Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3453

Appeal PA13-505

Ministry of Community Safety and Correctional Services

January 27, 2015

Summary: The appellant requested information about his detention at a correctional facility for a five-day period in January 2013. The ministry denied access to the responsive records, claiming the application of a number of exemptions in the *Act*. The appellant appealed this decision on the basis that the exemptions claimed do not apply to the records and that other additional records ought to exist. In this order, the adjudicator upholds the ministry's search as reasonable, the application of the personal privacy exemption in section 49(b) to some information and the application of section 49(a), in conjunction with the law enforcement exemptions in sections 14(1)(i), (j), (k) and (l). The remaining information does not qualify for exemption under sections 14(2)(d), 15(b) or 49(e), however.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, definition of "personal information" in section 2(1), sections 14(1)(i), (j), (k), (l), 14(2)(d), 15(b), 49(a), (b) and (e); *Criminal Code of Canada,* R.S.C. 1985, c C-46, section 516(2).

Orders and Investigation Reports Considered: PO-3075, PO-2988, MO-1288

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) from a lawyer on behalf of her client. I will refer to the client as the appellant in this order. The request sought access to the following records relating to the appellant:

> … entire file/all records (including notes, reports, correspondences, recordings, etc.) pertaining to [requester's] detention at the Toronto West Detention Centre from January 22, 2013 to his release (27.01.2013).

[2] The ministry located responsive records and provided the appellant with a decision stating that "… partial access is granted to all of the requested institutional and health care records located at the Metro Toronto West Detention Centre for the period between January 22 and 27, 2013." The remainder of the records, in whole or in part, were denied pursuant to section 49(a), in conjunction with sections 14(l)(i), 14(l)(j), 14(1)(k), 14(1)(l) (law enforcement), 14(2)(d) (correctional record), 15(b) (relations with other governments), 21(1) and 49(b) (personal privacy) and 49(e) (confidential correctional record) of the *Act*. The ministry also stated that no other responsive records relating to the appellant exist.

[3] The appellant appealed the ministry's decision.

[4] During mediation, the appellant clarified that he seeks access to the records and portions of records that were denied and that he believes more records should exist. The appellant is particularly interested in records that explain why he was placed in isolation during his incarceration, as well as records relating to communications that may have taken place between the ministry and the Canada Border Services Agency.

[5] The ministry issued a supplementary decision revising its initial decision, granting full access to some of the records which were previously released in part. Accordingly, records 4, 6, 7, 14 and 16 are no longer at issue in this appeal, as they have been completely disclosed. The ministry stated that access to the remaining responsive records, or parts of records, continues to be denied in accordance with its initial decision. The parties agreed that the appellant would file a separate request for records relating to any communications between the ministry and the Canadian Border Services Agency. The appellant maintained that other responsive records exist and continues to seek access to the records, or parts of records, that were denied.

[6] As no further mediation was possible, the file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the ministry, initially, and these representations were shared, in their entirety, with the appellant. In addition, the ministry advised the appellant and this office that it had located another responsive record, which it designated as record 25, and granted partial access to this document. Access to the undisclosed portions of record 25 was denied under section 49(a), taken in conjunction with the law enforcement exemptions in sections 14(1)(i), (j), (k), (l) and 14(2)(d), as well as sections 49(b) and (e).

[7] The appellant also provided me with representations, a complete copy of which was shared with the ministry, who then submitted further representations by way of reply.

[8] In this order, I uphold the ministry's decision to deny access to most of the undisclosed information contained in the records. Some discrete portions of the records are ordered disclosed. This order also upholds the ministry's search as reasonable.

RECORDS:

[9] The records at issue consist of the undisclosed portions of a one-page document entitled OTIS-Client Profile (record 2), a one-page Warrant Remanding a Prisoner (record 3), the complete version of a two-page CPIC printout (records 9 and 10), the undisclosed portions of a one-page document entitled OTIS – Unit Identification Card (record 12), a complete copy of a handwritten note (record 13) and the undisclosed portions of a Monthly Detention Report (record 25).

ISSUES:

A: Did the institution conduct a reasonable search for records?
B: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
C: Does the discretionary exemption at section 49(b) apply to the personal information in the records?
D: Does the discretionary exemption at section 49(a) apply to the personal information in the records?
E: Do the discretionary exemptions at section 14(1)(i), (j), (k), (l) and 14(2)(d) apply to the records?
F: Does the discretionary exemption at section 15(b) apply to the records?
G: Does the discretionary exemption at section 49(e) apply to the personal information in the records?
H: Did the institution exercise its discretion under sections 14, 15 and 49? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Did the ministry conduct a reasonable search for records?

[10] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[1] If I am satisfied that the

[1] Orders P-85, P-221 and PO-1954-I.

search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[11] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[2] To be responsive, a record must be "reasonably related" to the request.[3] 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.[4] A further search will be ordered if the institution 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.[5]

[12] 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.[6] In this case, beyond the bare assertion that additional records ought to exist, the appellant has not presented any evidence whatsoever in support of his argument that the ministry's search was unreasonable.

[13] The ministry provided me with an affidavit sworn by the individual who conducted the searches for responsive records in this appeal, an Administrative Assistant in the Superintendent's office of the Toronto West Detention Centre (TWDC). In her affidavit, the affiant describes in detail the steps initially taken to locate and identify all records that are responsive to the appellant's request. Records were identified in Health Care and Inmate Records departments of the facility and forwarded to the ministry's Freedom of Information office in October 2013. The affiant deposed that there were no records in the TWDC's Security Department files relating to the appellant.

[14] The affiant also described how a second search was undertaken in May 2014 following the filing of the current appeal with this office. At this time, a second search was undertaken by the Superintendent of Inmate Records of inmate files and no further records were located in that location. However, on May 12, 2014, the Administrative Assistant conducted a search of the Administrative Detention files at the TWDC and located a record entitled Monthly Detention Report which indicated that the appellant's client was on "administrative hold" during the month of January 2013. The information pertaining to the appellant's client was disclosed to her while information about other inmates was not disclosed. The ministry identified this document as record 25.

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[2] Orders P-624 and PO-2559.
[3] Order PO-2554.
[4] Orders M-909, PO-2469 and PO-2592.
[5] Order MO-2185.
[6] Order MO-2246.

[15] Based on the ministry's affidavit evidence, I am satisfied that the searches which it conducted for responsive records were reasonable in their nature and scope. I note that the appellant was in the custody of the TWDC for just five days in January 2013. Staff at the TWDC conducted two searches of the appellant's medical records (maintained by the Health Care Department), institutional records (held by the Inmate Records Department) and any records maintained by the Security Department. In addition, as a result of a further search of its Administrative Detention files, the ministry located record 25 and issued a decision respecting access to it.

[16] In my view, the ministry has undertaken a thorough and comprehensive search of its record-holdings at the TWDC for records relating to the appellant's incarceration there in January 2013. In the absence of any evidence to the contrary, I am satisfied that the search was adequate in scope and I dismiss this aspect of the appeal.

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

[17] 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,
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> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> (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;

[18] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[7] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[8]

[19] The ministry argues that records 2, 3 and 25 contain the appellant's personal information, as well as that of other identifiable individuals. One of the individuals identified in record 2 is a family member of the appellant. Records 2 and 3 also identify by name two other individuals who were listed in a court order made under section 516(2) of the *Criminal Code* requiring that the appellant not associate or have communications with them. The undisclosed portions of record 25 contain information about the measures taken by the TWDC with respect to the custody of seven other individuals. This information includes their names, the dates of their detention, the reason for their detention and other remarks entered by TWDC staff about these inmates.

[20] I find that all seven of the records or parts of records which remain at issue contain the appellant's personal information. All of the information relates directly to the criminal charges laid against the appellant and the circumstances surrounding his incarceration. I further find that record 2 contains the personal information of a family member of the appellant as it describes her marital status (paragraph (a) of the definition). Records 2 and 3 contain the personal information of the two individuals who are subject to the non-communication and association order made under section 516(2) as it includes their names, as well as other personal information about them (paragraph (h) of the definition), the fact that they are the subject of a court order. Finally, I find that the undisclosed portions of record 25 contain the personal

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[7] Order 11.
[8] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information of the seven inmates who are listed on this document, as they relate to their criminal history, as contemplated by paragraph (b) of the definition set out above.

Issue C: Does the discretionary exemption at section 49(b) apply to the personal information in the records?

[21] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. The ministry has claimed the application of section 49(b) to the undisclosed personal information in records 2, 3 and 25. Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.[9]

[22] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[10]

[23] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[11] The ministry argues that because the records were located in the appellant's correctional file, they are by their very nature highly sensitive within the meaning of section 21(2)(f), which reads:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> > the personal information is highly sensitive;

[24] I agree with the ministry's contention that the undisclosed personal information in record 25 which relates solely to individuals other than the appellant is "highly sensitive" as it describes certain security measures imposed on the inmates who are identified during their incarceration at the TWDC. As I have not been provided with any evidence or argument in favour of the application of any considerations which might

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[9] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 49(b).
[10] Order MO-2954.
[11] Order P-239.

favour the disclosure of this information, I conclude that its disclosure would give rise to an unjustified invasion of personal privacy under section 21(1). As a result, I find that the undisclosed portions of record 25 are exempt under section 49(b), subject to my discussion below of the ministry's exercise of discretion.

[25] The ministry also claims that the personal information in the undisclosed portions of records 2 and 3 is also highly sensitive, as contemplated by section 21(2)(f) and that its disclosure would result in an unjustified invasion of the personal privacy of the individuals named in these records. The first severance on record 2 refers to a close family member of the appellant and the nature of their relationship. I find that the disclosure of this information to the appellant would not give rise to an unjustified invasion of the individual's personal privacy as this information is clearly within the appellant's knowledge.

[26] The personal information contained in the second severance on record 2 and on record 3 consists of the names of two individuals who were subject to an order under section 516(2) of the *Criminal Code.* This order was made in court in the presence of the appellant and is included in record 3, a document entitled "Warrant Remanding a Prisoner". In my view, the disclosure of the personal information contained in such a document cannot constitute an unjustified invasion of the identified individuals' personal privacy. The appellant must have been made aware of their identity in order to ensure that he did not violate the court's non-association/non-communication order under section 516(2). As a result, I find that the personal information in records 2 and 3 is not subject to the exemption in section 49(b) and I will order that it be disclosed to the appellant. Other portions of record 2 remain subject to exemption claims which I will address below.

Issue D: Does the discretionary exemption at section 49(a) apply to the personal information in the records?

[27] I have found in Issue B that all of the records or portions of records remaining at issue contain the appellant's personal information. As noted above, section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right, including section 49(a), which 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.

[28] 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.[12]

[29] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. I will address the manner in which the ministry exercised its discretion with respect to sections 14(1)(i), (j), (k) and (l), 14(2)(d) and 15(b), below.

Issue E: Do the discretionary exemptions at section 14(1)(i), (j), (k), (l) and 14(2)(d) apply to the records?

General principles

[30] Sections 14(i), (j), (k), (l) and 14(2)(d) state:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
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> (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;
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> (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
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> (l) facilitate the commission of an unlawful act or hamper the control of crime.
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> (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.

[31] As noted above, the ministry has claimed the application of section 14(2)(d), which previous orders have determined only applies to information about individuals

[12] Order M-352.

who are currently under the control or supervision of a correctional authority. The appellant is no longer incarcerated or under the ministry's supervision. However, the ministry argues that the appellant remains subject to certain reporting requirements with the Canada Border Services Agency (the CBSA), as reported in a decision of the Federal Court involving him. I have reviewed the Federal Court decision referred to by the ministry and agree that while certain reporting requirements were placed on the appellant by the Court, this does not equate to the appellant being "a person under the control or supervision of a correctional authority." In my view, section 14(2)(d) has no application to any of the records, or parts of records, before me and I will not address it further in this order.

The ministry's representations

[32] Rather than make separate submissions for each of the exemptions claimed under section 14(1), the ministry has chosen to make one comprehensive argument in favour of the application of all of the section 14(1) exemptions claimed, based on the types of harms foreseen by the ministry.

[33] Records 2 and 12 are documents relating to the appellant which were produced from information contained in the ministry's Offender Tracking Information System (OTIS). Certain portions of records 2 and 12 have not been disclosed on the basis that they contain information that qualifies under one or more of the section 14(1) exemptions referred to above. Records 9 and 10 consist of a two-page CPIC printout relating to the appellant while record 13 is a handwritten note that was attached to appellant's Unit Notification Card, record 12. Access to these records has been denied on the same basis as the undisclosed information in records 2 and 12.

[34] The ministry provided representations respecting the "coding information" contained in records 9-10, relying on the reasoning in Orders PO-2582 and PO-1921 which found that the disclosure of similar coding information could reasonably be expected to "hamper the control of crime", within the meaning of section 14(1)(l).

[35] The ministry argues that the confidential, internal communications which remain undisclosed in the second box in record 2, all of record 9-10, the undisclosed portion of record 12 and record 13, in its entirety fall within the ambit of the exemptions in sections 14(1)(i), (j), (k) or (l). It argues that the undisclosed information in these records pertains to the TWDC's management of the appellant, from a security perspective, during his incarceration there. It submits that the disclosure of this information could reasonably be expected to give rise to the harms described in sections 14(1)(i), (j), (k) and (l) because it relates to security concerns about an inmate in its custody.

[36] I find that all of the undisclosed information in records 2, 12 and 13 qualifies for exemption under sections 14(1)(i), (j), (k) or (l). It addresses certain security

procedures to be followed while the appellant was in the custody of the TWDC and its disclosure could reasonably be expected to endanger the security of a building or a "system or procedure" as contemplated by section 14(1)(i), facilitate the escape from custody of a person in lawful detention as described in section 14(1)(j), jeopardize the security of a centre for lawful detention within the meaning of section 14(1)(k) and facilitate the commission of an unlawful act, as set out in section 14(1)(l). As a result, I find that the undisclosed information in records 2, 12 and 13 is exempt from disclosure under section 49(a), in conjunction with sections 14(1)(i), (j), (k) and (l).

[37] These exemptions do not, however, operate to exempt the personal information in the first box on record 2 and on record 3 (which I have also found is not exempt under section 49(b)), as well as the undisclosed portions of record 25 (which I have found to be exempt under section 49(b)).

[38] With respect to record 9-10, which consists of a CPIC printout relating to the appellant, different considerations apply. The ministry has claimed that the discretionary exemptions in sections 14(1)(l), 14(2)(d), 15(b), in conjunction with sections 49(a), and section 49(e) apply to this record. The CPIC record contains a great deal of information which was received by the TWDC from the CPIC database, which is maintained by the RCMP, using information provided to it by Toronto Police Service. The record includes the appellant's personal information, specifically his name, weight and height, address, sex, date of birth and information pertaining to the charges he was facing at the time of his incarceration. It also contains certain security-related information about the appellant to assist the TWDC in its management of him.

[39] I find that this security-related information, which I have highlighted on the copy of record 9-10 that I have provided to the ministry is exempt from disclosure under section 14(1)(l) as its disclosure could reasonably be expected to facilitate the commission of an unlawful act, as contemplated by that exemption. Further, I accept the ministry's representations respecting the disclosure of the coding information contained in record 9-10 and find that it is also exempt under 14(1)(l). I have highlighted on the copy of record 9-10 which I have provided to the ministry those portions of record 9-10 containing coding information subject to the section 14(1)(l) exemption, and therefore, exempt under section 49(a).

Issue F: Does the discretionary exemption at section 15(b) apply to the remaining information at issue in record 9-10?

[40] The ministry takes the position that all of the information contained in record 9-10, including that not subject to exemption under section 14(1)(l), qualifies for exemption under section 15(b), which reads:

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

> reveal information received in confidence from another government or its agencies by an institution;

[41] Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(b) is intended to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern.[13]

[42] When relying on the section 15(b) exemption, the ministry must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences. [14] If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received.[15]

[43] For section 15(b) to apply, the ministry must show that:

1. the records reveal information received from another government or its agencies; and

2. the information was received by an institution; and

3. the information was received in confidence.[16]

[44] In support of its claim under section 15(b), the ministry states that the CPIC printout reflected in record 9-10 was received from the RCMP, through the CPIC database which it maintains. It also indicates that it received the information from the RCMP in confidence. In support of its assertion that the information was received in confidence, the ministry relies upon the wording used in the printout itself. It argues that the inclusion of wording in the CPIC printout which indicates that the information in record 9-10 is not to be disclosed to the appellant demonstrates that it was "received in confidence".

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[13] Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.); see also Orders PO-1927-I, PO-2569, PO-2647, and PO-2666.

[14] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

[15] Order P-1552.

[16] Order P-210.

[45] In Order PO-3075, Adjudicator Colin Bhattacharjee reviewed the interpretations from previous orders placed upon section 15(b) with respect to CPIC records as follows:

> The records at issue include a number of CPIC records that contain the appellant's personal information, particularly a history of his charges and convictions under the *Criminal Code* and other statutes.
> . . .
>
> The gist of the ministry's submissions is that disclosing the CPIC records that contain the appellant's personal information could reasonably be expected to reveal information that the OPP received in confidence from the RCMP, which is an agency of Public Safety Canada, a federal government department. However, the IPC has consistently found in previous orders that CPIC records containing a requester's personal information do not qualify for exemption under section 15(b) of the *Act* or the municipal equivalent in section 9(1)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*.[17] In Order MO-1288, former Adjudicator Holly Big Canoe rejected the argument of the Toronto Police Service that they had received CPIC information "in confidence" for the purposes of the section 9(1)(d) exemption:
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> > The CPIC computer system provides a central repository into which the various police jurisdictions within Canada enter electronic representations of information they collect and maintain. Not all information in the CPIC data banks is personal information. That which is, however, deserves to be protected from abuse. Hence, a reasonable expectation of confidentiality exists between authorized users of CPIC that the personal information therein will be collected, maintained and distributed in compliance with the spirit of fair information handling practices. However, the expectation that this information will be treated confidentially on this basis by a recipient is not reasonably held where a requester is seeking access to his own personal information.
> >
> > There may be specific instances where the agency which made the entry on the CPIC system may seek to protect information found on CPIC from the data subject. Reasons for this might include protecting law enforcement activities from being jeopardized. These concerns will not be present in every case, and will largely depend on the type of

[17] Orders MO-1288, M-1055, MO-2508 and Order PO-2647.

> information being requested. The Police have not identified any particular concerns in this area in the circumstances of this appeal, and it is hard to conceive of a situation where an agency inputting suspended driver or criminal record information would require the Police to maintain its confidentiality from the data subject. In fact, although members of the public are not authorized to access the CPIC system itself, the CPIC Reference Manual contemplates disclosure of criminal record information held therein to the data subject, persons acting on behalf of the data subject, and disclosure at the request or with the consent of the data subject.
>
> Accordingly, I find that there is no reasonable expectation of confidentiality in the circumstances of this appeal, where the appellant is the requester and the information at issue relates to the suspension of the appellant's drivers licence and a history of his previous charges and convictions, the fact of which he must be aware. In my view, section 9(1)(d) does not apply to the [withheld records].

I agree with former Adjudicator Big Canoe's reasoning and adopt it with respect to the appellant's and his wife's personal information in the CPIC records at issue, which the ministry claims is exempt under section 15(b). There are certainly circumstances in which the OPP receives records in confidence from the RCMP. However, I find that there is no reasonable expectation of confidentiality with respect to the appellant's personal information in these particular CPIC records, which contain a list of his previous charges and convictions. This offence history constitutes the appellant's personal information and he clearly knows of its existence. The same reasoning would apply to his wife's personal information in such records.

In short, I find that section 49(a), in conjunction with section 15(b), does not apply to the appellant's and his wife's personal information in these records.

[46] In the present appeal, the ministry has made similar arguments in favour of a finding that the information in the CPIC printout that is not already subject to exemption under section 14(1)(l) qualifies for exemption under section 15(b). For the reasons described in Order PO-3075, I find that section 15(b) has no application to those portions of record 9-10 which I have found to not qualify for exemption under section 49(a), in conjunction with section 14(1)(l). I find that there was no reasonable expectation in confidentiality in this personal information, which relates only to the

appellant and is clearly well-known to him. As such, this information cannot qualify for exemption under section 15(b).

Issue G: Does the discretionary exemption at section 49(e) apply to the personal information remaining at issue in record 9-10?

[47] As noted above in my discussion of sections 49(a) and (b), section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Under section 49(e), the institution 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

[48] "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.[18]

[49] In support of its position, the ministry relies on Order PO-2988 which upheld its decision to deny access to a CPIC printout on the basis that it was exempt under section 49(e). In that decision, I found that a series of records, including a CPIC printout that had been provided directly to the ministry by the Toronto Police, qualified for exemption under section 49(e) because, in the circumstances, it met the criteria for a "correctional record" and had been supplied in confidence to the ministry by the Toronto Police.

[50] In the present case, the CPIC printout did not originate with the RCMP or the police service which originally entered the information into CPIC (the Toronto Police), but rather was located on the CPIC database and printed by staff with the TWDC. Accordingly, whether or not the document meets the criteria for a "correctional record", I find that it was not "supplied" to the ministry for the purposes of section 49(e). Instead, I find that the CPIC printout originated with ministry staff and cannot, therefore, qualify for exemption under section 49(e).

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

Issue H: Did the institution exercise its discretion under the exemptions in sections 14(1)(i), (j), (k) and (l) and sections 49(a) and (b)? If so, should this office uphold the exercise of discretion?

[51] In my discussion above, I have found that certain portions of the records, specifically the bottom box of record 2, the highlighted portions of record 9-10, the undisclosed information in record 12, all of record 13 and the undisclosed portions of record 25 qualify for exemption under either section 49(a), taken in conjunction with section 14(1)(l), or section 49(b).

[52] The section 14(1) and 49 exemptions are discretionary, and permit 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.

[53] 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.

[54] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[19] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations

[55] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[20]

- 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

[19] Order MO-1573.
[20] Orders P-344 and MO-1573.

  - 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.

[56] The ministry submits that it properly exercised its discretion as it took into account the fact that the:

> . . . law enforcement information in corrections records is highly sensitive, both with respect to maintaining the security of correctional institutions, protecting the safety of corrections staff, inmates and the general public, and the privacy rights of individuals referenced in the records.

[57] It also submits that it considered the appellant's right to obtain access to his own personal information and that it severed the records in such a way as to maximize that right of access on behalf of the appellant. It also indicates that it followed its usual practice with respect to the disclosure of the information contained in the records.

[58] The appellant did not address the adequacy of the ministry's exercise of discretion in his representations.

[59] Based on my review of the contents of the records which were disclosed and those withheld, as well as the ministry's representations, I am satisfied that the ministry properly exercised its discretion to deny access to the information which has been found above to be exempt under sections 49(a), in conjunction with section 14(1) and 49(b). I find that the ministry relied only on relevant considerations and did not improperly rely on irrelevant factors in making its decision. As a result, I uphold this aspect of the ministry's decision.

ORDER:

1. I order the ministry to disclose the withheld information in the first box of record 2, as well as the two names contained in the second box of record 2, record 3, and those portions of record 9-10 which are **NOT** highlighted in the copy provided to the ministry with a copy of this order by providing him with a copy by **March 3, 2015** but not before **February 26, 2015.**

2. I uphold the ministry's decision to deny access to the remaining portions of records 2, 9-10, 12, 13 and 25.

3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: January 27, 2015
Donald Hale
Adjudicator