Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3469

Appeal PA13-544

Ministry of Community Safety and Correctional Services

March 6, 2015

Summary: 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 information about a specific Ontario Provincial Police file and police constable. The ministry issued a decision granting partial access to the records. Access was denied to the withheld information in the records pursuant to the discretionary law enforcement exemption in section 14(1)(l), in conjunction with section 49(a), and the discretionary personal privacy exemption in section 49(b) of the *Act*. The ministry also withheld some information that was not responsive to the request. This order upholds the ministry's decision under section 14(1)(l), read in conjunction with section 49(a), and partially upholds its decision under section 49(b). This order also upholds the ministry's decision about the information it deemed non-responsive in the records and also finds that its search for records was reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 49(a), 14(1)(l), 49(b), 24.

Orders and Investigation Reports Considered: Order MO-2871.

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* (*FIPPA* or the *Act*) for the following information about a specific file and police constable:

> Copies of all disclosure in the OPP [Ontario Provincial Police][1] file
> Copies of all notebook entries
> Copies of any documents/information

[2] The ministry issued a decision granting partial access to the records. Access was denied to the withheld information in the records pursuant to the discretionary law enforcement exemption in section 14, read in conjunction with section 49(a), and the discretionary personal privacy exemption in section 49(b) of the *Act*. The ministry also withheld some information that was not responsive to the request.

[3] The requester (now the appellant) appealed the decision of the ministry to deny access to the withheld parts of the records.

[4] During mediation, the appellant explained that she wanted to pursue access to the information that had been withheld from the records. The appellant believed that she had a right to know who lodged a complaint against her and what actions the ministry took to investigate the complaint.

[5] The mediator informed the appellant that the information withheld under section 49(b) of the *Act*, related to other individuals (affected persons), and could not be disclosed to her without their consent. The appellant advised the mediator that she did not want the affected persons to be notified of her request. The appellant indicated that she wished to pursue access to the parts of the records withheld under section 49(b).

[6] The appellant explained that she believed that more records should exist, in particular, a copy of a letter that she wrote to the affected persons (mentioned on page 5 of the records), records that would show when the ministry attempted to call or attend her residence, as well as an account of interviews with the affected persons and herself.

[7] In addition, the appellant was concerned that large portions of the officer's notebook entries were identified by the ministry as not responsive to her request, and withheld accordingly. The appellant did not accept that the information severed was not related to her request.

[8] The mediator discussed the appellant's concerns with the ministry. As a result, the ministry conducted another search for records. Some additional records were located and the ministry issued a supplementary decision denying access to the records pursuant to section 49(b) of the *Act*. The ministry also advised:

> …that no additional officer notebook entries, reports or emails were located. The [named] OPP detachment confirmed that all responsive

[1] The OPP is part of the ministry.

> officer notebook entries, reports and emails have been provided to this office. Please be advised that all recorded contact between yourself and the OPP has already been released to you.
>
> Please be advised that access to interview statements cannot be granted, as the information does not exist. The [named] OPP detachment confirmed to this office that no interview statements exist.

[9] The mediator discussed the ministry's supplementary decision with the appellant. The appellant advised that she continued to believe that the ministry had not conducted a reasonable search for records. The appellant believed that more records should exist related to the police investigation.

[10] The appellant also advised that she wanted to pursue access to the "police codes" withheld under sections 14(1)(l) and 49(a) of the *Act* and to the portions of the withheld records identified as not responsive to the request.

[11] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sought and received representations from the ministry, which I sent to the appellant. The appellant provided representations in response.

[12] In its representations, the ministry withdrew its claimed section 14(2)(a) exemption for pages 4 through 11 of the records. This did not affect the number of records that were withheld by the ministry.

[13] In this order, I uphold the ministry's decision under section 14(1)(l), read in conjunction with section 49(a), and partially uphold its decision under section 49(b). I also uphold the ministry's decision about the information it deemed non-responsive in the records and its search for records.

RECORDS:

[14] The records remaining at issue consist of police occurrence reports, an officer's notebook entries and other records the appellant believes should exist.

ISSUES:

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

B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

C. Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) law enforcement exemption apply to the information at issue?

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

E. Is the information in the records marked non-responsive to the request actually responsive to the request?

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

DISCUSSION:

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

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

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

> confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[16] 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.[2]

[17] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[3]

[18] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[4]

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[5]

[20] The ministry states that the records contain the names, dates of birth, an address, and information that affected persons provided to the OPP. The ministry further states that the personal information is what police would typically gather in the course of conducting an investigation into a possible violation of the law.

[21] The appellant does not dispute that the records contain personal information.

Analysis/Findings

[22] Based on my review of the information at issue I the records, I agree with the ministry that the records contain the personal information of the appellant and other

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[2] Order 11.
[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.
[5] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

identifiable individuals, in their personal capacity. This personal information includes a home address, dates of birth, and views and opinions, in accordance with paragraphs (d), (e), and (g) of the definition of personal information in section 2(1) of the *Act*.

[23] As the information at issue in the records contains the personal information of the appellant and other individuals, I will consider whether the discretionary personal privacy exemption in section 49(b) applies to it.

B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

[24] 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.

[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.

[26] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[27] If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). I find that neither paragraphs (a) to (e) of section 21(1) nor paragraphs (a) to (d) of section 21(4) apply.

[28] 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.[6]

[29] The ministry relies on the presumption against disclosure in section 21(3)(b), which reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

[6] Order MO-2954.

> was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[30] The ministry states that the records were created pursuant to a law enforcement investigation. If the evidence gathered during the investigation had pointed in a different direction, charges could have been laid by the OPP, most likely pursuant to the *Criminal Code*.

[31] The ministry also relies on the factor in 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,
>
> > the personal information is highly sensitive.

[32] Concerning this factor, the ministry relies on Order P-1618,[7] where the IPC found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive" for the purpose of section 21(2)(f).

[33] The ministry states that it is particularly concerned in this instance because the records are being requested by an appellant, who has been cautioned about harassing some of the affected persons.

[34] The appellant states that she was cautioned regarding a criminal offence, and that disclosing the records of the complainant to her is not an unjustified invasion of privacy. She submits that disclosure will prevent abuse of intimidation and build confidence in the police services. She further states that:

> As well as it is a breach of the personal privacy that my personal information was given to the Police Services, and would like all parties identified who disclosed my personal information, such as email address, telephone number etc.

Analysis/Findings

[35] Based on my review of the records, I agree with the ministry that the presumption in section 21(3)(b) applies as the records were compiled during a criminal

[7] at page 14.

investigation and are identifiable as part of an investigation into a possible violation of law concerning a potential charge of criminal harassment.

[36] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[37] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[8] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[9]

[38] 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.[10]

[39] Based on review of the contents of the records, I agree with the ministry that section 21(2)(f) applies as the personal information in the records is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[11]

[40] In this appeal, the personal information concerns a situation about individuals listed in a complaint against the appellant regarding possible criminal harassment.

[41] The appellant appears to be raising the factor in favour of disclosure in section 21(2)(a), 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,
>
> > the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny.

[42] Section 21(2)(a) contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[12]

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[8] Orders P-242 and MO-2235.
[9] Orders MO-2213, PO-1849 and PO-2608.
[10] Order P-239.
[11] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[12] Order P-1134.

[43] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.[13]

[44] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 21(2)(a).[14]

[45] The appellant was cautioned by the police about an allegation of criminal harassment made against her. She states that disclosure will prevent abuse of intimidation and build confidence in the police services.

[46] The email chain between the appellant and the OPP in the records reveals that the appellant is aware of who made the complaint against her. The OPP's interaction with her was to tell her to not have any further contact with the complainant. Based on my review of the records, they do not contain evidence of intimidation of the appellant.

[47] Nor do I agree with the appellant that disclosure of the records will increase public confidence in the ministry.[15] Disclosure will merely subject the views or actions of a private individual, the complainant, to public scrutiny.

[48] Accordingly, I find that section 21(2)(a) does not weigh in favour of disclosure of the personal information at issue in the records.

[49] As the presumption in section 21(3)(b) and the factor in section 21(2)(f) weighing against disclosure apply, I find that the records are exempt under section 49(b). Subject to my review of the absurd result principle and the ministry's exercise of discretion, I find that the disclosure of this personal information would give rise to an unjustified invasion of personal privacy of the affected persons mentioned in the records.

Absurd result

[50] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 49(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[16]

[51] The absurd result principle has been applied where, for example:

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[13] Order PO-2905.
[14] Order P-256.
[15] Orders M-129, P-237, P-1014 and PO-2657.
[16] Orders M-444 and MO-1323.

- the requester sought access to his or her own witness statement[17]
- the requester was present when the information was provided to the institution[18]
- the information is clearly within the requester's knowledge.[19]

[52] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[20]

[53] The ministry submits that it is not clear how much knowledge the appellant has of the contents of the responsive records. Regardless, it submits that the absurd result principle does not apply because disclosure would be inconsistent with the purpose of the exemption, to protect the privacy of the affected persons whose personal information has been collected as part of a police investigation.

[54] The ministry relies upon the reasoning set out in Order PO-3313, which held:

> ... there is a particular sensitivity inherent in the information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act*, as identified by Senior Adjudicator Goodis in Order MO-1378 (including the protection of privacy of individuals, and the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, I find that the absurd result principle does not apply in this appeal.

[55] The appellant states that she informed the police of the entire situation when she attended at the police station, and that she is aware of the circumstances that led to the police involvement.

Analysis/Findings

[56] Based on my review of the records, I find that the absurd result principle applies to the email chain at pages 4 to 9 of the records between the appellant and the OPP. This email chain is titled Supplementary Occurrence Report. Except for a portion of one comment at the bottom of page 7 concerning details about a constable's absence from work, the information in this email exchange is clearly within the appellant's knowledge. I find that the comment about the constable's absence is not responsive to the appellant's request.

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[17] Orders M-444 and M-451.
[18] Orders M-444 and P-1414.
[19] Orders MO-1196, PO-1679 and MO-1755.
[20] Orders M-757, MO-1323 and MO-1378.

[57] The responsive information in pages 4 to 9 of the records was either provided to or from the appellant, I find that the absurd result principle apples and I will order the responsive information at issue in pages 4 to 9 of the records disclosed.

[58] As well, I find that the information at page 11 of the records, which is also a Supplementary Occurrence Report, is information within the appellant's knowledge as it is a reiteration of what the OPP told the appellant. Therefore, I will order the responsive information at issue on page 11 disclosed to the appellant.

[59] I find that the absurd result principle does not apply to the remaining information at issue in the records, as it is information originating with individuals other than the appellant and it is not information clearly within the appellant's knowledge. I will consider below whether the ministry exercised its discretion in a proper manner with respect to this information, below.

C. Does the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) law enforcement exemption apply to the information at issue?

[60] 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.

[61] Section 49(a) reads:

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

[62] 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.[21]

[63] 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.

[64] In this case, the institution relies on section 49(a) in conjunction with section 14(1)(l).

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[21] Order M-352.

[65] Section 14(1)(l) states:

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

[66] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[22]

[67] Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[23]

[68] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[24]

[69] The ministry relies on section 14(1)(l), which reads:

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

[70] The ministry states that it applied section 14(1)(l) to the police codes in the records. It states that IPC jurisprudence has consistently upheld the exemption of police codes under subsection 14(1)(l) on the basis that their disclosure would impair the ability of police officers to communicate with one another confidentially, thereby harming police officers safety and increasing the likelihood that criminal elements could use these records for illegal purposes.

[71] The appellant did not provide representations with respect to the application of section 14(1)(l) to the police codes in the records.

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[22] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[23] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), and *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[24] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

Analysis/Findings

[72] The information for which the ministry has applied section 14(1)(l) consists of police 10 codes and other police-coded information. In Order MO-2871, I stated that:

> This office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l)[25] applies to "10 codes" (see Orders M-93, M-757, MO-1715 and PO-1665), as well as other coded information such as "900 codes" (see Order MO-2014). These orders adopted the reasoning of Adjudicator Laurel Cropley in Order PO-1665:
>
> > In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space....
>
> Concerning section 8(1)(l), I also agree with Adjudicator Bhattacharjee in Order MO-2112 that this office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l) applies to "10 codes". Adopting this reasoning, I find that disclosure of the 10 codes in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime and that section 38(a)[26] read in conjunction with section 8(1)(l) applies to this information. I will consider below whether the police exercised their discretion under section 38(a) in a proper manner concerning this information.

[73] I adopt my previous findings in Order MO-2871 and find that the 10 codes and other police-coded information are subject to the law enforcement exemption in section 14(1)(l) of the *Act*. Disclosure of this information in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Subject to my review of the ministry's exercise of discretion, this information is exempt under section 49(a), read in conjunction with section 14(1)(l).

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[25] Section 8(1)(l) of the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal *Act*), the equivalent of section 14(1)(l) of *FIPPA*.
[26] Section 38(a) of the the municipal *Act*, the equivalent of section 49(b) of *FIPPA*.

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

[74] The sections 49(a) and 49(b) 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.

[75] 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.

[76] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[27] This office may not, however, substitute its own discretion for that of the institution.[28]

[77] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[29]

- 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
    - 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

[27] Order MO-1573.
[28] Section 52(4).
[29] Orders P-344 and MO-1573.

- 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.

[78] The ministry states that it withheld information based on the following considerations:

> (a) The public policy interest in protecting the privacy of personal information belonging to affected persons, that is contained in law enforcement investigation records;
>
> (b) The public policy interest in safeguarding the privacy of individuals who seek out the protection of law enforcement; and,
>
> (c) The concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the public cooperation that the OPP depend upon when they conduct law enforcement investigations.

[79] The appellant states that the public policy interest in protecting the privacy of personal information belonging to affected persons that is contained in law enforcement investigation records does not apply in this case. She submits that there was neither an investigation nor records from the investigation which might substantiate that the affected persons need protection of law enforcement.

[80] The appellant further states that not providing complete disclosure of the records would jeopardize the public confidence in the OPP, as it is refusing to provide complete and proper disclosure and has discriminated against a member of the general public.

Analysis/Findings

[81] Based on my review of the records and the parties' representations, I find that the ministry exercised its discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations. The ministry took into account, in particular, the wording of the personal privacy and law enforcement exemptions and the interests they seek to protect and whether disclosure will increase public confidence in the operation of the institution.

[82] I find that the appellant has not addressed the ministry's exercise of discretion in her representations. Instead, she is concerned about whether the OPP investigated the affected persons' need for the protection of law enforcement. However, the law enforcement exemption applied by the ministry only concerned the police-coded information used by the OPP police officers to communicate with each other.

[83] Furthermore, I do not agree with the appellant that, in the circumstances of this appeal, disclosure of the information remaining at issue in the records would increase public confidence in the OPP in exposing discrimination by the OPP against her. Based on my review of the records, I find that they do not contain evidence of discriminatory behaviour by the OPP against the appellant.

[84] Therefore, I uphold the ministry's exercise of discretion with respect to the information that I have found subject to sections 49(a) and 49(b) and will order this information withheld.

E. Is the information in the records marked non-responsive to the request actually responsive to the request?

[85] 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).

[86] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[30]

[87] To be considered responsive to the request, records must "reasonably relate" to the request.[31]

[88] The ministry states that it has determined, in accordance with its usual practices, that the following portions of the records are non-responsive:

> (a) Information electronically generated disclosing when the records were printed from the printer for the purpose of assembling them, as part of this appeal; and,
>
> (b) Information in the officer's notes pertaining to other unresponsive incidents or investigations. An officer's notes will typically contain all of the different policing matters occupying an officer's time over the course of a day. It is not surprising therefore that some of the officer's notes will contain information responsive to the incident that is the subject of this appeal and some do not.

[89] The appellant states that the information withheld is not when the records were printed from the printer but the date the file was created. She further states that each page of the notebook should be numbered and written in chronological order. She states that she requested copies of the notebook entries that pertain to this incident, and the ministry failed to provide legitimate copies of the notebook entries.

Analysis/Findings

[90] I agree with the ministry that the non-responsive information in the records includes information as to when the records were printed. It does not include information as to when the records were created, as claimed by the appellant.

[91] I also find that the remaining non-responsive information in the records concerns information that falls outside the ambit of what was requested by the appellant in her request. The appellant has received the notebook entries and other information related to her request. The information marked as non-responsive by the ministry does not reasonably relate to the request and instead records other activities undertaken by the officer on that day that is completely unrelated to the appellant.

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[30] Orders P-134 and P-880.
[31] Orders P-880 and PO-2661.

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

[92] 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.[32] If I am satisfied that the 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.

[93] 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.[33] To be responsive, a record must be "reasonably related" to the request.[34]

[94] 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.[35]

[95] 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.[36]

[96] The ministry states that trained OPP staff conducted a search of the OPP police records database, based on the scope of the search and that all of the records that would be responsive to the search would be kept in the OPP records database. The ministry states that it only searched for records that were in the possession of the OPP due to the nature of the request (i.e., for law enforcement records).

[97] The appellant states that the ministry did not provide representations on the type of search it conducted to locate responsive records.

Analysis/Findings

[98] During mediation, the appellant explained that she believed that more records should exist, in particular, a copy of a letter that she wrote to the affected persons (mentioned on page 5 of the records), records that would show when the OPP attempted to call or attend her residence, as well as an account of interviews with the affected parties and herself.

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[32] Orders P-85, P-221 and PO-1954-I.
[33] Orders P-624 and PO-2559.
[34] Order PO-2554.
[35] Orders M-909, PO-2469 and PO-2592.
[36] Order MO-2185.

[99] I have reviewed page 5 of the records. The email the appellant is referring to quotes one line of the letter the appellant wrote to an affected person. The email states that the affected person has a copy of the letter. It does not state that the OPP has a copy of this letter.

[100] The police officer notes, as well as the remaining records, indicate the attempts the OPP made to contact the appellant. The representations of the ministry state that there are no responsive witness statements in existence.

[101] 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.[37]

[102] I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

[103] Based on my review of the records and the parties' representations, I find that the ministry has conducted a reasonable search for responsive records and I am upholding the ministry's search.

ORDER:

1. I uphold the ministry's decision that the information at issue in the records is exempt, except for the responsive information on pages 4 to 9 and 11 of the records.

2. I order the ministry to disclose the responsive information in pages 4 to 9 and 11 of the records to the appellant by **March 27, 2015**. For ease of reference I am providing the ministry with a copy of pages 4 to 9 and 11 of the records with the non-responsive information to be withheld highlighted.

[37] Order MO-2246.

3. I uphold the ministry's search for responsive records.

Original Signed By: March 6, 2015
Diane Smith
Adjudicator