Information and Privacy Commissioner,
Ontario, Canada

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

# INTERIM ORDER PO-3281-I

Appeal PA12-185

Ministry of Community Safety and Correctional Services

December 3, 2013

**Summary:** The appellant sought access to incarceration records relating to two specified periods of time she served at a specified detention centre. The ministry located records responsive to the request and granted partial access to them, relying on the discretionary exemptions in section 49(b) (invasion of privacy), section 49(e) (confidential correctional record), and section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(i), (j) and (k) (security), 14(1)(l) (facilitate commission of unlawful act), 14(2)(d) (correctional record) and 15 (relations with other governments) of the *Act* to deny access to the remaining responsive records and portions thereof. The ministry also denied access to other information in the records on the basis that it was not responsive to the request. The appellant appealed the ministry's decision to deny her partial access to the records. She also provided detailed information describing various records that she believed existed but were not located by the ministry, including video recordings of her during her incarceration. The ministry conducted three additional searches during the course of the appeal and issued three supplementary decisions providing partial access to additional responsive records. The ministry relied on the same discretionary exemptions noted above and withdrew its reliance on section 15.

The ministry's decision to withhold almost all of the records remaining at issue under the discretionary exemption in section 49(e) is upheld in this interim order. However, the ministry is ordered to disclose pages 339, 342 and 576 as these pages do not qualify for the exemptions claimed. The ministry is also ordered to conduct further searches for specified records and to provide explanations for the whereabouts of records that previously existed, but were not located.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 14(2)(d), 23, 49(a) and 49(e).

**Orders and Investigation Reports Considered:** Orders P-541, PO-3080 and PO-3086.

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

## OVERVIEW:

[1] On January 11, 2012, the appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) for access to her incarceration records from a named detention centre (the detention centre). The request specifically included the following records:

- The audio recording taken by three named negotiators on December 23, 2011.
- Video recordings from December 21 to 30, 2011, and particularly from December 28, 2011, to be provided in 24-hour time periods.
- Medical and psychiatric records, reports, assessments, logs handwritten notes from the clipboard in front of her cell that was signed every 15 minutes and any other related personal information from October 4, 2011, to January 11, 2012.
- All records for June 18, 2011, including video recordings.

[2] The appellant subsequently submitted an amended request to the ministry for her incarceration records from the detention centre and for general records about the ministry's policies, procedures, guidelines and standards. In her amended request of February 8, 2012,[1] the appellant specified she sought access to the following records for the time period May 25, 2011, to February 5, 2012:

- Audio recordings taken by three named negotiators on December 23, 2011.
- Video recordings of the detention centre's female area from December 21 to 30, 2011, and particularly, video recordings from all the areas of the

[1] Although the amended request form indicates a date of August 2, 2012 in the form "2012/08/02" under the heading "Date (yyyy/mm/dd)", it is clear from the file that the amended request was submitted February 8, 2012.

detention centre (indoor and outdoor) she was taken on December 28, 2011.

- Video recordings from January 12 to February 5, 2012 from the camera installed outside of the female unit segregation cell closest to A&D, where she was housed.

- All medical and psychiatric records, reports, assessments, doctor's orders for medical TAPs, pharmacy orders, and any other related information.

- Logs, records, handwritten notes from the clipboard in front of her cell that was signed every 15 minutes (from both of her incarcerations: May 25 to August 15, 2011, and October 3, 2011, to February 5, 2012), incident reports, her written requests, misconducts, and any other records written by corrections staff.

- All records for June 18, 2011, including video recordings taken in the S.N.U. area.

- All policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates.

[3] The ministry located records responsive to the request and issued two decisions, the first relating to the request for incarceration records, and the second relating to the request for general records.

[4] In its first decision dated April 4, 2012, the ministry granted partial access to the appellant's incarceration and medical records, including access to audio recordings on a CD. The ministry stated that no video recordings exist. The ministry relied on the discretionary exemptions in section 49(b) (invasion of privacy), section 49(e) (confidential correctional record), and section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(i), (j) and (k) (security), 14(1)(l) (facilitate commission of unlawful act), 14(2)(d) (correctional record) and 15 (relations with other governments) of the *Act* to deny access to the remaining responsive records and portions thereof. The ministry also stated that access to other information in the records was denied on the basis that it was not responsive to the request.

[5] In its second decision, the ministry issued a fee estimate and interim access decision for the part of the request relating to the detention centre's policies and procedures with respect to the care and treatment of inmates. The requester appealed this decision and related appeal PA12-205 was opened. Accordingly, this aspect of the request is not at issue in this appeal.

[6] The appellant then appealed the ministry's decision to deny her partial access to her incarceration records to this office.

[7] During mediation, the appellant indicated her belief that additional records exist and that the ministry had removed some information from the CD that was disclosed with its decision. She stated that the audio recording was only 80 minutes long, while the written account of the negotiations indicated a duration of four hours. She asserted that the discrepancy was a result of the negotiations being recorded using the wrong format, thereby ending the recording at the 80 minute mark, and omitting two hours and 20 minutes from the recording.

[8] The appellant provided details of the records she believes exist and reiterated her request for video recordings which she stated were missing from the responsive records. To support her claim about the existence of video recordings, the appellant provided a copy of an email sent by the Executive Director of The Elizabeth Fry Society of Ottawa to the appellant's sister dated January 16, 2012, which stated that an investigator in the office of the Ontario Ombudsman was examining "the video evidence of [the appellant's] treatment." A copy of this email was shared with the ministry along with the appellant's details and concerns about the ministry's search.

[9] The appellant also requested a copy of the ministry's record retention policy and asked that this issue be added to her related appeal PA12-205. This issue was subsequently resolved during the mediation of appeal PA12-205 when the appellant agreed to submit a new request to the ministry for this record. Appeal PA12-205 was then closed.

[10] The ministry conducted two additional searches and located additional responsive records. On September 11, 2012, the ministry issued a supplementary decision granting partial access to the additional records. It relied on the discretionary exemptions in sections 49(b) and (e), and 49(a) in conjunction with sections 14(1)(i), (j) and (k), and 14(2)(d) of the *Act* to deny access to some portions of the records. The ministry also denied access to other portions of the records that were not responsive to the request. In addition, the ministry confirmed that the audio recording that was previously provided to the appellant had been disclosed in its entirety.

[11] After receiving the ministry's supplementary decision, the appellant again raised the reasonableness of the ministry's search as an issue in the appeal. The appellant again provided details of records she believes exist, and these details were again shared with the ministry. The ministry initially advised that it would not conduct a further search as it had located all of the records that are responsive to the request.

[12] The ministry subsequently issued a second supplementary decision dated October 29, 2012. It stated that after consulting with four different police forces, it had decided to grant additional access to the records at pages 127 to 138, and 177 to 180.

The ministry also advised that it was relying on section 49(a) in conjunction with section 14(l)(i) rather than section 15(b), as well as on sections 49(b) and (e), to withhold portions of these records. The ministry granted the appellant access to pages 114 and 270, in their entirety. It also stated that pages 7 and 13 to 27 were not responsive to the request and were being withheld on this basis.

[13] At the end of mediation, the appellant confirmed that she is not seeking access to information that was withheld as non-responsive to her request. Accordingly, this information is no longer at issue in this appeal. Pages 7, 13 to 27, 218, 246, 291, 462 and 466, from which only non-responsive information was withheld, are similarly no longer at issue in this appeal. The appellant also advised that she is not pursuing the access codes which were withheld from records 127 to 138 and 177 to 180. Accordingly, pages 127, 128, 130, 131, 177, 178 and 180 of the records, from which only access codes were withheld, are no longer at issue in this appeal.

[14] The appellant also advised that except for the information that was withheld in pages 464 and 465 of the records, she was not pursuing access to information that was withheld because it contained the personal information of other individuals. Accordingly, this information is no longer at issue in this appeal, and pages 153, 156, 159, 160, 376, 439, 440, 472 and 479, from which only the personal information of other individuals was withheld, are no longer at issue in this appeal.

[15] Pages 179 and 462 are also not at issue, as the only information withheld from these records consists of either non-responsive information, access codes and/or other individuals' personal information.

[16] Finally, the appellant advised that she continued to question the reasonableness of the ministry's search, and suspected that the ministry purposely destroyed the video recordings she requested in order to hide evidence of the mistreatment she suffered while incarcerated. The appellant confirmed that she wished to pursue access to the remaining withheld records and portions thereof.

[17] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process for an inquiry under the *Act.*

[18] I began my inquiry by inviting the representations of the ministry on the exemptions it claimed and the reasonableness of its search. I received the ministry's representations and shared them with the appellant, who provided representations in two parts. In her representations, the appellant identified numerous records by type and date that she submitted were missing from the responsive records identified by the ministry. She also raised the possible application of the public interest override in section 23 of the *Act.*

[19] Accordingly, I shared the appellant's representations, in their entirety, with the ministry and asked it to provide reply representations that addressed the existence of the additional records specified by the appellant, and the possible application of section 23 in this appeal.

[20] The ministry provided reply representations, and it also issued a third supplementary decision to the appellant. In this third supplementary decision dated April 12, 2013, the ministry granted the appellant access to additional medical records from her incarceration, disclosing pages 575 and 577 through 590 in their entirety, and page 576 in part. In its letter, the ministry advised that it relies on the discretionary exemption in section 49(b) to withhold portions of page 576.

[21] In this order, I uphold the ministry's decision to withhold the records at issue, with the exception of three pages which I order disclosed. I find the ministry's search for responsive records to be unreasonable and I order the ministry to conduct a further prescribed search for records.

## RECORDS:

[22] The records remaining at issue consist of occurrence and other reports, handwritten notes, checklists, profiles, and briefing forms withheld in their entirety (pages 289, 306 , 307, 312, 313, 318 to 325, 346 to 361 and 381) or in part (pages 3, 6, 33, 124, 172, 183, 292, 293, 296 to 298, 300, 304, 305, 310, 314 to 317, 326, 331 to 333, 339, 342, 345, 365, 366, 369 to 371, 373, 374, 386, 387, 460, 461, 464, 465, 477, 480 and 576).[2]

[23] Unfortunately, the ministry did not provide an index of records to this office at any stage of the appeal process. As such, I will describe the records as required below when I address those that are relevant.

## 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(e) apply to the information at issue?

[2] In the Notice of Inquiry I provided to the parties, I inadvertently listed page 476 as one of the records at issue. In fact, page 476 was disclosed in full to the appellant in the ministry's supplementary decision letter of September 11, 2012 and is therefore not at issue in this appeal.

C. Does the discretionary exemption at section 49(a), in conjunction with the section 14(1)(i), (j), (k), and (l), and the section 14(2)(d) exemptions apply to the information at issue?

D. Did the institution exercise its discretion under section 49(e)? If so, should this office uphold the exercise of discretion?

E. Does the public interest override in section 23 apply to the records at issue?

F. Did the institution conduct a reasonable search for records?

## DISCUSSSION:

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

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

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,

> (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;

[25] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[26] In its representations, the ministry states that pages 3, 6, 172, 183, 310, 345, 369, 386, 461, 464, 465 and 477 of the records contain the personal information of identifiable individuals other than the appellant. Specifically, pages 3, 6, 310, 345, 386 and 477 contain the name, address and phone number of an identifiable individual; pages 172 and 183 contain the names of individuals with whom the appellant is prohibited from having contact; pages 461, 464 and 465 contain the names of witnesses, and a paramedic and security guards not employed by the ministry, all of whom were present during incidents involving the appellant on December 28, 2011.

[27] The ministry submits that this personal information is contained in a correctional record and thus would link the individuals to violent, aggressive and destructive incidents caused by the appellant while incarcerated. It states that the personal information would likely identify the individuals. It adds that it is not in the normal course of ministry business to refer to these kinds of individuals in ministry records; however, these individuals were mentioned because of the nature of incidents reported on and described in the records. The ministry thus argues that although the paramedic and security guards were acting in their professional capacity, their names, coupled with other information in the record, would reveal information of a personal nature about these individuals, and therefore, the records contain their personal information.

[28] In her representations, the appellant states that she is not interested in pursuing access to the personal information of third party individuals, including the names of any witnesses from the community. She adds that the withheld records could be severed to exclude any third party information.

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

### *Analysis and findings*

[29] Based on my review of the records at issue in this appeal, I find that all of them contain the personal information of the appellant, as contemplated by the various paragraphs in the definition of "personal information" set out in section 2(1) of the *Act.*

[30] I accept the ministry's representations that pages 3, 6, 172, 183, 310, 345, 369, 386, 461, 464, 465 and 477 contain the names and other information about identifiable individuals that would reveal something personal about them and would, therefore, qualify as their personal information. I also note that although the ministry did not include page 296 in its submission, this page also contains the personal information of an identifiable individual. Therefore, I find that all of these pages contain the personal information of other identifiable individuals.

[31] Because the appellant confirmed in her representations that she is not interested in pursuing access to the personal information of other individuals, it is not necessary for me to consider whether the information severed from these pages, which consists of the personal information of other identifiable individuals, qualifies for exemption under the discretionary invasion of privacy exemption in section 49(b) which was claimed by the ministry for the severed information.

[32] Accordingly, the first severance in each of pages 3, 6, 296, 310, 345, 369, 386, and 477 is no longer at issue in this appeal. As well, the names of other identifiable individuals contained in pages 172, 183, 461, 464 and 465, are similarly no longer at issue in this appeal. Because pages 461, 464 and 465 were disclosed to the appellant with the exception of the severances made under the invasion of privacy exemption, there is no remaining withheld information in these records, and thus, they are no longer at issue.

[33] There remains one page containing two severances that were withheld by the ministry pursuant to the section 49(b) exemption; page 576. The ministry did not address this page in its representations. Based on my review of page 576, I find that it contains the names of identifiable individuals who are referenced only in their professional capacities. There is no evidence before me to indicate that these two names in page 576 reveal something of a personal nature about these individuals. Accordingly, I find that because the information in the severances on page 576 does not qualify as "personal information" the exemption in section 49(b) cannot apply to exempt the severed information. As no other exemption has been claimed for this page, I will order it disclosed.

## B. Does the discretionary exemption at section 49(e) apply to the information at issue?

[34] The ministry claims that both the section 49(a) and (e) exemptions apply to all of the withheld information remaining at issue in this appeal.

[35] Section 49 provides a number of exemptions from the general right of access individuals have under section 47(1) to their own personal information held by an institution. Under section 49(e), the ministry may refuse to disclose a correctional record in certain circumstances. Section 49(e) reads:

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

[36] "Correctional records" may include both pre- and post-sentence records. To qualify for exemption under section 49(e), the ministry need only show that the records it seeks to protect are "correctional" records, the disclosure of which "could reasonably be expected to reveal information supplied in confidence." It does not have to go further and demonstrate, on detailed and convincing evidence, that a particular harm would result if the information were to be disclosed.[4]

### *The ministry's representations*

[37] In its representations, the ministry states that the records remaining at issue relate to incidents involving the appellant during her incarceration, and consist of: occurrence reports used to brief the superintendent of the detention centre; an activation and debriefing report prepared by the crisis negotiation team; notes taken by the crisis negotiation team and others while the team was activated; and printouts from the Offender Tracking Information Sheet (OTIS) database, which is a ministry database that maintains information on offenders for correctional, parole and probation employees.

[38] The ministry states that its mandate is to operate a "modern correctional system where incarcerated offenders are held in a safe and security environment and where those serving sentences in the community are well supervised." It also refers to section 5 of the *Ministry of Correctional Services Act* (*MCSA*) which states:

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

> It is the function of the Ministry to supervise the detention and release of inmates, parolees and probationers and to create for them an environment in which they may achieve changes in attitude by providing training, treatment and services designed to afford them opportunities for successful personal and social adjustment in the community . . .

[39] The ministry submits that all of the records are correctional records since they were created by it for correctional purposes and in a manner that is consistent with its mandate as set out in section 5 of the *MCSA*. It further submits that the records would all reveal information supplied in confidence from sources within the correctional institution, from the OTIS database or from judicial records.

[40] The ministry states that many of the records are occurrence reports addressed exclusively to the superintendent of the detention centre. The ministry asserts that in preparing the occurrence reports to brief the superintendent, the writer relied on information provided in confidence by negotiators and members of the correctional staff. The ministry further argues that superintendents cannot fulfill their mandate unless they have complete access to confidential information, which will allow them to make relevant decisions in the administration of correctional institutions.

[41] It continues that it can be inferred from the other records that the records for which it has applied section 49(e) were created exclusively for correctional purposes and impliedly were supplied in confidence.

[42] The ministry asserts that the records have been severed and disclosed appropriately and that the information that remains at issue was properly withheld in accordance with its exercise of discretion. The ministry submits that the severances at issue in pages 3, 6, 172, 183, 296, 310, 345, 369, 386, 477 and 480 contain management risk assessments created at various times during the appellant's incarceration, as they appear in the appellant's profile set out in the OTIS. The ministry states that these records are created solely to provide correctional employees, including probation employees, important information about offenders, and they allow corrections staff to take appropriate steps to protect themselves, the offender and others when interacting with the offender.

[43] The ministry states that pages 312, 313, 314 to 316, 326, 331 to 333, 347 to 361, and 365, are records leading up to and otherwise related to the activation of the crisis negotiation team. It states that the information withheld from these pages reveals the strategies used to deal with offenders who are destructive or commit acts of violence or aggression.

[44] The ministry concludes by stating that most of the withheld records were created because the appellant required an extraordinary amount of supervision while she was incarcerated due to her behaviour and actions, all of which are detailed in her records.

It states that part of the appellant's supervision included the deployment of the crisis negotiation team, as well as additional monitoring by corrections officers. The ministry continues that consistent with this additional supervision, additional records were created to document the appellant's history, including the management risk assessments noted in the pages above.

### *The appellant's representations*

[45] The appellant refutes the ministry's assertion that the information at issue is exempt. While she does not directly address the possible application of the section 49(e) exemption, she alleges that the ministry is using "security issues" as a pretext to censor the detention centre's policies on the use of force and the classification of inmates which allow an inmate to be segregated indefinitely. She asserts that as a result of the complete disregard of detention centre staff, inmate risk assessment information in the OTIS database relating to other inmates has already been intentionally disclosed to her. She explains that many confidential documents and personal records of various inmates were improperly stored in the admission and discharge area of the female unit of the detention centre, and she saw these records belonging to other inmates.

[46] The appellant asserts she is in no way the violent and dangerous person that she being is portrayed as by the ministry. She adds her belief that the detention centre personnel are chiefly interested in protecting themselves and their jobs from the scrutiny of the general public, and are not interested in protecting the privacy of inmates as is evident from the number of restricted records she has seen "due to the privacy breaches of careless staff."

### *Analysis and findings*

[47] All of the records remaining at issue were created during the appellant's incarceration at the detention centre for correctional purposes. They all relate to correctional activities and occurrences involving the appellant while she was an inmate. Most of the records relate to a specific incident that occurred on December 23, 2011, while the remainder consist of multiple copies of the appellant's OTIS client profile and other documents, generated or prepared by correctional staff during the course of the appellant's incarceration. Accordingly, I find that all of the information at issue is contained in records that qualify as correctional records for the purposes of section 49(e).

[48] My finding that the information at issue is contained in a correctional record addresses the first part of section 49(e). To find that the section 49(e) exemption applies, I must be satisfied that disclosure of the information could reasonably be expected to reveal information supplied in confidence. Thus, I will now consider whether the information at issue was supplied to the ministry in confidence.

[49] The ministry submits that disclosure of the information at issue would reveal information supplied in confidence either by sources within the detention centre, the OTIS database, or by judicial records. The appellant does not directly address this issue in her representations, but she does criticize the detention centre staff's commitment to maintaining the confidentiality of personal information.

[50] Having reviewed the records and considered the representations and all of the evidence before me, I accept the ministry's position. I find that disclosure of the withheld information, with the exception of the severances specified below, would reveal information supplied in confidence to the ministry.

[51] In making my determination, I am guided by the decision of the Court of Appeal for Ontario which considered the section 49(e) exemption in its 2011 decision in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner).*[5] The issue before the Court in *Correctional Services* was whether the definition of "correctional" referred to the punishment and rehabilitation of offenders only after a finding of wrongdoing. In ruling that "correctional" should be construed as referring to both pre- and post-sentencing records, the Court made a number of remarks that are applicable in this appeal including articulating the evidentiary standard to be used in determining whether section 49(e) applies:

> To qualify for a s. 49(e) exemption, the Ministry need only show that the records it seeks to protect are "correctional" records, the disclosure of which "could reasonably be expected to reveal information supplied in confidence." It does not have to go further and demonstrate, on detailed and convincing evidence, that a particular harm would result if the information were to be disclosed.[6]

[52] The Court then went on to note that the origin of information supplied in confidence is not determinative when dealing with correctional records; instead, it is the confidential nature of the information that attracts the protection of the section 49(e) exemption.

> The Commissioner claims that the Williams Report supports the adjudicator's conclusion that s. 49(e) was enacted to protect sensitive information that family members and friends of the inmate/offender might be willing to provide to probation and parole officers on a promise of confidentiality. Having reviewed the relevant sections of the Williams Report, I do not doubt that s. 49(e) was enacted in part to protect sensitive information provided on a confidential basis by family members and friends to parole and probation officers. However, I do not accept that s. 49(e) was enacted exclusively for that reason. I see no principled

[5] *Supra,* note 4 (*Correctional Services*).
[6] *Ibid*, paragraph 52.

> reason why the less stringent s. 49(e) test should only apply to information supplied by family members and friends to parole and probation officers at the post-sentence stage but not to information supplied by the police to corrections at the pre-trial/pre-sentence stage. Surely sensitive information provided by the police or anyone else for that matter should receive the same protection.
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> The Williams Commission was concerned with privacy issues at all stages of the correctional process, including the pre-trial custodial stage. The Report recognizes, at p. 561, that inmate files may contain information that is used in making decisions "about the kind of institution [an inmate] is to be assigned to, any special treatment he is to receive, and whether he will be granted a temporary absence permit." The Report notes that while an inmate may be aware of "much of the information leading to these decisions, the inmate is not normally permitted to see the actual file." Likewise, the Report adverts to the fact that inmates may not see "the inmate record card (which may indicate, for example, that the inmate is assaultive, a sexual deviate, or an arsonist) nor generally know the contents of the progress reports or psychiatric assessments."[7]

[53] The Court proceeded to remark that focusing on the confidentiality aspect of section 49(e) is the appropriate way to narrow the reach of this provision, and to thereby give effect to the twin purposes in sections 1(a) and (b) of the *Act* to the effect that rights of access should be liberally construed while exemptions should be limited and specific.

[54] I adopt the Court's interpretation of section 49(e) that sensitive information that is contained in correctional records, regardless of who provided it, should be protected as long as the ministry is able to show that the information was supplied to it in confidence.

*Management risk information in OTIS profiles*

[55] Applying the Court's reasoning to this appeal, I accept that the severed management risk information contained in the OTIS profiles in pages 3, 6, 172, 183, 296, 310, 345, 369, 386, 477 and 480, was supplied to the ministry by correctional staff in confidence to provide important information about the appellant to correctional employees responsible for her supervision. The severed information is directed to correctional employees and provides details about the appellant that allow correctional staff to take appropriate steps to protect themselves, the appellant and others when interacting with her. While the source of the information is not clear on the face of the records, I accept the ministry's submission that the information was provided by

[7] *Ibid*, paragraphs 54 and 55.

sources within the detention centre, from the OTIS database or from judicial records. It is evident that the information consists of advisories provided to correctional staff to make them aware of specific risks and/or safety concerns in carrying out their duties with respect to the appellant. This limited use of the information supports the ministry's claim that it was provided confidentially.

[56] While the appellant may have knowledge of some of the incidents underlying the inclusion of the various management risk entries in her OTIS profile, her knowledge does not diminish the correctional staff's expectation that the information it supplied for the profile remain confidential. There is no evidence before me that this information was intended to be disclosed to anyone other than correctional staff, or that it was treated by the ministry or the detention centre in a manner that is inconsistent with the confidentiality claimed by the ministry. For these reasons, I find that the severed management risk information in these pages qualifies for exemption under section 49(e).

*Procedural and briefing checklists, reports and forms*

[57] Similarly, I accept that the information in the following withheld pages was provided in confidence: the procedural and briefing checklists at pages 289, 318, 319 and 381; the briefing form at pages 306 and 307; the crisis negotiation team activation and debriefing report and communications log in pages 312, 313 and 320 to 325; and the offender profile at pages 346 to 361. All of the information withheld from these pages was prepared by various detention centre staff during the course of their supervisory duties, crisis negotiation and crisis management responsibilities involving the appellant. Some of this information was prepared for reporting purposes to apprise the superintendent of the detention centre of the appellant's conduct and the correctional steps taken by staff to supervise and manage her.

[58] I also note that some of the records in which this information is contained consist of checklists or forms that reveal standard correctional procedures followed in certain inmate situations. For example, the offender profile and handwritten notes at pages 346 through 361 provide an overview of the crisis negotiation strategy employed by the detention centre that acted as a step by step manual for staff who dealt with the appellant during the incident of December 23, 2011.

[59] While the appellant may have knowledge of the steps taken by staff and the course of events that day, her knowledge does not diminish the expectation that correctional practices and details of how specific tactics were used to deal with her remain confidential. Considering the sensitive nature of this information, the challenging circumstances under which it was generated, and the detailed account of correctional procedures and strategies that it contains, I am satisfied that all of the withheld information in these records was supplied in confidence by the correctional staff for the purpose of carrying out their duties and was intended to be kept confidential. There is

no evidence before me to indicate anything to the contrary. Accordingly, I find that pages 289, 306, 307, 312, 313, 318 to 325, 346 to 361 and 381 qualify for exemption under section 49(e).

*Occurrence reports*

[60] The withheld portions of occurrence reports in pages 33, 124, 292, 293, 297, 298, 300, 304, 305, 314 to 317, 326, 331 to 333, 365, 366, 370, 371, 373, 374 and 387 contain information reported by correctional personnel to the superintendent of the detention centre about the appellant. The occurrence reports relate primarily to an incident that occurred on December 23, 24 and 25, 2011, and the crisis negotiation management that was employed to deal with the appellant during the incident.

[61] All of the withheld information in these occurrence reports describes correctional decisions made during the incidents involving the appellant, and/or correctional activities and practices that were implemented by the detention centre. As many of the occurrence reports relate to the same incident, some of the severances contain similar information that has been withheld in multiple occurrence reports. This office has previously found that the disclosure of information relating to internal correctional facility practices provided by correctional officers could reasonably be expected to reveal information supplied in confidence for the purposes of section 49(e).[8] I adopt this approach in this appeal.

[62] I find that the withheld portions of the occurrence reports at issue contain information that would reveal information supplied by correctional staff in confidence. I further find that the withheld portions of pages 33, 124, 292, 293, 297, 298, 300, 304, 305, 314 to 317, 326, 331 to 333, 365, 366, 370, 371, 373, 374 and 387 qualify for exemption under section 49(e).

*The severances at pages 339 and 342*

[63] The last two pages I must address are pages 339 and 342. The ministry claims that section 49(e) applies to the single severance that appears on each of pages 339 and 342. These pages are part of an eight-page record entitled "Negotiation Log." The ministry has disclosed the remaining six pages of the Negotiation Log to the appellant. These previously disclosed pages of the Negotiation Log contain the same information as that severed from pages 339 and 342. The ministry has not advised in its representations why the severed information in pages 339 and 342 should be protected under section 49(e), while the identical information in the disclosed pages should not. The ministry's inconsistent treatment of identical information within the same record and its failure to explain or justify its inconsistency, undermine its claim that the information in these two severances should be exempt under section 49(e). Disclosure

[8] See for example Order PO-3080 at pages 13 through 15.

of these severances cannot be said to reveal information supplied in confidence when the information has already been disclosed by the ministry. As such, I find that the information contained in the severances at pages 339 and 342 is not exempt under section 49(e). As the ministry has also claimed the exemption in section 49(a), in conjunction with section 14(2)(d), for these severances, I will consider whether the severances are exempt under section 49(a) below.

[64] As for the remaining records which I have found qualify for exemption under section 49(e), I find that they are exempt from disclosure subject to my determination of the ministry's exercise of discretion below.

## C. Does the discretionary exemption at section 49(a) in conjunction with the section 14(2)(d) exemption apply to the withheld information in pages 339 and 342?

[65] Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[66] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[9]

[67] In this case, the ministry relies on section 49(a), in conjunction with 14(2)(d) which states:

> (2) A head may refuse to disclose a record,
>
> > (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

[68] The ministry states in its representations dated February 14, 2013, that the appellant is serving probation and thus remains under its control or supervision.

[69] In her representations dated March 8, 2013, the appellant states that her probation order expires on March 15, 2013.

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[9] Order M-352.

[70] This order is being issued several months after the expiration of the appellant's probation order as reported by her. I accept the appellant's submission that she is no longer on probation and find that she can no longer be said to be under the control or supervision of a correctional authority for the purpose of section 14(2)(d).

[71] On this basis, I reject the ministry's submission, and I find that the severances in pages 339 and 342 do not qualify for exemption under section 49(a). As the ministry has not claimed any other exemptions in respect of these severances, I will order them disclosed.

## D. Did the institution exercise its discretion under sections 49(e)? If so, should this office uphold the exercise of discretion?

### *General principles*

[72] The section 49(e) 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.

[73] 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.

[74] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[10] This office may not, however, substitute its own discretion for that of the institution.[11]

### *Relevant considerations*

[75] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[12]

- the purposes of the *Act*, including the principles that

[10] Order MO-1573.
[11] Section 54(2).
[12] Orders P-344 and MO-1573.

  - 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
  - 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
- the historic practice of the institution with respect to similar information.

***Representations***

[76] The ministry asserts that it exercised its discretion appropriately in accordance with the following considerations:

- it has a strong security interest in exempting records that would reveal how it assesses risks posed by offenders, or the strategies it uses during crisis negotiations;
- offenders have the right to their own personal information and accordingly, it has severed the records and provided the appellant with access to much of her personal information; and

- it has exercised its discretion in this appeal in accordance with its usual practices.

[77] The appellant submits that the ministry has exercised its discretion by primarily considering how to safeguard the actions of the people in positions of power at the detention centre who make "arbitrary biased decisions and [allow] reprehensible procedures and actions to continue unabated." She notes that her records with reference to managerial staff are the records that are chiefly being severed or withheld.

[78] The appellant disagrees with the ministry's assertion that disclosure of her personal records would constitute a security risk to the detention centre or its staff. She states that her having seen exempt correctional records relating to others through the lack of judgment of staff, has not precipitated any harm to the ministry or the detention centre. The appellant concludes by reiterating her legal right to access the withheld records and states that she is interested in the accountability and legal responsibility of the detention centre to the public.

### *Analysis and findings*

[79] Having regard to the nature of the records at issue and the significant volume of records and information disclosed by the ministry to the appellant, I am satisfied that the ministry properly exercised its discretion under section 49(e).

[80] The ministry considered appropriate factors including the sensitive nature of the records, the broad scope and significant purposes of the section 49(e) exemption, and the appellant's right to access her personal information, which is evident from the hundreds of pages of records that the ministry disclosed to the appellant.

[81] While the appellant argues that the ministry inappropriately considered the protection of supervisors in the detention centre primarily in withholding records, there is no evidence before me to support this assertion. On the contrary, in the hundreds of pages of records that have been disclosed to the appellant, information on the various decisions that were made with respect to the appellant's supervision and management during her incarceration and during specific incidents is abundant. In the records that have been disclosed and those that have been withheld in whole or in part, I see no evidence of an intention on the part of the ministry to only withhold information about decisions and actions of detention centre staff or management.

[82] Based on my review of the disclosed and withheld records and the representations of the parties, I am satisfied that the ministry took relevant factors into account and did not exercise its discretion in bad faith or for an improper purpose. Accordingly, I uphold the ministry's exercise of discretion under section 49(e).

## E. Does the public interest override in section 23 apply to the records at issue?

[83] In her representations, the appellant states that she states she worries about other individuals who are physically and or mentally ill and incarcerated, and that her aim is to find a way to protect these vulnerable people from "the abuse of authority, malicious segregation tactics and lawlessness of the [detention centre] and of the corrections system in Canada." She adds that her objective is simply to examine her own records in order to understand the truth about the mistreatment she suffered and the medical negligence she experienced, and what is being done behind closed doors in the prison system. In this regard, the appellant alludes to the possible application of the public interest override in section 23 in this appeal.

[84] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[85] The discretionary exemption at section 49(e) of the *Act* is not listed as an exemption that can be overridden by section 23. However, the question of whether the public interest override in section 23 applies to section 49(b) has been previously considered in Order P-541, where the following finding was made:

> In my view, where an institution has properly exercised its discretion under section 49(b) of the *Act*, relying on the application of sections 21(2) and/or (3), an appellant should be able to raise the application of section in the same manner as an individual who is applying for access to the personal information of another individual in which the personal is considered under section 21. Were this not to be the case, an individual could theoretically have a lesser right of access to his or her own personal information than would the "stranger". This would result if section 23 could be used to override the exemption in section 21 of the *Act*, but not if the institution denied access to the information pursuant to section 49(b) as it contained the appellant's own personal information, as well as that of other individuals.

[86] Subsequent orders of this office have agreed with this finding and have found that the reasoning is equally applicable to the inclusion of section 49(a)[13] within the scope of section 23.

[13] Order PO-3086.

[87] In its reply representations, the ministry rejects the possibility that the public interest override applies in this appeal. It asserts that section 23 does not apply to records withheld under section 14 or 49(e) of the *Act.* The ministry states that the records have all been withheld on the basis of section 49(e) and most have been withheld on the basis of section 14. The ministry further argues that the appellant's request is for her incarceration records and, therefore, the interests being advanced are essentially private in nature as they are the appellant's alone. The ministry concludes by arguing that if there is a public interest, it is in not disclosing the personal information that is contained in the records given the circumstances in which the records were created and out of consideration for the individuals whose personal information the ministry is seeking to protect.

### *Analysis and findings*

[88] As noted above, previous orders of this office have accepted that an appellant should be able to raise the public interest override where an institution has exercised its discretion under section 49(a) and (b) of the *Act.* I agree with this approach and I adopt the reasoning set out in Orders P-541 and PO-3086 in confirming that section 23 can apply to the records that I have found qualify for exemption under section 49(e) of the *Act.*

[89] However, for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[90] In accordance with the standard approach of this office, I have reviewed the records that I have found above qualify for exemption under section 49(e) with a view to determining whether there could be a public interest in disclosure which clearly outweighs the purpose of the exemption.[14] Having done so, I find that there is no relationship between the records at issue and the *Act's* central purpose of shedding light on the operations of government.[15] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[16] I find this is not the case in this appeal.

[91] I agree with the ministry that the interests being advanced by the appellant are private in nature and concern the appellant's incarceration. I adopt the reasoning in previous orders of this office that have found that a public interest does not exist where

[14] Order P-244.
[15] Orders P-984 and PO-2607.
[16] Orders P-984 and PO-2556.

the interests being advance are essentially private in nature.[17] I find that the appellant's private interest in disclosure of her withheld correctional records does not raise issues of more general application, such that a public interest may be found to exist.[18]

[92] Accordingly, I find that section 23 is not applicable in this appeal.

## F. Did the institution conduct a reasonable search for records?

[93] The appellant has repeatedly asserted throughout the appeal process that additional records exist beyond those identified by the ministry, and accordingly, I must decide whether the ministry has conducted a reasonable search for records as required by section 24.[19] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the ministry's decision. If I am not satisfied, I may order further searches.

[94] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[20] To be responsive, a record must be "reasonably related" to the request.[21]

[95] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[22]

[96] A further search will be ordered if the ministry does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[23]

[97] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[24]

[98] During my inquiry into this appeal, I asked the ministry to provide a written summary of all steps taken in response to the request, including details of what searches were carried out, by whom and where. I also asked the ministry whether it was possible that responsive records previously existed but no longer exist, and if so, to

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[17] Orders P-12, P-347 and P-1439.
[18] Order MO-1564.
[19] Orders P-85, P-221 and PO-1954-I.
[20] Orders P-624 and PO-2559.
[21] Order PO-2554.
[22] Orders M-909, PO-2469 and PO-2592.
[23] Order MO-2185.
[24] Order MO-2246.

provide details of when such records were destroyed, including information about record maintenance policies and practices such as evidence of retention schedules.

### *The ministry's representations*

[99] In its representations, the ministry submits that it has conducted a thorough search for all responsive records, and it provides an affidavit sworn by the Security Manager of the detention centre in response to the questions set out in the Notice of Inquiry.

[100] In the affidavit, the Security Manager states that his duties and responsibilities include: gathering institutional records as requested through the Freedom of Information Office (FOI office), obtaining relevant institutional files in support of subpoenas and production orders, and providing testimony as required. He further states:

- On January 30, 2012, the FOI office received a detailed request under the *Act*.

- On February 2, 2012, he was contacted by the FOI office about the request and undertook a search for any responsive records in the custody and control of the ministry.

- The type of records that the appellant was seeking was clear to him; she was seeking access to her institutional, medical, audio and video recordings and observation records. Accordingly, he asked the Health Care Department, the Records Department and the Crisis Negotiating Department at the detention centre to provide any responsive records.

- The Health Care Department provided all responsive records in its possession.

- The Records Department went through the appellant's institutional inmate file and provided all documents requested.

- The Crisis Negotiators provided a copy of an audio file recording taped conversation they had had with the appellant.

- He personally checked and identified that certain video recordings requested were not available at that time either due to the short term electronic retention schedule or, electronic surveillance was not installed at that time.

- On July 11, 2012, the FOI office requested a supplementary search for records, and he again asked the Records and Health Care Departments to attempt to locate files, messages, clipboard notes, and audio and video files that the appellant felt were missing. After conducting a thorough search based on the clarification provided by the appellant, additional records were located and provided to the FOI office.

- On August 13, 2012, the FOI office requested a second supplementary search for records, and he again asked the Records and Health Care Departments to attempt to locate files, messages, clipboard notes, and audio and video files that were reportedly missing according to the appellant. He was informed by representatives of these departments that a thorough search for these documents was undertaken, and that no further responsive records could be found.

- He spoke to Crisis Negotiators who were present at the incidents involving the appellant and was informed by them that although they were present on the unit where the appellant was being housed for several hours, the recorders were only turned on at specific times and that all of that recording has been provided. He believes this accounts for the reason why certain video recordings that were requested are not available.

- He believes that the search has been diligent and thorough in that multiple searches were conducted, specifically on February 2, 2012, March 23, 2012, July 11, 2012 and August 13, 2012. After conducting a thorough search based on the clarification provided by the appellant, additional records were located and provided to the FOI office.

### *The appellant's representations*

[101] In her representations, the appellant states she does not believe that the ministry has addressed the issue of the records she has identified as missing, including the video recordings she alleges the ministry destroyed. She provides detailed lists of numerous specific records which she asserts are missing from her incarceration records. Along with the descriptions, she includes her rationale for why these records exist. The appellant states that while a small number of missing or misplaced records was released to her after the supplementary searches, most of the important material was not even mentioned by the ministry. She believes that the missing records that have been omitted by the ministry and the severed records chiefly involve or reference managerial staff, health care management and health care in particular, which are all under investigation at the detention centre through various governing bodies and courts.

[102] In respect of the audio CD recorded on December 23, 2011 by the crisis negotiators which was disclosed to her, she argues that the ministry chose the wrong format to record the negotiations. She states that she has several written versions of the negotiation session and she knows from these that it lasted approximately three hours and 40 minutes. She states that the CD ends at the 80 minute mark. She adds that the segment of the negotiations where she asks one of the negotiators whether she is being recorded is missing, and this occurred 45 minutes into the negotiations. The appellant states that there can be nothing in the audio recording that she has not already received in writing and she repeats her request for the remainder of this recording.

[103] The appellant also reiterates her request for missing video recordings. To support her claim that video recordings exist, she provides a copy of an email sent by the Executive Director of The Elizabeth Fry Society of Ottawa to the appellant's sister dated January 16, 2012, that states an investigator in the office of the Ontario Ombudsman was examining "the video evidence of [the appellant's] treatment."

### *The ministry's reply representations*

[104] In its reply representations, the ministry submits that it has introduced evidence that extensive searches were carried out for records that are responsive to the appellant's request in compliance with the *Act.* It further submits that the searches were conducted by experienced employees in the Health Care, Records, and Crisis Negotiating Departments of the detention centre. The searches have yielded approximately 480 pages of responsive records, which is a significant number consistent with what might be expected to be produced as a result of these searches. The ministry submits that the Security Manager has reasonable explanations for why certain records such as video recordings are not available, and he confirms in his affidavit that he spoke to the Crisis Negotiators to validate his explanation. The ministry expresses doubt that an additional search, if one is ordered, would be productive, given that two thorough searches have already taken place.

[105] The ministry then questions the submissions of the appellant and the suggestion that every single communication or meeting resulted in written records. It states that there is no reason to suggest that this is the case; meetings or telephone conversations do not necessarily result in the creation of written records.

[106] The ministry also alleges that the appellant expands the scope of her request in her submissions by requesting the name of the pharmacy and the pharmacy nurse at the detention centre. The ministry asserts that these records are not included in the scope of the request and should not therefore, be part of the appeal.

[107] The ministry argues that the appellant's requests are for records that the searches did not identify and therefore, were perhaps never in its custody or under its

control. For example, the appellant requests a copy of a hospital physician's order for a brain scan; given that this record was not identified as a responsive record, it may be that the ministry never received it from the hospital and that therefore, the appellant should contact the hospital to obtain a copy.

[108] Finally, the ministry asserts that it has not withheld any part of the audio records as alleged by the appellant.

### *Analysis and findings*

[109] The appellant has provided detailed information on a number of records that she believes should exist, but that were not located or identified by the ministry as responsive. Many of these relate to specific meetings, actions, incidents, people, dates and times. I am not able to repeat these details in this order for confidentiality reasons. However, these details are compelling in their breadth and provide a rational basis for believing that additional records beyond those identified by the ministry, exist, particularly in the face of the ministry's unsatisfactory response to this issue which amounts to a blanket assertion that all responsive records have been located.

[110] During my inquiry, I provided the ministry with all of the appellant's detailed submissions on the records that she asserts are missing. Rather than directly address each allegedly missing record described by the appellant, the ministry responded with general and unhelpful submissions that it has conducted appropriate searches. I find this response and approach inadequate considering the very detailed information that the ministry had before it from the appellant. I also note that the ministry located additional records after each supplementary search, which does not inspire confidence in the reasonableness of the ministry's searches.

[111] While I accept the ministry's contention that records do not necessarily exist for all of the meetings, conversations, actions and instances referenced by the appellant, the ministry has not particularized which of the allegedly missing records fall under this category. Accordingly, while this vague contention is plausible, it is not of assistance in the circumstances of this appeal.

[112] The ministry has also asserted that the appellant has attempted to expand the scope of her request by asking for the names of the pharmacy and pharmacy nurse in her representations. To the extent that these names are contained in any responsive records that may be located as a result of the further search that I will order the ministry to conduct, I disagree. The requested names cannot be said to be outside the scope of the request if they are contained in records that are responsive to the request, as framed. If, however, these names do not appear in any responsive records, then I invite the ministry to advise me of this along with its search results.

[113] With respect to the audio recording which the appellant asserts was withheld in part, the ministry denies that any part of the audio record was withheld. In the affidavit from the Security Manager, the ministry explains that the recording devices were not always activated and this is why certain video recordings that were requested are not available. Because the affidavit provided by the ministry conflates the issue of the allegedly severed audio recording and the allegedly missing and/or destroyed video recordings, I am not satisfied that the ministry's has adequately addressed the discrepancy between the length of the negotiations and the length of the audio recording pointed out by the appellant. Accordingly, I will ask the ministry to satisfy its reasonable search obligations by more specifically addressing the issue of the audio recordings.

[114] Finally, the ministry has failed to directly address the appellant's assertion that video recordings exist and her evidence in the form of an email from the Executive Director of the Elizabeth Fry Society that video recordings of her treatment while incarcerated were being examined by the Ontario Ombudsman as of January 16, 2012. This email provides me with a reasonable basis to conclude that video recordings exist, or at the very least, existed at the time that the appellant filed her first request on January 11, 2012. On this date, the appellant specifically requested all video recordings from December 21 to 30, 2011, and particularly from December 28, 2011, to be provided in 24-hour time periods. She then amended her request on February 8, 2012 to include video recordings of the detention centre's female area from December 21 to 30, 2011, and particularly, video recordings from all the areas of the detention centre (indoor and outdoor) that she was taken on December 28, 2011; and video recordings from January 12 to February 5, 2012 from the camera installed outside of the female unit segregation cell closest to admitting and discharge, where she was housed. Considering the fact that the ministry was on notice as of January 11, 2012, that the appellant was seeking access to all video recordings from her December 2011 incarceration, and as of February 2012 that she was seeking access to all video recordings from her 2012 incarceration, and considering the evidence of the appellant that the Ontario Ombudsman was in possession of video recordings of her treatment while incarcerated as of January 16, 2012, the ministry has not adequately addressed the issue of the existence of video recordings and their fate.

[115] All of the concerns I note above lead me to question the reasonableness of the ministry's search. In the circumstances, I am not satisfied that the ministry's search was reasonable. As such, I will order the ministry to conduct a further search for all of the records that the appellant has specifically identified in her submissions, including the video recordings.

[116] I will order the ministry to directly address whether each of these records exists and to provide both this office and the appellant with a copy of a decision letter regarding access to any records that were not previously located. As for any records that may have previously existed but no longer exist, such as the video recordings, I

will order the ministry to identify these records and to explain why they no longer exist, and when they were destroyed, with specific reference to the timing of the appellant's request and when the ministry became aware that the appellant was seeking access to them.

## INTERIM ORDER:

1. I uphold the ministry's decision to withhold information from pages 3, 6, 33, 124, 172, 183, 289, 292, 293, 296 to 298, 300, 304 to 307, 310, 312, 313, 314 to 326, 331 to 333, 345 to 361, 365, 366, 369, 370, 371, 373, 374, 387, 381, 386, 477 and 480 pursuant to the discretionary confidential correctional record exemption in section 49(e).

2. I order the ministry to disclose the withheld portions of pages 339, 342 and 576 of the records to the appellant by **January 6, 2014**, but not before **December 31, 2013**.

3. I order the ministry to conduct a further search for the records alleged to be missing by the appellant as specified in her correspondence of March 8, 12 and 24, 2013. Specifically, I order the ministry to address each specified record individually and directly, and to advise whether:

    a) the record was specifically searched for, by whom, where, and whether it exists.

    b) the record previously existed. If so, provide details of when it was destroyed including information about the relevant record maintenance policies and practices, such as evidence of record retention schedule.

    c) the audio recording disclosed to the appellant was recorded in its entirety on the CD provided to the appellant and the method used to record it. Also, with regard to the length of the crisis negotiation as reported in the paper records, explain the discrepancy between this time and the length of time of the audio recording.

    d) video recordings for the time periods specified by the appellant previously existed. If so, provide details of:

        i. how many existed and what time periods did these video recordings cover.

        ii. when each of the video recordings was destroyed including information about the relevant record

maintenance policies and practices, such as evidence of record retention schedule.

iii. whether and when the ministry or the detention centre provided copies of video recordings relating to the appellant's incarceration to the Ontario Ombudsman and the details of the video recordings provided, including the dates and times of the recordings.

4. I order the ministry to provide the results of its additional search ordered in provision 3 above, along with its answers to the questions listed in order provision 3 above, to me by **January 6, 2014**. The results of the additional search should be provided in the form of an access decision for any additional responsive records that are located.

5. I remain seized of this appeal to address all outstanding issues noted in the order provisions above.

Original signed by: December 3, 2013
Stella Ball
Adjudicator