Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3284

Appeal PA11-514

Ministry of Community Safety and Correctional Services

December 13, 2013

Summary: The appellant made a request to the Ministry of Community Safety and Correctional Services (the ministry) for a copy of an Ontario Provincial Police (OPP) briefing book used to prepare OPP officers for a protest. The ministry identified the briefing book and denied access to it in part, claiming the application of the discretionary exemption in section 14(1) (law enforcement) and the mandatory exemption in section 21(1) (personal privacy). In this order, the adjudicator upholds the ministry's decision with respect to the application of the exemption in sections 14(1)(c) and 14(1)(g). The adjudicator also upholds the ministry's exercise of discretion, and dismisses the appeal.

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

OVERVIEW:

[1] This order disposes of the issues raised arising from a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) for information relating to a Mohawk protest that took place during a specified time frame.

[2] In particular, the request was for the following information:

> The Briefing Book issued to OPP officers to prepare them for their policing duties with respect to the Mohawk occupations, protests and roadblocks at or near Deseronto related to development of the "[named company] site" on the Culbertson Tract land claim from April 20 to 28, 2008.

[3] The ministry located a responsive record and issued a decision to the requester, granting access, in part. The ministry denied access to other portions of the record, claiming the application of the discretionary exemption in sections 14(1)(c) (law enforcement), 14(1)(e) (endanger life or safety), 14(1)(g) (law enforcement), 14(1)(l) (facilitate commission of an unlawful act) and the mandatory exemption in section 21(1) (personal privacy) of the *Act.*

[4] The requester (now the appellant) appealed the ministry's decision to this office. In its letter of appeal, the appellant raised the application of section 23 of the *Act* in relation to the information withheld pursuant to section 21(1) of the *Act.* Consequently, section 23 of the *Act* was added as an issue in this appeal.

[5] During the mediation of the appeal, the mediator discussed the nature of the severances in relation to section 14 of the *Act* with the appellant. Following that review, the appellant narrowed the scope of the information remaining at issue. Specifically, the appellant indicated that it was seeking access to pages 27-32 and 39-46 of the record.

[6] In addition, the appellant advised that it was not pursuing access to any codes severed pursuant to section 14(1)(l) of the *Act.*

[7] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the ministry and the appellant. Representations were shared in accordance with this office's *Practice Direction 7*.

[8] Also during the inquiry, the ministry issued a supplementary decision letter to the appellant, denying access to the personal information in the records, claiming the application of the exemptions in sections 14(1)(g), 14(1)(l) and 21(1), relying on the factor in section 21(2)(f) and the presumption in section 21(3)(b).

[9] For the reasons that follow, I uphold the ministry's decision and its exercise of discretion, and dismiss the appeal.

RECORD:

[10] The record consists of pages 27-32 and 39-46 of an OPP briefing book.

ISSUES:

A: Does the discretionary exemption at sections 14(1)(c), 14(1)(e), 14(1)(g) and/or 14(1)(l) apply to the record?

B: Did the ministry exercise its discretion under section 14(1)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the discretionary exemption at sections 14(1)(c), 14(1)(e), 14(1)(g) and/or 14(1)(l) apply to the record?

[11] The ministry is claiming the application of the exemption in sections 14(1)(c), 14(1)(e), 14(1)(g) and 14(1)(l)[1], which state:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[1] The ministry is claiming sections 14(1)(e) and (l) with respect to all of the records, and claiming section 14(1)(c) with respect to pages 27-32, and section 14(1)(g) with respect to pages 39-46.

[12] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

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

[13] The term "law enforcement" has been found to apply to a police investigation into a possible violation of the *Criminal Code.*[2]

[14] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[3]

[15] Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[4]

[16] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[5]

The ministry's representations

[17] The ministry states that the briefing materials in the record were prepared for a briefing session that was held by the OPP to prepare officers for their policing duties in relation to occupations, protests and roadblocks near Deseronto in 2008.

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[2] Orders M-202 and PO-2085.
[3] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[4] 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.).
[5] Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

[18] The ministry submits that the record was created strictly for law enforcement purposes, and that policing operations were established in these instances to preserve the peace, protect public safety and to enforce the law, all of which are core policing duties. In addition, the ministry states that the record was created to brief OPP members on the preparations they would be required to take, in order to plan as much as possible for every foreseeable eventuality.

[19] The ministry further submits that although the record was created approximately five years ago, the type of disputes that took place at that time remain ongoing and are as "contentious and volatile" as ever. For example, the ministry states that in December 2012 and January 2013, there were more rail blockades in the area, as well as threats of violence by protestors. The ministry argues that the leader of the protesters is on the record as stating to the Canadian Press that the protesters had guns in the camp. In addition, the ministry provided media articles, quoting one protestor as stating that "[t]his protest is peaceful. The next one won't be," and another article stating that if the police had enforced a court order to remove the barricades and tried to make arrests, there would have been a fight.[6]

[20] The ministry states:

> Obviously, the OPP has been challenged by these events, as it must preserve the peace, protect public safety, and yet also minimize disruption to vital national transportation infrastructure, such as trains and highways. The Ministry fears that it would not take much for the anger generated by this ongoing dispute to boil over. The Ministry does not want the disclosure of the record, and the visceral impact it could have, to play any part in triggering further illegal activities.
>
> The Ministry is of the view that the exemptions the Ministry has claimed in section 14 [of the *Act*] ought to be interpreted in light of the reality of the situation as it existed in 2008 and as it still exists. Specifically, the Ministry has withheld the responsive record for the following reasons:
>
> The record contains investigative techniques and procedures that members of the OPP were requested to follow as part of their policing duties;
>
> The release of the record could endanger the life or physical safety of law enforcement officials given that some of the record identify law enforcement officials involved in policing the dispute;

[6] Warrior Publications, December 30, 2012 and APTN National News, January 7, 2013.

> The record contains law enforcement intelligence information, and the Ministry further contends that the disclosure of the record would interfere with the gathering of such information;
>
> The Ministry contends that the release of the record would facilitate the commission of unlawful acts or hamper the control of crime by rendering public information that the Ministry contends is not currently part of the public domain, and that could be used to harm ongoing law enforcement activities.

[21] Moreover, the ministry submits that the decision in *Fineberg* is particularly relevant in the context of these appeals. In particular, the ministry notes that it is established jurisprudence that the law enforcement exemption must be "approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context." The ministry argues that in applying *Fineberg* to the circumstances of this appeal, it is impossible to anticipate the various ways in which individuals with criminal intent can use the records to take advantage of situations that remain challenging and volatile. The ministry goes on to argue that caution must be exercised in not disclosing a record, which could harm either law enforcement operations or public safety, particularly in light of the ongoing dispute in the area.

Section 14(1)(c): investigative techniques and procedures

[22] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[7]

[23] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.[8]

[24] The ministry submits that the records contain investigative techniques or procedures that are not widely known and that remain in current use, especially given the ongoing nature of the dispute and the particular circumstances of the dispute. The ministry provided details of the investigative techniques and procedures in its representations, but which will not be detailed in this order, as they met the confidentiality criteria in *Practice Direction 7*. In particular, disclosure of these portions of the ministry's representations would reveal the content of the records at issue.

[7] Orders P-170, P-1487, MO-2347-I and PO-2751.
[8] Orders PO-2034 and P-1340.

Section 14(1)(e): life or physical safety

[25] A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.[9] The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.[10]

[26] The ministry submits that it is established jurisprudence that there is a lesser threshold to be met with respect to the application of section 14(1)(e) than with the other exemptions in section 14. The ministry advises that the Court of Appeal has held that the "expectation of harm must be reasonable, but in need not be probable."[11]

[27] The ministry also submits that the reasoning for applying the exemption in section 14(1)(e) to these records is similar to that in Order MO-2011, in which this office upheld the application of the municipal equivalent of this exemption to many emergency planning records, on the grounds that to disclose such records would reveal vulnerabilities in emergency response.

[28] The ministry goes on to state that it has applied this exemption because it is concerned about the life and physical safety of the members of the OPP who were tasked with preserving the peace, protecting public safety and enforcing the law during the time of the dispute, who still are enforcing the law and that will likely continue to do so for the foreseeable future. The ministry states that it is also concerned about the safety of the public, who may be affected by blockades and who may end up in altercations with protestors.

[29] The ministry provided the basis for its belief that disclosure of the record would lead to a reasonable expectation of harm in its representations, but which will not be described in greater detail in this order, as they met the confidentiality criteria in *Practice Direction 7*. In particular, disclosure of these portions of the ministry's representations would reveal the content of the records at issue.

Section 14(1)(g): law enforcement intelligence information

[30] The term "intelligence information" means:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from

[9] Order PO-2003.
[10] Order PO-1817-R.
[11] See note 4.

> information compiled and identifiable as part of the investigation of a specific occurrence.[12]

[31] The ministry submits that this office has held in past orders that there is no temporal limit for the application of section 14(1)(g), such that the fact that the records were created over or nearly five years ago does not prevent the ministry from continuing to apply this exemption.[13]

[32] The ministry states that the records contain law enforcement intelligence belonging to the OPP, and therefore ought to be treated as police intelligence records. The ministry notes that previous orders of this office have expressly protected police intelligence records[14] under section 14(1)(g) and that this reasoning ought to be applied to this appeal. The ministry then goes on to describe the intelligence information in the records, which I will not describe in greater detail in this order, as it too meets this office's confidentiality criteria set out in *Practice Direction 7*.

Section 14(1)(l): commission of an unlawful act or control of crime

[33] The ministry submits that disclosure of these records would facilitate the commission of unlawful activity or hamper the control of crime and sets out its reasons, which I am unable to describe in greater detail in this order, as they also meet this office's confidentiality criteria set out in *Practice Direction 7*.

[34] Lastly, the ministry states that the records cannot be severed without disclosing law enforcement information.

The appellant's representations

[35] The appellant's representations included extensive background information, including its specific research objectives, the underlying issues behind the protest, its views on the adequacy of the decision letters, its views on its relationship with the ministry, and the ministry's "unreasonable" resort to the exemptions it claimed. I have reviewed these representations very carefully, but will not be reproducing them in their entirety. I have summarized the portions of the representations that are relevant for purposes of this appeal.

[36] The appellant advises that since May of 2008, it has been conducting research into two Mohawk land rights protests and occupations in the Tyendinaga area which occurred in 2007 and 2008 and which were both policed by the OPP. One of the

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[12] Orders M-202, MO-1261, MO-1583, PO-2751; see also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).
[13] Order MO-1647.
[14] Order MO-1431.

primary objectives of the research and the appeal, the appellant states, is to determine whether the OPP applied Ontario public policy and international human rights standards in preparing for the protests. The appellant is also of the view that some of the Mohawk activists may have been identified by photos and other descriptions and may have been targeted for possible criminal charges prior to the protests.

[37] The appellant states that Mohawk activists occupied the Culbertson Tract site on the east side of Deseronto on April 21, 2008. This occupation included blocking road access to the site. According to the appellant, a development company holds title to this land, but the land is the subject of unresolved land claim negotiations with the federal government. The appellant states that on the day in question, the OPP set up checkpoints at the road blockades to divert local traffic and that the following morning, community members observed a massive build-up of OPP forces, including helicopters and officers of the Public Order Unit wearing full riot gear, with shields, helmets, batons and police dogs. The blockades were subsequently dismantled by the activists.

[38] The appellant goes on to state that three days later, the OPP went to a local quarry, which had been occupied by activists for more than a year. At the quarry, the appellant advises, the OPP arrested four activists and the situation began to escalate. According to the appellant, OPP officers drew their guns and assault rifles and pointed them at the protesters and by-standers. That evening, the appellant states, the activists set up a roadblock to control access to the quarry and the OPP remained in the area. The appellant states that on the morning of April 28, 2008, approximately 200 OPP officers dismantled the barricade and by the end of the day, both police and the four remaining protesters had dispersed.

[39] The appellant further submits that the ministry's claims that the protesters had firearms are "highly debatable." The appellant states that it has interviewed participants and witnesses and found no evidence of the presence of firearms at these or subsequent protests, nor was any evidence presented in court. In addition, the appellant states that media accounts vary, with another reporter attributing a substantially different statement between the protester's leader and the Canadian Press, in which he stated that there weren't any weapons present.[15] Moreover, the appellant argues that the ministry's reference to a media account appears to be unnecessarily alarmist.

[40] The appellant states:

> While raising the spectre of armed violence by Mohawk protesters in June of 2007, [the ministry] does not mention the role of the OPP in its disproportionate response to the Mohawk road and rail blockades . . .

[15] Susanna Kelley on CBC's The Current, March 26, 2008.

[41] In addition, the appellant raises a number of points in response to the ministry's representations as follows:

- the ministry's claim that the disclosure of the records would now have a visceral impact which might trigger further illegal activities strains credulity and the ministry has provided no evidence to support this claim;

- there is a distinction between the right of protest and illegal actions;

- the ministry ignores the fact that in 2007, 2008, 2010 and 2013, the Mohawk protests and occupations ended peacefully without threats to public safety;

- the ministry has not provided any evidence that the disclosure of the briefing book might endanger the physical safety of OPP officers who would then be identified;

- as a result of the protests, a number of individuals were charged. Some of the OPP officers who were present at the protests provided testimony in court and have not subsequently faced reprisals from protesters;

- previous protests had been successfully and peacefully contained by the Tyendinaga Mohawk Police Service and the escalation of road and rail blockades appears to be related to the introduction of the OPP in policing the sites; and

- the possibility that the ministry is seeking to prevent the public release of information, not out of legitimate law enforcement concerns, but out of a desire to shield the OPP and its [former] Commissioner from potentially embarrassing or discrediting revelations.

[42] Lastly, the appellant argues that the record could be severed or edited to permit the release of information, including severing photographs of individuals and their names and other identifying information.

Analysis and findings

[43] I have carefully reviewed both the non-confidential and confidential portions of the ministry's representations, the appellant's representations and the withheld portions of the record at issue. I am satisfied that this record meets the criteria of the definition of "law enforcement" records as set out in section (1) of the *Act*, as it relates to policing. In particular, the record consists of an OPP briefing book provided to officers prior to the policing of Mohawk protests.

[44] I am not persuaded by the ministry that the exemptions in sections 14(1)(e) and 14(1)(l) apply in the circumstances of this appeal. In my view, the ministry's submissions amount to a paraphrasing of section 14(1)(e), rather than evidence as to how or why disclosure of the record at issue could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Although the nature of the section 14(1)(e) exemption allows an institution to submit evidence that is less cogent than that required to satisfy the other section 14(1) exemptions, an institution must still provide some evidence beyond a mere paraphrasing of the words of the exemption. This would include some explanation as to why the reasons for resisting disclosure are not frivolous or exaggerated. In my view, the ministry's generic submissions on section 14(1)(e) do not meet this minimum threshold.

[45] The ministry has not pointed to any specific information in the record at issue, which, if disclosed to the appellant, could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Instead, the representations appear to be based on the premise that if the ministry puts into evidence information with respect to an individual's possible statement to the press, the section 14(1)(e) exemption automatically applies to the record at issue.

[46] I acknowledge that the OPP engage in work that is potentially dangerous, and that they undoubtedly face risks to their safety while carrying out their duties. However, I am not persuaded that disclosure of the withheld information in the specific record at issue in this appeal could reasonably be expected to lead to the harms contemplated by sections 14(1)(e) of the *Act*.

[47] I am also not persuaded that disclosing the withheld information in the record at issue could reasonably be expected to lead to the harms contemplated by section 14(1)(l) of the *Act*. In my view, the ministry's confidential submissions with respect to the application of this exemption amounts to speculation of possible harm, which is not sufficient to establish that the section 14(1)(l) exemption applies to the withheld information in the records at issue.

[48] However, I am satisfied, based on my review of the records, that some of the information that is contained in the record reveals "investigative techniques and procedures." Such information does not automatically qualify for exemption under section 14(1)(c) simply because it reveals "investigative techniques or procedures." This office has found in previous orders that to meet the requirements of section 14(1)(c), the institution must show that disclosure of the investigative technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[16] Moreover, in Interim Order MO-2347-I, Adjudicator Colin Bhattacharjee found that disclosure of a specific investigative

[16] Orders P-170 and P-1487.

technique or procedure could not reasonably be expected to hinder or compromise its effective utilization if it is already accessible in publicly available records. I find that some of the information in the records would disclose the investigative techniques and procedures of the handling and management of protests, where those methods are not generally known to the public. This information, contained in pages 27-32 of the briefing book is, therefore, exempt from disclosure under section 14(1)(c).

[49] Similarly, I am satisfied that the remainder of the information in the record which is contained in pages 39-46, meets the criteria for exemption under section 14(1)(g), as its disclosure would reveal detailed law enforcement intelligence information respecting an organization and individuals. Past orders of this office have defined intelligence information as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation or a specific occurrence. Therefore, the fact that the briefing book, which was prepared prior to a briefing session that occurred approximately five years ago does not undermine the application of this exemption, because the exemption does not contain a temporal limit. Consequently, the remaining information in the record is exempt from disclosure under section 14(1)(g).

[50] In sum, I find that the withheld portions of the record are exempt from disclosure under section 14(1)(c) or (g) as the case may be, subject to my finding with respect to the ministry's exercise of discretion. In addition, as I have found the information at issue to be exempt from disclosure under section 14(1), it is not necessary for me to consider the ministry's application of the mandatory exemption in section 21(1) to the same information.

Issue B: Did the institution exercise its discretion under section 14(1)? If so, should this office uphold the exercise of discretion?

[51] The section 14 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 Commissioner may determine whether the institution failed to do so.

[52] 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.

[53] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[17] This office may not, however, substitute its own discretion for that of the institution.[18]

[54] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[19]

- the purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

[17] Order MO-1573.
[18] Section 54(2) of the *Act*.
[19] Orders P-344 and MO-1573.

The ministry's representations

[55] The ministry submits that it exercised its discretion properly in not disclosing the record at issue, and states that it took into consideration the following:

- the importance of protecting the integrity of law enforcement operations, including personal information that is collected during these operations;
- the fact that intelligence information is, by definition, information that is maintained in strict confidence and is not disclosed for non-law enforcement purposes;
- the public's expectation that personal information collected by the police during a law enforcement operation will be kept confidential, except in accordance with strictly interpreted exemptions, none of which apply in this appeal; and
- that there is a compelling public interest in intelligence information not being disclosed, and in protecting this type of record.

The appellant's representations

[56] The appellant submits that the ministry does not appear to have exercised its discretion in a reasonable manner, as it has adopted an "across-the-board" application of four discretionary exemptions to the entirety of the information at issue. This approach, the appellant argues, may demonstrate a lack of transparency and public accountability.

[57] The appellant also submits that the ministry failed to take into account other relevant considerations. For example, the appellant states that the ministry did not take into account the age of the record,[20] or the fact that the appellant represents a respected and reputable organization, whose truthfulness and reliability have not been refuted by the OPP or any provincial government official.

[58] The appellant has made arguments that it is in the public interest that the record be disclosed. Although the public interest override in section 23 of the *Act* is not available to override the discretionary exemption in section 14(1), the Supreme Court of Canada held in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association* [21] that the public interest must be taken into consideration when an institution exercises its discretion when applying the exemption in section 14(1). Therefore, I will consider the appellant's argument as part of my analysis of the ministry's exercise of discretion.

[20] Approximately five years.
[21] 2010 SCC 23 (SCC).

[59] The appellant submits that the public interest in the disclosure of the record would be desirable for the purpose of subjecting the activities of the government and its agencies to public scrutiny, for the following reasons:

- based on the appellant's research, there is good reason to suspect that some Mohawk activists may have been identified in part of the record, and may have been selected for possible criminal charges prior to the protest. The appellant states that it has repeatedly, but unsuccessfully attempted to persuade the Government of Ontario to establish an independent, impartial probe into the OPP's handling of the protest;

- the United Nations Committee Against Torture has expressed its concern about excessive use of force by law enforcement officers in the Tyendinaga area and recommended that an impartial investigation ensue;

- the public's interest in determining if the OPP is putting into practice the recommendations made at the Ipperwash Inquiry, despite the lack of a third party evaluation of the OPP's *Framework for Police Preparedness for Aboriginal Critical Incidents*;

- to determine if the prior selective identification of certain individuals in the record was indicative of a predisposition in the OPP towards criminalization;

- to learn as much as possible about the policing of previous Mohawk protests, in order to take whatever steps are necessary to reduce the potential for violence and harm; and

- the additional costs of front-line policing by the OPP during the protest may be the result of "law and order" rather than "peacekeeping" bias.

Analysis and findings

[60] I have carefully considered the representations of both parties. I am satisfied that the ministry took into account relevant factors in weighing against the disclosure of the information at issue and did not take into account irrelevant considerations. In my view, the ministry's representations reveal that they also considered any public interest in the disclosure of the records in exercising their discretion not to disclose the information at issue. As well, I note that any public interest in *non*-disclosure that may exist also must be considered,[22] and I am satisfied that the ministry has appropriately

[22] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

taken that into consideration. I also note that the ministry did not deny access to the briefing book in its entirety, as other portions of it were disclosed to the appellant.

[61] Under all the circumstances, therefore, I am satisfied that the ministry has appropriately exercised its discretion under sections 14(1)(c) and 14(1)(g).

ORDER:

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

Original signed by: December 13, 2013
Cathy Hamilton
Adjudicator