Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3536

Appeal PA15-93

Ministry of Community Safety and Correctional Services

September 30, 2015

Summary: The appellant sought access to records relating to a complaint received by the OPP about threatening emails sent to a municipal office. The ministry denied access to the responsive records on the basis that they were exempt under section 49(a), in conjunction with various section 14(1) exemptions (law enforcement) and section 15(a) and (b) (relations with other governments), as well as section 49(b) (personal privacy). In this decision, the adjudicator upholds the ministry's decision under section 49(b), but orders the disclosure of four pages of records which he finds do not qualify for exemption under section 49(a), in conjunction with sections 14(1)(a), (c), (d), (e), (l) and 15(a) and (b).

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], 14(1)(a), (c), (d), (e), (l), 15(a) and (b), 49(a) and (b).

Orders and Investigation Reports Considered: PO-2715 and PO-2751.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request for access to:

> Any and all records pertaining to [the appellant] that are in the possession of the Ontario Provincial Police [the OPP], Lakeshore Detachment.

[2] The ministry located responsive records and issued a decision denying access to all of them. The records relate to an incident involving the appellant which occurred on November 6, 2014. The ministry relied upon the discretionary law enforcement exemptions in sections 14(1)(a), 14(1)(c), 14(1)(d) and 14(1)(l), as well as the discretionary exemptions in sections 15(a) and (b) (relations with other governments), taken in conjunction with the discretionary exemption in section 49(a). Finally, the ministry also relies on the discretionary personal privacy exemption in section 49(b), along with the factor in section 21(2)(f) and the presumption in section 21(3)(b) of the *Act.* The ministry also advised the appellant that some of the information in the records was not responsive to his request.

[3] The appellant appealed this decision. Attached to the appeal letter was a transcript of a conversation between an officer with the Dearborn Michigan police and the Ontario Provincial Police Lakeshore Detachment which occurred on November 6, 2014. This transcript was disclosed to the appellant by the Dearborn Police and was shared with the ministry in order to "provide additional information and assist in [the ministry] granting the appeal and request for access to the requested documents."

[4] During the mediation process, the mediator provided the ministry with a copy of the transcript of the November 6, 2014 call between the Lakeshore OPP and the Dearborn Police. The ministry was also provided with a copy of the letter written by the appellant that accompanied his appeal to this office. In this letter, the appellant summarizes the incident and states, among other items, that he requires the records to ensure his safety and his ability to travel across borders. Upon receipt of this information, and after an email exchange with the mediator about the applicability of the exemptions claimed, the ministry advised the mediator that it would issue a revised access decision.

[5] Subsequently, the ministry issued a revised access decision in which it provided partial access to page one of the records, disclosing the appellant's name and the addresses of the two police departments, as well as a two-line summary of the complaint. The other information on that page was severed under section 14(1)(l) and 49(a) and (b). The ministry continued to withhold the balance of the records in full, relying upon sections 14(1)(a), 14(1)(c), 14(1)(d), 14(1)(e), 14(1)(g), 14(1)(l), 14(2)(a), 15(a), 15(b), and 49(a) and (b).

[6] The ministry also took the position that some of the information contained in page 1 of the records relating to the dates the records were recovered from the ministry's database in response to the request was not responsive to his request. I agree that this information is not responsive to the request and will not address it further in this order. The appellant agreed to remove from the scope of the appeal the information claimed to be exempt under section 14(1)(l). As a result, this information is also no longer at issue in this appeal.

[7] As further mediation was not possible, the appeal 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 and an individual whose rights may be affected by the disclosure of the records (the affected person). In its representations, the ministry indicated that it is no longer relying on the discretionary exemptions in sections 14(1)(g) and 14(2)(a). I provided the appellant with a complete copy of the representations of the ministry, and withheld the representations of the affected person on the basis that they were confidential in nature. However, the essential elements of the affected person's submissions are reflected in those of the ministry. I then received representations from the appellant.

[8] In this order, I uphold the ministry's decision to deny access to most of the records on the basis that they are exempt from disclosure under sections 21(1) or 49(b). I order the disclosure of pages 3-7 of the records.

RECORDS:

The records at issue in this appeal consist of: occurrence summary (page 1), general occurrence report (pages 2 – 3), case report (pages 4 – 7), notes report (pages 8 – 18) and police officers' notes (pages 19 – 28).

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 mandatory exemption at section 21(1) or the discretionary 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)(a), (c), (d), (e) and (l) and 15(a) and (b) exemptions, apply to pages 3-7 of the records?

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

[9] 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;

[10] 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.[1]

[11] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

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[1] Order 11.

> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[12] 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.[2] 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.[3]

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

Findings

[14] The records at issue in this appeal consist of various occurrence reports, summaries and notes which relate to certain events that were the subject of a police investigation. The appellant has received partial access to some of the records, particularly those portions that relate only to him. The events described in the records were initiated when the Town of Lakeshore began to receive a series of very disturbing and bizarre emails. The OPP investigated the source of these messages and found that they originated from a computer located in the appellant's home in Dearborn Michigan. The police in that community were notified and they attended at the appellant's home. The appellant denied having sent the emails, despite the fact that the subject matter of some of them related directly to a business opportunity in which he was directly involved.

[15] I find that the occurrence summary and general occurrence report in pages one and two of the records contain the appellant's personal information, as well as that of the affected person. The second page of the general occurrence report, described as page 3, contains only the appellant's personal information. A case report prepared by the Dearborn Police comprises pages 4 to 7 and contains only the personal information of the appellant and his wife.

[16] Pages 8 to 18 consist of a notes report representing email communications passing between the Town of Lakeshore and the OPP and include the emails sent from the appellant's computer to the Town. I find that these records contain the affected person's personal information and information relating to the sender of the emails. This

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

individual is unnamed and remains unidentified as the appellant denies being the sender of these communications. The relevant portions of the police officer notes which comprise pages 19 to 28 of the records contain the personal information of the affected person and the appellant, including their names, addresses, telephone numbers and other information appearing with their names.

[17] To summarize, I find that pages 1, 2 and 19-28 contain the personal information of both the appellant and the affected person. Pages 3-7 are comprised of the appellant's personal information only, while pages 8-18 contain the affected person's personal information. Pages 8 to 18 do not contain the personal information of any other individuals, such as the appellant, because only information about "identifiable individuals" can qualify as "personal information" under the definition of that term in section 2(1).

Issue B: Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the information at issue?

[18] 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.

[19] 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.

[20] In contrast, under section 21(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 21(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 21(1)(f)].

[21] In my discussion above, I found that pages 1, 2 and 19-28 contain the personal information of both the appellant and the affected person. I will, accordingly, determine whether they qualify for exemption under the discretionary exemption in section 49(b). Because pages 8-18 contain only the affected person's personal information, I will evaluate whether they qualify under the mandatory exemption in section 21(1).

[22] Pages 3-7 contain only the appellant's personal information. I will determine below whether these pages are exempt under the other discretionary exemptions claimed by the ministry, specifically section 49(a) in conjunction with sections 14(1)(a), (c), (d) and (e), as well as sections 15(a) and (b).

[23] In applying either of the section 49(b) or 21(1) exemptions, sections 21(2) and

(3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[24] Both the affected person and the ministry take the position that the personal information contained in the records is subject to the presumption in section 21(3)(b) as it was compiled as part of the OPP's investigation into possible criminal conduct on the part of the appellant or some other individual. The ministry also submits that the information is "highly sensitive" within the meaning of that term in section 21(2)(f) and that this consideration weighs heavily against the disclosure of the personal information in the records.

Sections 21(2) and (3)

[25] 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. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[26] For records claimed to be exempt under section 21(1) (ie., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if a section 21(4) exception or the "public interest override" at section 23 applies.[5]

[27] If the records are not covered by a presumption in section 21(3), section 21(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure.[6]

[28] For records claimed to be exempt under section 49(b) (ie., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal.[7]

[29] In the circumstances, it appears that the presumption at paragraph 21(3)(b) could apply. This section reads as follows:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is

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[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.
[6] Order P-239.
[7] Order MO-2954.

> necessary to prosecute the violation or to continue the investigation;

[30] 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]

[31] As noted above, the ministry also relies on the consideration listed at section 21(2)(f), which states:

> 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] The appellant's representations do not address directly the possible application of sections 21(3)(b) or section 21(2)(f) to the personal information at issue.

Findings

[33] Based on my review of the personal information at issue in this appeal, I conclude that both the presumption in section 21(3)(b) and the factor listed in section 21(2)(f) apply to it. The personal information was compiled and is identifiable as part of the OPP's investigation of possible criminal conduct following complaints they received from the Town of Lakeshore. I find that the information relates directly to the OPP's investigation into the circumstances described in the records, which gave rise to concerns about possible criminal behaviour. As a result, I find that the presumption in section 21(3)(b) applies to the personal information in pages 1, 2, 8-18 and 19-28 and its disclosure is presumed to constitute an unjustified invasion of the personal privacy of the affected person.

[34] In addition, the content of the email communications are extremely disturbing, obscene and threatening in their composition. As a result, I find that they, and the reactions of the recipients of these messages which are also described in the records, are highly sensitive in nature, as contemplated by section 21(2)(f). I further find that this factor weighs very strongly in favour of privacy protection with respect to the affected person's personal information contained in pages 1, 2, 8-18 and 19-28.

[35] Because I find that the presumption in section 21(3)(b) and the factor favouring privacy protection in section 21(2)(f) apply, I conclude that the disclosure of the

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[8] Orders P-242 and MO-2235.
[9] Orders MO-2213, PO-1849 and PO-2608.

personal information in pages 1, 2, 8-18 and 19-28 would result in an unjustified invasion of the affected person's personal privacy under sections 21(1) and 49(b). I further find that none of the exceptions listed in section 21(4) apply to this personal information, and the appellant has not raised the possible application of the public interest override provision in section 23. Accordingly, I conclude that pages 1, 2 and 19-28 are exempt from disclosure under section 49(b), while pages 8-18 qualify for exemption under section 21(1).

Issue C: Does the discretionary exemption at section 49(a), in conjunction with the section 14(1)(a), (c), (d), (e) and (l) and 15(a) and (b) exemptions, apply to pages 3-7 of the records?

[36] 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 and 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.

[37] 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.[10] In this case, the institution relies on section 49(a) in conjunction with sections 14(1)(a), (c), (d), (e) and (l) and 15(a) and (b).

Sections 14(1)(a), (c), (d), (e) and (l)

[38] Sections 14(1)(a), (c), (d), (e) and (l) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (a) interfere with a law enforcement matter;
> >
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

[10] Order M-352.

> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

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

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

[40] The term "law enforcement" has covered the following situations:

- a police investigation into a possible violation of the *Criminal Code*.[11]

[41] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[12]

Section 14(1)(a)

[42] Previous orders of the Commissioner's office have determined that the matter in question which is described in the records must be ongoing or in existence.[13] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.[14] "Matter" may extend beyond a specific investigation or proceeding.[15] The institution holding the records need not be the institution conducting the law enforcement matter for the exemption to apply.[16]

[43] The ministry points out that the "matter" which gave rise to the creation of the records remains unresolved, as the sender of the emails to the Town of Lakeshore was never positively identified. For this reason, it argues that the "matter" has not been

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[11] Orders M-202 and PO-2085.
[12] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[13] Order PO-2657.
[14] Orders PO-2085 and MO-1578.
[15] *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).
[16] Order PO-2085.

completed and should be treated as ongoing. It has not, however, provided me with any information whatsoever to indicate that the OPP is continuing to investigate the incidents referred to in the records or that some further action on its part, or on the part of the Dearborn police is contemplated.

[44] As a result, I find that the "matter" which is the subject of the records is no longer ongoing or in existence, regardless of the fact that the investigation was not resolved by the laying of charges. Accordingly, I find that section 14(1)(a) has no application to the information in pages 3-7 of the records.

Section 14(1)(c)

[45] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[17]

[46] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.[18]

[47] The ministry argues that the records describe "investigative techniques and details associated with tracking the source of emails, collaborating with other law enforcement agencies, and responding to threats that are communicated by email." It submits that "disclosing these records could hinder or compromise their effective utilization, by disclosing investigative techniques."

[48] It must be noted that the only records which remain at issue in this appeal consist of pages 3 to 7, which represent a brief description of the actions of the Dearborn police (at page 3) and the Case Report of the Dearborn police, which was shared with the OPP. These records simply describe the actions taken by the Dearborn police after being notified of the OPP's concerns surrounding certain threatening and disturbing emails that were received by the Town of Lakeshore from an email address which originated at the appellant's home. I also note that the appellant indicates that the Dearborn police disclosed to him "every document and piece of information that it had" regarding this matter and enclosed a copy of the transcript of the telephone conversation between officers with the Lakeshore detachment of the OPP and the Dearborn police.

[49] I have reviewed the contents of pages 3 to 7 and find that they do not contain information that meets the test under section 14(1)(c) which applies only to records which relate to investigative techniques or procedures which are not generally known to the public. The information contained in these pages relates to the actions taken by the

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

Dearborn police in response to the information provided to it by the Lakeshore detachment of the OPP about possible criminal activity or a threat to the appellant's own safety. I find that the disclosure of the records could not reasonably be expected to reveal investigative techniques and procedures, as contemplated by section 14(1)(c). Specifically, I find that pages 3 to 7 do not contain investigative information which would not be generally known to the public.

Section 14(1)(d)

[50] In order for section 14(1)(d) to apply, the institution must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.[19]

[51] Again, as this exemption is being applied only to pages 3 to 7 of the records, I find that they do not contain information that would reveal the identity of a confidential source. These pages of the records do not include information about the source of the complaint which gave rise to the investigation described therein.

Section 14(1)(e)

[52] Both the affected person and the ministry have provided me with representations on the possible application of this exemption to the records at issue in this appeal. They have not, however, focussed on the contents of pages 3 to 7, which are the only records that remain at issue. The affected person is justifiably concerned for his or her safety, given the content of the emails that were sent to the Town of Lakeshore, as they contain threats and bizarre language alluding to violence and harm to individuals who may have been involved in the Town of Lakeshore's zoning decision. The ministry also takes the position that because the emails are threatening in nature, their disclosure could reasonably be expected to result in the types of harm contemplated by section 14(1)(e).

[53] A person's subjective fear, while relevant, may not be enough to justify the exemption.[20] The term "person" is not necessarily limited to a particular identified individual, and may include the members of an identifiable group or organization.[21]

[54] Again, the application of section 14(1)(e) is limited to the contents of pages 3 to 7. Based on my review of those records, I find that they relate exclusively to the actions of the Dearborn police with respect to the appellant. I do not agree that their disclosure could reasonably be expected to result in endangerment to the life or physical safety of anyone, including the affected person. As a result, I find that section 14(1)(e) has no application to the information in pages 3 to 7.

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[19] Order MO-1416.
[20] Order PO-2003.
[21] Order PO-1817-R.

Section 14(1)(l)

[55] The ministry raises concerns about whether the disclosure of the records would result in members of the public being more reluctant to cooperate with law enforcement agencies like the OPP. It also submits that disclosure of the contents of the records "might deter the sharing of information between the OPP and other law enforcement agencies due to the perception of other law enforcement agencies that the OPP could not protect sensitive law enforcement records that it is provided." It concludes this aspect of its representations by suggesting that disclosure of the records may serve to compromise the evidence which they contain, "should charges ever be laid in relation to the threats contained in the emails." The ministry submits that all of these considerations lead to a conclusion that disclosure of the records could reasonably be expected to hamper the control of crime, as contemplated by section 14(1)(l).

[56] Based on my review of the contents of pages 3 to 7, I conclude that the disclosure of this information could not reasonably be expected to result in the facilitation of an unlawful act or hamper the control of crime. The information in these records was shared by the Dearborn police with the OPP and was disclosed by that police service to the appellant. I find that the disclosure of the specific information in pages 3 to 7 could not reasonably be expected to result in the types of harms contemplated by section 14(1)(l) and this exemption does not apply to it.

Sections 15(a) and (b)

[57] Sections 15(a) and (b) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
> >
> > (b) reveal information received in confidence from another government or its agencies by an institution;

[58] Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(a) recognizes the value of intergovernmental contacts, and its purpose is to protect these working relationships.[22] Similarly, the purpose of sections 15(b) and (c) is to allow the Ontario government to receive information in confidence, thereby building the trust required to

[22] Orders PO-2247, PO-2369-F, PO-2715 and PO-2734.

conduct affairs of mutual concern.[23]

[59] For subsection 15(b) to apply, the institution 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.[24]

[60] A municipality is not a "government" for the purpose of section 15.[25] This office has also stated that municipal police forces are not agencies of another government for the purposes of this section.[26]

[61] The institution 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. [27] 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.[28]

[62] The ministry argues that the interpretation relied upon by this office with respect to the treatment of municipal governments, including municipal police services, is incorrect. It argues that "there is value in the working relationships that the OPP has with its policing counterparts in Michigan, and that the public interest in ensuring that law enforcement agencies on either side of the international border work closely together can be best ensured by protecting the confidentiality of records that are shared."

[63] The ministry goes on to argue that it would be absurd to draw a distinction between U.S. municipal police forces and federal law enforcement agencies, such as the Federal Bureau of Investigation (the FBI), based on this office's historical interpretation of section 15. It submits that there is no distinction between those agencies as both have the same general law enforcement mandate with the same objectives.

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[23] 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.
[24] Order P-210.
[25] Orders P-69, PO-2715 and PO-2751.
[26] Orders PO-2715 and PO-2751.
[27] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[28] Order P-1552.

[64] With respect to the application of section 15(a), the ministry states that the Dearborn police provided the records to the OPP pursuant to a law enforcement investigation "with the implied expectation that all police departments have when they share record with another law enforcement agency, which is that the records would only be used for a law enforcement purpose." It also suggests that the Dearborn police have "advised that it opposes disclosure of its records pursuant to this appeal." The ministry did not, however, provide me with any evidence to substantiate this statement or its position that the records were received from the Dearborn police in confidence, as required under section 15(b).

[65] The appellant, on the other hand, provided me with a copy of a transcript of a recorded conversation between officers with the Dearborn police and the OPP which initiated the investigation by the Dearborn police. The appellant obtained a copy of this document, along with what he describes as "every document and piece of information it had", though he did not provide me with copies of any other documents that were disclosed to him other than the transcript.

[66] In my view, based on the information provided to me by the appellant, it is apparent that the Dearborn police have provided the appellant with a great deal of information relating to its investigation of the matters raised with it by the OPP. The disclosure of the transcript of the telephone call that initiated the Dearborn police's investigation demonstrates to me that it has provided the appellant with a great deal of information about the circumstances which resulted in their investigation and subsequent attendance at the appellant's home. Based upon these facts, I find that the ministry's concerns about disclosing confidential or secure law enforcement information are less compelling.

[67] In my view, sections 14(1)(a), (c), (d), (e) or (l), as well as sections 15(a) and (b) have no application to the contents of pages 3 to 7. These records are not, accordingly, exempt under the discretionary exemption in section 49(a). As no other exemptions have been claimed and no mandatory exemptions apply to them, I will order that they be disclosed to the appellant.

Issue D: Did the institution exercise its discretion under section 49(b) with respect to records 1, 2 and 19 to 28? If so, should this office uphold the exercise of discretion?

[68] I have found above that records 1, 2 and 19 to 28 qualify under the discretionary exemption in section 49(b). The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[69] 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.

[70] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[29] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[71] The ministry submits that it exercised its discretion not to disclose the withheld records based on the following considerations:

1. there is a public safety interest in protecting the personal information of the affected person;
2. the disclosure of certain information received from the Dearborn police could interfere with the working relationship between it and the OPP; and
3. concerns that disclosure could reveal law enforcement information that is subject to one of the exemptions in section 14(1).

[72] The appellant submits that no charges were laid as a result of the investigation and that it has now concluded. The appellant goes on to state that the information is necessary in order for him:

> . . . to be sure his wife and children (as well as himself) are all protected from further assaults on their home – the only way that can possible happen is for [the appellant] to learn what information exists that lead to this horrific stormtrooper assault on their home so he can legally and properly take the steps necessary to clear his name and protect his family.

[73] I note that the appellant has received extensive disclosure of information through his requests to the ministry and the Dearborn police. As a result of this order, he will receive additional disclosure. The appellant is well aware of the circumstances that gave rise to the actions of the Dearborn police and, particularly, his own role in causing these actions to be taken. I find that his concerns about ensuring that another "assault" on his home is avoided and that he clears his name is somewhat disingenuous, given his involvement in this matter.

[74] In my view, given that the majority of the information withheld from the appellant in pages 1, 2 and 19 to 28 constitutes the affected person's personal information, the ministry has properly exercised its discretion not to disclose this

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[29] Order MO-1573.

information to the appellant. I find that it has taken into consideration only relevant circumstances and has not relied on irrelevant or improper factors in deciding not to disclose pages 1, 2 and 19 to 28 to the appellant.

ORDER:

1. I order the ministry to disclose pages 3 to 7 of the records by providing him with a copy by **November 5, 2015** but not before **November 2, 2015**.

2. I uphold the ministry's decision to deny access to the remaining records at issue.

3. In order to verify compliance with order provision 1, 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: September 30, 2015

Donald Hale
Adjudicator