministry's search for responsive records was reasonable, and dismiss this appeal.

Original Signed by: May 29, 2012
Frank DeVries
Adjudicator