Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3604

Appeal PA14-566

Ministry of Community Safety and Correctional Services

May 12, 2016

Summary: The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) to the Ministry of Community Safety and Correctional Services (the ministry) for access to his records for a specified time period. The ministry located responsive records and granted partial access to them with information withheld pursuant to the discretionary exemptions in section 14 (law enforcement), in conjunction with section 49(a), sections 49(b) (personal privacy), and 49(e) (correctional records) of the *Act*. This order partially upholds the ministry's decision, as well as upholding its search for responsive records.

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), 17, 49(a), 14(1)(j), (k) and (l), 14(2)(d), 49(b), 21(2)(f), 49(e).

OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) for access to his records for a specified time period.

[2] The ministry located responsive records and granted partial access to them with information withheld pursuant to the discretionary exemptions in sections 14 (law enforcement), in conjunction with section 49(a), 49(b) (personal privacy), 15(b) (relations with other governments), and 49(e) (correctional records) of the *Act*.

[3] During the course of mediation, the appellant advised the mediator that he was pursuing access to the withheld information and he is of the view that additional responsive records should exist including records with respect to a specific correctional centre. As a result, the reasonableness of the ministry's search for responsive records was added as an issue in this appeal.

[4] The ministry advised the mediator that it had conducted a comprehensive search and that no further responsive records exist. The ministry reviewed its decision and subsequently issued a revised decision granting access to some previously withheld information.

[5] As mediation did not resolve the issues in this appeal, the file was transferred to adjudication where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. Only the ministry provided representations.

[6] In its representations, the ministry advised that it would no longer be relying on the exemption in section 15(b). Accordingly, this exemption is no longer at issue.

[7] In this order, I partially uphold the ministry's decision under section 49(a), in conjunction with section 14(2)(d), sections 49(b) and 49(e). I also uphold the ministry's search for responsive records.

RECORDS:

[8] The ministry describes the records at issue as:

> …the withheld portions of ministry reports, court records, print outs from the offender management system, records prepared specifically for the attention of the superintendent of [a specific] correctional centre by staff or by affected individuals, case notes, and other records...

ISSUES:

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

B. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information) in conjunction with the section 14 law enforcement exemption apply to the information at issue?

C. Does the discretionary correctional records exemption at section 49(e) apply to the information at issue?

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

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

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?

[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,
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> > (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,
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> > (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
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> (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] The ministry states that the appellant requested access to his records from when he was incarcerated at a former correctional centre (the centre) from mid-1993, to early 1995. It states that this centre has not been operational for over 12 years and many of the inmates presented a safety risk to staff, other inmates, and to the community.

[12] The ministry states that the personal information at issue belongs to inmates or other affected individuals who had interactions with the appellant and includes names, addresses, home phone numbers, occupational information, and statements that were provided to the ministry.

Analysis/Findings

[13] 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]

[14] 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]

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

[16] I find that the records contain the personal information of the appellant and other identifiable individuals (the affected persons). This information includes the appellant's name and other personal information about him, as well as the affected

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[1] Order 11.
[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.).

persons' names, addresses, home phone numbers, financial information, and statements that were provided to the ministry, in accordance with the definition of personal information set out above.

B. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information) in conjunction with the section 14 law enforcement exemption apply to the information at issue?

[17] 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.

[18] 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.

[19] 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.[5]

[20] 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.

[21] In this case, the institution relies on section 49(a) in conjunction with sections 14(1)(j), (k) and (l), and 14(2)(d). These sections read:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (j) facilitate the escape from custody of a person who is under lawful detention;
> >
> > (k) jeopardize the security of a centre for lawful detention; or
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.
>
> (2) A head may refuse to disclose a record,

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[5] Order M-352.

(d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

[22] I will first consider the application of section 14(2)(d), in conjunction with section 49(a), to the records.

Section 14(2)(d): person under the control or supervision of a correctional authority

[23] The ministry has applied section 14(2)(d) to records involving inmates other than the appellant, who is no longer under the supervision or control of the ministry. The ministry notes that there are numerous records containing personal information about other inmates, and it is unsure whether these inmates remain incarcerated or are otherwise under its control or supervision.

[24] The ministry submits that disclosure could:

- discourage the kinds of candid communications that are required between staff in correctional institutions in order to ensure the maintenance of safety and order in correctional institutions;
- harm the gathering of information used to preserve the security of correctional institutions; and,
- not allow superintendents to properly discharge their statutory duties to make relevant decisions and to otherwise administer correctional institutions.

Analysis/Findings

[25] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[6]

[26] Section 14(2)(d) authorizes the ministry to exempt information "about the history, supervision or release of a person under the control or supervision of a correctional authority".

[27] The ministry has applied section 14(2)(d) to all of the information at issue in the records, except for pages 47, 67, 84, 111, 217, 255 to 257, 365, and 368.

[28] I find that the following pages contain information about the history, supervision

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

or release of an identifiable person other than the appellant under the control or supervision of a correctional authority. I find that section 14(2)(d) applies to this information:

- pages 9, 15, 27, 32, 43, 50, 57, 61, 70, 84, 87 to 89, 111, 113 to 116, 137, 138, 217, 229, 231, 234, 235, 261, 268, 275, and 353 to 355.

[29] I find that section 14(2)(d) does not apply to the remaining pages as they do not contain other inmate information. Instead, the following records contain information related to other individuals:

- pages 33, 71, 268, 275, 278, 282 are about non-inmates;
- pages 36, 57, 74, 91, 96, 136, 139 to 141, 144 to 146, 151, 152, 168, 170, 269, 277 and 326 are about the appellant's family;
- page 41 is a letter about the appellant from a person not in the correctional system;
- page 44 is the appellant's CPIC[7] Check;
- pages 51 to 54, 56, 59, 62, 65, 76, 78, 122, 128, 134, 135, 148, 149, 162, 230, 232, 233, are about the appellant only.

[30] I will consider the remaining exemptions at section 49(a) in conjunction with sections 14(1)(j)(k) and (l), and sections 49(b) and (e), where applicable, for this information.

Sections 14(1)(j), (k) and (l): Facilitating escape, jeopardizing security, facilitating unlawful acts or hampering the control of crime

[31] At issue are pages 44, 51 to 54, 56, 58 to 60, 62, 65, 71, 76, 78, 122, 230, 232, and 233.

[32] The ministry states that sections 14(1)(j) and (k) expressly relate to the security of a correctional institution, whereas section 14(1)(l) allows it to exempt records which facilitate the commission of an unlawful act or hamper the control of crime, both of which could occur were the records to be disclosed.

[33] The ministry provided representations concerning certain specific records, as follows:

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[7] The RCMP's Canadian Police Information Centre.

- Pages 51 to 53, and 76 contain assessments regarding risk and were created solely to provide correctional employees important information to allow corrections staff to take appropriate steps to protect themselves and others. It submits that if these pages were disclosed, it could discourage the kinds of candid communications that are required between staff in correctional institutions in order to ensure the maintenance of safety and order in correctional institutions.

- Page 78 and 122 contain references to confidential sources of information. The ministry submits that the collection of this type of information is vital to preserving the security of correctional institutions. It states that this gives correctional officials insight into inmates that it would not otherwise have and disclosure could be expected to harm this type of information gathering, and thereby jeopardize the security of correctional institutions.

Analysis/Findings re: sections 14(1)(j), (k) and (l)

[34] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[8] 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. [9]

[35] The records at issue are dated between 1993 to 1995 and concern the appellant only while he was incarcerated during that time.

[36] I find that none of the records at issue contain information that comes within sections 14(1)(j), (k) and (l). In particular, the pages at issue can be described as follows:

- Page 44 is a CPIC check handwritten form for the appellant, listing his charges and other biographical data about him.

- Pages 51 to 54, 78, 122, 230, 232, and 233 contain severances about the appellant's behaviour.

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[8] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

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

- Pages 56, 58, 59, 60, 62, 65, 71, and 76 lists biographical or information about the appellant's charges or the name of his victim

[37] Concerning the specific representations of the ministry, I do not agree that the small severances on pages 51 to 53, and 76 about the appellant's behaviour contain assessments regarding risk and were created solely to provide correctional employees important information to allow corrections staff to take appropriate steps to protect themselves and others. I am not satisfied that if these pages were disclosed, it could discourage the kinds of candid communications that are required between staff in correctional institutions in order to ensure the maintenance of safety and order in correctional institutions.

[38] I find that section 14(1)(j) does not apply to this information as the appellant is not at this time in lawful custody, therefore disclosure of the records at issue could not reasonably be expected to facilitate his escape from custody. Nor do the records contain such information that could facilitate the escape of other inmates.

[39] Nor do I find, based on my review of the information remaining at issue, which primarily is information that originated from or is about the appellant, that disclosure could reasonably be expected to jeopardize the security of a centre for lawful detention or facilitate the commission of an unlawful act or hamper the control of crime under sections 14(1)(k) or (l). The records are over 20 years old and the correctional centre has been closed for over 12 years. I find that I do not have sufficient evidence that the sections 14(1)(j), (k) and (l) exemptions apply.

[40] I will now consider the application of the sections 49(b) and (e) exemptions to the information remaining at issue where applicable. However, taking into account the ministry's representations on section 49(e)[10] and the exemptions marked on the records by the ministry, and as no other exemptions have been claimed for pages 59, 65, 76, 232, and 233, therefore, I will order these pages disclosed.

C. Does the discretionary correctional records exemption at section 49(e) apply to the information at issue?

[41] 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.

[42] Under section 49(e), the institution may refuse to disclose a correctional record

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[10] The ministry states in its representations that it has withheld access to only three pages of records on the basis of section 49(e), namely pages 41, 234 and 235 and has not marked the application of section 49(b) on these pages of the records. These pages only contain the personal information of the appellant and no other identifiable individuals.

in certain circumstances.

[43] 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

[44] The ministry states in its representations that it has withheld access to three pages on the basis of section 49(e), namely pages 41, 234 and 235. I found above that pages 234 and 235 were subject to section 14(2)(d), therefore, I will only consider this exemption to page 41.

[45] The ministry states that all of the records at issue in this appeal are correctional records, since they are records created or used for correctional purposes, and in a manner that is consistent with the ministry's mandate as set out in section 5 of the *Ministry of Correctional Services Act* (the *MCSA*).[11] As for the second part of the test, the ministry states that it has withheld page 41 on the grounds that disclosure would reveal information supplied in confidence from an affected individual. It is the ministry's submission that private correspondence addressed to ministry officials should be treated as though it has been supplied with the expectation that it be held in confidence.

Analysis/Findings

[46] "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.[12]

[47] I agree with the ministry that page 41 is subject to section 49(e). It is a letter

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[11] *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22. The ministry states that its mandate is statutorily prescribed in section 5 of the *MCSA*, which provides that:

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

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

provided to the ministry in confidence about the appellant. It is a record that refers to rehabilitation after a finding of wrong-doing, through a program such as imprisonment, parole or probation.[13] It is not a standard document routinely created and maintained by another organization placed in the appellant's file.[14] Page 41 contains information received from a third party by employees of the correctional centre. I find that page 41 is a correctional record which, in my view, reveals information supplied to the ministry in confidence.[15] Therefore, I find that page 41 qualifies for exemption under section 49(e) of the *Act*. Subject to my review of the ministry's exercise of discretion, this page is exempt under section 49(e).

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

[48] The last exemption remaining at issue in this order is section 49(b).

[49] 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.

[50] 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.

[51] I find that section 49(b) cannot apply to the information at issue in pages 44, 51 to 54, 56, 76, 78, 122, 148, and 230, as these pages contain only the personal information of the appellant and do not contain the personal information of other identifiable individuals. As no other exemptions apply to this information, I will order these pages disclosed.

[52] Concerning the application of section 49(b), sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). In this appeal, the information does not fit within these paragraphs of sections 21(1) and (4).

[53] 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

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[13] Order PO-2456.
[14] Ibid.
[15] Order P-421.

balance the interests of the parties.[16]

[54] 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). In this appeal, section 21(3) does not apply.

[55] 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.[17]

[56] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[18]

[57] The ministry relies on the factor favouring privacy protection 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,
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> > the personal information is highly sensitive;

[58] The ministry states that the records are created by, or provided to a correctional institution. It provided representations on the personal information in the records that belongs to inmates who were incarcerated at the correctional centre at the same time as the appellant. However, I have found that information about other inmates in the records is subject to the discretionary law enforcement exemption in section 14(2)(d). Therefore, there is no need for me to also consider the application of section 49(b) to this information.

[59] The ministry submits that some of the records contain personal information about victims of crime (e.g., pages 33 and 80). The ministry states that disclosure of personal information belonging to victims of crime would derogate from the principles enshrined in the *Victims Bill of Rights, 1995.* It states that affected individuals have an implied expectation that correctional records are kept confidential. The ministry is concerned that the disclosure of personal information may lead to repercussions, especially those records which document incidents between the appellant and affected individuals, or which would reveal communications between the affected individuals and the ministry.

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[16] Order MO-2954.
[17] Order P-239.
[18] Order P-99.

Analysis/Findings

[60] At issue are pages 33, 36, 47, 58, 60, 62, 67, 71, 74, 80, 91, 96, 128, 134 to 136, 139 to 141, 144 to 146, to 149, 150 to 152, 162, 168, 170, 257, 277 to 278, 282, 326, 365 and 368.

[61] The ministry relies on the factor favouring privacy protection in section 21(2)(f). To be considered highly sensitive under this exemption, there must be a reasonable expectation of significant personal distress if the information is disclosed.[19] Based on my review of the information at issue in the records, other than page 149, I find that the factor in section 21(2)(f) does not apply.

[62] Page 149 is a letter that contains the name and address of an individual that had an interaction with another government agency. I have no evidence that the appellant is aware of this information. I find that the factor favouring privacy protection in section 21(2)(f) applies and, subject to my review of the ministry's exercise of discretion, this page is exempt under section 49(b).

[63] The information remaining at issue for which section 49(b) has been claimed, other than page 149, is over 20 years old and is information that was supplied by the appellant to the ministry or is about the appellant and is information that is clearly within his knowledge.

[64] As stated above, of the pages at issue, the ministry only provided direct representations on the application of section 49(b) to the information on pages 33 and 80 of the records.

[65] I agree with the ministry that pages 33 and 80 contain the name of an individual other than the appellant. In page 33, this name was provided by the appellant directly to the ministry and, in page 80, it is part of the warrant of committal issued to the appellant. Even if I were to find that the factor in section 21(2)(f) applies to the information at issue in pages 33 and 80 and that the information is exempt under section 49(b), I would find that the absurd result applies to the information at issue in pages 33 and 80 and to the remaining pages for which section 49(b) has been claimed, other than page 149.

[66] The absurd result principle applies where the requester originally supplied the information, or the requester is otherwise aware of it, and provides that 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.[20]

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[19] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[20] Orders M-444 and MO-1323.

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

- the requester sought access to his or her own witness statement[21]
- the requester was present when the information was provided to the institution[22]
- the information is clearly within the requester's knowledge[23]

[68] 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.[24] In this appeal, based on my review of the information for which section 49(b) has been claimed, I find that disclosure is not inconsistent with the purpose of this exemption and would not be an "unjustified invasion" of the other individual's personal privacy.

[69] Accordingly, I find that the remaining information on pages 33, 36, 47, 58, 60, 62, 67, 71, 74, 80, 91, 96, 128, 134 to 136, 139 to 141, 144 to 146, 150 to 152, 162, 168, 170, 257, 277 to 278, 282, 326, 365 and 368 is not exempt under section 49(b) by reason of the absurd result principle and I will order it disclosed.

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

[70] The sections 49(a), (b) and (e) 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.

[71] 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.

[72] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[25] This office may not, however,

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[21] Orders M-444 and M-451.
[22] Orders M-444 and P-1414.
[23] Orders MO-1196, PO-1679 and MO-1755.
[24] Orders M-757, MO-1323 and MO-1378.
[25] Order MO-1573.

substitute its own discretion for that of the institution [section 54(2)].

[73] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[26]

- 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
- 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.

[74] Concerning its exercise of discretion, the ministry states that correctional services staff prepare records about inmates such as the appellant to communicate necessary and highly sensitive information to other staff and to management. It states that these records include information about security concerns, as well as strategies that were employed by the correctional centre to maintain security. The ministry submits that the free and frank sharing of information among correctional employees and between

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[26] Orders P-344 and MO-1573.

correctional employees and management is vital to the security of a correctional institution. The ministry further submits that in the circumstances of this appeal, the disclosure of highly sensitive personal information in correctional records is an unjustified invasion of affected individuals' personal privacy.

Analysis/Findings

[75] I have found in this order that:

- section 14(2)(d), in conjunction with section 49(a), applies to the information at issue that reveals the identities of inmates other than the appellant;

- section 49(e) applies to one correctional record that was supplied in confidence; and,

- section 49(b) applies to the information that reveals the identity of an individual who has interacted with a government agency.

[76] I find that in denying access to the records at issue, the ministry exercised its discretion in a proper manner taking into account relevant considerations and not taking into account irrelevant considerations.

[77] Accordingly, I am upholding the ministry's exercise of discretion and find the information that I have found subject to sections 49(a), (b) and (e) is exempt.

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

[78] 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.[27] 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.

[79] 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.[28] To be responsive, a record must be "reasonably related" to the request.[29]

[80] 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

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[27] Orders P-85, P-221 and PO-1954-I.
[28] Orders P-624 and PO-2559.
[29] Order PO-2554.

are reasonably related to the request.[30]

[81] 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.[31]

[82] 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.[32]

[83] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[33]

[84] The ministry was required to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.

2. If the institution did not contact the requester to clarify the request, did it:

    a. choose to respond literally to the request?

    b. choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

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[30] Orders M-909, PO-2469 and PO-2592.
[31] Order MO-2185.
[32] Order MO-2246.
[33] Order MO-2213.

4. Is it possible that such records existed but no longer exist? If so, please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

[85] The ministry states that it conducted two searches for records, both of which were overseen by an experienced staff member. It states that the records would only likely be found in one location, the ministry's Records Centre, where records from decommissioned correctional institutions, such as the correctional centre named in the request, are sent to be stored.

[86] In support, the ministry provided a detailed affidavit from an Acting Regional Incident Manager of the Correctional Services Division, who is knowledgeable of the requirements and procedures for responding to access requests under *FIPPA*.

Analysis/Findings

[87] Based on my review of the ministry's representations and the records disclosed to the appellant in response to his request, I find that the ministry has conducted a reasonable search for responsive records. In the absence of representations from the appellant, I find that there is no reasonable basis for me to conclude that additional responsive records exist. Therefore, I am upholding the ministry's search for responsive records.

ORDER:

1. I uphold the ministry's decision to deny access to the information at issue in pages 9, 15, 27, 32, 41, 43, 50, 57, 61, 70, 84, 87 to 89, 111, 113 to 116, 137, 138, 149, 217, 229, 231, 234, 235, 261, 268, 275, and 353 to 355 of the records.

2. I order ministry to disclose the remaining information at issue in the records to the appellant by **June 3, 2016**.

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

4. In order to verify compliance with the provisions of 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 pursuant to order provision 2.

Original Signed by: May 12, 2016

Diane Smith
Adjudicator