

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3650

Appeals PA15-294 and PA15-295

Ministry of Community Safety and Correctional Services

September 20, 2016

Summary: The Ministry of Community Safety and Correctional Services (the ministry) received two requests under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for access to copies of reports for two specific incidents involving the requester. The ministry denied access to portions of the records, citing the discretionary personal privacy exemption in section 49(b), and the discretionary law enforcement exemption in sections 14(1)(c) and (l), read with section 49(a).

In this order, the adjudicator finds that some of the information at issue is not personal information. She upholds the ministry's decision under the discretionary personal privacy exemption in section 49(b) and its decision as to the responsiveness of the information in the records. She also partially upholds the ministry's decision under the discretionary law enforcement exemption in section 14(1), read with section 49(a).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of personal information), 2(3), 49(b), 21(3)(b), 21(2)(f), 49(a), 14(1)(c), 14(1)(l), 24.

Orders and Investigation Reports Considered: Order PO-3013 and Order MO-1786.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received two requests under the *Freedom of Information and Protection of Privacy Act*

(*FIPPA* or the *Act*) for access to copies of reports for two specific incidents involving the requester.

[2] The ministry granted partial access to the reports. The ministry withheld portions of the records pursuant to the discretionary exemptions in section 14 (law enforcement), in conjunction with section 49(a) (discretion to refuse requester's own information), and section 49(b) (personal privacy) of the *Act*. Some of the information, such as computer generated text, was also withheld as it was deemed non-responsive by the ministry.

[3] The requester, now the appellant, appealed the ministry's decisions and appeal file numbers PA15-294 and PA15-295 were opened.

[4] During the course of mediation, the ministry explained that they did not notify the other person (the affected person), whose personal information was contained in the records.

[5] The appellant clarified for the mediator that she was interested in knowing what the affected person said to the police and how that was reported by the police in these reports. However, the appellant indicated that it was unlikely that the affected person in this case would provide consent.

[6] As mediation did not resolve all of the issues, the files were transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were sought and exchanged between the ministry and the appellant in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. In its representations, the ministry withdrew its reliance on section 14(2)(a).

[7] In this order, I find that some of the information at issue is not personal information. I uphold the ministry's decision under the discretionary personal privacy exemption in section 49(b) and its decision as to the responsiveness of the information in the records. I also partially uphold the ministry's decision under the discretionary law enforcement exemption in section 14(1), read with section 49(a).

RECORDS:

[8] The records remaining at issue consist of the withheld portions of the Occurrence Summary reports and Domestic Violence Supplementary Reports.

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 information) in conjunction with the sections 14(1)(c) and (l) law enforcement exemption apply to the information at issue?
- C. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- D. Did the institution exercise its discretion under sections 49(a) and 49(b)? If so, should this office uphold the exercise of discretion?
- E. What is the scope of the request? What records are responsive to the request?

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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and

replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.¹

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

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

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

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

[13] 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

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

[15] The ministry states that the majority of the records contain personal information related to two individuals, although most of it belongs to one individual who is identified

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.).

potentially as a victim of crime. It states that this personal information includes:

- Identifying information such as names, an address, and a phone number; and,
- Information, including opinions or factual statements, provided by, or about the affected individuals, which could identify them, even if their names are not disclosed.

[16] The ministry submits that due to the subject matter of the records (i.e., a law enforcement investigation where the appellant and the other individuals know each other), severing identifying information would not serve to remove the personal information from the records.

[17] The ministry notes that the second individual (the case worker) is identified in an official capacity, however, the ministry submits that the statement he provided to the Ontario Provincial Police (the OPP)⁵ still constitutes his personal information because it contains a highly personal evaluation of another individual, and it was provided to the OPP in the course of a law enforcement investigation.

[18] The appellant did not address the issues directly in her representations, but instead provided additional details about the incidents set out in the records.

Analysis/Findings

[19] The records concern two domestic incidents from 2012 and 2013 involving the appellant and another individual (the affected person). The records contain the personal information of these two individuals.

[20] The personal information of the affected person includes their name where it appears with other personal information relating to this individual, their address, telephone number, personal opinions or views, date of birth, age and marital status in accordance with paragraphs (a), (d), (e), (g), and (h) of the definition of personal information in section 2(1) of the *Act*.

[21] The ministry submits that the records also contain the personal information of an individual involved in a professional capacity. I note that the ministry has severed from the 2012 records the name and the views of the appellant's case worker about the appellant. It has not severed the title of the appellant's case worker from the records from 2012.

[22] I disagree with the ministry that the information of the appellant's case worker in the records is that individual's personal information. This information includes the case worker's name and title in a professional capacity, which information is not personal

⁵ The OPP is part of the ministry.

information as set out in section 2(3).

[23] The case worker's other information in the records is information associated with this individual in a professional capacity and does not reveal something of a personal nature about this individual. As this information is not the case worker's personal information, the personal privacy exemption in section 49(b) cannot apply. As no other discretionary exemptions have been claimed and no mandatory exemptions apply to this information, I will order the information of the case worker disclosed.

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

[24] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[25] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

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

[27] If the information fits within any of paragraphs (a) to (e) of section 21(1) 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 these appeals, the information does not fit within these paragraphs of sections 21(1) or (4).

[28] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.⁶

[29] 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).

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

⁶ Order MO-2954.

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

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

[31] The ministry states that all of the personal information withheld under this exemption was compiled by the OPP, and relates to two incidents which were investigated by the OPP to determine if domestic violence or another offence had occurred. It states that the OPP investigation did not result in charges, but the records nevertheless fall within the scope of this presumption, because if the OPP officers had found that an offence had been committed, they could have laid charges.

[32] The appellant did not address this issue in her representations other than to state that the OPP were called and did attend at both incidents referred to in the records.

Analysis/Findings

[33] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁸

[34] Section 21(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.⁹

[35] The presumption can apply to a variety of investigations, including those relating to by-law enforcement¹⁰ and violations of environmental laws or occupational health and safety laws.¹¹

[36] I agree with the ministry that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law related to the two separate incidents set out in the records. Therefore, the presumption in section 21(3)(b) applies to the personal information in the records.

[37] In addition, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified

⁷ Orders P-242 and MO-2235.

⁸ Orders MO-2213, PO-1849 and PO-2608.

⁹ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹⁰ Order MO-2147.

¹¹ Orders PO-1706 and PO-2716.

invasion of personal privacy.¹²

[38] 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).¹³

[39] The ministry relies on the factor in section 21(2)(f). 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;

[40] The ministry relies on Order P-1618, where the IPC found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive" for the purpose of section 21(2)(f). It submits that this reasoning should be applied to the records, especially given that the affected person has not consented to the disclosure of their personal information.

[41] I agree with the ministry that the information at issue is highly sensitive information of the affected person. The affected person was the complainant in one of the incidents and the suspect in the other incident. The two incidents outlined in the records involve acrimonious domestic disputes between the appellant and the affected person. At issue is the affected person's interaction with the police, as the appellant's information from her direct interaction with the police has been disclosed to her. I find that the factor favouring privacy protection in section 21(2)(f) applies.

[42] As I have found that only the presumption in section 21(3)(b) and the factor in section 21(2)(f) apply, both favouring privacy protection, subject to my review of the ministry's exercise of discretion, this information is exempt under section 49(b).

C. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own information) in conjunction with the sections 14(1)(c) and (l) law enforcement exemption apply to the information at issue?

[43] 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.

¹² Order P-239.

¹³ Order P-99.

[44] 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.¹⁴

[45] 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.

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

[47] Section 14(1) states in part:

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

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(l) facilitate the commission of an unlawful act or hamper the control of crime.

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

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b).

[49] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁵

[50] 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.¹⁶ The institution must

¹⁴ Order M-352.

¹⁵ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹⁶ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

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.¹⁷

Section 14(1)(c): investigative techniques and procedures

[51] The ministry has applied section 14(1)(c) to withhold parts of two records identified as Domestic Violence Supplementary Reports because they describe the kinds of techniques and procedures that the OPP follow when they investigate an allegation of domestic assault. It submits that the techniques and procedures in the records relate to the kinds of checks that are conducted by the OPP on suspects, and the evaluative tools, including a checklist, which the OPP use to consider the threat that someone may pose.

[52] The ministry states that these techniques and procedures have been put into place to protect members of the public, notably victims or potential victims of domestic assault. The ministry claims that disclosing these records would allow alleged offenders to circumvent the techniques and procedures that are described in them, and possibly cause harm to suspected victims and responding police officers, thereby hindering their effective utilization. The ministry does not believe that these investigative techniques and procedures are widely known, especially to the extent they are described in the records.

[53] The appellant did not address the section 14 law enforcement exemption in her representations.

Analysis/Findings re; section 14(1)(c)

[54] With respect to the information remaining at issue, namely the information not subject to section 49(b), the ministry has applied section 14(1)(c) to the list of the Risk Factors questions and answers in the Domestic Violence Supplementary Reports in each appeal file. The answers to these questions have been found subject to section 21(1) above. Therefore, I will only consider the application of section 14(1)(c) to the Risk Factor questions.

[55] The ministry submits that the Domestic Violence Supplementary Reports describe the kinds of techniques and procedures that the OPP follow when they investigate an allegation of domestic assault. It states that these techniques and procedures relate to the kinds of prior checks that are conducted by the OPP on suspects, and the evaluative tools, including a checklist, which the OPP use to consider the threat that someone may

¹⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

pose.

[56] The ministry notes that these techniques and procedures have been put into place to protect members of the public, notably victims or potential victims of domestic assault. The ministry claims that disclosing these records would allow alleged offenders to circumvent the techniques and procedures set out therein, as well as possibly cause harm to suspected victims and responding police officers, thereby hindering their effective utilization. The ministry does not believe that these investigative techniques and procedures are widely known, especially to the extent they are described in the records.

[57] The ministry relies on Order PO-3013, where the IPC upheld the ministry's decision to withhold the checklist of risk factors, which were also contained in a Domestic Violence Supplementary Report on the basis that their disclosure "could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcements". It also relies on Order MO-1786, where the IPC upheld the police's decision to withhold investigative techniques and procedures that the police follow when attending a victim's residence to investigate an allegation of domestic assault.

[58] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.¹⁸

[59] The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures.¹⁹

[60] I have considered the findings in Order PO-3013, referred to by the ministry where the adjudicator found that:

... the disclosure of the checklist of risk factors used to assess the threat posed by domestic violence could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. (see Order MO-1786). As a result, I find that this information qualifies for exemption under section 49(a) in conjunction with 14(1)(c), ...

[61] I also note that in Order MO-1786, the adjudicator found that this exemption applied to information about investigative techniques and procedures that the police are to follow when attending at a victim's residence to investigate an allegation of domestic assault. In that order, the adjudicator found that this information is clearly

¹⁸ Orders P-170, P-1487, MO-2347-I and PO-2751.

¹⁹ Orders PO-2034 and P-1340.

“investigative” in nature and the techniques and procedures described are not generally known to the public.

[62] I adopt these findings in Orders PO-3013 and MO-1786 and find that the Risk Factors questions (not the answers)²⁰ in each file are subject to section 14(1)(c) as disclosure of the Risk Factors questions could reasonably be expected to hinder or compromise the effective utilization of this investigative technique. Therefore, subject to my review of the ministry’s exercise of discretion, the Risk Factors questions are exempt under section 14(1)(c).

Section 14(1)(l): commission of an unlawful act or control of crime

[63] Remaining at issue is the information subject to section 14(1)(l), which are background information questions in the Domestic Violence Supplementary Reports in each appeal file, as well as the police codes.

[64] The ministry submits that members of the public, including the affected person, seek the assistance of the police, on the understanding that the information they provide is often highly sensitive, and for that reason alone, would never be disclosed in the manner contemplated by this appeal. The ministry is concerned that the disclosure of the records could discourage members of the public from seeking police assistance out of concern that the confidentiality of their information will not be safeguarded.

[65] The ministry states that the records include confidential law enforcement information that members of the OPP used for the purpose of documenting their investigations, and for internal communications. The ministry is concerned that members of the OPP will be less likely to record information and to communicate candidly with one another, if the records that they create are more likely to be disclosed.

[66] The ministry further states that the police codes in the records include codes which reveal identifiable locations from which officers are dispatched for patrol and other law enforcement activities. It refers to a long line of previous orders, including most recently Order PO-3013 which have found that disclosure of the police codes could reasonably be expected to cause harm to police investigations, and have upheld the application of section 14(1)(l) to them.

Analysis/Findings re section 14(1)(l)

[67] The ministry is concerned that the disclosure of the information at issue could discourage members of the public from seeking police assistance out of concern that the confidentiality of their information will not be safeguarded. However, I have

²⁰ I have found that the answers to these questions are subject to the discretionary personal privacy exemption in section 49(b).

determined that the information provided by the affected person is subject to the section 49(b), therefore, this concern of the ministry is not relevant.

[68] There are two types of information remaining at issue. The background questions (not the answers given by the affected person) and the police codes.

[69] I have found that the answers to the background questions in the Domestic Violence Supplementary Reports about the affected person are subject to the discretionary personal privacy exemption in section 49(b).

[70] Concerning the background information questions at issue in the Domestic Violence Supplementary Reports in each appeal file, this information includes questions about the OPP officer's observations of the appellant and the affected person and questions about historical data about these individuals. Although the ministry states that this information includes confidential law enforcement information that members of the OPP use for the purpose of documenting their investigations, and for internal communications, I note that much of this information has been already disclosed to the appellant with the disclosure to her of her own personal information.

[71] Based on my review of this information, I do not agree with the ministry that disclosure of the background information questions in the Domestic Violence Supplementary Reports could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime, as the ministry has disclosed most of the information at issue to the appellant.

[72] Page 1 of the records in each file contain police codes, specifically codes that identify specific police zones and beats, as well as emergency service zones. Several orders, including Order PO-3013²¹ cited by the ministry, have found that these types of codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm which may result from their release. These orders have found that disclosure of police patrol zone information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime, engaging the application of section 14(1)(l).²² Accordingly, subject to my review of the ministry's exercise of discretion these police codes on page 1 of the records in each appeal file are exempt under section 49(a), in conjunction with section 14(1)(l).

Conclusion re section 14(1)

[73] I have found that the background information questions in the Domestic Violence

²¹ See, for example, Orders M-393, M-757, M-781, MO-1428, MO-2795, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339.

²² See for example, Order MO-2795 which found that section 8(1)(l) of the *Municipal Freedom of Information and Protection of Privacy Act*, the municipal equivalent to section 14(1)(l) of *FIPPA*, applied to this information.

Supplementary Reports in each appeal file are not subject to section 14(1)(l). As no other exemptions apply, I will order this disclosed.

[74] I have found that the the list of the Risk Factors questions in the Domestic Violence Supplementary Reports in each appeal file are subject to section 14(1)(c), in conjunction with section 49(a). I have also found that the police codes on page 1 of the records in each appeal file are subject to section 14(1)(l), in conjunction with section 49(a). I will consider whether the ministry exercised its discretion in a proper manner with respect to both types of information.

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

[75] The sections 49(a) and 49(b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[76] 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.

[77] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²³ This office may not, however, substitute its own discretion for that of the institution.²⁴

[78] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²⁵

- 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

²³ Order MO-1573.

²⁴ Section 54(2).

²⁵ Orders P-344 and MO-1573.

- 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.

[79] The ministry states that it exercised its discretion based on the following considerations:

- the public policy interest in protecting the privacy of personal information belonging to affected individuals, which is contained in law enforcement investigation records;
- the public policy interest in safeguarding the privacy of individuals, and in particular a potential victim of crime, who seek out the protection of law enforcement; and,
- the concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the expectation that information the OPP receive during a law enforcement investigation will be held in confidence.

[80] The appellant did not provide representations on this issue.

Analysis/Findings

[81] Based on my review of the ministry's representations, I agree that it exercised its discretion in a proper manner with respect to sections 49(a) and (b) taking into account relevant factors and not taking into account irrelevant factors.

[82] The ministry considered the purposes of the personal privacy exemption and the

law enforcement exemption, as well as considering the nature, significance and sensitivity of the information.

[83] Accordingly, I am upholding the ministry's exercise of discretion and find that the information at issue that I found subject to section 49(b) and section 49(a), read with section 14(1), is exempt.

E. What is the scope of the request? What records are responsive to the request?

[84] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
 - ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[85] The ministry was asked to provide representations in response to the following questions:

Did the request provide sufficient detail to identify the records responsive to the request? If so, what is the scope of the request and what records or portions of records are responsive to the request?

If the request did not sufficiently describe the records sought, did the institution inform the requester of the defect and offer assistance in reformulating the request? If so, please provide details including a summary of any further information the requester provided.

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?

[86] In response, the ministry states that the appellant's requests allowed it to identify the responsive records, which the OPP had compiled in the course of its investigation relating to the two incidents, and which consisted of two Occurrence Summaries, two General Occurrence Reports, and two Domestic Violence Supplementary Reports.

[87] The ministry further states that as a result of the detailed nature of the requests, the ministry responded literally to them, and did not require further clarification from the appellant.

[88] The ministry has withheld computer generated text as not being responsive to the requests, which identifies information related to when the records were printed, on which ministry computer, and related information. The ministry takes the position that this computer generated text is produced when the record is printed, and therefore it is not part of the record.

[89] The appellant did not provide representations on this issue.

Analysis/Findings

[90] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.²⁶

[91] To be considered responsive to the request, records must "reasonably relate" to the request.²⁷

[92] Based on my review of the ministry's representations and the records at issue, I agree with the ministry that it properly responded to the request. The information in the records that it has withheld as non-responsive, is not responsive to the request, as described by the ministry.

ORDER:

1. I order the ministry to disclose to the appellant **by October 12, 2016** the following information in the records:

²⁶ Orders P-134 and P-880.

²⁷ Orders P-880 and PO-2661.

- the case worker's information, and
 - the background information questions in the Domestic Violence Supplementary Reports.
2. For ease of reference, I have highlighted the information to be disclosed to the appellant in a copy of the records sent to the ministry with this order.
 3. I uphold the ministry's decision to withhold the remaining information at issue in the records.

Original Signed by: _____
Diane Smith
Adjudicator

_____ September 20, 2016