Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2862

Appeal MA11-447

York Regional Police Services Board

March 28, 2013

Summary: The appellant is a journalist who is seeking records from the York Regional Police Services Board about lost or stolen firearms, ammunition and use-of-force equipment. The police created a summary report and also located occurrence reports documenting specific incidents in which officers reported that their use-of-force equipment was lost or stolen. They provided the appellant with access to the summary report for a $225 fee, but denied access to the occurrence reports in full under the personal privacy exemption in section 14(1) and the law enforcement exemptions in sections 8(1)(e) and (l) of the *Municipal Freedom of Information and Protection of Privacy Act*.

In this order, the adjudicator finds that the police officers' names, job titles, work contact information, badge numbers and the narratives they provided in the occurrence reports, cannot qualify for exemption under section 14(1) because this information is not "personal information," as that term is defined in section 2(1). Instead, this information is associated with these officers in a professional capacity. In addition, he finds that the information in the occurrence reports does not qualify for exemption under sections 8(1)(e) or 8(1)(l), except for the serial numbers of lost or stolen firearms, which are exempt under section 8(1)(l).

He orders the police to disclose the occurrence reports to the appellant, except for the officers' personal information (their home addresses, home telephone numbers, birth dates, etc.), the names and home addresses of several civilians, and the serial numbers of lost or stolen firearms, which the police must sever from the records before disclosing them to the appellant. He upholds the police's decision to charge a $225 fee for providing the appellant with access to the summary report and their decision to deny him a fee waiver.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 2(2.1), 8(1)(e), 8(1)(l), 14(1), 45(1) and 45(4)(c).

Orders and Investigation Reports Considered: Orders MO-2527, MO-2252, MO-2112, MO-2050, PO-2940 and PO-2455.

OVERVIEW:

[1] The appellant is a journalist who submitted an access request to the York Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

> . . . reports that show the number and specific types of firearms, ammunition, and use-of-force equipment stolen, lost or missing from York Regional Police from Jan. 1, 1985 to Jan. 1, 2011. I ask that this report include a breakdown of the total number of each type of equipment lost or stolen (for example: pepper spray, asp, baton, etc.).
>
> I further request a copy of the occurrence details (or occurrence report) for each incident of a lost or stolen YRP-issued firearm, ammunition or use-of-force equipment from the time period of Jan. 1, 2005 to Jan. 1, 2011.
>
> It is my contention that the information being requested is of great public interest.

[2] In response, the police advised the appellant that their current records management system was established in July, 2005 and they were only able to provide records from that time onwards. It further stated that the previous system was "archived and dormant" and statistical data and reports could no longer be retrieved from it.

[3] With respect to the first part of the appellant's request, the police created a seven-page report that summarizes the incidents in which police officers reported that their use-of-force equipment was lost or stolen (the "summary report").

[4] With respect to the second part of his request, the police located 181 pages of occurrence reports, which document incidents in which police officers reported that their use-of-force equipment was lost or stolen. These occurrence reports, which are much more detailed than the summary report, contain information relating to the officers who reported the loss or theft of their use-of-force equipment, including their names.

[5] The police issued a decision letter to the appellant that advised him that under the fee provisions in the *Act*, he would be required to pay $225 to access the summary report. The letter also stated that the police were denying access to the occurrence reports because "the actual reports submitted for lost or stolen property would be considered the personal information of third parties [from] whom we do not have consent to release their information." It cited section 14(3)(b) of the *Act*, which sets out a circumstance in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy under the mandatory exemption in section 14(1).

[6] The appellant paid the $225 fee for the summary report. The police then disclosed this report to him and issued a new decision letter denying access to the 181 pages of occurrence reports in full under the mandatory personal privacy exemption in section 14(1), read in conjunction with the factor in section 14(2)(i) and the presumption in section 14(3)(b), and under the discretionary law enforcement exemptions in sections 8(1)(e) and (l).

[7] The appellant appealed the police's decisions to the Information and Privacy Commissioner of Ontario (IPC).

[8] During mediation, the appellant confirmed that he was appealing the police's decision that required him to pay a $225 fee for accessing the summary report and their decision to withhold the occurrence reports under various exemptions. He also claimed that there is a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemptions claimed by the police. Consequently, the public interest override in section 16 of the *Act* was included as an issue.

[9] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. Shortly after the start of the inquiry, the appellant requested a fee waiver from the police, which was denied. The appellant advised the IPC that he would like to appeal the police's decision to deny his fee waiver request. As a result, whether the appellant is entitled to a fee waiver was added as an issue.

[10] The initial adjudicator assigned to this appeal sought and received representations on the issues to be resolved from both the police and the appellant. These representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction Number 7*.

[11] This appeal was then assigned to me to complete the inquiry process. I notified and sought representations from 35 police officers identified in the occurrence reports who reported that their use-of-force equipment was lost or stolen, particularly with respect to whether these records contain their personal information and, if so, whether disclosing it would constitute an unjustified invasion of their personal privacy under

section 14(1). In response, the police submitted "joint representations" on behalf of all the officers.

RECORDS:

[12] The records at issue in this appeal are 181 pages of occurrence reports that document the specific incidents in which individual police officers reported that their use-of-force equipment was lost or stolen.

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 mandatory exemption at section 14(1) apply to the information at issue?

C. Is there a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

D. Do the discretionary exemptions under sections 8(1)(e) and (l) apply to the records at issue?

E. Did the police exercise their discretion under sections 8(1)(e) and (l)? If so, should the IPC uphold their exercise of discretion?

F. Should the fee be upheld?

G. Should the fee be waived?

DISCUSSION:

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

[13] The police claim that the information relating to the officers identified in the occurrence reports is exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*. However, section 14(1) only applies to "personal information." Consequently, it must be determined whether the information in the occurrence reports relating to these officers qualifies as their "personal information." 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] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[2]

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[1] Order 11.

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

[15] However, section 2(2.1) of the *Act* excludes specific information from the definition of "personal information." It states:

> 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.

[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.[3] 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.[4]

[17] In his representations, the appellant states that he is not seeking access to the personal information of any police officers in the occurrence reports, such as their home addresses, home telephone numbers, or birth dates. Based on my review of the occurrence reports, I find this would also include other personal information such as the officers' sex, ethnicities, cellular telephone numbers, driver's license numbers and citizenship. In a phone conversation with an adjudication review officer, the appellant also stated that he is not seeking access to the names or home addresses of civilians which may be included in the occurrence reports. Consequently, all of this personal information is not at issue and I will order the police to sever it from the occurrence reports.

[18] However, the appellant is seeking access to the police officers' names and badge numbers. He submits this information is not personal information, but rather information associated with the officers in a professional, business or official capacity. He further submits that this information does not reveal anything personal about the officers. He states, in part:

> These cases all involve officers in their role as public servants. The missing use-of-force equipment is public property. Much of the equipment was lost or stolen while these officers were performing their professional duties. There is nothing personal about this information.

[19] The police acknowledge that under section 2(2.1) of the *Act*, 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. However, they submit that the appellant is inquiring about equipment that may have

[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.

been lost or misplaced while the officer was off duty or lost when he or she went to a civilian's home.

[20] Both the police and the individual officers submit that information relating to an officer's loss of equipment constitutes part of that officer's "employment history" and it qualifies as his or her personal information under paragraph (b) of the definition of that term in section 2(1). They further submit that the suggestion in the appellant's representations that he is seeking the officers' names and badge numbers to hold them accountable for some perceived wrongdoing, supports their position that the information in the occurrence reports is the officers' personal information. The police state:

> If the objective of the request is to comment on the culpability of these officers in relation to the missing equipment, as opposed to the policing duties the officers were undertaking at the time of the equipment loss, this is clearly an employer-employee matter within the scope of "employment history" under s. 2(1)(b).

[21] I have considered the parties' representations and reviewed the records at issue. At the outset, I would point out that the appellant's purpose or reasons for seeking access to the information in the occurrence reports is not relevant in determining whether this information qualifies as the officers' personal information. Such a determination must be based solely on an analysis of the information in the records themselves and particularly the context in which this information appears.

[22] In my view, the police officers' names, job titles and work contact information (addresses, telephone numbers and email addresses) identify them in a professional rather than a personal capacity.[5] This information clearly falls within section 2(2.1) of the *Act*, which excludes such information from the definition of personal information. Consequently, I find that this information does not qualify as their personal information.

[23] In addition, previous IPC orders have found that a badge number does not qualify as personal information because it is associated with an officer in a professional rather than a personal capacity.[6] I agree with these previous orders. The badge numbers in the occurrence reports are the officers' professional information and do not reveal anything of a personal nature about them. Accordingly, I find that these badge numbers do not qualify as the officers' personal information.

[24] The occurrence reports also include narratives written by the officers whose use-of-force equipment was lost or stolen. In my view, the information in these narratives relating to these officers is about their professional duties and does not reveal anything

[5] Most of the officers entered their work addresses rather than their home addresses in the field that reads: "Residing at:" in the occurrence reports.
[6] Orders MO-2527, MO-2252, MO-2050 and MO-2112.

personal about them. Each of these individuals was assigned use-of-force equipment in their professional capacity, not their personal capacity. Similarly, each officer had a professional duty to report the loss or theft of such equipment.

[25] I am not persuaded by the police's argument that the information in these occurrence reports may reveal something personal about an officer because the equipment may have been lost or misplaced while that officer was off duty. Police officers are assigned use-of-force equipment in their professional capacity. The fact that an officer was off duty when such equipment was lost or stolen does not cause what is clearly professional information to be transformed into that officer's personal information.

[26] I find, therefore, that the information in the narratives written by the officers is associated with them in a professional, rather than a personal capacity. It does not reveal anything of a personal nature about them. Accordingly, I find that the information in these narratives does not qualify as their personal information.

[27] Finally, I do not accept the police's submission that the information in the occurrence reports falls within paragraph (b) of the definition of personal information in section 2(1) because it constitutes the officer's "employment history." In my view, "employment history" is meant to encompass basic information about an individual's previous employment. It is not meant to include detailed information about how an individual carried out his or her professional duties with respect to specific incidents that occurred during that individual's current or previous employment. Consequently, I find that the information in the occurrence reports relating to the officers who reported the loss or theft of their use-of-force equipment does not constitute their "employment history" for the purposes of paragraph (b) of the definition of personal information in section 2(1).

[28] In short, I find that the officers' names, job titles, work contact information, badge numbers and the information in the narratives they provided, do not qualify as their personal information under the definition of that term in section 2(1). Instead, this information is associated with these officers in a professional capacity only. Given that the personal privacy exemption in section 14(1) only applies to "personal information," I find that this information cannot qualify for exemption under that provision. In these circumstances, it is not necessary to address Issues B (personal privacy) or C (public interest override) and I will move directly to Issue D.

D. Do the discretionary exemptions under sections 8(1)(e) and (l) apply to the records at issue?

[29] The police have withheld the occurrence reports under the discretionary law enforcement exemptions in sections 8(1)(e) and (l) of the *Act*. These provisions state:

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

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

[31] Except in the case of section 8(1)(e), where section 8 uses the words "could reasonably be expected to," the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient.[8] In addition, it is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record.[9]

[32] In their representations, the police identify specific information that they submit triggers the application of sections 8(1)(e) or (l) to the occurrence reports. In particular, they point out that the occurrence reports contain "the personal information of officers (name, date of birth, home address, and telephone numbers) as well as information and/or details of property codes, query formats, serial numbers and CPIC information."

Section 8(1)(e): life or physical safety

[33] Under section 8(1)(e), an institution may refuse to disclose a record if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

[34] For section 8(1)(e) to apply, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. The

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

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

[9] Order PO-2040; *Ontario (Attorney General) v. Fineberg*, *supra* note 7.

reasons for resisting disclosure must not be frivolous or exaggerated.[10] A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.[11]

[35] The police submit that disclosing the police officers' names, birth dates, home addresses and home phone numbers could reasonably be expected to endanger their lives or physical safety. They state:

> The requester is [a newspaper], so it is of great concern to this police service that by releasing the personal contact information of officers, the [newspaper] could publish this information and therefore [compromise] the safety of the officers by disclosing where they live to the public. This could lead to the exposure of these officers to any persons who they may have dealt with previously or currently, as well as their families.

[36] The appellant has made it abundantly clear that he is not seeking access to the personal information of any police officers in the occurrence reports, including their home addresses, birth dates and personal telephone numbers. Consequently, that information is not at issue in this appeal and I will order the police to sever it from the occurrence reports.

[37] However, the appellant is seeking the names of the police officers who reported the loss or theft of their use-of-force equipment. As noted above, the officers' names in the occurrence reports identify them in a professional, not a personal, capacity. Transparent and accountable policing generally requires that an officer's name be accessible to the public. There may be circumstances in which disclosing an officer's name could reasonably be expected to endanger that individual's life or physical safety, but such circumstances would be rare.

[38] In my view, the police have not proven that disclosing the names of the officers in the particular occurrence reports at issue in this appeal could reasonably be expected to endanger the lives or physical safety of these officers or any other person, such as their family members. Consequently, I find that this information does not qualify for exemption under section 8(1)(e).

Section 8(1)(l): commission of an unlawful act or control of crime

[39] Under section 8(1)(l) of the *Act*, an institution may refuse to disclose a record if the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. The police must provide "detailed and convincing" evidence to prove that section 8(1)(l) applies to the occurrence reports.

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[10] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Ministry of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).
[11] Order PO-2003.

[40] The police submit that the section 8(1)(l) exemption applies to "property codes, query formats, serial numbers and CPIC information" in the occurrence reports.

[41] With respect to "property codes," the police's representations do not explain what these codes are or why disclosing them could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. In my view, simply referring to "property codes" without further elaboration falls far short of the "detailed and convincing" evidence required to prove that such information qualifies for exemption under section 8(1)(l).

[42] With respect to "CPIC information" and "query formats," the police cite Order PO-2940 and state the following:

> The disclosure of this information has the potential to compromise the integrity and ongoing security of the CPIC system and facilitate unauthorized access to the CPIC system . . . . It is the view of the [police] that disclosure of this information may reasonably be expected to facilitate the commission of an illegal act or hamper the control of crime. The disclosure [of] CPIC computer transmissions/access codes, as well as CPIC query format information may reasonably expected to leave the CPIC computer system more vulnerable to security breaches. Security breaches could lead to data corruption, compromise data integrity and result in unauthorized/illegal disclosures of confidential law enforcement and personal information.

[43] In Order PO-2940, Adjudicator Frank DeVries canvassed previous IPC orders and found that CPIC access and transmission codes and query format information were exempt from disclosure under section 14(1)(l) of the *Freedom of Information and Protection Privacy Act* (*FIPPA*), which is the provincial equivalent to section 8(1)(l). He stated:

> Previous orders of this office have addressed the issue of whether section 14(1)(l) applies to this type of information and have found that it does. For example in Order MO-1355, Adjudicator David Goodis reviewed the application of [section 8(1)(l)], and stated:
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> > Where information could be used by any individual to gain unauthorized access to the CPIC database, an important law enforcement tool, it should be considered exempt under section 8(1)(l)….
>
> Other orders have found that CPIC access codes, ORI numbers, or other information which could compromise the security and integrity of the CPIC

> computer system qualify for exemption under [section 8(1)(l)] (see, for example, Orders M-933, MO-1004, MO-1929).
>
> The [Ministry of Community Safety and Correctional Services] has stated that the release of CPIC access/transmission codes, as well as CPIC query format information, has the potential to compromise the integrity and ongoing security of the CPIC and facilitate unauthorized access to the CPIC system. On my review of the portions of records remaining at issue, I am satisfied that it consists of CPIC access and/or transmissions codes, as well as CPIC query format information. Some of the severed information is specific transmission, access or ORI codes. Although a few other severed numbers are not numbers of that nature, based on the representations of the Ministry I am satisfied that they, too relate to the access to the CPIC system.

[44] I have carefully reviewed the occurrence reports and find that the "CPIC information" in these records is distinguishable from the information at issue in Order PO-2940. The information that the police have identified as "CPIC information" is merely information that conveys whether or not the incident was entered into CPIC or removed from CPIC. It does not include access and transmission codes or the type of query format information that could allow an unauthorized individual to gain access to the CPIC database. Consequently, I find that the information in the occurrence reports that the police characterize as "CPIC information" and "query formats" is not exempt from disclosure under section 8(1)(l).

[45] With respect to the serial numbers of the use-of-force equipment identified in the occurrence reports, the police submit that section 8(1)(l) applies to such information. They state:

> . . . The knowledge of serial numbers could be used by criminals to re-serialize illegal guns and other use-of-force equipment. This could hamper the ability of police agencies to identify such weapons if they are used for criminal acts. Releasing this information could permit the cross-referencing or other misuse of firearms and use-of-force equipment serial numbers and their disclosure could reasonably be expected to facilitate unlawful acts or hamper the control of crime.

[46] In Order PO-2455,[12] Adjudicator Steven Faughnan found that section 14(1)(l) of *FIPPA* applied to the serial numbers of guns contained in a police database. He found that knowledge of these serial numbers could be used by criminals to re-serialize guns and therefore hamper the ability of police agencies to identify such weapons if they are used for criminal activities. I agree with Adjudicator Faughnan's analysis and find that

[12] Upheld on judicial review on this point in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* 231 O.A.C. 230.

the serial numbers of firearms in the occurrence reports in this appeal qualify for exemption under section 8(1)(l), because disclosing them could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[47] In my view, however, the police have not submitted the detailed and convincing evidence required to prove that disclosing the serial numbers of other use-of-force equipment, such as handcuffs, batons or pepper spray, could reasonably be expected to lead to the harms contemplated by section 8(1)(l). The police have not provided me with any corroborating evidence or examples to substantiate their claim that lost or stolen handcuffs, batons or pepper spray could be re-serialized by criminals or that disclosing their serial numbers could result in "cross-referencing" or other misuse.

[48] In the absence of such evidence, the police's submissions with respect to the disclosure of the serial numbers on those types of use-of-force equipment is speculative, and evidence amounting to speculation of possible harm is not sufficient to meet the requirements of any of the section 8 exemptions, including section 8(1)(l).[13] I find, therefore, that the police have not established that disclosing the serial numbers of other use-of-force equipment, such as handcuffs, batons or pepper spray, could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime, as required by section 8(1)(l).

[49] Subject to my review of the police's exercise of discretion below, I find that section 8(1)(l) only applies to the serial numbers of the lost or stolen firearms identified in the occurrence reports.

E. Did the police exercise their discretion under sections 8(1)(e) and (l)? If so, should the IPC uphold their exercise of discretion?

[50] I have found that the serial numbers of the lost or stolen firearms in the occurrence reports qualify for exemption under section 8(1)(l). Consequently, I will now determine whether the police exercised their discretion under that exemption with respect to that information and, if so, whether I should uphold their exercise of discretion.

[51] I have not found that any information in the occurrence reports qualifies for exemption under section 8(1)(e), so it is not necessary to determine whether the police exercised their discretion properly under that provision.

[52] The section 8(1)(l) 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 an institution failed to do so.

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[13] *Supra* note 8.

[53] 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
- it fails to take into account relevant considerations.

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

[55] The police's representations on exercise of discretion address the occurrence reports as a whole. They state that they considered the principle that information should be available to the public, that the appellant is a member of the media and whether disclosure will increase public confidence in the operations of the police. However, they concluded that disclosing the serial numbers of lost or stolen firearms could hamper their ability to identify such weapons if they are used for criminal acts.

[56] I am satisfied that the police exercised their discretion when they decided to withhold the serial numbers of lost or stolen firearms under section 8(1)(l). There is no evidence to show that they failed to take relevant factors into account or considered irrelevant factors in withholding this information. I find, therefore, that they exercised their discretion under section 8(1)(l) and did so in a proper manner.

F. Should the fee be upheld?

[57] The appellant has appealed the police's decision to require him to pay a $225 fee for accessing the summary report.

[58] Where a fee exceeds $25, an institution must provide the requester with a fee estimate.[16] Where the fee is $100 or more, the fee estimate may be based on either the actual work done by the institution to respond to the request, or a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.[17]

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[14] Order MO-1573.
[15] Section 43(2) of the *Act*.
[16] Section 45(3) of the *Act*.
[17] Order MO-1699.

[59] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access.[18]

[60] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[19]

[61] The IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out below.

[62] Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[63] More specific provisions regarding fees are found in section 6, of Regulation 823. The sections relevant to this appeal state:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
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> . . .
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.

[18] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[19] Orders P-81 and MO-1614.

> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> . . .
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

[64] In reviewing the $225 fee that the police charged the appellant, I must consider whether it is reasonable, giving consideration to the content of the appellant's request, the circumstances of the appeal and the provisions in section 45(1) of the *Act* and Regulation 823.

[65] The burden of establishing the reasonableness of the fee rests with the police. To discharge this burden, the police must provide me with detailed information as to how the fee estimate was calculated in accordance with the provisions of the *Act*, and provide sufficient evidence to support their claim.

[66] The police state that preparing the report that describes the lost or stolen use-of-force equipment was a time-consuming process. They submit that their records management system does not have a specific code for use-of-force equipment. As a result, they had to conduct computer searches on all "general weapons sections." In addition, they submit that they had to manually verify each incident to ensure that it involved use-of-force equipment. They claim that it took 7.5 hours to extract and verify the list of incidents.

[67] Further, the police submit that once the list was created, the information contained in the list was extracted manually to create the final report that was disclosed to the appellant. They claim that it took an additional four hours to create the report. They further state that they charged a $225 fee for the 7.5 hours required to search for and extract the incidents, and not the additional four hours required to produce the final report.

[68] The appellant states that because he is not familiar with the police's records management system, he has no grounds to challenge the length of time required to extract the requested information. However, he submits that the $225 fee is high, especially considering that another police service provided him with similar records at no cost.

[69] I find that the $225 fee for 7.5 hours of work is reasonable. The police provided me with a detailed account of the time spent and the work performed to retrieve the information and the amount of time needed to prepare the report.

[70] The fee is based on the actual time required to perform the search and prepare the records for disclosure, at a rate of $7.50 for each 15 minutes spent. This is an allowable cost under sections 45(1)(a) and (b) of the *Act*. Further, the rate of $7.50 for each 15 minutes spent is allowable under sections 6(3) and 6(4) of Regulation 823.

[71] I am not persuaded by the appellant's submission that the police should not charge him a fee because another police service provided him similar records at no cost. The fee provisions in the *Act* are mandatory and can only be waived in the specific circumstances set out below. Therefore, I uphold the $225 fee that the police charged the appellant for accessing the summary report.

G. Should the fee be waived?

[72] The appellant appealed the police's decision to deny his request for a waiver of the $225 fee.

[73] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. In this appeal, the appellant relies on section 45(4)(c) of the *Act*. Section 8 of Regulation 823 sets out additional matters for a head to consider before deciding whether to waive a fee. These provisions state:

> 45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> (c) whether dissemination of the record will benefit public health or safety;
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[74] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees.[20]

[75] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before the IPC will consider whether a fee waiver should be granted. The IPC may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[21]

[76] The institution or the IPC may decide that only a portion of the fee should be waived.[22]

Part 1: Basis for fee waiver

[77] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by:
    - (a) disclosing a public health or safety concern, or
    - (b) contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record.[23]

[20] Order PO-2726.
[21] Orders M-904, P-474, P-1393 and PO-1953-F.
[22] Order MO-1243.
[23] Orders P-2, P-474, PO-1953-F and PO-1962.

[78] The focus of section 45(4)(c) is "public health or safety." It is not sufficient that there is a "public interest" in the records or that the public has a "right to know." There must be some connection between the public interest and a public health and safety issue.

[79] The IPC has found that dissemination of a record will benefit public health or safety under section 45(4)(c) (or the equivalent 57(4)(c) in the provincial *Act*) where, for example, the records relate to:

- compliance with air and water discharge standards;[24]
- expansion of a landfill site;[25]
- environmental concerns associated with the issue of extending cottage leases in provincial parks;[26]
- complaints against licensed daycare centres;[27]
- illegal parking in designated bike lanes;[28] and
- quality of care and service at long-term care facilities.[29]

[80] The police submit that the officers' names and personal identifiers do not relate directly to a public health and safety issue. Further, they submit that disclosing an officer's personal information would not shed light on a public health or safety concern in relation to use-of-force equipment and would not contribute to the development or understanding of any public health or safety issues related to such equipment.

[81] The appellant submits that the records were requested in the public interest and that their disclosure will promote public safety. He states that the police are tasked with the important responsibility of protecting the residents they serve and the fact that police firearms and use-of-force equipment are lost and stolen is directly related to public safety.

[82] Further, he submits that because the records will be used in news reports that will be disseminated to the public, it is a matter of public interest. He cites Order MO-2199, in which Assistant Commissioner Brian Beamish ordered the Waterloo Regional Police Services Board to waive the fee that it charged to a requester for an electronic

[24] Order PO-1909.
[25] Order PO-2514.
[26] Order PO-1953-I.
[27] Order PO-2515-F.
[28] Order MO-2102.
[29] Orders PO-2278, PO-2333 and PO-2886.

copy of the police's database of calls for service. He found that disseminating those records would benefit public safety, and that it would be fair and equitable in the circumstances of that particular appeal to waive the fee.

[83] In my view, how the police address lost or stolen use-force equipment is clearly a matter of public rather than private interest and relates directly to a public safety issue. In addition, given that the appellant is a journalist, I am satisfied that he will be disseminating the contents of the summary report in his news reports and doing so will yield a public benefit by helping citizens to be informed about a public safety issue.

[84] I find, therefore, that disseminating the summary report will benefit public safety under section 45(4)(c).

Part 2: Fair and equitable

[85] The introductory wording of section 45(4) requires that it be "fair and equitable" to grant a fee waiver. Although I have found that disseminating the summary report will benefit public safety under section 45(4)(c), I must also be satisfied that it would be fair and equitable in the particular circumstances of the appellant's request to grant a fee waiver.

[86] Relevant factors in deciding whether or not a fee waiver is "fair and equitable" may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[30]

[30] Orders M-166, M-408 and PO-1953-F.

[87] The police submit that it would not be fair and equitable to waive the fee for the appellant's request because creating the summary report interfered with the duties of several staff, who normally produce this type of record for statistical purposes and not for the purposes of responding to access-to-information requests. The police further submit that waiving the fee would shift an unreasonable burden from the appellant to the police and point out that they only charged a $225 fee to cover the 7.5 hours required to search for and extract the incidents, and not the additional four hours required to produce the summary report itself.

[88] The appellant submits that granting a fee waiver would not shift an unreasonable burden of the cost onto the police.

[89] Although I have found that disseminating the summary report will benefit public safety under section 45(4)(c), I am not satisfied that it would be fair and equitable to grant a fee waiver. In my view, the fact that the police did not charge the appellant for the four hours of additional work required to transform the extracted data into a summary report amounts to a partial fee waiver.

[90] In addition, the fee provisions in the *Act* establish a user-pay principle. Providing the appellant with a fee waiver would, in these particular circumstances, shift an unreasonable burden of the cost from the appellant to the police. I find, therefore, that it would be not be fair and equitable to waive the $225 fee, and I uphold the police's decision to not waive this fee.

ORDER:

1. I order the police to disclose the occurrence reports to the appellant, except for the following information, which must be severed:

   (a) the police officers' home addresses, home and cellular telephone numbers, birth dates, sex, ethnicities, driver's license numbers and citizenship;

   (b) the names and home addresses of several civilians; and

   (c) the serial numbers of firearms that were reported lost or stolen.

2. I have provided the police with a copy of the occurrence reports and highlighted those parts that must be severed under paragraphs (a), (b) and (c) of order provision 1.

3. I order the police to disclose the severed occurrence reports to the appellant by **May 6, 2013** but not before **April 29, 2013**.

4. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records that they disclose to the appellant.

5. I uphold the police's $225 fee for the costs of searching for information and preparing the summary report for disclosure.

6. I uphold the police's decision to deny the appellant a fee waiver.

Original signed by: March 28, 2013
Colin Bhattacharjee
Adjudicator