

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3145

Appeal PA09-201-2

Ministry of Community Safety and Correctional Services

November 30, 2012

Summary: The appellant submitted a 31-part request to the Ministry of Community Safety and Correctional Services for various OPP records. The ministry denied him access to these records under several exclusions and exemptions in the *Freedom of Information and Protection of Privacy Act*. During the adjudication stage of the appeal process, he narrowed his request to specific records relating to two incidents. In this order, the adjudicator finds that the personal information in these records qualifies for exemption under section 49(b), because its disclosure to the appellant would be an unjustified invasion of other individuals' personal privacy. In addition, he finds that the ministry has conducted a reasonable search for responsive records.

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"), 2(3), 10(2), 21(2)(d), 21(2)(f), 21(3)(b), 24 and 49(b).

Orders and Investigation Reports Considered: Orders P-312, PO-1764, PO-2518, PO-2617, MO-2262 and MO-2344.

Cases Considered: *Grant v. Cropley* [2001] O.J. 749.

OVERVIEW:

[1] The appellant originally filed a 31-part request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* with the Ministry of Community Safety and Correctional Services (the ministry) for various records, most of which relate to

incidents involving him and other individuals that were investigated by the Ontario Provincial Police (OPP). The ministry located more than 500 pages of paper records, including occurrence reports, police officers' notes, interview statements, and correspondence relating to various incidents. In addition, it located several electronic records, including video and audio recordings.

[2] The ministry issued a decision letter and subsequently four supplemental decision letters to the appellant that provided him with partial access to these records. It denied him access to some records, either in whole and or in part, under several exclusions and exemptions in *FIPPA* and because some of the information in the records is not responsive to his request. In addition, it advised him that no responsive records exist with respect to some parts of his request.

[3] The appellant appealed the ministry's decisions to the Information and Privacy Commissioner of Ontario (IPC). His appeal was not resolved during mediation and was moved to the adjudication stage of the appeal process for an inquiry. Early in the inquiry, the appellant sent a letter to the IPC in which he narrowed the records he is seeking to only the following:

- records created by a named OPP officer; and
- the name of the individual who threatened him with a saw.

Records created by named OPP officer

[4] The appellant's letter states, in part:

I would like copies of [named OPP officer's] notes, records, reports, phone records, etc. re; OP08149167, from May 29, 2008, please, (and anything since May 29, 2008, re; OP08149167), please.

[5] Page 328 of the records is an excerpt from the notebook of the OPP officer named by the appellant. This page is responsive to the appellant's narrowed request because it is dated May 29, 2008 and describes the OPP officer's interaction with the appellant's neighbour, including a video interview that she conducted with him, relating to incident OP08149167. The ministry has withheld page 328 in full under the following discretionary exemptions:

- section 49(a) (refusal of access to one's own personal information), read in conjunction with the discretionary exemption in section 14(1)(l) (law enforcement); and

- section 49(b) (personal privacy), read in conjunction with the factor in section 21(2)(f) (highly sensitive) and the presumption in section 21(3)(b) (investigation into violation of law).

[6] The appellant has indicated that he is not interested in seeking police codes, which the ministry claims are exempt under section 49(a), read in conjunction with section 14(1)(l). Consequently, it must be determined whether the remaining information on page 328 qualifies for exemption under section 49(b). In addition, it must be determined whether the ministry has conducted a reasonable search for other records that might have been created by this OPP officer on or after May 29, 2008 relating to incident OP08149167.

Name of individual who threatened appellant with saw

[7] The appellant's letter states, in part:

[On] August 15, 2008, on the property next door to [a neighbour], while I was on my own property, trying to retrieve my garbage can from the curb, a young person, [a] construction worker, threatened me, then later threatened to kill me with an electric circular saw, waved the saw at me and revved the saw, OP08238743.

. . . .

[In] November 2010, I filed charges against the person who threatened to kill me with a saw, but the information was refused by the Court, because I can't name the accused.

The name of the accused is on the involved tab, OP08238743. There are five names on the involved tab. Three are residents of [a named address], [a named male], his wife and adult son. The remaining two names are the construction workers. I need the name so that I can re-file the charges.

[8] The names of the two construction workers referred to by the appellant appear in two records:

- the severed parts of the occurrence summary (specifically "involved persons" 5 and 6), which is on page 86 of the records; and
- an excerpt from an OPP officer's notes on page 90 of the records.

[9] Neither the occurrence summary nor the OPP officer's notes clearly pinpoint which of the two construction workers might have threatened the appellant.

Accordingly, I will consider both names to be responsive to the appellant's narrowed request.

[10] The ministry has denied access to the personal information of various individuals on pages 86 and 90, including the names of the two construction workers, under the discretionary exemption in section 49(b), read in conjunction with the factor in section 21(2)(f) and the presumption in section 21(3)(b). Consequently, it must be determined whether the names of these two construction workers qualify for exemption under section 49(b).

[11] I sought and received representations from both the ministry and the appellant on the issues that remain to be resolved in this appeal.

RECORDS:

[12] The OPP records that are responsive to the appellant's narrowed request are found on pages 86, 90 and 328.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 49(b) apply to the personal information in the records?
- C. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?
- D. Did the ministry conduct a reasonable search for records?

DISCUSSION:

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

[13] The discretionary personal privacy exemption in section 49(b) of *FIPPA* applies to "personal information." Consequently, it is necessary to determine whether the records contain "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,
- (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 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;

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

[15] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

¹ Order 11.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[16] In addition, previous IPC orders have found that 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.²

[17] However, previous orders have also found that 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.³

[18] The ministry states that the records contain personal information belonging to "affected parties" involved in a dispute with the appellant. It submits that this personal information includes their names, addresses and phone numbers and "more sensitive information that they provided to members of the OPP responsible for investigating the disputes." It further submits that the individuals in dispute with the appellant are acting in a "personal capacity."

[19] The appellant states that paragraphs (a) to (g) of the definition of personal information in section 2(1) do not apply to the two construction workers' names. He further submits that paragraph (h) does not apply either because disclosure of their names alone would not reveal other personal information about them. Finally, he suggests that the exclusion to the definition of personal information in section 2(3) applies to the two names because these individuals are identified in the records in a business capacity.

[20] Page 86 is an occurrence summary and page 90 is an excerpt from an OPP officer's notes relating to incident OP08238743, which resulted from the appellant's complaint that a construction worker at his neighbour's house threatened him. Both pages contain information relating to several individuals, including the appellant, his neighbour, his neighbour's family, and two construction workers. However, the appellant is only seeking the name of the construction worker who threatened him.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

[21] As noted above, neither the occurrence summary nor the OPP officer's notes clearly pinpoint which of the two construction workers might have threatened the appellant. Accordingly, I will consider both names to be responsive to the appellant's narrowed request.

[22] I am not persuaded by the appellant's suggestion that the two construction workers' names fall within section 2(3), which excludes an individual's name from the definition of personal information if it identifies that individual in a business capacity. These two individuals are not identified as "involved persons" in the OPP records because they were doing work on a neighbour's house. They are identified in these records because the OPP was investigating whether one of them personally threatened the appellant and therefore engaged in a *Criminal Code* offence. Therefore, I find that they are identified on pages 86 and 90 in a personal rather than a business capacity with respect to the appellant's criminal complaint, and their names do not fall within the section 2(3) exclusion.

[23] In addition, disclosing their names would show that they were the subject of a criminal complaint and therefore reveal other personal information about them, as contemplated by paragraph (h) of the definition of personal information in section 2(1). In short, I find that the names of these two individuals on pages 86 and 90 qualify as their personal information.

[24] The excerpt from the OPP officer's notebook on page 328 of the records relates to incident OP08149167, in which a neighbour accused the appellant of uttering a death threat. This page describes the OPP officer's interaction with the neighbour, including a video interview that she conducted with him. It includes information relating to the appellant and his neighbour.

[25] The names of the appellant and his neighbour appear on page 328 along with other personal information relating to them, as contemplated by paragraph (h) of the definition of personal information in section 2(1). Therefore, I find that page 328 contains their personal information.

[26] I will now determine whether the personal information of various individuals on pages 86, 90 and 328 of the records qualifies for exemption under section 49(b).

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

[27] The ministry submits that the personal information of the appellant and other individuals on pages 86, 90 and 328 of the records is exempt from disclosure under section 49(b).

[28] Section 49(b) states:

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.

[29] Because of the wording of section 49(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in records which also contain the requester's personal information.⁴

[30] In other words, 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 under section 49(b).

[31] Sections 21(2) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met. Section 21(2) lists "relevant circumstances" or factors that must be considered; section 21(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3).

Section 21(2)

[32] Section 21(2) states, in part:

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;

(f) the personal information is highly sensitive;

[33] Although the appellant does not specifically cite any of the section 21(2) factors, he states in his narrowed request that the sole purpose of his access request and appeal "is to bring the people who habitually threaten me to justice in court . . ."

⁴ Order M-352.

Consequently, it appears that the appellant is seeking the personal information on pages 86, 90 and 328 of the OPP records because he wishes to bring legal proceedings against the individual whom he claims threatened him with a saw and the neighbour whom he believes falsely accused him of uttering a death threat.

[34] In my view, the appellant is arguing that he requires disclosure of these individuals' personal information because it is relevant to a fair determination of his rights, as contemplated by section 21(2)(d).

[35] 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
- (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

[36] I accept that the right in question that the appellant seeks to establish is a legal right drawn from the common law or statute law; it is related to a contemplated proceeding; the personal information he is seeking would have some bearing on the right in question; and he requires the personal information to assist him to prepare for such a proceeding.

[37] In short, I find that the personal information on pages 86, 90 and 328 is relevant to a fair determination of his rights and he has therefore established that the section 21(2)(d) factor applies and weighs in favour of disclosing the personal information in these records.

[38] The ministry submits that the personal information in the records remaining at issue is "highly sensitive," as contemplated by section 21(2)(f), because these records were created as a result of OPP investigations into "contentious disputes" where violence was threatened and the individuals whose personal information is at issue have not consented to its disclosure.

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.).

[39] To be considered "highly sensitive" for the purposes of section 21(2)(f), there must be a reasonable expectation of significant personal distress if an individual's personal information is disclosed.⁶ Given the adversarial relationship that appears to exist between the appellant and his neighbour and the allegations of threats between the parties, I find that disclosing the personal information of his neighbour (page 328) and the two construction workers (pages 86 and 90) to him could reasonably be expected to cause them significant personal distress. Consequently, I find that in the particular circumstances of this case, the personal information of these individuals on pages 86, 90 and 328 is "highly sensitive," as required by the factor in section 21(2)(f).

[40] In summary, I find that the section 21(2)(d) factor weighs in favour of disclosing the personal information on pages 86, 90 and 328, while the section 21(2)(f) factor weighs in favour of withholding it.

Section 21(3)

[41] With respect to records claimed to be exempt under section 49(b), in *Grant v. Cropley* [2001] O.J. 749, the Divisional Court said the IPC could:

. . . consider the criteria mentioned in s.21(3)(b) in determining, under s.49(b), whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

[42] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the personal information is presumed to be an unjustified invasion of personal privacy. In my view, the only possible presumption that could apply to the personal information in the records at issue is section 21(3)(b), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

[43] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁸

⁶ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

⁷ Orders P-242 and MO-2235.

⁸ Orders MO-2213, PO-1849 and PO-2608.

[44] The ministry states that disclosure of the records would presumptively constitute an unjustified invasion of personal privacy under section 21(3)(b) because the personal information on pages 86, 90 and 328 was compiled and is identifiable as part of an investigation into a possible violation of law. In particular, all of the withheld personal information was created because of two OPP investigations, triggered by the uttering of threats, which is an offence under section 264.1 of the *Criminal Code*.

[45] The appellant does not specifically address whether the section 21(3)(b) presumption applies to the personal information in the records.

[46] The names of the two construction workers in the occurrence summary on page 86 and the OPP officer's notes on page 90 were compiled and are identifiable as part of an OPP investigation into a possible violation of section 264.1 of the *Criminal Code* by one of these individuals. Similarly, the personal information of the appellant and his neighbour in the OPP officer's notes on page 328 was compiled and is identifiable as part of an OPP investigation into a possible violation of section 264.1 of the *Criminal Code* by the appellant.

[47] Consequently, I find that the personal information in these records clearly falls within the section 21(3)(b) presumption and its disclosure to the appellant is presumed to be an unjustified invasion of the personal privacy of his neighbour and the two construction workers.

Section 21(4)

[48] If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy, despite section 21(3), and the personal information is not exempt under section 49(b). In my view, none of the circumstances listed in paragraphs (a) to (d) of section 21(4) apply to the personal information in the records at issue.

Conclusion

[49] In assessing whether the personal information in the records qualifies for exemption under section 49(b), I have found that it fits squarely within the section 21(3)(b) presumption and disclosing it to the appellant is therefore presumed to be an unjustified invasion of the personal privacy of his neighbour (page 328) and the two construction workers (pages 86 and 90). In addition, I have found that in the particular circumstances of this case, the personal information of these individuals is "highly sensitive," as required by the factor in section 21(2)(f), which weighs in favour of privacy.

[50] I agree with the appellant that the personal information in the records is relevant to a fair determination of his rights and he has therefore established that the factor in

section 21(2)(d) applies and weighs in favour of disclosure. However, this factor alone is not sufficient to rebut my findings that the presumption in section 21(3)(b) and the factor in section 21(2)(f) apply to the personal information in the records.

[51] I have considered whether page 328 can be severed in a manner that provides the appellant with his own personal information without disclosing his neighbour's personal information.⁹ However, the personal information of these two individuals is closely intertwined in this particular record and I find that disclosing the appellant's own personal information to him would result in an unjustified invasion of his neighbour's personal privacy under section 49(b).

[52] Subject to my assessment under Issue C below as to whether the ministry exercised its discretion appropriately, I find that the personal information of the appellant and other individuals on pages 86, 90 and 328 qualifies for exemption under section 49(b), because its disclosure to the appellant would constitute an unjustified invasion of other individuals' personal privacy.

[53] The appellant argues that the public interest override in section 23 applies to the records. Under section 23, an exemption from disclosure of a record under several listed exemptions does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. However, the IPC has found in previous orders that a public interest does not exist where the interests being advanced are essentially private in nature.¹⁰ In my view, the appellant has mainly a private, not a public interest, in seeking access to the records at issue, and the public interest override in section 23 therefore does not apply.

C. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?

[54] The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[55] In addition, the IPC 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; or

⁹ Section 10(2) of *FIPPA* requires an institution to disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

¹⁰ Orders P-12, P-347 and P-1439.

- it fails to take into account relevant considerations.

[56] In either case the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹¹ The IPC may not, however, substitute its own discretion for that of the institution.¹²

[57] The ministry submits that it exercised its discretion appropriately by severing the records and withholding only those records or parts thereof which might identify individuals under section 49(b). The appellant suggests that the ministry should have exercised its discretion under section 49(b) in favour of transparency and disclosure, because doing so would assist him in fighting false allegations made against him and in pursuing legal action against the individual who threatened him.

[58] I am satisfied that the ministry weighed the interests in disclosure and non-disclosure and exercised its discretion to withhold the personal information of the appellant and his neighbour (page 328) and the two construction workers (pages 86 and 90) in the records at issue. It took into account the fact that it has already disclosed a significant number of records and parts of records to the appellant and concluded that the need to protect the privacy of the individuals whose personal information is found in these records trumps the appellant's interest in disclosure.

[59] I am not persuaded that the ministry failed to take relevant factors into account or that it considered irrelevant factors in withholding the records. I find, therefore, that it exercised its discretion under section 49(b) and did so in a proper manner.

D. Did the ministry conduct a reasonable search for records?

[60] The appellant claims that the ministry has not conducted a reasonable search for records created by a named OPP officer on and after May 29, 2008 relating to incident OP08149167. This incident arose after one of the appellant's neighbours called the OPP and claimed that the appellant had threatened him. The OPP officer named by the appellant conducted a video interview with this neighbour on May 29, 2008 at the local detachment.

[61] The appellant states that although he is not seeking access to the video itself, it may show the officer taking notes as she conducted the interview. However, he emphasizes that the notes "are just part of the records at issue here."

[62] 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 24.¹³ If I am satisfied that the

¹¹ Order MO-1573.

¹² Section 54(2).

¹³ Orders P-85, P-221 and PO-1954-I.

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.

[63] *FIPPA* 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.¹⁴

[64] The ministry submits that it has conducted "more than one thorough search" for notes created by the named OPP officer on or around May 29, 2008, related to incident OP08149167, which the appellant alleges were taken during a video interview. It states:

[The named OPP officer] was contacted about these notes. [She] does recall the video interview, but she cannot recall if she took notes, and advised that she does not have a copy of them, if in fact they were taken. She says that in any event, when she does take notes during video interviews, it is usually to assist her or the officer in charge with the writing of the synopsis of the complaint, or it is to write questions that she is planning on asking. Therefore, even if notes were taken, they would not, on the basis of what she has told us, likely reveal any further information than what the appellant has already been made aware of given that he acknowledges he has seen the video in question.

The ministry believes that if the notes exist, they would have been uncovered by now. As you know, the original request was a 31-part request, which uncovered numerous records, but not the notes in question. Moreover, the appellant claims he has tried 4 times, twice through FOI requests and twice through Crown disclosure, to obtain the notes without success. [The named OPP officer's] notes pertaining to this incident have not turned up anywhere suggesting that if they did exist, they no longer do, and that more than one reasonable search has been undertaken to try to locate them with the FOI and Crown disclosure processes.

[65] The appellant submits that additional records created by this OPP officer must exist:

. . . I simply don't believe that [the named OPP officer] didn't make any notes, reports or put anything on paper about the May 29, 2008 incident. I don't believe her. I don't believe that, where [the named OPP officer] was prepared to testify in a criminal court trial in court, she didn't have any notes or reports or records? It is simply not believable.

¹⁴ Orders P-624 and PO-2559.

[66] For the reasons that follow, I find that the ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the appellant's narrowed request.

[67] First, the ministry has conducted a series of searches for responsive records. After receiving his original 31-part request, it expended significant staff time and resources to locate responsive records, including records relating to incident OP08149167. It located more than 500 pages of paper records, including occurrence reports, police officers' notes, interview statements, and correspondence relating to various incidents. In addition, it located several electronic records, including video and audio recordings.

[68] These records included an excerpt (page 328) from the notebook of the OPP officer named by the appellant. This page is responsive to the appellant's narrowed request because it is dated May 29, 2008 and describes the OPP officer's interaction with the appellant's neighbour, including a video interview that she conducted with him, relating to incident OP08149167. However, I have found that the personal information in this record qualifies for exemption under section 49(b) because its disclosure to the appellant would be an unjustified invasion of his neighbour's personal privacy.

[69] Second, with respect to the appellant's claim that the video itself might show the named OPP officer taking notes, the ministry has advised me that this video is not available for review because it no longer exists. However, as noted above, the ministry contacted the named OPP officer and specifically asked her whether she took any notes during her video interview with the appellant's neighbour. She told the ministry that she cannot recall if she took any notes but even if she did, she does not have a copy of them.

[70] Moreover, I accept the ministry's evidence that if any notes taken by the OPP officer still exist, they would have been found during the searches that were undertaken. In my view, the ministry's searches, coupled with the evidence that it obtained from the OPP officer herself, demonstrate that it undertook reasonable efforts to locate any notes that might still exist.

[71] Third, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester must still provide a reasonable basis for concluding that such records exist.¹⁵ In my view, the appellant's assertion that the named OPP officer must have created additional records on and after May 29, 2008 relating to incident OP08149167, is speculative. Given the considerable efforts that the ministry has expended in searching for records that are responsive to the appellant's original 31-part request and his narrowed request, including contacting the named OPP

¹⁵ Order MO-2246.

officer about her notes, I am not prepared to order the ministry to conduct a further search that would likely be fruitless.

[72] I find, therefore, that the ministry has conducted a reasonable search for responsive records, as required by section 24 of *FIPPA*.

CONCLUSION:

[73] In this order, I find that:

- A. The records contain the personal information of the appellant, a neighbour and two construction workers.
- B. The personal information in the records qualifies for exemption under section 49(b) of *FIPPA*.
- C. The ministry exercised its discretion under section 49(b) and did so in a proper manner.
- D. The ministry conducted a reasonable search for responsive records.

ORDER:

I uphold the ministry's access and search decisions with respect to the appellant's narrowed request. The appeal is dismissed.

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

November 30, 2012