Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3291

Appeals PA12-205-2 and PA13-71-2

Ministry of Community Safety and Correctional Services

January 3, 2014

Summary: This order disposes of two related appeals. The first [Appeal PA12-205-2] arises out of a request made by the appellant for access to "all policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates". The ministry granted the appellant partial access to the responsive records and advised that portions of the records were not responsive to her request and other portions were exempt from disclosure under the discretionary exemptions in section 14(1)(a) (law enforcement matter), 14(1)(e) (life or physical safety), 14(1)(i), (j) and (k) (security) and 14(1)(l) (facilitate commission of an unlawful act) of the *Act*. The appellant appealed the ministry's access decision and appeal PA12-205-2 was opened. The appellant also claimed that additional responsive records exist. This order upholds the ministry's search as reasonable. In addition, this order upholds the ministry's claim that some of the records are not responsive to the appellant's request, with the exception of seven pages, or portions thereof, and the ministry is ordered to issue an access decision on these pages. Finally, this order upholds the ministry's decision to withhold almost all of the information at issue under sections 14(1)(i), (j) and/or (k). However, the ministry is ordered to disclose pages 57-59 as these pages do not qualify for the exemptions claimed.

The second appeal [Appeal PA13-71-2] arises out of discussions during the mediation of fee issues relating to the first request. During that mediation, the appellant advised the ministry that she also sought access to the detention centre's record retention policy for written, audio and video records. The appellant submitted a new request for the additional records. The ministry issued a decision granting the appellant full access to some records and claimed that a number of other records were not responsive to her request. The appellant filed an appeal of that decision, and appeal PA13-71-2 was opened. During mediation, the ministry issued

supplementary access decisions, granting the appellant access to the information previously identified as not responsive. The appellant claimed that additional responsive records exist. This order upholds the ministry's search as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 14(1)(a), (e), (i), (j) and (k) and 24.

Orders and Investigation Reports Considered: Order PO-2332.

Cases Considered: *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233, 231 O.A.C. 230 (Div. Ct.).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to incarceration records relating to the requester from a named detention centre (the detention centre) between October 4, 2011 and January 11, 2012. The requester 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, the requester specified she sought access to the following records for the time period May 25, 2011 to February 5, 2012:

> Audio Recordings taken by negotiators [names of three individuals] on December 23rd, 2011.
>
> Video recordings of female area from December 21st, 2011 to December 30th, 2011, especially for the day of December 28th, 2011, in all areas of institution where [requester] was taken that day, indoors and outdoors.
>
> Video recordings taken from January 12th, 2012 to February 5th, 2012 from camera installed outside of female unit segregation cell closest to A&D, where [requester] was housed.
>
> All medical and psychiatric records, reports, assessments, doctor's orders for medical TAPs, pharmacy orders, and any other related information.
>
> Logs, records, hand written notes from clipboard in front of [requester's] cell that gets signed every 15 minutes {from both consecutive incarcerations – May 25th, 2011 to August 15th, 2011, as well as October 3rd, 2011 to February 5th, 2012}, incident reports, requests written by [requester], misconducts, and any other reports written by corrections staff.

> Records for June 18th, 2011 – video recordings taken in the S.N.U. area and all records for that day. This is from previous incarceration, May 25th, 2011 to August 15th, 2011.
>
> All policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates.
>
> [*sic*]

[2] The ministry located records responsive to the request and issued two decisions, the first relating to the request for the appellant's own incarceration records, and the second relating to the request for general records.

[3] In its first decision, the ministry granted partial access to the requester's correctional 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 sections 49(b) (invasion of privacy) and 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(a) (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 some information in the records was denied on the basis that it was not responsive to the request. The requester appealed this decision and appeal PA12-185 was opened. Interim Order PO-3281-I addresses the issues raised in Appeal PA12-185 as they relate to the appellant's request for her own correctional records. Accordingly, this aspect of the appellant's request is not at issue in this appeal.

[4] 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 the ministry's fee decision and appeal PA12-205 was opened. During the mediation of that appeal, the parties agreed to a reduced fee and appeal PA12-205 was closed as resolved. In addition, the appellant identified additional records that she sought access to. This request is the subject of appeal PA13-71-2.

PA13-71-2

[5] After the appellant indicated that she sought access to additional records, she submitted the following request under the *Act*:

> The [detention centre] policy on the retention of records, including written, audio and video records.

[6] When she did not receive a response from the ministry, the appellant filed a deemed refusal appeal and appeal PA13-71 was opened.

[7] The ministry then issued a decision granting the appellant full access to the responsive records. The ministry advised the appellant "parts of the documents have been removed as information that is not responsive to your request". The ministry also provided information regarding the Health Care Retention Schedule extracted from its Institutional Services Policies and Procedures to the appellant.

[8] The appellant appealed the ministry's decision and appeal PA13-71-2 was opened.

[9] During mediation, the appellant raised a number of concerns with regard to the ministry's mailing procedures and suggested that they caused unreasonable delays in the processing of her requests and appeal. As a result, the ministry agreed to resolve the appellant's concerns with correspondence by sending all future correspondence to her home address by regular mail, rather than by courier.

[10] The appellant confirmed that she sought access to the information that was withheld from disclosure as not responsive to the request.

[11] Subsequently, the ministry issued a revised decision advising the appellant that it reviewed the portions of the record previously deemed to be not responsive to her request and reconsidered its decision, granting her full access to the responsive records.

[12] Upon review of the revised decision, the appellant noted that it appeared that there were a number of pages missing from the records and advised that these additional pages should also be responsive to her request.

[13] The ministry then issued another decision granting the appellant full access to the pages which she identified that were previously considered to be not responsive.

[14] The appellant reviewed the records and noted that the retention policy does not contain any timelines for the retention and disposal of ministry records. The appellant advised the mediator that she believes that more responsive records should exist relating to the timelines for the retention and disposal of ministry records.

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

[16] I began my inquiry by inviting the appellant to make representations to demonstrate that there is a reasonable basis for her belief that additional responsive

records exist. The appellant submitted a letter to this office, in which she requested that appeal PA13-71-2 be considered jointly with appeal PA12-205-2. Upon review of the appellant's letter, I decided to grant her request and will consider the issues raised in both appeals in this order.

PA12-205-2

[17] After the issue of the ministry's fee in appeal PA12-205 was resolved, the ministry issued a final access decision to the appellant relating to the detention centre's policies and procedures addressing the care and treatment of inmates. In its decision, the ministry granted the appellant partial access to the responsive records and advised her that the remainder of the records are exempt from disclosure under sections 14(1)(a) (law enforcement matter), 14(1)(e) (life or physical safety), 14(1)(i), (j) and (k) (security) and 14(1)(l) (facilitate commission of an unlawful act) of the *Act*. The ministry also advised the appellant that some information was severed because it is not responsive to her request.

[18] The appellant appealed the ministry's access decision to this office and appeal PA12-205-2 was opened.

[19] During mediation, the appellant identified a number of concerns relating to the ministry's search. These issues were shared with the ministry, which then conducted another search and located additional records.

[20] The ministry then issued another decision regarding these additional records. The ministry advised the appellant that the undisclosed portions of those records were withheld under the exemptions in sections 14(1)(e), (i), (j) and (k) of the *Act*. The ministry also advised that some information was removed from the records because it is not responsive to the appellant's request. With regard to other concerns raised by the appellant respecting its search, the ministry advised that it did not locate a responsive record or that the responsive records were previously disclosed to the appellant.

[21] After further discussions, the ministry issued another decision disclosing the withheld portion of page 209.

[22] The appellant maintains that additional records responsive to her request should exist and advises that she seeks access to all of the information that was withheld by the ministry.

[23] As mediation did not resolve all of the issues in the appeals, they were transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[24] I began my inquiry by inviting representations from the ministry in response to a Notice of Inquiry and it did so. The appellant was then invited to make submissions in response to those of the ministry and she also submitted representations on the issues in this appeal as well as the reasonable search issue in PA13-71-2. Finally, I sought further representations from the ministry in reply to those of the appellant and the ministry did so.

[25] In this order, I uphold the ministry's searches for both PA13-71-2 and PA12-205-2. In addition, I uphold the ministry's claim that certain pages, or portions thereof, are not responsive to the appellant's request, with the exception of seven pages, or portions thereof, for which I order the ministry to issue an access decision. Finally, I uphold the ministry's decision to withhold the information at issue under the law enforcement exemption in section 14(1), with the exception of the information withheld on pages 57-59, which I order disclosed.

RECORDS:

[26] The information at issue in appeal PA12-205-2 consists of portions of various policies and procedures relating to the detention centre.

PRELIMINARY ISSUES

[27] During the inquiry, the appellant submitted extensive representations, portions of which were not directed at any of the issues before me but, rather, address the issue of whether the policies that are the subject of her requests were breached by the detention centre. I will not address these issues as they are not encompassed by the scope of this appeal or my authority under the *Act*.

[28] In addition, the appellant submits in her representations that she is "seeking my own correspondence records within my personal records from [the detention centre] at adjudication which were not provided within my [detention centre] personal records". The appellant's request for her correspondence and other personal records are not at issue in this appeal. The appellant's request for various personal records was considered in appeal PA12-185, which resulted in Interim Order PO-3281-I. Accordingly, I will not be addressing this part of the appellant's representations in this order.

[29] Finally, during the mediation of Appeal PA13-71-2, the appellant advised the mediator that she is dissatisfied with the content of the ministry's retention policy and seeks access to the standard timelines for the retention of government records across the province of Ontario. The appellant also raised a number of issues with regard to the ministry's office procedures. This office has no authority to review the adequacy of the ministry's retention policy generally, and office procedures, as part of an access appeal (unless they are encompassed by other issues in the appeal). I will therefore

not be addressing issues in relation to the ministry's retention policies and office procedures in this order. The only issue under appeal in PA13-71-2 is whether the ministry conducted a reasonable search for records responsive to the appellant's original request.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

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

C. Do the discretionary exemptions at sections 14(1)(a), (e), (i), (j), (k) and (l) apply to the records?

D. Did the ministry exercise its discretion under section 14? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[30] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort to identify the record;
>
> …
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[31] Previous orders have found that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour.[1]

[32] To be considered responsive to the request, records must "reasonably relate" to the request.[2]

[33] In appeal PA12-205-2, the appellant's original request read as follows:

> All policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates [at the detention centre for the time period May 25, 2011 to February 5, 2012].

[34] In its representations, the ministry submits that portions of the following pages of the records are not responsive to the appellant's request: pages 161, 162, 166 to 171, 205, 207, 210, 225, 232, 239, 241, 242 and 257. In addition, there are a number of pages that were withheld in full as not responsive to the appellant's request. Unfortunately, the ministry did not number these pages. With regard to the numbered pages, the ministry made the following submissions:

(a) The non-responsive portions of pages 161, 162 and 207 contain technical instructions on how to operate ministry software systems or electronic equipment. This has no bearing or relation to the request.

(b) The non-responsive portions of pages 166, 167, 168, 169, 170, 171 relate to parole and parolees. Parolees are not inmates as that term is defined in the *Ministry of Correctional Services Act* (i.e., parolees are not confined in a correctional institution), and therefore these pages do not fit within the scope of the request.

(c) The non-responsive portions of pages 205, 225 and 257 relate to discrete matters (staffing for admissions, unclaimed property, and receiving deliveries) that cannot reasonably be said to have any bearing or relation to the request.

(d) The non-responsive portions of pages 232, 239, 241 and 242 are standing orders aimed solely at employee conduct, and as such are matters between the employer and the employee that have nothing to do with the request.

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[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

[35] With regard to the pages of records that were not numbered, the ministry did not provide a similarly detailed explanation as to why they are not responsive to the appellant's original request.

[36] In her representations, the appellant submits that all of the information claimed to be not responsive to her original request is, in fact, responsive and that she should have access to it. Furthermore, the appellant submits that her original request was for all of the detention centre's policies, which means that every detention centre policy is responsive to her request. As the detention centre's focus is on the rehabilitation of inmates, the appellant believes that all of its policies, in their entirety, should be responsive to her request.

[37] In response to the appellant's claim, the ministry submits that the appellant submitted a request that was not for all of the detention centre's policies, but rather only those pertaining to the "care, treatment and rights of inmates". The ministry submits that if the appellant had sought access to all of the detention centre's policies, she should have specified this in her request.

[38] With regard to the scope of the appellant's request, I agree with the ministry. As stated above, the appellant's original request was for "All policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates [at the detention centre for the time period May 25, 2011 to February 5, 2012]." I find that the appellant's request is clear and unambiguous. The appellant seeks access to policies that relate only to the care, treatment and rights of inmates at the detention centre which were in place during a defined period of time. While the appellant claims that her original request was for "all" of the detention centre's policies, I find that her original request was clearly restricted to only those policies that relate to "the care, treatment and rights of inmates".

[39] Reviewing the portions of the records that the ministry has claimed to be not responsive to the appellant's original request, I find that a majority of these portions are not responsive. As the ministry submits, the portions of the records marked as not responsive on pages 161, 162 and 207 contain information of a technical nature and do not relate to the "care, treatment and rights" of the inmates at the detention centre.

[40] In addition, the portions of pages 166, 167, 168, 169, 170, 171 are not responsive as they do not relate to the "care, treatment and rights" of inmates. Instead, they relate to parole and parolees. As the ministry submits, parolees are not inmates and, since the appellant seeks records relating to the "care, treatment and rights" of inmates, the information relating to parole and parolees is not responsive to the appellant's original request.

[41] Finally, I agree with the ministry that the portions identified as non-responsive on pages 232, 239, 241 and 242 are not responsive to the appellant's request because

they relate exclusively to detention centre's employees and their conduct and not the "care, treatment and rights" of inmates.

[42] With regard to page 257 of the records, the ministry submits that the non-responsive portion relates to discrete matters that cannot reasonably be said to have any bearing or relation to the appellant's request. However, upon review of the withheld portion of this record, I find that one portion does "reasonably relate" to the appellant's original request. The withheld portion contains information relating to the rights or duties that inmates may have with regard to Food Services. I find that the portion that relates to the rights or duties of inmates is reasonably related to the appellant's original request for policies that relate to the "care, treatment and rights" of inmates at the detention centre.

[43] Although the ministry submits that only portions of page 210 of the records are not responsive to the request, it withheld the entire page from disclosure and did not provide any explanation as to why the entire page is not responsive to the appellant's original request. Reviewing page 210, I find that portions of it are responsive to the appellant's original request. The top portion relates to inmates' medications or drugs that may be found in their possession and I find that the portion of a policy that concerns inmates' medications and/or drug possession fits squarely within the appellant's original request as it reasonably relates to the care and treatment of inmates. My finding is supported by the fact that the first portion of the policy, found on page 209, was treated as responsive and the information on page 210 is a continuation of the policy that begins on page 209. The bottom portion of page 210 relates to the retrieval of electronic supervision program equipment from inmates. Reviewing this information, I find that this information, with the exception of the information that describes the administrative procedures in retrieving this equipment, reasonably relates to the care, treatment and rights of inmates as it discusses procedures in which certain equipment is retrieved from inmates.

[44] While the ministry made representations on the information claimed to be not responsive on pages 161, 162, 166 to 171, 205, 207, 210, 225, 232, 239, 241, 242 and 257, it did not make any representations on the information it claimed to be not responsive on the pages of the records that are not numbered. These unnumbered pages were withheld in their entirety and identified as not responsive to the appellant's request. Unfortunately, the ministry did not provide an index of records to this office at any stage of the appeal process; nor did it number these pages. As a result, I will describe them in a general way below. The unnumbered pages that were identified as not responsive to the appellant's original request are as follows:

- Standing Order: Security dated June 2011, Section 11 10, pages 16 and 17 (of 17)

- Standing Order: Programs dated June 2011, Section 14 12, page 2 of 4

- Standing Order: Intermittent Inmates dated February 2012, Section 20 01, pages 2 and 3 (of 3)

- Standing Order: Admitting and Discharge dated April 2013, Section 06 03, page 3 of 24

- Standing Order: Employees dated April 2013, Section 03 03, pages 1-5, 7-19 (of 19)

- Standing Order: Programs dated April 2013, Section 14 02, pages 3 and 4 (of 4)

- Sanding Order: Employees dated January 2013, Section 03 06, pages 1 and 2 (of 6)

[45] I have reviewed these unnumbered pages and find that the majority of them are not responsive to the appellant's original request. With regard to the pages from the Standing Order: Security, I find that these pages contain information that relates exclusively to specific detention centre staff and protocols pertaining to them. The information contained on pages 16 and 17 of the Standing Order: Security, does not relate to the "care, treatment and rights of inmates" and, therefore, is not responsive to the appellant's original request.

[46] With regard to page 2 of Standing Order: Programs, I also find this page to be not responsive in its entirety, as the information relates to administrative reports and documentation and does not relate to the "care, treatment and rights of inmates".

[47] Similarly, I find that page 3 of Standing Order: Admitting and Discharge contains exclusively administrative and reporting information and does not contain information relating to the "care, treatment and rights" of inmates.

[48] In addition, I find that pages 3 and 4 of the Standing Order: Programs are not responsive to the appellant's request. These pages describe the role of the volunteer co-ordinator and the oath of confidentiality and security clearance of volunteers at the detention centre and relate exclusively to the volunteers. These pages do not include any information regarding the "care, treatment and rights" of the detention centre's inmates. Accordingly, I find that these pages are not responsive to the appellant's request.

[49] In addition, I agree that pages 1 and 2 of Standing Order: Employees (dated January 2013) are not responsive to the appellant's request. Pages 1 and 2 of this standing order relate exclusively to employee conduct (both on and off duty) and human resources procedures. They do not describe employee conduct in relation to the inmates; nor do they describe the procedures/protocol with regard to employee-inmate

interaction. As a result, I find that these records do not reasonably relate to the appellant's request for policies and procedures about the "care, treatment and rights" of the detention centre's inmates.

[50] With regard to Standing Order: Employees (dated April 2013), I find that the bottom portion of page 3 as well as pages 4, 5 and 7-19 (of 19) are not responsive to the appellant's original request. These pages and a portion of page 3 relate exclusively to the duties and responsibilities of the detention centre's employees, the use of electronic devices by employees, the rights and responsibilities of employees in the case of inmate assault, and the work schedules of employees. I find that the information that relates exclusively to the detention centre employees and their responsibilities, duties and performance is not responsive to the appellant's original request. With regard to pages 16-17 of the standing order that relates to inmate assault, I find that this policy relates exclusively to the rights and responsibilities of employees and describes the protocol to follow if an employee is assaulted by an inmate. Pages 16 and 17 do not relate to the "care, treatment and rights" of the inmate who may have assaulted a detention centre employee. As a result, I find that these pages, along with pages 4, 5, 7-15, 18 and 19 and a portion of page 3 are not responsive to the appellant's request.

[51] However, I find that pages 1, 2 and a portion of page 3 of Standing Order: Employees (dated April 2013) contain information that reasonably relate to the appellant's original request. The information contained on these pages describes the detention centre's employees' duties and responsibilities in relation to the inmates, specifically the general policy with regard to the employees of the detention centre, the policy regarding the discharge of their duties, which necessarily includes the care and treatment of the inmates and the policy regarding prohibitions. I find that these portions of the Standing Order: Employees reasonably relate to the "care, treatment and rights" of the detention centre's inmates and are, therefore, responsive to the appellant's original request.

[52] In addition to pages 1-3 of Standing Order: Employees, I find that pages 2 and 3 (of 3) from Standing Order: Intermittent Inmates are responsive to the appellant's request. Although these pages deal with "intermittent" inmates, I find that the appellant's request for policies and protocols relating to the "care, treatment and rights of inmates" would reasonably include the care, treatment and rights of intermittent inmates. Accordingly, I will order the ministry to issue an access decision on pages 2 and 3 of Standing Order: Intermittent Inmates.

[53] In conclusion, I find that the following portions or pages of the records are responsive to the appellant's original request:

- Page 210 (highlighted portion)

- Page 257 (highlighted portion)

- Standing Order: Employees dated April 2013, Section 0303, Pages 1 and 2, and a portion of page 3 of 19 (Subjects: Policy, Discharge of Duties and Prohibitions)

- Standing Order: Intermittent Inmates dated February 2012, Section 2001, pages 2 and 3 of 3

[54] Although the ministry submits that all of the pages withheld as not responsive fall within at least one of the section 14(1) exemptions claimed for the responsive records, the ministry's submissions do not constitute a formal access decision. Accordingly, I will order the ministry to issue a formal access decision to the appellant for the above-noted pages that I have found responsive to her original request.

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

[55] The appellant asserts that additional responsive records should exist in both PA12-205-2 and PA13-71-2. Accordingly, I must decide whether the ministry has conducted a reasonable search for records as required by section 24 of the *Act*.[3]

[56] Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search to identify any records that are responsive to the request.

[57] 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.[4] To be responsive, a record must be "reasonable related" to the request.[5]

[58] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the subject expends a reasonable effort to locate records which are reasonably related to the request.[6]

[59] 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.[7]

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[3] Orders P-85, P-221 and PO-1954-I.
[4] Orders P-624 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2469 and PO-2592.
[7] Order MO-2185.

[60] 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.[8]

PA13-71-2

[61] The request at issue in this appeal is as follows:

> The [detention centre] policy on the retention of records, including written, audio and video records.

[62] In its first decision letter, the ministry granted the appellant full access to the information it found to be responsive to the request. The ministry advised the appellant that "parts of the documents have been removed as information that is not responsive to your request". The ministry also provided the appellant information regarding the Health Care Retention Schedule extracted from its Institutional Services Policies and Procedures to the appellant.

[63] The appellant confirmed that she sought access to the information that was withheld from disclosure as not responsive to the request.

[64] Subsequently, the ministry issued a revised decision advising the appellant that it reviewed the portions of the record previously deemed to be not responsive to her request and reconsidered its decision, granting her full access to the responsive records.

[65] Upon review of the revised decision, the appellant noted that it appeared that there were a number of pages missing from the records and advised that these additional pages should be responsive to her request.

[66] The ministry then issued a third access decision, granting the appellant full access to an additional nine pages of records that were previously deemed as not responsive to her request.

[67] The appellant reviewed the records and noted that the retention policy does not contain any timelines for the retention and disposal of ministry records. The appellant advised the mediator that she believes that more responsive records should exist relating to the timelines for the retention and disposal of ministry records.

[68] The ministry referred the appellant to page one of the Video Monitoring and Recording Policy which states:

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[8] Order MO-2246.

> Part III of the [*Act*] sets out rules governing the collection, use, disclosure, retention and disposal of personal information to which Correctional Services must adhere.

[69] In addition, the ministry referred the appellant to section 40(1) of the *Act* and section 5(1) of Regulation 460, which identifies a one year time period for the retention of records containing personal information.

[70] In response, the appellant stated:

> From experience, the Ministry of Correction has made several searches for each individual one of my files, and I do not have many, and every time has found more omitted or missing records. Based on this fact, I believe that there is surely a record from the [named detention centre] that makes plain the timeline for the retention of video and audio recordings, as opposed to timelines for paper records, which is all I have now I believe. The Policy itself is what I requested from the Ministry ([named detention centre]) on February 8, 2012, and not statements to go look at the [*Act*] sections or [a named detention centre] Policy split up into several parts over the better part of one year.

[71] The ministry confirmed that no additional responsive records exist.

[72] During my inquiry into this appeal, I asked the appellant to provide me with representations that demonstrate that there is a reasonable basis for her belief that additional responsive records exist.

[73] In lieu of representations, the appellant submitted a letter in which she raised a number of concerns relating to the manner in which this office has dealt with her appeal. The Assistant Commissioner has separately responded to the appellant's concerns and I will not address this letter further.

[74] In her representations for Appeal PA12-205-2, the appellant reiterates her request in Appeal PA13-71-2 for all detention centre policies, including that of audio and video records.

[75] The appellant did not provide me with any other submissions that demonstrate that that there is a reasonable basis for her belief that additional responsive records exist.

[76] Although it is unlikely that the appellant is in a position to indicate precisely which records the institution has not identified, previous orders require that the

appellant provide a reasonable basis for concluding that such records exist.[9] I have reviewed the circumstances of this appeal and the appellant's representations and finds that she has not provided a reasonable basis for her conclusion that additional responsive records exist. I also note that, while the appellant claims the ministry conducted several searches for all of her files and located "more omitted or missing" records after each search, it appears that in this appeal, the ministry's revised decisions reflect a reconsideration of whether records are responsive, rather than the discovery of additional responsive records. Accordingly, on this basis, I find that the ministry's search was reasonable.

PA12-205-2

[77] The request at issue in Appeal PA12-205-2 reads as follows:

> All policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates [of the detention centre].

[78] During mediation, the appellant provided the mediator with a letter, attached to an email dated April 17, 2013, in which she described the additional polices that she believes should exist. In that letter, the appellant provided a detailed and enumerated list of specific policies that she believes should exist and included her rationale as to why these records exist. The appellant submitted that she believed that there were approximately 32 to 40 policies that are outstanding and/or missing from those that she was granted access to.

[79] The appellant's letter was shared with the ministry, with her consent. In response, the ministry sent the appellant a letter dated June 4, 2013, addressing the majority of the enumerated paragraphs in her letter that describe a policy that she identified as outstanding. With regard to a number of these policies, the ministry advised that no such policies exist at the detention centre. With regard to other policies identified by the appellant as outstanding, the ministry referred her to the records that were previously disclosed as being responsive. The ministry also identified additional responsive records and granted the appellant partial access to them.

[80] 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.

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

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[9] Order MO-2246.

[82] In the affidavit, the Sergeant states that his duties and responsibilities include, but are not limited to: supervision of correctional officers, gathering various occurrence reports, accident and injury reports, misconduct reports, as well as initiating and submitting incident reports as required when incidents occur.

[83] The Sergeant advised that upon receipt of the appellant's request, he conducted a detailed search for the responsive records. The Sergeant stated that the responsive records would only be stored on a particular ministry computer database, which is a shared internal drive that is only accessible to authorized ministry staff. The Sergeant stated that records responsive to this request would not be located anywhere other than this internal drive, and therefore, it is not necessary to search elsewhere. After retrieving the responsive records, the Sergeant advised that the records were forwarded to the ministry for processing.

[84] The appellant submitted very detailed representations, identifying a number of outstanding policies that she believes should exist and that should be disclosed to her. I note that the appellant reproduced most of the submissions made in the attachment to her April 17, 2013 email in these representations. However, the appellant has identified a number of additional policies that she believes should exist and are outstanding. The appellant submits that there are approximately 40 to 60 policies that are outstanding and that she should be granted access to. For the majority of these policies identified as outstanding, the appellant identifies a particular incident that occurred during her incarceration and submits that a relevant policy must or should exist that would govern the detention centre's staff's conduct in these situations.

[85] The ministry was asked to provide representations in response. In particular, I asked the ministry to address all of the appellant's arguments, including, but not limited to, the specific responsive records that she alleges should exist. In its reply representations, the ministry referred to its supplemental decision letter dated June 4, 2013, which, it submits, answered many of the questions posed by the appellant in the attachment to her email of April 17, 2013 and repeated in her representations during my inquiry. The ministry submits that its June 4, 2013 letter responds to the allegations and concerns that are relevant in this appeal.

[86] The ministry submits that all responsive records have been identified and have been released to the appellant, with the exception of the information withheld under the law enforcement exemptions in section 14(1) and affirms that it conducted a reasonable search for responsive records.

[87] On my review of the representations and submissions from the mediation stage of the appeal, I am satisfied that the ministry has conducted a reasonable search for "all policies, procedures, guidelines and standards pertaining to the care, treatment and rights of inmates" at the detention centre. Although the appellant made very detailed submissions describing the specific policies that she believes are outstanding, I find that

the ministry addressed the majority of these concerns in its June 4, 2013 letter to her. With regard to the issues raised by the appellant that were not addressed by the ministry, I find that the appellant has not provided me with a reasonable basis for her belief that additional records exist.

[88] My finding is supported by the affidavit provided by the detention centre's Sergeant, who confirmed that the responsive records would only be stored on a particular ministry computer database, which is a shared internal drive that is only accessible to authorized ministry staff. The Sergeant stated that because any records responsive to this request cannot be found anywhere but on the internal drive, there would be no need to search elsewhere. I find that it is reasonable that the detention centre would store all of its policies and similar documents relating to the care, treatment and rights of its inmates in a central database or computer drive. As both the Sergeant and the ministry have confirmed that they performed a thorough search of the central database that stores all of the detention centre's policies, I find that the ministry's search for responsive records was reasonable.

[89] In light of the ministry's second access decision in which it advised that it located additional records, I appreciate the appellant's unwillingness to accept the ministry's claim that no additional responsive records exist. However, the appellant has not provided me with a reasonable basis to believe additional responsive records exist. Most of the enumerated paragraphs in her representations were addressed by the ministry and of those that were not, I find that they do not demonstrate that she has a reasonable basis to believe that additional responsive records exist. In her representations, the appellant has described a number of incidents that occurred during her incarceration and submits that a relevant policy must or should exist that would relate to those specific incidents. The appellant may well believe that the ministry *should* have policies with respect to each of these specific matters. However, on review of all the material before me, there is no reasonable basis to conclude that such policies currently exist. Therefore, I find that the appellant has not provided me with a reasonable basis to find that additional responsive records exist and I uphold the ministry's search as reasonable.

C. Do the discretionary exemptions at sections 14(1)(a), (e), (i), (j), (k) and (l) apply to the records?

[90] The ministry relies on the following exemptions in section 14(1) of the *Act*:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;

> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
>
> (j) facilitate the escape from custody of a person who is under lawful detention;
>
> (k) jeopardize the security of a centre for lawful detention; or
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[91] The term "law enforcement", used in section 14(1)(a), 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).

[92] Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the ministry must provide me with "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[10]

[93] The law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[11]

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[10] 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.).
[11] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[94] It is not sufficient for an institution to take the position that harms under section 14 are self-sufficient from the record or that a continuing law enforcement constitutes a *per se* fulfilment of the requirements of the exemption.[12]

[95] In her representations, the appellant notes that she has received a number of policies that have been severed under the law enforcement exemptions. The appellant questions the appropriateness of these severances and submits that if these policies are related in "any way" to her request, it would be within the rights of inmates to have access to them, particularly where the policies concern inmate safety, security and their human and civil rights. In addition, the appellant submits that the severances to the polices should be as limited as possible, in order to uphold accountability, especially where they concern serious health and safety interests.

Section 14(1)(i), (j), (k) and (l)

[96] With the exception of the information withheld on pages 52, 53, 106 and 107, the ministry claims that the discretionary exemptions in sections 14(1)(i), (j) and (k) of the *Act* applies to exempt all of the information at issue. With regard to the information withheld on pages 52, 53, 106 and 107, the ministry claims the application of the exemptions in sections 14(1)(i) and (l).

[97] In its representations, the ministry states that it relies upon the same submissions for all of the information claimed to be exempt pursuant to sections 14(1)(i), (j), (k) and (l), because these exemptions overlap insofar as correctional records are concerned. The ministry submits that, while it has released most of the standing orders to the appellant, security and safety considerations must trump the appellant and the public's right to access the information withheld from disclosure. The ministry submits that the information at issue offers guidance to staff at the detention centre on the appropriate protocol to ensure their, and potentially others', safety in situations which may be dangerous, and to generally safeguard the security of correctional institutions. The ministry submits that when it describes sensitive security procedures in its standing orders, it must do so without concern that these parts of the standing orders will be subject to subsequent disclosure.

[98] The ministry states that the responsive records are standing orders that were prepared for internal ministry use only and there is no evidence that the information withheld is known outside of correctional institutions. The ministry submits that it is concerned that records that are not currently known to the public could be disseminated widely, should the records be disclosed.

[99] The ministry also submits that the disclosure of the security details protected in the records at issue could permit an individual to draw accurate inferences about the

[12] *Ibid*. and Order PO-2040.

possible absence of other security precautions. Such inferences could reasonably be expected to jeopardize the security of the institution by aiding in the planning or execution of a crime.

[100] With regard to the information withheld on pages 53, 68 and 207 of the records, the ministry states that these pages describe aspects of the ministry's databases or computer systems. The ministry submits that if the information at issue on these pages is disclosed, its databases or computer systems could be compromised, which could harm the security of the correctional centre and the privacy and safety of the inmates listed in these databases.

[101] With regard to the information withheld on pages 79 and 81, the ministry states that these records describe the configuration of parts of correctional institutions. The ministry submits that details about the configuration of a correctional institution should not be revealed because it would provide information about buildings whose access is strictly controlled and regulated for security reasons.

[102] The ministry states that it also withheld information that describes the types of searches that are to take place in correctional institutions to prevent contraband from being imported into correctional institutions or other illegal activities. The ministry submits that details about the performance of these searches should not be released as their disclosure could harm the ability of correctional institutions to prevent illegal activities from occurring.

[103] Based on my review of the records, I find that the majority of the information at issue is exempt under sections 14(1)(i), (j) or (k) of the *Act*.

[104] In Order PO-2332, former Adjudicator John Swaigen considered the application of section 14(1)(i) to portions of a copy of a security audit of a maximum security detention centre operated by the ministry. The information at issue in that inquiry consisted of portions of an "Institutional Operational Self-Audit Workbook" (OSAW), which described the types of security tools, equipment, materials, systems and practices in place at that detention centre, their location, whether they comply with norms and standards, and completed or proposed measures to correct any non-compliance. In his decision, Adjudicator Swaigen found as follows:

> In my view, much of the information in the security audit would be obvious to most people. It is a matter of common sense and common knowledge that certain kinds of security measures, such as locks, fences and cameras would be present in certain locations and would be checked periodically in certain ways and that other practices and procedures described in the OSAW would be routine. However, the Ministry points out that "to a knowledgeable individual, the absence of a particular topic, identified deficiencies, or the unavailability of certain security-enhancing

> measures at a given correctional facility could suggest a potential security vulnerability".
>
> I accept that even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security. Knowledge of the matters dealt with in the security audit could permit a person to draw accurate inferences about the possible absence of other security precautions. Such inferences could reasonably be expected to jeopardize the security of the institution by aiding in the planning or execution of an escape attempt, a hostage-taking incident, or a disturbance within the detention centre. As the Ministry states, disclosure of the contents of the security audit to a requester can result in its dissemination to other members of the public as well.

[105] I agree with and adopt this reasoning of Adjudicator Swaigen. I am also mindful that previous orders of this office have found that the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[13]

[106] Based on my review of the records, I find that the exemptions in sections 14(1)(i) and (k) of the *Act* apply to the information withheld on the following pages: 50, 75, 77, 78, 79, 81-82, 84, 106-107, 111, 114-116, 118, 119, 120, 123-124, 128, 178, 190, 196, 209, 212-213, 217-218, 221, 223, 227-228, 248-249, 256, 260 and 261. The information at issue on these pages contains details regarding the protocols and practices for securing the detention centre and the storage of certain objects (such as potentially dangerous instruments and materials).

[107] In addition, I agree with the ministry that the information on pages 79 and 81 contain information that describes the configuration of the detention centre and if this information is disclosed, it could leave the detention centre vulnerable to security breaches. Furthermore, I find that some of the information on the pages identified above contains details regarding the different types of searches that take place in correctional institutions, such as frisk searches or routine searches of living areas. Reviewing the information that describes the procedures for these different types of searches, I find that the disclosure of this information could pose a security risk to the staff and inmates of the correctional centre.

[108] In addition, some of the information at issue on these pages describes in detail the safe storage of items such as communications information and potential weapons that, if disclosed, could reasonably be expected to jeopardize the security of the detention centre. Accordingly, I find that the exemptions in sections 14(1)(i) and (k) apply to withhold the information at issue on these pages.

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

[109] In addition to the records listed above, I find that the exemption in section 14(1)(i) applies to the information withheld on pages 52-53, 126-129, 139-140 and 226. The information at issue on these pages contains details regarding the security of items (such as disclosure materials for court proceedings) and vehicles used to transport inmates. I find that the disclosure of this information could reasonably be expected to endanger the security of the vehicles used to transport inmates and other items or could reasonably be expected to endanger the security of a system or procedure established for the protection of items, for which protection is required.

[110] I also find that the exemption in section 14(1)(j) applies to some of the information at issue. Based on my review of the records, I find that the exemption in section 14(1)(j) applies to the withheld portions of the following pages: 62, 68, 73-74, 132, 133, 134-135 and 136-138. Some of the information at issue on these pages describes the security practices and protocols involved with the transfer and release of inmates and community escorts. In addition, some of information at issue on these pages contains the protocols and precautions taken by law enforcement when inmates are escorted out of the detention centre for various reasons, such as a medical appointment or to attend a funeral. Moreover, other portions of these pages contain details regarding the manner in which inmates are escorted and monitored outside the detention centre. I find that knowledge of these details could permit a person to draw accurate inferences about the potential vulnerabilities in the escort security and these inferences could reasonably be expected to facilitate an inmate's escape from custody. Accordingly, I find that this information is exempt under section 14(1)(j).

[111] As I have found that the information withheld under section 14(1)(l) is exempt from disclosure under section 14(1)(i), I do not need to consider whether section 14(1)(l) also applies to exempt this information from disclosure.

[112] With regard to the information withheld on pages 57-59, I am not satisfied that the exemptions in sections 14(1)(i), (j), (k) and (l) apply. Pages 57-59 contain a definition of what constitutes a high profile or high risk inmates and sex offender, guidelines regarding the manner in which an inmate is identified as this type of offender and the procedures to be followed in identifying these individuals to local law enforcement upon their release. The ministry did not make any representations that specifically address the application of the exemptions in sections 14(1)(i), (j), (k) and (l) to the information at issue on pages 57-59 beyond the general arguments summarized above. As previously discussed, the words "could reasonably be expected to" contained in section 14(1) require the ministry to provide me with "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[14]

[14] 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.).

[113] Based on my review of pages 57-59 and in the absence of any "detailed and convincing" evidence from the ministry to establish a reasonable expectation of the harms identified in sections 14(1)(i), (j), (k) and (l) if these pages are disclosed, I find that these exemptions do not apply the information on these pages. The information at issue on pages 57-59 does not relate to the security of the detention centre or the security of any vehicles or items that should be protected. Nor it is reasonable to expect that the disclosure of the information at issue on these pages could facilitate the escape of a person under lawful detention from custody or facilitate the commission of an unlawful act or hamper the control of crime. As described above, these pages relate to the general policy that the detention centre provide information relating to a high profile or high risk inmate and/or sex offender to the police of a municipality where the inmate will likely reside when they are released from custody. The information at issue describes the indicators of a "high profile" or "high risk" inmate, guidance with regard to the determination that the inmate is "high profile" or "high risk" and the procedure for the disclosure of the inmate's information to local law enforcement. Reviewing the information at issue, I do not find that the harms identified in sections 14(1)(i), (j), (k) and (l) would reasonably be expected to result from the disclosure of this information.

[114] Therefore, subject to my review of the ministry's exercise of discretion, I find that all of the information at issue, with the exception of the information at issue on pages 57-59, is exempt from disclosure under sections 14(1)(i) and/or (j) and/or (k) of the *Act*.

Section 14(1)(a)

[115] The ministry submits that section 14(1)(a) applies to withhold pages 57-59 of the records from disclosure. The ministry states that these pages contain a standing order related to the disclosure of information to police about the release of high profile and high risk inmates and sex offenders from correctional institutions.

[116] The ministry submits that section 14(1)(a) applies to these pages, as the standing order relates to law enforcement functions performed by the police to protect public safety.

[117] The ministry notes that this office has found that section 14(1)(a) can apply to records that exist beyond a specific investigation or proceeding. The ministry refers to Order MO-2539, in which it submits that this office found that the institution holding the records does not have to be the institution conducting the law enforcement matter for the exemption to apply.

[118] Additionally, the ministry submits that the standing order applies to situations where inmates that are considered to be high profile and high risk and/or sex offenders are released from correctional institutions. The ministry states that it works closely with police services in these situations and is concerned that the disclosure of pages 57-59

would interfere with this working relationship and law enforcement operations. Specifically, the ministry submits that the disclosure of this type of sensitive and confidential information could impair the ability of the police to monitor these individuals, thereby harming public safety.

[119] Based on my review of pages 57-59, I am satisfied that the information in these pages falls within the wide ambit of "policing" as defined in section 2(1) of the *Act*. Furthermore, I am satisfied that the determination of whether an offender falls within the definition of a high risk or high profile inmate and/or sex offender and the disclosure of that individual's information to local law enforcement is encompassed within the definition of "a law enforcement matter". In *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*[15], the Divisional Court considered the application of the exemption in section 14(1)(a) to two firearms databases maintained by the Provincial Weapons Enforcement Unit. In that decision, the Divisional Court found as follows:

> Under s. 14(1)(a) of [the *Act*], the Ministry may refuse to disclose a record where such disclosure could reasonably be expected to interfere with a law enforcement matter. We agree with the Ministry that the keeping of such data falls within the definition of "a law enforcement matter". The plain and ordinary meaning of the word "matter" is very broad.[16] We find that "matter" does not necessarily always have to apply to some specific on-going investigation or proceeding.[17]

[120] Applying the Divisional Court's broad definition of "law enforcement matter", I find that the information contained in pages 57-59 falls within this definition. I find that the information contained in pages 57-59 of the records relates to the monitoring of high profile or high risk inmates or sex offenders after their release.

[121] Although I find that the information withheld on pages 57-59 falls within the definition of "law enforcement matter", the ministry has failed to demonstrate that the disclosure of the information contained on these pages would reasonably interfere with the monitoring of high profile or high risk inmates and sex offenders. As previously discussed, the words "could reasonably be expected to" contained in section 14(1) require the ministry to provide me with "detailed and convincing" evidence to establish a "reasonable expectation of harm".

[122] Reviewing the ministry's representations and pages 57-59, I find that it has not provided me with the "detailed and convincing" evidence required to establish a "reasonable expectation of harm". The ministry submits that it is concerned that the

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[15] [2007] O.J. No. 4233, 231 O.A.C. 230 (Div. Ct.).
[16] *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, [2006] 1 S.C.R. 441 at para. 44
[17] *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233, 231 O.A.C. 230 (Div. Ct.) at para 72.

disclosure of the information on pages 57-59 could impair the ability of the police to monitor high profile or high risk inmates and sex offenders, thereby harming public safety. However, it does not offer any evidence connecting the disclosure of this information to the interference of the monitoring or surveillance of high profile or high risk inmates or sex offenders.

[123] I have reviewed pages 57-59 and find that they do not contain any specific information relating to the manner in which these types of offenders would be monitored after their release. Rather, these pages contain a definition of what a high profile or high risk inmates and sex offender is, guidelines regarding the manner in which an inmate is identified as this type of offender and the procedures to be followed in identifying these individuals to local law enforcement. Furthermore, I find that the ministry has failed to provide me with "detailed and convincing" evidence to establish a "reasonable expectation" that the police's ability to monitor these individual's would be negatively affected by the disclosure of these records.

[124] As a result, I find that the exemption in section 14(1)(a) of the *Act* does not apply to pages 57-59 of the records.

Section 14(1)(e)

[125] The ministry submits that section 14(1)(e) applies to exempt the information withheld on pages 57-59, 62, 77-78, 81-82, 84, 111, 114-116, 118, 119, 123-124, 126-129, 132-140, 178, 190, 196, 209, 211-213, 217, 218, 221, 223, 226-228, 248, 249, 256 and 260-261.

[126] I have already found that all of the withheld information, with the exception of the information contained on pages 57-59, is exempt under one or more of sections 14(1)(i), (j), and (k). Accordingly, I only need to consider whether the exemption in section 14(1)(e) applies to exempt pages 57-59 from disclosure.

[127] In its representations, the ministry submits that the disclosure of pages 57-59 would affect the ability of law enforcement to monitor high risk or high profile inmates or sex offenders who have been released into the community, thereby creating a risk for public safety.

[128] In the case of section 14(1)(e), the ministry must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[18]

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[18] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

[129] A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.[19]

[130] The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.[20]

[131] Based on my review of the information withheld on pages 57-59, I find that the ministry has not provided me with evidence to establish that the disclosure of these pages could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. In its representations, the ministry simply asserts that "the disclosure of these pages would affect the ability of law enforcement to monitor high risk or high profile inmates or sex offenders who have been released into the community, thereby creating a risk for public safety".

[132] Pages 57-59 contain a definition of what a high profile or high risk inmates and sex offender is, guidelines regarding the manner in which an inmate is identified as this type of offender and the procedures to be followed in identifying these individuals to local law enforcement. I find that the ministry's submission does not establish a reasonable basis for believing that endangerment will result from disclosure. The ministry has not provided me with evidence that connects that disclosure of these pages with the harm it asserts will take place. Furthermore, upon my review of pages 57-59, I do not find that the disclosure of the information on these pages would reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Accordingly, I find that the exemption in section 14(1)(e) does not apply to the information contained on pages 57-59.

[133] Therefore, I find that all of the information at issue, with the exception of the information at issue on pages 57-59, is exempt from disclosure under sections 14(1) of the *Act*, subject to my review of the ministry's exercise of discretion below.

[134] I note that, in her representations, the appellant raised the application of the public interest override in section 23 of the *Act* to the disclosure of the records at issue. Section 23 of the *Act* reads as follows:

> 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.

[135] The appellant submits that the detention centre policies should be disclosed to her in full to uphold accountability, especially where these policies concern serious health and safety interests. However, the only exemption the ministry relies on to withhold portions of the records is the law enforcement exemption in section 14 of the

[19] Order PO-2003.
[20] Order PO-1817-R.

Act. Under the *Act*, the public interest override has no application to a record which is exempt from disclosure under section 14. As I substantially uphold the ministry's decision to apply section 14, I will not be addressing the appellant's arguments with regard to section 23 of the *Act*.

D. Did the ministry exercise its discretion under section 14? If so, should this office uphold the exercise of discretion?

[136] 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, I may determine whether the institution failed to do so.

[137] In addition, I 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.

[138] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[21] This office may not, however, substitute its own discretion for that of the institution.[22]

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

- 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;

[21] Order MO-1573.
[22] Section 43(2).

- 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.

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

- the ministry has a strong interest in exempting records from disclosure that would reveal sensitive security measures used in correctional institutions;
- the ministry has withheld records where disclosure might harm the safety of correctional officers or the general public; and
- the ministry has exercised its discretion in this instance in accordance with its usual practices.

[141] The appellant did not make representations regarding the ministry's exercise of discretion.

[142] I have reviewed the circumstances surrounding this appeal and the ministry's representations on the manner in which it exercised its discretion. I note that the majority of the information in the records was disclosed to the appellant and that a small amount of information was withheld from disclosure. Most of the information withheld from disclosure consists of sensitive and confidential information that, if disclosed, could reasonably be expected to result in the harms identified in sections 14(1)(i), (j) and/or (k) of the *Act*. Based on my review of the ministry's representations and the records, I am satisfied that the ministry weighed the appellant's interest in obtaining access to the information against the purposes of the law enforcement exemptions in section 14(1). Accordingly, I am satisfied that the ministry did not err in the exercise of its discretion to refuse to disclose the information at issue.

[143] Therefore, I uphold the ministry's decision to withhold those portions of the records that qualify for exemption under section 14(1) of the *Act*.

ORDER:

PA13-71-2

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

PA12-205-2

1. I order the ministry to issue an access decision to the appellant for the following records or parts thereof (I have highlighted the portions that I have found responsive):

    - Page 210 (highlighted portion)
    - Page 257 (highlighted portion)
    - Standing Order: Employees dated April 2013, Section 0303, Pages 1 and 2, and a portion of page 3 of 19 (Subjects: Policy, Discharge of Duties and Prohibitions)
    - Standing Order: Intermittent Inmates dated February 2012, Section 2001, pages 2 and 3 of 3

    The ministry shall provide a decision letter to the appellant regarding these records, considering the date of this order as the date of the request.

2. I uphold the ministry's search for records.

3. I find that the exemption in section 14 does not apply to the information withheld on pages 57 through 59 of the records. I order the ministry to disclose this information to the appellant by **February 6, 2014.**

4. I uphold the ministry's application of section 14 of the *Act* to exempt the remaining information at issue.

Original Signed By: January 3, 2014
Justine Wai
Adjudicator