Information and Privacy Commissioner,
Ontario, Canada

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

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# ORDER PO-3630

Appeal PA13-31

Ministry of Community Safety and Correctional Services

July 12, 2016

**Summary:** The requester sought access to records about himself from the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) while he was an inmate at a detention centre. The ministry denied access to the records in part citing the discretionary exemptions in sections 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(g) (law enforcement), 14(1)(i), (j) and (k) (security), 14(1)(l) (facilitate commission of unlawful act), and 14(2)(d) (correctional record), and sections 49(b) (personal privacy) and 49(e) (confidential correctional record). This order partially upholds the ministry's decision under sections 49(a) in conjunction with sections 14(1)(j), (k) and (l). This order further finds that two records are excluded from the scope of *FIPPA* under section 65(6)3 and also upholds the ministry's 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), 14(1)(i), (j), (k), (l), 14(2)(d), 49(a), (b) and (e), 24 and 65(6)3.

**Orders and Investigation Reports Considered:** Orders 98, PO-3163, and PO-3484.

## 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 access to:

- All institutional records of [the requester] from [named] Detention Centre, including any written records pertaining to his transfer to the segregation unit on [date].
- All institutional records pertaining to an incident [date] during which time [the requester] was injured and transferred to hospital, including but not limited to all records, statements taken and all other documents produced from witnesses, logs, notes, occurrence reports, investigation reports, incident reports, memorandum, forms, directives, drawings, diagrams, photographs, visual recordings, audio recordings, medical reports, and any other documentary materials regardless of physical form or characteristics concerning the above.
- A record of the health care professional's written report to the institution's Superintendent, regarding the nature of the injuries and treatment provided to [the requester] in association with the incident on [a specific date].
- A copy of the investigatory report created by [name], Staff Inspector of the Correctional Investigation Unit, Ministry of Corrections.

[2] The ministry located responsive records and issued a decision granting partial access to them. The ministry relied on the discretionary exemption in section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(g) (intelligence information), 14(1)(i), (j) and (k) (security), 14(1)(l) (facilitate commission of unlawful act), 14(2)(d) (correctional record) and 15(b) (relations with other governments), and the discretionary exemptions in sections 49(b) (personal privacy) and 49(e) (confidential correctional record), to withhold parts or entire records.

[3] The requester sent a letter to the ministry questioning the reasonableness of the ministry's search for records and noting that certain specifically requested documents were missing. Specifically, he referred to any video or audio footage of the specified incident (the incident) and any reports prepared about the incident, the segregation observation form from the date of the incident and any witness statements.

[4] The requester, now the appellant, appealed the ministry's decision to this office.

[5] During the mediation stage of the appeal process, the appellant maintained that more records should exist, including audio or video footage of the incident, a segregation observation form from the date of the incident and a report about the incident. The appellant stated that he had been told by a staff inspector from the Correctional Investigation and Security Unit of the ministry that an investigation had been undertaken and a report had been created.

[6] The ministry advised that there was no video footage of the specified incident.

[7] The ministry also issued a supplemental decision in which it provided partial disclosure to additional responsive records that were located during mediation following a search by the detention centre, including a number of photographs. The ministry relied on all of the same discretionary exemptions it noted in its original decision to withhold parts of the additional records. It also advised that parts of some records were non-responsive to the request, and others were excluded from the application of the *Act* by virtue of the employment or labour relations records exclusionary provisions in sections 65(6).

[8] Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeal process for an inquiry.

[9] The adjudicator formerly assigned to this file began the inquiry by inviting the representations of the ministry.

[10] In its representations, the ministry advised of some changes it was making to the exemptions claimed to the withheld information in this appeal. It stated it was no longer relying on the exemptions in sections 14(1)(g) and 15(b); accordingly, these exemptions are no longer at issue in this appeal. It also advised that it was no longer relying on the factor in section 21(2)(f) (highly sensitive) with respect to pages 21 through 25, 69, and 244 of the records. Finally, it stated that it would no longer be claiming the exemption in section 49(e) for pages 2, 3, 56, 58, 135, 162, 163, 214, 215, 219, 222, 236, 238, 239, 241, 244, 247, 252, and 255 through 261.

[11] The ministry also stated the following:

> In the event that the exclusion of the records under subsection 65(6) is not upheld, the ministry reserves the right to withhold the records based on the exemptions in the [*Act*].

[12] Representations were exchanged between the parties in accordance with section 7 of the Information and Privacy Commissioner of Ontario's (the "IPC's") *Code of Procedure* and *Practice Direction 7*.

[13] In this order, I partially uphold the ministry's decision under section 49(a), read in conjunction with sections 14(1)(j), (k) and (l). I also uphold the ministry's application of the exclusion in section 65(6)3 to two records and its search for responsive records.

## RECORDS:

[14] At the end of mediation, the information remaining at issue in the records was set out in the Mediator's Report, as follows:

- Withheld in full: pages 20-26, 48, 166-200 (excluding 182, 183 and 184), 242, 244.
- Severed in part: pages 1-5, 7-10, 15, 55-58, 68-69, 74-75, 135, 164-165, 231, 233, 235-236, 238, 240-241, 246-248, 254, 256-260.

[15] Of this information, only the following remains at issue:[1]

| Page numbers | Description | Withheld in part | Withheld in full |
|---|---|---|---|
| 1 - 5[2] | Client Profile | √ | |
| 7 | Prisoner Transportation Form | | √ |
| 8 - 9 | Record of Arrest | | √ |
| 10 | Injury/Illness Report | | √ |
| 15 | Warrant of Arrest | √ | |
| 17 - 18[3] | Unit Notification Card | √ | |
| 21 - 25 | Admit Queries | | √ |
| 26 | Occurrence Report | | √ |
| 55 - 58 | Health Care Record | √ | |
| 74 | Hospital Consultation Report | √ | |
| 135 | Email chain | √ | |
| 164[4] | Client Profile | √ | |

[1] With its initial representations, the ministry provided a list of the exemptions that it claims apply to these records.
[2] The information at issue in page 165 is identical to page 5, therefore, page 165 is not at issue.
[3] The information at issue in page 18 is identical to page 68. Page 67 was disclosed in full, therefore, page 68 is not at issue.
[4] The information at issue in page 164 is identical to pages 240 and 248, therefore, pages 240 and 248 are not at issue.

| | | | |
|---|---|---|---|
| 166 - 181 | Local Investigation Report | | √ |
| 185 - 200 | Detention Centre Administrative Review | | √ |
| 231 | Occurrence Report | √ | |
| 233 | Occurrence Report | √ | |
| 235 - 236 | Occurrence Report | √ | |
| 241 | Unit Assignment List | √ | |
| 242 | Handwritten Note | | √ |
| 244 | Handwritten Note | | √ |
| 254, 256 - 260 | 6 Unit forms | √ | |

## 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) (right of access to one’s own personal information), in conjunction with the sections 14(1)(i), (j), (k), and (l) and/or 14(2)(d) (security, facilitate commission of unlawful act, correctional record) exemptions, apply to the information at issue?

C. Does the discretionary exemption at section 49(e) (confidential correctional records) 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 section 49(a)? If so, should this office uphold the exercise of discretion?

F. Does section 65(6)3 (employment or labour relations) exclude pages 166-181 and 185-200 of the records from the *Act*?

G. 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?

[16] 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;

[17] 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.[5]

[18] 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.[6]

[19] 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.[7]

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[8]

[21] The ministry states that the records consist mostly of printouts of the appellant's profile stored on a ministry database, log book records, officers' notes, a fact sheet, a local investigation report and an administrative review.

[22] The ministry submits that there is personal information of other identifiable individuals in their personal capacity on pages 4 to 5, 15, 18, 26, 56 to 58, 74, 135, 164, 231, 233, 236, 241 to 242, and 256 to 260, which consists of the following:

a. The name and contact information of two third party individuals, which are listed on pages 4, 164, and 231;

b. Comments, actions or references to various third party individuals, which are set out on pages 26, 56 to 58, 135, 233, 235, 236, 241, and 256 to 260;

c. The name of an individual who the appellant is prohibited from having contact with, which is set out on pages 5, 15, and 18; and,

d. The cell phone number of an individual on page 242.

[23] The ministry submits that the above-referenced personal information is contained in correctional records, and would link the affected individuals to the appellant during his incarceration, and to the incident involving the appellant. The

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

ministry submits that as almost all of the personal information listed above includes the names of individuals, the disclosure of these names would serve to identify third party individuals.

[24] The appellant states that it is unclear whether all of the information the ministry claims to be exempted relates to third party persons not working in a professional or official capacity.

***Analysis/Findings***

[25] All of the records contain information that qualifies as the "personal information" of the appellant as the records relate to the appellant while incarcerated at a detention centre.

[26] I also agree with the ministry that there is information that qualifies as the personal information of other identifiable individuals on pages 4 to 5, 15, 18, 26, 56 to 58, 74, 135, 164, 231, 233, 236, 241, 242, 256 and 260 of the records. This personal information is described above by the ministry and qualifies as "personal information" as it is defined in paragraphs (c), (d), (g) and (h) of the definition of personal information in section 2(1) of the *Act*. This information includes their names, where the disclosure of these names would reveal other personal information about the individuals.

**B. Does the discretionary exemption at section 49(a) (right of access to one's own personal information), in conjunction with the sections 14(1)(i), (j), (k), and (l) and/or 14(2)(d) (security, facilitate commission of unlawful act, correctional record) exemptions, apply to the information at issue?**

[27] 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.

[28] 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.

[29] 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.[9]

[30] 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.

[31] Sections 14(1) and (2) state, in part:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > . . .
> >
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
> >
> > (j) facilitate the escape from custody of a person who is under lawful detention;
> >
> > (k) jeopardize the security of a centre for lawful detention; or
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.
>
> (2) A head may refuse to disclose a record,
>
> > . . .
> >
> > (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

[32] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[10]

[33] 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

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[9] Order M-352.
[10] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

because of the existence of a continuing law enforcement matter.[11] 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.[12]

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

[34] The ministry has applied section 49(a), in conjunction with sections 14(1)(j), (k) and (l), for all of the records except for pages 15, 55-58, 74, 135, 166-181, 185-200, and 231.

[35] The ministry stares that the records are held by a correctional institution about the appellant who is incarcerated because he has been convicted of violent crimes and the purpose of the records is to flag this history of violence, so that the ministry can take appropriate precautions during his incarceration. The ministry provided representations concerning certain specific records, as follows:

- Pages 1 to 5, 17 to 18, 164, and 233 contain risk assessments created at varying times during the appellant's incarceration, and are taken from the appellant's profile. It states that this information allows corrections staff to take appropriate steps to protect themselves, the appellant, and others when they are interacting with the appellant. The ministry submits that if these pages were disclosed, it could thwart measures it has taken to address security concerns involving the appellant and could also create broader based security concerns in correctional institutions.

- Pages 244, and 260 refer to procedures in institutions that are undertaken during particular incidents such as the one that gave rise to this appeal. As with other records the ministry has exempted, it contends that the disclosure of these records would reveal confidential information that could be used by the inmate or anyone else who receives the records to thwart security procedures in correctional institutions.

- Pages 7 to 10, and 21 to 25 were received from third party police services, either directly or through the Canadian Police Information Centre (CPIC) database,

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[11] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[12] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

which is administered by the Royal Canadian Mounted Police (RCMP). The ministry states that it relies upon the records it receives from its law enforcement partners in order to maintain safety and security in correctional institutions and that much of this information has been incorporated into the risk assessments described above.

- Pages 26, 164, 233, 235-236, 241, and 256 to 259 refer to third party individuals and, in certain instances, the records reference negative interactions between the appellant and others. The ministry submits that out of concern for these individuals' safety and privacy, these correctional records should not be disclosed.

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

[36] 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.[13] 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. [14]

[37] The records at issue concern the appellant while he was incarcerated at the detention centre. I have reviewed the records and I find that the ministry has provided sufficient evidence in its representations that pages 1 to 5, 17 to 18, 21 to 25, 164, 233, and 244 are subject to sections 14(1)(j), (k), or (l). In particular, disclosure of the information at issue in these pages could reasonably be expected to facilitate escape, jeopardize security, facilitate unlawful acts or hamper the control of crime.

[38] However, I find that the following pages are not subject to these exemptions:

- Page 7 is a Prisoner Transportation Form. Pages 8 to 9 is the appellant's Record of Arrest. These pages contain basic biographical data about the appellant that he would be aware of, and disclosure could not reasonably be expected to result in the identified harms. I will consider whether sections 14(2)(d) or 49(e) apply to these pages.

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[13] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[14] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

- Page 10 is an Injury/Illness Report for the appellant. It describes the injuries that the appellant had incurred prior to his arrest. I do not agree with the ministry that disclosure of this page could reasonably be expected to cause the harms set out in sections 14(1)(j), (k), or (l). I will consider whether sections 14(2)(d) or 49(e) apply to this page.

- Page 26 is a record of telephone calls made to and from the detention centre about the appellant's condition during his hospitalization. It contains only brief information about the appellant's condition. I do not agree with ministry that disclosure of this page could reasonably be expected to cause the harms set out in sections 14(1)(j), (k), or (l). I do not agree that this page reveals a negative interaction between the appellant and the other individual whose personal information is in this page. I will consider whether sections 14(2)(d) or 49(b) or (e) apply to this page.

- The information severed from pages 235 and 236 is information about individuals personally known to the appellant outside the correctional system. I do not agree with the ministry that disclosure of these pages could reasonably be expected to cause the harms set out in sections 14(1)(j), (k), or (l). I do not agree that these pages reveal a negative interaction between the appellant and the other individual whose personal information is in this page. I will consider whether sections 14(2)(d) or 49(b) or (e) apply to these pages.

- The information severed from pages 241, and 254, 256 to 260 is a listing of other inmates' names and information about their identification number, bed location, whether they had a shower or yard time and similar type information. It does not reveal any information about these inmates' interactions with other inmates, including the appellant. I do not agree with the ministry that disclosure of these pages could reasonably be expected to cause the harms set out in sections 14(1)(j), (k), or (l). I do not agree that these pages reveal a negative interaction between the appellant and the other individual whose personal information is in this page. I will consider whether sections 14(1)(i), 14(2)(d), 49(b) or (e) apply to these pages.

- Pages 242 is a handwritten note. The ministry did not provide representations on this page concerning the exemptions at issue. Page 242 contains mostly phone numbers and does not appear to contain any information that would bring it within sections 14(1)(j), (k) or (l). I will consider whether sections 14(2)(d), 49(b) or (e) apply to this page.

*Conclusion*

[39] In conclusion, I have found that pages 1 to 5, 17 to 18, 21 to 25, 164,[15] 233, and 244 are subject to sections 14(1)(j), (k) and (l). Subject to my review of the ministry's exercise of discretion, these records are exempt under section 49(a), in conjunction with sections 14(1)(j), (k) and (l).

[40] I have found that pages 7 to 10, 26, 235, 236, and 241, 242, and 254, 256 to 260 are not subject to the exemptions in sections 14(1)(j), (k), and (l). I will consider the application of the other applied exemptions to these pages.

## Section 14(1)(i): security of a building, vehicle, system or procedure

[41] Although this provision is found in a section of the *Act* dealing specifically with law enforcement matters, it is not restricted to law enforcement situations and can cover any building, vehicle or system which requires protection.[16]

[42] Of the records remaining at issue, the ministry has applied section 49(a), in conjunction with section 14(1)(i), to pages 241 to 242, and 256 to 260. The ministry alleges that these records contain risk assessments, CPIC access and transmission codes and query format information, and procedures that are enacted when incidents such as the one that gave rise to this appeal occur. The ministry submits that disclosure would endanger the system of procedures for assessing risk posed by inmates, which is required to safeguard correctional institutions. The ministry submits that the disclosure of CPIC access/transmission codes and CPIC query format information could compromise the integrity and security of the CPIC system.[17]

*Analysis/Findings re: section 14(1)(i)*

[43] As pointed out by the appellant, the ministry has not identified which exemptions apply to which portions of the records. From my review of the pages at issue, I cannot ascertain what information consists of "risk assessments, CPIC access and transmission codes and query format information." Accordingly, I do not find that section 14(1)(i) applies to pages 241 to 242, and 256 to 260. Nor is it apparent to me that disclosure of the records at issue could reasonably be expected to endanger the security of the detention centre or a system or procedure established for the protection of the detention centre.

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[15] Page 164 also contains the personal information of other individuals, which the appellant is not interested in receiving access to.
[16] Orders P-900 and PO-2461.
[17] The ministry relies on Order PO-2970.

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

[44] The ministry states that it has exempted all of the records on the basis of section 14(2)(d), except for those that have been excluded pursuant to subsection 65(6)3.[18] Therefore, I will consider whether this exemption applies to pages 7 to 10, 15, 26, 74, 135, 231, 235, 236, 241, 242, 254, and 256 to 260.

[45] Concerning section 14(2)(d), the ministry states that the records relate to the history and supervision of the appellant, who is incarcerated and, therefore, remains under the control or supervision of the ministry, which is a correctional authority. It submits that there is no requirement under this section for the ministry to provide detailed and convincing evidence that a particular harm would result if the records were disclosed.[19]

[46] The appellant submits that it is most concerned with records that have been withheld in their entirety or substantially redacted, therefore, it is unclear as to which parts of the records are claimed as exempt.

[47] The appellant argues that section 14(2)(d) cannot be used by the ministry as a reason to exempt records because at the time of the request for access, the appellant was not in the control or supervision of a correctional facility.[20]

[48] In reply, the ministry states that since the appellant was then (or 'presently') under the control or supervision of a correctional authority at the time it filed its submission, it contends that it correctly relied upon section 14(2)(d).

[49] In sur-reply, the appellant states he was not in the custody of the ministry at the time of the request, although he has been in and out of the custody of the detention centre since the time of the incident.

[50] The adjudicator previously assigned to this file, at the appellant's suggestion, then requested from the ministry a list of the dates of the appellant's incarceration,

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[18] The ministry has claimed the exclusion in 65(6)3 to pages 166 to 181 and 185 to 200.

[19] The Ministry submits that in this way section 14(2)(d) is similarly worded to section 49(e) and relies on *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.), where the Court of Appeal expressly rejected the requirement for the ministry to adduce evidence related to harm, and asserts that the same reasoning should apply to the interpretation of section 14(2)(d).

[20] The appellant relies on paragraph 40 of *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.), citing *Re Ontario (Solicitor General)*, 1994 CanLII 6597 (ON IPC).

which the ministry provided. It shows that the appellant was not in detention at the time of his request, was in detention at the time of the ministry's initial representations, but no longer was in detention at time of the ministry's reply representations.

*Analysis/Findings re: section 14(2)(d)*

[51] Section 14(2)(d) exempts records that "contains information about the history, supervision or release of a person under the control or supervision of a correctional authority." The purpose of this subsection is to allow an appropriate level of security with respect to the records of individuals in custody.

[52] The ministry submits that the records are subject to this exemption as the appellant was in custody at the time it made its submissions.

[53] The records at issue are from August and September 2012. The appellant was released from the detention centre in September 2012. The ministry's representations are dated December 2013. At that time, the appellant was in custody in a different detention centre. As of April 2014, the appellant was no longer in custody and I have no evidence that he has since returned to custody.

[54] In Order PO-3163, Adjudicator Donald Hale found that section 14(2)(d) cannot apply to the record of an individual whose term of correctional supervision has expired.

[55] I agree with this finding of Adjudicator Hale and find that as the appellant's incarceration has expired, section 14(2)(d) does not apply.

[56] In Order 98, former Commissioner Sidney B. Linden considered the interpretation of section 14(2)(d) as follows:

> In my view, the purpose of subsection 14(2)(d) is to allow an appropriate level of security with respect to the records of individuals *in custody*. [emphasis added by me]

[57] I agree with this finding of former Commissioner Linden and find that, in any event, the records at issue do not contain sufficient detail regarding the history, supervision or release of the appellant, or any other individual under the control or supervision of a correctional authority, to attract the application of the exemption. Accordingly, I find that section 14(2)(d) does not apply to those records for which it was claimed.[21] The ministry has claimed further exemptions for these records which I will consider below.

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[21] See also Order P-460.

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

[58] 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.

[59] Under section 49(e), the institution may refuse to disclose a correctional record in certain circumstances.

[60] 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

[61] "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.[22]

[62] The ministry submits that all of the records at issue in this appeal are correctional records, since they are records created by, or in any event used by the ministry for correctional purposes, and in a manner that is consistent with the ministry's mandate as set out in section 5 of the *MCSA*.[23]

[63] The ministry has withheld the following records remaining at issue pursuant to section 49(e) on the grounds that disclosure would reveal information supplied in confidence from the following sources:

- pages 7 to 10 contain information provided by another police service;
- page 26 contains information provided by a hospital;

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[22] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.).
[23] *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

- pages 55, 57 and 242 were provided by ministry employees and a health care professional; and,

- pages 26, 74, 231, and 235 were provided by affected third party individuals.

[64] The ministry claims that all of the above-referenced records contain information provided in confidence. It also claims that many of them were provided by other law enforcement agencies impliedly with the expectation that they would remain confidential and would be used for internal correctional purposes, specifically to ensure that the inmate would pose no risk to others.

[65] The appellant does not dispute that some portions of identified records may be exempt under section 49(e). He states that the withheld and substantially redacted records, such as pages 26, 231, 235, and 242, are subject to the s. 10(2) severability requirement.

***Analysis/Findings***

[66] I agree with the parties that all of the records are correctional records, however, I do not agree that disclosure of these pages could reasonably be expected to reveal information supplied in confidence.

[67] Based on my review of the records and the ministry's representations, I do not have sufficient evidence to find that the information at issue in the following pages is information supplied in confidence. In particular:

- Page 7 is a Prisoner Transportation Form. Pages 8 to 9 is the appellant's Record of Arrest. These pages contain basic biographical data about the appellant that he would be aware of.

- page 10, which is an Injury/Illness Report about the appellant, and contains information supplied by the appellant about himself.

- page 26, contains information about the appellant's health condition as provided by the hospital where he was a patient;

- pages 55, and 242 contain the names and phone numbers of individuals in a professional capacity that have had interactions with the appellant;

- pages 74, and 231 identifies individuals in their personal capacity and the appellant is aware of the information in these pages as he either provided it or was present when it was given;

- page 57 and 235 contains information about the appellant provided by individuals in their personal capacity. I do not have sufficient evidence to find that this information about the appellant was supplied in confidence; and,
- page 74 contains information about the appellant that was provided in his presence.

[68] Therefore, I find that section 49(e) does not apply to these records. The ministry has also claimed the personal privacy exemption in section 49(b) for these records, except for pages 7 to 10 and 55. As no other exemptions apply to pages 7 to 10, and 55, I will order these pages disclosed.[24]

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

[69] 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.

[70] 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.[25]

[71] 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.

[72] 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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[24] Except for the identity of an individual in his personal capacity on page 8 and the phone number on page 55, which may be a personal phone number. The appellant is not interested in receiving this type of information.

[25] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 49(b).

balance the interests of the parties.[26]

[73] 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.[27]

[74] 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).[28]

[75] The ministry submits that the factor in section 21(2)(f) applies. This section 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.

[76] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[29]

[77] The ministry states that the records were created by a correctional authority or were provided to the correctional authority mostly by other law enforcement agencies and that much of the personal information in the records belongs to other inmates. It relies on Orders P-597 and P-686 where it states it was found that the disclosure of records containing the names of inmates is "highly sensitive."

[78] The appellant submits that the ministry has failed to sufficiently identify or explain how the non-disclosed personal information on the identified records qualify for exemption under section 21(2)(f), but does not dispute the non-disclosure of personal information of other inmates or persons not acting in their professional capacity. He states that records identifying his personal information created by persons acting in a professional capacity ought to be disclosed.

### *Analysis/Findings*

[79] The records remaining at issue for which section 49(b) has been claimed are:

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[26] Order MO-2954.
[27] Order P-239.
[28] Order P-99.
[29] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

- pages 15, 26, 56 to 58, 74, 135, 231, 235, 236, 241, 242, 254, and 256 to 260.

[80] The appellant is not seeking disclosure of the personal information of individuals in their personal capacity, including inmates. Therefore, the application of section 49(b) to the following records or parts of records are not at issue as they contain the personal information of other individuals in their personal capacity:

- the information at issue on pages 15, 56, 58, 135, 231, 235, 241, 254, and 256 to 260.
- part of the information at issue on pages 26, 57, 74, 236, and 242.

[81] I find that once the personal information of other individuals in their personal capacity is removed from pages 26, 57, 74, 236, the remaining personal information only concerns the appellant and that the factor in section 21(2)(f), therefore, does not apply.

[82] Page 242 is a handwritten note listing names and phone numbers. Once the personal information of other individuals is removed, all that remains is information of individuals in their professional capacity and section 21(2)(f) does not apply.

[83] I find that once the personal information of other individuals is removed pages 26, 57, 74, 236, and 242, the discretionary personal privacy exemption in section 49(b) does not apply to the remaining information. As no other exemptions apply to the information remaining at issue in pages 26, 57, 74, 236, and 242, I will order it disclosed.

[84] As the only information remaining at issue in pages 15, 56, 58, 135, 231, 235, 241, 254, and 256 to 260 is the personal information of other individuals in their personal capacity, that the appellant is not seeking access to, I will order that these pages be withheld.

### E. Did the institution exercise its discretion under section 49(a)? If so, should this office uphold the exercise of discretion?

[85] The section 49(a) exemption is 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.

[86] 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.

[87] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[30] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[88] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[31]

- 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

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[30] Order MO-1573.
[31] Orders P-344 and MO-1573.

- the age of the information
- the historic practice of the institution with respect to similar information.

[89] The ministry submits that in exercising its discretion it considered that it has a strong security interest in exempting correctional records, especially records that reveal how risks posed by inmates are assessed, the strategies correctional institutions use during emergency situations, as well as records provided by police services. It states that it has severed and provided the appellant with access to much of his personal information.

[90] The appellant states that the ministry failed to take into consideration relevant considerations, namely that he suffered a traumatic life-threatening incident leading to life-changing injuries as a result of a specific incident referenced in the records, including at least two reviews and a report relating to the incident. He states that:

> …disclosure would increase public confidence and trust in correctional institutions, and may aid in the healing from a traumatic incident like the appellant experienced…

### *Analysis/Findings*

[91] The information that I have found subject to section 49(a) is contained in pages 1 to 5, 17 to 18, 21 to 25, 164, 233, and 244. These records are subject to the law enforcement exemptions in sections 14(1)(j), (k) and (l) as disclosure could reasonably be expected to facilitate escape, jeopardize security, facilitate unlawful acts or hamper the control of crime. These records do not contain information about the appellant's life-threatening incident.

[92] I find that the ministry exercised its discretion in a proper manner concerning the records at issue. Disclosure of the records would not increase public confidence in the ministry or its correctional institutions. Accordingly, I am upholding the ministry's exercise of discretion and find that the information at issue on pages 1 to 5, 17 to 18, 21 to 25, 164, 233, and 244 is exempt under section 49(a), in conjunction with sections 14(1)(j), (k) and (l).

## F. Does section 65(6)3 (employment or labour relations) exclude pages 166-181 and 185-200 of the records from the *Act*?

[93] Section 65(6)3 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[94] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[95] For the collection, preparation, maintenance or use of a record to be "in relation to", it must be reasonable to conclude that there is "some connection" between them.[32]

[96] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[33]

[97] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[34]

[98] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.[35]

[99] Section 65(6) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.[36]

[100] The exclusion in section 65(6) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil

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[32] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[33] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.
[34] Order PO-2157.
[35] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[36] Orders P-1560 and PO-2106.

action in which the Crown may be held vicariously liable for torts caused by its employees.[37]

[101] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[38]

[102] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[103] The ministry has applied the exclusion at 65(6)3 to a Local Investigation Report (pages 166-181) and an Administrative Review Report (pages 185-200), which it states were created for the sole purpose of reviewing employee conduct in light of the incident that gave rise to this appeal. The ministry states that it can impose discipline as a result of the findings contained in either a local investigation report or an administrative review report.

[104] With respect to part 1 of the test, the ministry states that both records were prepared and used by it.

[105] With respect to part 2 of the test, the ministry states that the records were prepared and used solely in relation to discussions and communications generated by the incident involving the appellant, and were created by its employees for senior officials within the ministry. The ministry submits that there is a close proximity or relationship between the creation of the records and their use for a labour or employment related purpose, given that such records can, depending on the findings, be used to discipline employees.

[106] With respect to part 3 of the test, the ministry states that the records were created to investigate a serious incident that occurred in a ministry correctional

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[37] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

[38] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

institution, and the role of ministry employees in that incident; and, that the ministry can impose discipline depending on the findings of the records. It states that it has an interest in the records because it relates to the conduct of its employees during the incident.

[107] The ministry relies on Order PO-2809, where an investigation report prepared by the ministry's Criminal Intelligence Security Unit (CISU) was upheld as excluded on the basis of subsection 65(6)3. The ministry contends that the investigation report was prepared for the same reasons as the records at issue in this appeal and that the same reasoning ought to be applied so as to exclude them.

[108] The appellant states that the records were not created concerning issues relating to the terms and conditions of employment or human resources questions. He states that the ministry's submissions describe records relating to employee actions and personal information about the appellant that occurred during the incident.

[109] The appellant states that unlike Order PO-2809, where the record in question was a record created to investigate alleged serious misconduct, the records at issue in this appeal are not sufficiently linked to any disciplinary proceeding as to qualify for consideration of exclusion under section 65(6)3.

[110] The appellant submits that because it appears that even the possibility of disciplinary action has passed, then the ministry's interest in the matter no longer exists as an exemption under section 65(6)3 of the *Act*.[39]

[111] In reply, the ministry states that the records are not an operational review and that they were created to investigate one serious incident. It states that the records in this appeal are similar to the records in Order PO-2809, in that both were created to investigate whether misconduct had occurred in response to a serious incident.

[112] The ministry also disputes that the opportunity to impose discipline had passed by the time the records at issue were created as the investigative report is dated four days after the incident and the administrative review is dated just over a month after the incident, therefore, there is a close proximity in time between the creation of the records and the incident to which they relate.

[113] In sur-reply, the appellant states that as noted in *Ontario (Ministry of Correctional Services) v. Goodis*,[40] the passage of time from the time the record was recorded and the time of the ministry's reply to the records request is relevant because

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[39] The appellant relies on *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.
[40] Cited above.

any possibility of disciplinary action has passed, factoring against exclusion.

### *Analysis/Findings*

[114] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition[41]
- an employee's dismissal[42]
- a grievance under a collective agreement[43]
- disciplinary proceedings under the *Police Services Act* [44]
- a "voluntary exit program"[45]
- a review of "workload and working relationships"[46]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.[47]

[115] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review[48]
- litigation in which the institution may be found vicariously liable for the actions of its employee.[49]

[116] The phrase "in which the institution has an interest" means more than a "mere

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[41] Orders M-830 and PO-2123.
[42] Order MO-1654-I.
[43] Orders M-832 and PO-1769.
[44] Order MO-1433-F.
[45] Order M-1074.
[46] Order PO-2057.
[47] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).
[48] Orders M-941 and P-1369.
[49] Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

curiosity or concern", and refers to matters involving the institution's own workforce.[50]

[117] The records collected, prepared maintained or used by an institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions.[51]

[118] I agree with the ministry that the records at issue were created by it and were used in relation to discussions and communications generated by the incident involving the appellant. I also agree with the ministry that the records were created to investigate the role of ministry employees in that incident; and, that the ministry could have used the information in the records to impose discipline. Both records specifically review staff actions during the incident and make findings as to the appropriateness of the actions of staff during the incident.

[119] I do not agree with the appellant that because it appears that even the possibility of disciplinary action has passed, then the ministry's interest in the matter may not qualify as an exemption under section 65(6)3 of the *Act*. As stated above, if section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.

[120] The records at issue in this appeal for which section 65(6)3 has been claimed are similar to the record at issue in Order PO-3484. In that order, the record was an investigation report (the report) prepared by the ministry's Correctional Investigation and Security Unit (CISU) into the death of an inmate. The report was prepared for management to review whether its staff at the jail where the inmate died acted appropriately. In Order PO-3484, Adjudicator Cathy Hamilton stated:

> Although in this instance, the CISU investigation was not initiated as a result of a complaint, I am satisfied that it was conducted to determine if correctional staff's actions in response to the incident which resulted in the [inmate's] death were appropriate, and in accordance with the ministry's policies and procedures. Consequently, I am satisfied that the exclusion in section 65(6)3 applies to the complete report, as this record was collected, prepared or maintained directly in relation to communications about the actions of ministry employees, which is an employment-related matter in which the ministry has an interest. I also find that none of the exceptions in section 65(7) apply in these

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[50] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner),* cited above.
[51] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

> circumstances. Therefore, I find that the investigation report, at pages 55-74, is excluded from the application of the *Act*.

[121] I adopt the findings in Order PO-3484. In this appeal, the records, the Local Investigation Report (pages 166-181) and the Administrative Review Report (pages 185-200) are reports about the investigation that was conducted to determine if correctional staff's actions in response to the incident which resulted in the appellant's injuries were appropriate, and in accordance with the ministry's policies and procedures. Therefore, I am satisfied that all three parts of the test under section 65(6)3 have been met for the two records at issue. The exceptions to the exclusion in section 65(7)[52] do not apply.

[122] Accordingly, the exclusion in section 65(6)3 applies to the Local Investigation Report (pages 166-181) and the Administrative Review Report (pages 185-200) as they were collected, prepared or maintained directly in relation to communications about the actions of ministry employees, which is an employment-related matter in which the ministry has an interest.

## G. Did the institution conduct a reasonable search for records?

[123] 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.[53] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's

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[52] If the records fall within any of the exceptions in section 65(7), the *Act* applies to them. Section 65(7) states:

> This Act applies to the following records:
>
> 1. An agreement between an institution and a trade union.
>
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
>
> 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
>
> 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

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

decision. If I am not satisfied, I may order further searches.

[124] 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.[54] To be responsive, a record must be "reasonably related" to the request.[55]

[125] 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.[56]

[126] 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.[57]

[127] 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.[58]

[128] The institution was asked 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?

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[54] Orders P-624 and PO-2559.
[55] Order PO-2554.
[56] Orders M-909, PO-2469 and PO-2592.
[57] Order MO-2185.
[58] Order MO-2246.

> 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.
>
> 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.
>
> This information is to be provided in affidavit form. The affidavit should be signed by the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

[129] In response, the ministry provided a detailed affidavit from the Administrative Assistant in the Superintendent's Office of the detention centre whose duties and responsibilities are to coordinate the compilation of records in response to freedom of information requests. In her affidavit, she states that the Health Care department, the keeper of medical files; the Inmate Records department, the keeper of institutional inmate records; and the Security department, the keeper of institutional security records, were notified to conduct searches for the responsive records. In her affidavit, she provided information as to the searches conducted by these departments.

[130] The appellant made no submissions on the reasonableness of the search except to state that he understood that segregation cells and hallways at the detention centre were under video surveillance so that the incident in the records would be captured on videotape.

[131] In reply, the ministry states that there is no video surveillance in the area near to where the incident took place that would have captured the incident. It states that this is why the search for records did not identify any responsive video recordings.

***Analysis/Findings***

[132] Based on my review of the parties' representations, I find that the search conducted by the ministry for records responsive to the appellant's request was reasonable.

[133] As set out above, 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 that are reasonably related to the request. I find that the ministry has

provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate responsive records within its custody or control. The ministry conducted a number of searches for records responsive to the request in a number of different departments.

[134] In addition, the ministry addressed the particular concern of the appellant and provided an explanation as to the absence of responsive video recordings in its reply representations, which the appellant did not respond to in his sur-reply representations.

[135] Based on my review of the request and the parties' representations, I find that the appellant has not provided a reasonable basis for concluding that additional responsive records exist.

[136] In conclusion, I am satisfied that the ministry has demonstrated that it has conducted a reasonable search under the *Act* and I uphold the ministry's search for records responsive to the appellant's request.

## ORDER:

1. I uphold the ministry's decision to deny access to the information at issue in pages 1 to 5, 15, 17 to 18, 21 to 25, 56, 58, 135, 164, 166 to 181, 185 to 200, 231, 233, 235, 241, 244, 254, and 256 to 260 of the records.

2. I order the ministry to disclose to the appellant by **August 3, 2016,** pages 7 to 10, 26, 55, 57, 74, 236, and 242 of the records, except for the personal information of other individuals. For ease of reference, I will provide the ministry with a copy of these pages highlighting the information that is not to be disclosed to the appellant.

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

| Original Signed by: | July 12, 2016 |
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Diane Smith
Adjudicator