

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3358

Appeal MA14-42

City of Ottawa

September 26, 2016

Summary: The appellant, a media requester, sought access to CCTV camera footage for a specified period of time on a specific date from five identified locations near the scene of a fatal collision between a bus and a train. The city identified five clips of CCTV camera footage from certain locations that had images, most notably faces, that were blurred using image blurring technology, as being responsive to the request. Relying on section 14(1) (invasion of privacy) of the *Act*, the ministry denied access to them, in full. In addition, in the course of adjudication an affected party, the Ottawa Police Services Board, sought to raise the possible application of the law enforcement exemptions at sections 8(1)(a), 8(1)(b), 8(1)(f) and 8(2)(a). This order finds that the five Clips do not contain personal information and thereby do not qualify for exemption under section 14(1) of the *Act*. This order also finds that even if the Ottawa Police Services Board were permitted to raise the application of sections 8(1)(a), 8(1)(b), 8(1)(f) and 8(2)(a) to the five Clips, none of those exemptions would apply. The five Clips of the CCTV camera footage with blurring technology applied are ordered disclosed to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 4(2), 8(1)(a), 8(1)(b), 8(1)(f), 8(2)(a) and 14(1).

Orders and Investigation Reports Considered: Orders M-693, MO-1410, MO-1570, MO-2420, MO-2709, P-230, PO-2033-I, PO-2063-R, PO-2892, PO-3233, PO-3248, PO-3306, PO-3333, PO-3412 and PO-3510; *Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report* - Privacy Investigation Report MC07-68, Privacy Complaint Reports MC10-2, MC13-46 and MC13-60.

Cases Considered: *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.); *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

Other considerations: *Guidelines for the Use of Video Surveillance Cameras in Public Places*, October 2001 (updated September 2007); *Guidelines for the Use of Video Surveillance*, October 2015; Railway Investigation Report R13T0192, Transportation Safety Board of Canada.

BACKGROUND:

[1] In September 2013, there was a fatal collision between an OC transpo bus and a Via Rail train near Fallowfield Transit Station in Ottawa. Six people died and other individuals were injured. The collision was investigated by the Transportation Safety Board of Canada (the TSB or the TSBC). The results of the investigation are set out in Railway Investigation Report R13T0192¹.

[2] The City of Ottawa (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) from a member of the media for access to “[a]ny and all CCTV or security camera footage” for a specified period of time on a specific date from five specified locations at Fallowfield Transit Station.

[3] In response the city identified responsive records as being CCTV camera footage from certain locations and issued a preliminary access decision letter, accompanied by a document entitled “Fee Statement”. In its letter, the city wrote:

The [city] has conducted a preliminary review of your request and has determined that the fees established under section 45(1)(c)² of the *Act*, copy attached, apply. In order to de-identify the individuals in the requested videos, the [city] needs to outsource this project as the city does not have the capacity to complete this work in house. ...

[4] The requester paid the required deposit and the city arranged for the responsive CCTV camera footage to have images on the CCTV camera footage, most notably faces, blurred using image blurring technology. The city then issued its access decision. Notwithstanding the use of the image blurring technology, the city relied on section 14(1) (invasion of privacy) of the *Act*, and denied access to them, in full.

[5] The requester (now the appellant) appealed the city’s decision. In its letter of appeal the appellant alleged that section 14(1) was not applicable and that disclosure of

¹ Railway Investigation Report R13T0192, Transportation Safety Board of Canada.

² Section 45(1)(c) of the *Act* provides that a head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed in the regulations for computer and other costs incurred in locating, retrieving, processing and copying a record.

the withheld information was in the public interest. As a result, the application of the public interest override at section 16 of the *Act* was added as an issue in the appeal.

[6] In the course of mediation, the city issued a supplementary decision letter advising the appellant that it had misunderstood the original request and in its initial decision letter had identified certain footage from two CCTV cameras that were not listed in the original request, as being responsive to it. In discussions with the appellant it was confirmed that the appellant was seeking access to the footage for these two CCTV cameras instead of the footage for two CCTV cameras listed in the original request. The parties agreed to proceed on the basis that the footage for the two cameras that the city had mistakenly identified as responsive to the request, with image blurring technology applied, could be substituted for the request for footage for two CCTV cameras listed in the original request. The appeal is proceeding on this basis.

[7] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[8] I commenced my inquiry by sending a Notice of Inquiry to the city setting out the facts and issues in the appeal. The city provided representations in response. In the course of considering the city's representations, I determined that I should notify representatives of the individuals who tragically died in the incident (personal representatives) about the appeal and to also ask them if they wished to provide representations on whether the information at issue qualifies as personal information and whether its disclosure would constitute an invasion of personal privacy. Accordingly, I sent them a supplementary Notice of Inquiry. Responding representations were received on behalf of four personal representatives. In addition, the city provided this office with correspondence that it had received from the Ottawa Police Services Board (the Ottawa police or the OPS) and the TSBC with respect to any concerns these entities may have over disclosure of the records at issue. In light of the content of those submissions, I decided to add the Ottawa police and the TSBC as affected parties, and to seek their representations on certain issues that I set out in a second supplementary Notice of Inquiry.

[9] Only the TSBC provided responding representations to the second supplementary Notice of Inquiry. I then sent the appellant a Notice of Inquiry along with the initial correspondence of the Ottawa police, the TSBC's responding representations as well as the non-confidential representations received from the city and the four personal representatives. The appellant provided representations in response. I decided that the appellant's representations raised issues to which the parties who provided representations in the appeal should be given an opportunity to respond. Accordingly, I sent them a letter inviting their reply submissions along with a copy of the appellant's representations. I received reply representations from the Ottawa police, the city and one personal representative. I decided to share with the appellant the representations of the Ottawa police and the city as well as the non-confidential reply representations provided by the personal representative, by way of sur-reply. The appellant provided

sur-reply representations.

RECORDS:

[10] At issue in this appeal is CCTV camera footage from five camera locations (referred to herein as Clips 1 to 5) on a DVD, with images, most notably faces, that were blurred using image blurring technology.

ISSUES:

- A. Does the CCTV camera footage, with images, most notably faces, that were blurred using image blurring technology, contain “personal information” as defined in section 2(1)?
- B. Should the Ottawa police be permitted to raise the application of the discretionary exemptions at sections 8(1)(a), 8(1)(b), 8(1)(f) and 8(2)(a) of the *Act*? And, if so, do they apply to the CCTV camera footage?

DISCUSSION:

Issue A: Does the CCTV camera footage contain “personal information” as defined in section 2(1)?

[11] The city relied on the mandatory personal privacy exemption in section 14(1) to deny access to the records at issue. Section 14(1), if it applied, would prohibit the city from disclosing any “personal information” as defined in section 2(1) of the *Act*.³ However, as discussed below, the appellant challenges the denial of access, arguing that the CCTV camera footage has been sufficiently de-identified through the blurring of images, most notably faces, that it can be disclosed without revealing any information that may qualify as personal information under the *Act*. Accordingly, the appellant submits that disclosing the records in that severed form could not, therefore, result in an unjustified invasion of personal privacy under section 14(1). The city, the Ottawa police and the personal representatives take the position that even with the application of image blurring technology, the CCTV camera footage contains personal information.

[12] “Personal information” is defined in section 2(1) of the *Act* as follows:

³ That is, unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In this appeal section 14(1)(f) is the relevant exception. Section 14(1)(f) provides that a head shall refuse to disclose personal information to any person other than the individual to whom the information relates except if the disclosure does not constitute an unjustified invasion of personal privacy.

“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 if 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;

[13] 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.⁴

[14] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) 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 Order 11.

(2.2) For greater certainty, subsection (2.1) 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.

[15] 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.⁵

[16] 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.⁶ To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁷

[17] As set out in Railway Investigation Report R13T0192⁸ detailing the investigation of the collision between the bus and train, the bus involved in the collision arrived at the Fallowfield Transit Station at 8:46:24 a.m. and departed from the station at 8:47:27 a.m.

[18] The city submits:

Each video contains approximately 10 minutes of footage recorded from 8:40 a.m. to 8:50 a.m. on September 18, 2013. The footage depicts, as the case may be, the public parking lots of the Station, a platform area and bus shelter area with commuter traffic, the Transitway (roadway) within the station with bus traffic, and the inside of the bus shelter adjacent to the bus stop which serves the bus involved in the collision.

The footage contains images of the bus just minutes before it travelled north and collided with the train at the rail crossing. The bus is identified as Bus No. 8017, on Route 76. The footage is limited to the areas contained in the Fallowfield Transit Station, however, the accident site is not visible from the footage in the videos.

The images show members of the public in and around the Fallowfield Transit Station. More specifically, it shows persons located both in the shelter and on the platform area prior to embarking on Bus No. 8017 just

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁸ Railway Investigation Report R13T0192, Transportation Safety Board of Canada.

before its departure from the station and therefore, just prior to the collision. ...

[19] There are five camera locations from which the footage at issue was generated. The sequence of the CCTV camera footage that is contained in the DVD the city provided to this office is set out below:

- Clip 1 - Security Camera number 7: Fallowfield Park and Ride Transit Station parking lot. The city describes this clip as containing the following:

Shows scan of parking lot from left to right. Left hand side of camera is the Fallowfield Transit Station as buses enter platform. Video clip was 2:28 in length at 1m:23s becomes fast forward to account for 10 minutes of video in 2m:28s.

- Clip 2 - Security Camera number 2: Fallowfield Transit Station platform Northeast bound, just Southwest of bus shelters. The city describes this clip as containing the following:

Shows transit station & platform on right hand side, view is in a north-east direction. Shows buses coming in from bottom left to pick up passengers. Bus No. 8017 stops at top right to pick up passengers. Can see passengers getting on the bus. Faces have been de-identified. Video clip is 1:48 in length and at 0m:33s becomes fast forward to account for 10 minutes of video in 1m:48s.

- Clip 3 - Security Camera number 3: Fallowfield Transit Station, inside bus shelter. The city describes this clip as containing the following:

Shows the inside of the bus shelter at the transit station; shelter is at the stop for Bus No. 8017. People coming in and out of shelter, waiting in shelter, and others are waiting for bus outside the shelter on the platform. Shows Bus No. 8017 arriving at station platform, passengers embarking and bus departing. Can see other buses arriving to pick up passengers in upper right of frame. Faces have been de-identified. Video clip is 10m:05s.

- Clip 4 - Security Camera number 4: Fallowfield Transit Station, Southwest bound, just Northeast of bus shelters. The city describes this clip as containing the following:

Shows Transit Station platforms, shelters and crosswalk; view is of a westerly direction, across from bus stop of Bus No. 8017. Left hand side is platform with passengers waiting for buses. Buses arrive from top left and bottom right. Can see people embarking buses on both sides of the platform, circulating around station, and crossing at crosswalk. Shows Bus

No. 8017 arriving at its stop, bus operator is not clearly visible. Faces have been de-identified. Video clip is 10m:05s.

- Clip 5 - Security Camera number 9: Fallowfield Transit Station Park and Ride/Parking lot. The city describes this clip as containing the following:

Camera on pole, facing south. Shows scan of parking lot from left to right (i.e. sweeping south-west). Can see people walking to the transit station from lot. Transit station is visible in second half of scan in top right side. Faces have been de-identified. Video clip is 10m:06s.

The representations of the City, the Ottawa police and the personal representatives of the deceased

[20] With respect to whether the CCTV camera footage contains personal information, the city submits:

Even though the city has taken the step to de-identify the faces of those individuals shown on the videos as part of the processing of this request, the city believes that this step has not been sufficient to truly anonymize the information. The city submits that persons are still identifiable by means of their body type, hair, height and other personal characteristics such as whether they wear glasses, as well as their clothing, shoes, and personal possessions such as bags or other articles they were carrying, all of which are clearly visible on the videos. The city further submits that given these clearly visible details, there is a reasonable expectation that the individuals in the videos can be identified and as such, the information in question meets the test of identifiability as set out by [the IPC] in Order P-230 and subsequent orders.

Furthermore, the images show these identifiable persons as they travel in and around the Fallowfield Transit Station, wait in shelters or on the platforms, and embark or disembark from buses, together with the activities they are undertaking at the time such as speaking on the phone. These images therefore qualify as personal information under the *Act*.

The city notes that it is highly likely that individuals on board the Bus No. 8017 at the time of the collision are shown in or outside of the bus shelter shown in Clip #3, above, and possibly in the other videos as well.

[21] The personal representatives filed extensive representations with respect to whether the de-identified images qualify as personal information. Portions of those representations cannot be reproduced in this order as they are confidential.

[22] One of the personal representatives relied on Order MO-2420, submitting that a deceased person would be easily identifiable on the camera footage, and that any

recorded information that allows one to identify the deceased's gender or race would qualify as personal information under section 2(1) of the *Act*. They submit that the deceased's family would easily identify the deceased "in the event that these recordings are made available to others and, subsequently, are disseminated to the public." They submit that even if the deceased's face "is obscured, identifying characteristics will certainly be apparent, not only to [the deceased's] family but to anyone who knew [the deceased] and knew of [the deceased's] presence on the OC Transpo bus". They further submit that those who knew the deceased, other than members of the deceased's family, will be able to identify the deceased, even if the deceased's face is obscured.

[23] They submit that:

... whether [the deceased] boarded the bus at the transit station or within [the deceased's] neighbourhood, [the deceased] was in a location on the bus that will have been easily viewed by any CCTV cameras. The front of the bus had windows that extended to the passenger's knee level. [An identified individual] knows exactly what [the deceased] was wearing, having been with [the deceased] in the morning. No amount of blurring would conceal the fact that [the deceased] would be recognizable.

[24] And that:

... We reiterate that face blurring and/or face obscuring technology, even if applied to the videos, would not obscure or prevent the identification of the individuals involved in the accident. The number of the bus on which these individuals are embarking/riding will be perfectly clear, the individuals themselves will be readily identifiable by their demeanor, their clothing and the articles that they are carrying, both by family members and other members of the public who have known them. Given the notoriety of the accident, it is submitted that it is highly inappropriate to rely on face blurring and/or obscuring technology

[25] Another of the personal representatives submitted that even with face blurring and obscuring technology, the records will include information which could assist in identifying the deceased, such as skin colour, race and sex.

[26] They submit that:

In the past year, several photographs and video footage of the bus and train after the collision and of the 6 deceased victims of the collision have been released by the media and government agencies. Should [the deceased] be in the video footage requested, it is reasonable to expect that [the deceased] will be easily identified.

[27] Another of the personal representatives relied on Privacy Complaint MC10-2,

Order MO-1410, Guidelines for the Use of Video Surveillance Cameras in Public Places⁹ and Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report¹⁰, submitting that:

Based on the forgoing [the deceased's representative] submits that the videos contain personal information of [the deceased], which is of a personal nature. People that knew [the deceased] would be able to identify [the deceased] if they viewed these videos. Additionally, following the accident, the deceased was featured in numerous news articles, stories and reports that discussed [the deceased's] death. [The deceased's] picture was disclosed to those across Canada and potentially across the world. An individual viewing the requested videos and seeing [the deceased's] face may therefore be able to identify [the deceased]. Accordingly, it is reasonable to assume that [the deceased] will be identified in the videos if they are disclosed.

The representations of the appellant

[28] The appellant submits in general that:

It is important to note that the videos in question have had the faces of the individuals portrayed obscured, and do not show the accident site (or by necessary implication, the accident itself). As a result, the videos may be described as simply showing unidentifiable individuals boarding or disembarking from a city bus. A video showing this fairly benign activity (as opposed to video of the incident itself) cannot be reasonably seen as reaching the required threshold to withhold under the *Act*.

[29] With respect to the position that the CCTV camera footage with image blurring technology applied contains personal information about an identifiable individual because it shows an individual's body type, hair, height as well as other characteristics such as whether they wear glasses and what accessories they may have been carrying, the appellant disagrees:

... these characteristics will only reveal that "a person of a certain race who owns a certain bag" was on the platform. Those characteristics could describe any number of individuals living in a city of over one million residents.

⁹ *Guidelines for the Use of Video Surveillance Cameras in Public Places*, October 2001 (updated September 2007).

¹⁰ *Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report* - Privacy Investigation Report MC07-68.

The public body has made the bald assertion that the fact these individuals were even present on the platform or "talking on the phone" constitutes personal information. Counsel for the families has relied on Order M-693 for the proposition that a mere depiction of an individual constitutes personal information under the *Act* ... This is a misstatement of the adjudicator's finding.

In that order, it was held that the depiction of the individual *in connection with his interaction with police* rendered the video personal information:

The appellant also maintains that "... depictions of one's person alone does not constitute personal information ..." The videotape does not merely depict the person of the deceased. As I stated, the tape records the involvement of the deceased with the Police.

Accordingly, I find that the videotape contains the personal information of the deceased (at p. 2).

In the case at bar, the videos do not show anything more than a "mere depiction" of the individuals involved that would elevate the content of the video to the status of "personal information". As a result, the appellant contends how one looks or what one is doing at any given time is not personal information "about" an individual as required by the *Act*.

The appellant also notes that the Ottawa Police Service has recently released surveillance video without obscuring the faces of innocent bystanders, who are literally running for their lives, in a joint press conference with the RCMP after the deadly attack on the War Monument in Ottawa (as reported by the New York Times...). The appellant submits the release of similar information in that video supports the argument the information the public body is attempting to withhold in this inquiry is not personal information which needs to be redacted.

In the alternative, even if one assumes each individual shown on the platform could be identified based on the above criteria, such identification would only reveal aspects about that person that were readily perceivable by any other person present on that day. If another person is able to identify these individuals based on these criteria, it would only be because those traits were previously known to the identifying party. Furthermore, the video would only reveal that the individual was waiting for a city bus and nothing more. As a result, it is unlikely such identification would be an "unreasonable invasion of privacy", ... [Emphasis in original]

The reply submissions

[30] In reply, the city maintained its position that the CCTV camera footage contains personal information because the persons depicted in it are identifiable despite the obstruction of their faces.

[31] In reply, the Ottawa police submitted that:

Personal information is defined in section 2 of the *Act* as recorded information about an identifiable individual, which includes, but is not limited to, information relating to an individual's race, colour, nationality or ethnic origin, sex and age. If a video surveillance system displaying these characteristics of an identifiable individual or the activities in which he or she is engaged, its contents will be considered "personal information" under the *Acts*. The videos at issue contain recorded video footage that displays information related to various individuals' race, colour, sex and age and activities before the individuals boarded the bus that was involved in the fatal bus crash. In the video the faces are obscured but the clothing is clearly identifiable. The videos are the images of individuals that are captured by cameras situated at the station and clearly identify particular individuals.

[32] In disagreeing with the appellant's position that the depiction of individuals in the CCTV camera footage does not qualify as "personal information", one of the personal representatives submitted in reply:

... We draw your attention, in particular, to IPC Order MO-2709 which was an appeal by an individual seeking disclosure of video surveillance of the entrance of the Elgin Street Police Station in the City of Ottawa. The appellant's personal information was contained in the video surveillance, along with the images and personal information of numerous other individuals. The adjudicator found that the images of all individuals clearly fell within s. 2(1) of the *Act*. It was determined that, while the appellant's own information was appropriate for release, this was only insofar as the appellant's personal information could reasonably be severed from the personal information of others. This is, in our view, exactly the situation with which we deal. The persons who will be identifiable in the video at issue are not only those who were involved in the accident, but also those waiting for other buses at the transit station. The [appellant] is suggesting that all persons present in the video surveillance who are identifiable should have their personal information released in the public forum. This is, clearly, excessive and is contrary to the provisions of the *Act*.

Further [the appellant] relies on the fact that the Ottawa Police Service recently released surveillance videos of the October 22, 2014 attack at the

War Memorial in support of its appeal. Not only is this irrelevant to the decision in the present case, but the circumstances under which the video at the war memorial was released are fundamentally different. The video released by the Ottawa Police Service was of an event in progress rather than a snap shot of a period of time prior to the tragedy. What the [appellant] is seeking is not a video of the event itself, but of the people involved in the accident prior to their embarkation on the OC transpo bus. It must be recalled that the surveillance will necessarily include images of many who were not personally involved in the accident. The video at issue, if released, will serve nothing more than to provide the media with a chance to further sensationalize an event that has struck six families to the core and will, if made public, revictimize the surviving family members and injured parties. [Emphasis in original]

The appellant's sur-reply representations

[33] The appellant submits that the city and the Ottawa police have failed to provide "any legal or evidentiary basis to support its claim that, although the faces of the individuals involved have been de-identified, they are nonetheless identifiable". The appellant also disagrees with the personal representative's characterization of Order MO-2709 and submits:

In that decision, a requester had sought video surveillance footage outside of a police station that showed the coming and goings of many identifiable individuals. Unlike the present case however, it does not appear from the decision that the faces of the individuals involved had been obscured. Consequently, counsel's reliance on that decision in the present case where the parties' faces have been "de-identified" is misplaced. Furthermore, the issue of whether de-identified video constitutes "personal information" has been definitively decided by [the IPC] in [Order PO-3248]¹¹:

In my view, the video can reasonably be severed by applying face-blurring or other obscuring technology to protect the identity of individuals who were in the FAAS office. Severing the video in this manner would provide the appellant with the part of the video that shows him outside the office while protecting the privacy of those individuals who were inside the office. Consequently, I will order the university to disclose a severed version of the video to the appellant.

¹¹ The appellant refers to paragraph 65 of the decision.

Given that [the IPC] has already declared that obscuring faces in surveillance videos is sufficient to satisfy the privacy requirements of the *Act*, the position presently adopted by the respondents should be rejected and the de-identified videos should be disclosed.

Analysis and finding

[34] Firstly, whether video footage of another incident was disclosed in the past by an institution other than the city does not govern my approach in this appeal.

[35] Clip 1 does not contain any images of individuals nor any other information that may qualify as personal information under section 2(1) of the *Act*. Clips 2 to 5 do contain blurred images of individuals to which blurring technology has been applied. In the analysis that follows I will be addressing Clips 2 to 5.

[36] Previous orders have determined that in order to qualify as “personal information”, the fundamental requirement is that the information must be “about an identifiable individual” and not simply associated with an individual by name or other identifier.¹²

[37] In this regard, it is important to return to first principles.

[38] In Order P-230, former Commissioner Tom Wright set out the basic requirements of identifiability as follows:

If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.¹³

[39] In answer to the appellant’s position that an image alone is not personal information, this office has previously held that information collected about identifiable individuals from video surveillance cameras qualifies as “personal information” under the *Act*.¹⁴ In that regard, I find that that disclosing an individual’s unblurred image on the CCTV camera footage on Clips 2 to 5 would also reveal their personal characteristics and that they were present in that place on that date, and their conduct, as well as their location and movements at certain times. As a result, if the image was unblurred, I find that this would qualify as the personal information of those individuals.

[40] That said, this office’s Guidelines for the Use of Video Surveillance Cameras in

¹² PO-2063-R.

¹³ In *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.) the Ontario Court of Appeal wrote that this elaboration of the test in the appeal before the Court “was not in dispute”.

¹⁴ See *Privacy and Video Surveillance in Mass Transit Systems: A Special Investigation Report* - Privacy Investigation Report MC07-68; Privacy Complaint Reports MC10-2, MC13-46 and MC13-60 and Orders MO-1570 and PO-3510.

Public Places¹⁵ that was in force at the time anticipated that there may be a digitally “blacking out” of the images of the other individuals whose images appear on video surveillance system media, in the event of disclosure of video surveillance system images:

An individual whose personal information has been collected by a video surveillance system has a right of access to his or her personal information under section 47 of the provincial Act and section 36 of the municipal Act. All policies and procedures must recognize this right. Access may be granted to one’s own personal information in whole or in part, unless an exemption applies under section 49 of the provincial Act or section 38 of the municipal Act, such as where disclosure would constitute an unjustified invasion of another individual’s privacy. Access to an individual’s personal information in these circumstances may also depend upon whether any exempt information can be reasonably severed from the record. One way in which this may be achieved is through digitally “blacking out” the images of the other individuals whose images appear on the videotapes.

[41] The revised version of the Guideline¹⁶ provides that a video surveillance system “should include the ability to remove or redact information from the video footage to protect exempted information – for example, by using tools and techniques such as ... blacking out or blurring images of individuals ... ”.

[42] This is in keeping with section 4(2) of the *Act* which requires disclosure of as much of a record as can reasonably be severed without disclosing the information that may qualify for exemption under the *Act*. However, under section 4(2) severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed.¹⁷

[43] In this regard, individuals may have certain attributes that would result in a reasonable expectation that they could be identifiable even with the application of blurring technology. A starting point could be section 2(1)(a) of the definition of personal information which provides that personal information includes:

information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual.

[44] Other considerations may also apply. Some orders have considered a small cell

¹⁵ October 2001 (updated September 2007).

¹⁶ *Guidelines for the Use of Video Surveillance*, October 2015.

¹⁷ Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

count¹⁸, where the possibility of identification increases based on the number of possible affected parties. The question then is whether it is reasonable to expect that an individual could be identified because of the size of the group of individuals, the nature of the information at issue, or when the information at issue is combined with information from sources otherwise available.¹⁹

[45] Other orders have found that, even if the images are unclear or the faces have been blurred, there may be something distinctive about an individual that would allow them to be identifiable. It may be that the individual's attire would set them apart from others on the scene, such as individuals wearing a particular uniform or type of clothing.²⁰ It may be that other attributes or circumstances make an individual so distinctive that even with facial blurring, they remain distinctive and therefore identifiable. Still other orders have found that individuals are not identifiable because the images are unclear on the video camera footage or because, in the circumstances, blurring the images would render the individual unidentifiable²¹.

[46] One precedent for the release of blurred images is Order PO-3248, decided by Adjudicator Colin Bhattacharjee. At issue in Order PO-3248 was a request for access to, amongst other things, video footage which contained the requester's image, which Adjudicator Bhattacharjee found to be the requester's personal information. In the course of determining whether video footage that simultaneously showed images of the appellant as well as other identifiable individuals should be disclosed in severed form, Adjudicator Bhattacharjee wrote:

Section 10(2)²², of the *Act* requires the university to disclose as much of a record as can reasonably be severed without disclosing the information that falls under one of the exemptions. As noted above, the video contains footage of various students who were in the FAAS office. However, the video appears to simultaneously show the appellant in an area outside the office.

Consequently, it must be determined whether the video can reasonably be severed in a manner that provides the appellant with his own personal information without disclosing the personal information of other individuals that is exempt under section 49(b).

¹⁸ PO-3233, PO-3333, PO-3412 and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 SCR 674, 2014 SCC 31.

¹⁹ See for example, Orders MO-2407, PO-2551 and PO-2811 upheld in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 SCR 674, 2014 SCC 31.

²⁰ See for example, Order PO-2033-I.

²¹ Order PO-3248 at paragraph 65 and Order PO-3306 at paragraph 46.

²² Adjudicator Bhattacharjee was dealing with the equivalent provision to section 4(2) in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31.

The IPC has found that it is not reasonable to sever a record containing the personal information of both a requester and other individuals if this information is too closely intertwined. In addition, it is not reasonable to sever a record if doing so would result in the disclosure of only disconnected snippets of information or worthless, meaningless or misleading information. [footnote omitted]

In my view, the video can reasonably be severed by applying face-blurring or other obscuring technology to protect the identity of those individuals who were in the FAAS office. Severing the video in this manner would provide the appellant with the part of the video that shows him outside the office while protecting the privacy of those individuals who were inside the office. Consequently, I will order the university to disclose a severed version of the video to the appellant.

[47] In this appeal, although there are extensive submissions about the existence of publicly disseminated images of some of the individuals affected by the accident, no specific examples of that type of image was provided. In my view, the representations do not establish the reasonable possibility that the blurred images in the Clips could be combined with other available information, to identify individuals in the clips so as to satisfy the definition of personal information under section 2(1) of the *Act*. I have also personally canvassed some of the media reports about the accident and have not found information that could result in identifying individuals despite the blurring. Furthermore, no evidence was provided regarding what, if any, technology exists to make the blurred images from a distance more visible or that would serve to identify a specific individual. While I understand that the personal representatives did not have the benefit of viewing the recordings, the city did, but provided no specific evidence linking a readily available image to a specific individual.

[48] As set out above Clip 1 contains no information that qualifies as "personal information". Clip 2 contains images of individuals at a distance. Clips 4 and 5 contain images of individuals at a distance as well as some that come closer into the frame. Clip 3 is the highest resolution and contains the most detail. In all of the clips blurring technology has been used. Based on my review of Clips 2 to 5 and the evidence before me, I have not been provided with sufficient evidence to satisfy me that the various available public sources of information could reasonably be used to identify specific individuals. As a result, I find that Clips 2 to 5 with the blurring technology applied, notably to faces, do not contain "personal information".

[49] In this regard, the fact that a relative or someone who knows the individual may be able to identify an individual from a blurred image is not sufficient to transform the information at issue into personal information under the definition set out at section 2(1) of the *Act*. A similar type of argument was addressed in Order PO-2892, which also dealt with the application of the provincial equivalent section 4(2) of the *Act*, to the information at issue in that appeal. In that Order, Commissioner Brian Beamish wrote:

In Order MO-2337, the appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for, amongst other records, a copy of Minutes of Settlement, which contained the personal information of a number of firefighters, who had been disciplined due to an on-the-job incident involving the theft of a fire truck. I found that if the names and contact details of these individuals contained in the record were severed, the record would no longer constitute their "personal information." I stated:

...

I acknowledge that there will be a limited number of individuals who are already aware of the identities of the affected parties; for example, other co-workers and supervisors. However, this does not affect my decision with regard to the ability to sever their names from the Minutes of Settlement. Such individuals will have been aware of the affected parties' identity independent of the disclosures made pursuant to this appeal. They will also be aware that the affected parties were subject to discipline as a result of the theft of the unattended fire truck. For the vast number of individuals who are unaware of the identity of the affected parties, the removal of their names from the Minutes of Settlement will not identify them and will provide relevant information about the manner in which the TFS [Toronto Fire Service] handled a high profile incident.

...

In my view, the approach taken in Order MO-2337 is equally applicable in this appeal. By carefully severing the complainants' and other individuals' names, addresses, telephone numbers and other identifiers, including information that may lead to the identification of the individual, I am satisfied that it will not be possible to identify these individuals and, therefore, the remaining information will not constitute their personal information as defined in section 2(1) of the Act. I note that, in some cases, this will require severing some details of the complaint itself in cases where those details may assist in identifying the complainant, or other involved individuals.

...

As was the case in Order MO-2337, I acknowledge that there will be a very limited number of individuals who may already be aware of the identities of the complainants and other individuals. However, this does not affect my decision with regard to the ability to sever their names and

contact information from the records. Such individuals will have been aware of these individuals' identity independent of the disclosures made pursuant to this appeal. For the vast number of people who are unaware of the identity of these individuals, the removal of their names from the records will not identify them, and will provide relevant information about the type of complaints received by the PSISB in regard to private investigators.

[50] In my view, the same rationale applies in the case before me.

[51] I find that Clips 2 to 5 with blurring technology applied do not contain "personal information" as defined in section 2(1) of the *Act*. Accordingly, it is not necessary for me to consider whether the section 14(1) exemption applies²³, as that would only be considered if the Clips did contain personal information.

Issue B: Should the Ottawa police be permitted to raise the application of the discretionary exemptions at sections 8(1)(a), 8(1)(b), 8(1)(f) and 8(2)(a) of the *Act*? And if so, do they apply to the information in Clips 1 to 5?

[52] The *Act* contains both mandatory and discretionary exemptions. A mandatory exemption indicates that a head "shall" refuse to disclose a record if the record qualifies for exemption under that particular section. A discretionary exemption uses the permissive "may". In other words, the legislature expressly contemplates that the head of the institution is given the discretion to claim, or not claim, these exemptions. In this case, the Ottawa police seek to rely on several exemptions not claimed by the city, namely parts of sections 8. The city chose to only rely on section 14(1).

[53] Sections 8(1)(a), (b) and (f) and 8(2)(a) read:

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

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

²³ Section 14(1)(f) is the relevant exemption which provides that a head shall refuse to disclose personal information to any person other than the individual to whom the information relates except if the disclosure does not constitute an unjustified invasion of personal privacy.

- (f) deprive a person of the right to a fair trial or impartial adjudication.
- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

[54] The term “law enforcement” is used in several parts of section 8, 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)

[55] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.²⁴

[56] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.²⁵ As set out by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*²⁶ the institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.²⁷

[57] The law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with “potential” law enforcement investigations.²⁸ The

²⁴ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

²⁵ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

²⁶ 2014 SCC 31 (CanLII).

²⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²⁸ Order PO-2085.

investigation in question must be ongoing or in existence.²⁹

[58] The institution holding the records need not be the institution conducting the law enforcement investigation for the exemption to apply.³⁰

Raising discretionary exemptions

[59] In their reply representations the Ottawa police explained that they were raising the discretionary exemptions for the following reason:

The Ottawa police are still under a directive of the [TSBC] in regards to this accident and have been directed to not release any information. So the file with the police is still under investigation ... because we were requested by the city to provide representations on the videos when a report is still open and yet to be investigated, sections 8 and 14 are applied when the report is still under investigation with law enforcement.

[60] In Order M-430, Inquiry Officer Anita Fineberg set out the considerations at play when a party raises the potential application of a discretionary exemption that was not claimed by an institution. She wrote:

As a general rule, the responsibility rests with the head of an institution to determine which, if any, discretionary exemptions should apply to a particular record. The Commissioner's office, however, has an inherent obligation to uphold the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner or his delegate decides that it is necessary to consider the application of a discretionary exemption not originally raised by an institution during the course of an appeal. This result would occur, for example, where release of a record would seriously jeopardize the rights of a third party. ...

[61] I agree with this approach and adopt it for the purposes of this appeal.

[62] The appellant is prepared to concede that the Ottawa police have an interest in the records but disagrees that the discretionary exemptions apply.

[63] At first glance, on the facts of this case, because an investigation was ongoing at the time the representations were filed, this may be one of those rare occasions when the IPC decides that it is necessary to consider the application of a discretionary exemption not originally raised by an institution during the course of an appeal. However, it is not necessary for me to make that determination. This is because,

²⁹ Order PO-2657.

³⁰ Order PO-2085.

assuming without deciding that the Ottawa police would be permitted to raise the discretionary exemptions, in my analysis below, I find that those exemptions do not apply. Accordingly, it is not necessary for me to address the raising of the discretionary exemptions by the Ottawa police.

Would the discretionary exemptions apply?

The representations of the city

[64] In its initial representations the city submitted that, at that time, the investigation of the collision by the Ottawa police was ongoing. In addition, the city submitted that an investigation was also being conducted by the TSBC, and “the collision is being reviewed to some extent by the Federal Employment and Social Development Canada (Labour Program) pursuant to the *Canada Labour Code*³¹.” The city submitted that all these investigations were then ongoing and that it had cooperated fully with all these investigative agencies.

The representations of the TSBC and the Ottawa police

[65] The TSBC initially sent email correspondence to the city with respect to its position on disclosure, which the city then provided to me. The TSBC took the following position:

After reviewing the videos, we agree that the videos that scan the parking lot and the videos from a distance on Woodroffe and Fallowfield roadways can be released.

However, we wish to protect the 2 videos that show the bus arriving and people getting on the bus at Fallowfield Station. Because this is an ongoing TSB investigation and this information will be incorporated into the report, we request that it not be released by the City of Ottawa. For our part, we will protect them under our *Canadian Transportation Accident Investigation and Safety Board Act*³².

One other item of concern. Throughout the 2 videos that display the bus arriving and departing Fallowfield station, a number of people can be observed getting on and off the bus at Fallowfield Station. These people are recognizable and some of them sustained serious or fatal injuries. Given the scope of the tragedy, we see no useful purpose in having these 2 videos released at this time.

[66] In light of the content of these submissions, as set out in the Background section

³¹ RSC 1985, c L-2.

³² SC 1989, c 3.

above, I decided to seek TSBC's representations on certain issues that I set out in a second supplementary Notice of Inquiry. In response, the TSBC added:

The [TSBC] is presently conducting an ongoing investigation of this accident in accordance with the *Canadian Accident Investigation and Safety Board Act* (TSB Act). During the course of the investigation we requested, and obtained, a number of videos from the City of Ottawa. Under the TSB Act, the TSB protects this recorded information for the duration of our investigation. However, in this case, the same videos are subject to Municipal information requests under the Ontario *Municipal Freedom of Information and Protection of Privacy Act*, which has different protection criteria.

...

Because this is an ongoing TSB investigation and this information will be incorporated into the report, we request that it not be released.

[67] In the initial letter the city received from the Ottawa police and then provided to this office, the Ottawa police wrote that the bus-train collision case "is currently under investigation" and that "any premature disclosure of the videos may interfere with the ongoing investigation". The Ottawa police wrote:

... The videos may contain information which is related to the ongoing law enforcement investigation and that disclosure of this information could reasonably be expected to interfere with the investigation. The videos may contain evidence that may be used or collected for the ongoing investigation and premature release of the video could reveal potential persons of interest still being investigated. The release of this could taint the quality of new evidence that could be gathered. Such as an individual could present information regarding the collision to the investigator, the investigator would have no way of knowing whether the individual learned of the information through the public domain or had firsthand knowledge. The disclosure would create a significant risk of compromising the integrity of recollection of witnesses and disclosure of the videos would have a catastrophic impact on the case, revealing the identities of witnesses. The disclosing of the videos could be deemed disclosure to the world.

Some of the videos may contain pictures of individuals who witnessed the accident and who may still be of interest as part of the ongoing investigation and disclosure of their identity would constitute an unjustified invasion of privacy. The protection of individuals' privacy rights and the protection of the integrity of the sensitive information should be paramount while the investigation is open and ongoing.

The appellant's representations

[68] The appellant submits that the Ottawa police have failed to satisfy the evidentiary burden established by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*.

[69] The appellant submits:

The letter received from the [OPS] is not "evidence" at all: it is merely a speculative statement from a Freedom of Information Analyst in the department. That alone should be sufficient to reject the law enforcement claims being advanced based on the test outlined above. Moreover, though, if one analyzes what the letter says, it is also clear the OPS is merely speculating that disclosure of the records might harm a law enforcement matter.

It is clear from the letter that OPS has not even seen the video: "The videos *may* contain information which is related to the ongoing investigation" [emphasis added]. The letter goes on to use the word "may" six more times in reference to a harm that "could" arise. Given that the OPS has no apparent knowledge of the contents of the records, and the fact that its basis for exclusion is merely speculative at best, its position may not be relied upon to withhold the records pursuant to the test laid out by the Supreme Court of Canada.

[70] With respect to the position of the TSBC, the appellant submits:

For its part, the [TSBC] has indicated simply that an investigation is on-going. It makes no attempt whatsoever to indicate that disclosure of the requested videos would be harmful to that process. As stated in the *Act*, the mere existence of an investigation is insufficient to withhold the records: there must be a reasonable expectation of harm to that investigation based on clear and convincing evidence, of which there is none in this instance.

The views expressed by [named individual] on behalf of [the TSBC] about the lack of "useful purpose" in disclosing the records are immaterial and improper for the purpose of this inquiry. Section 4 of the *Act* mandates that all requested records must be disclosed, unless they are subject to an exemption properly applied, or the request is frivolous or vexatious. [Named individual's] personal views on the utility of this request do not satisfy either of those criteria.

...

In addition to there being absolutely no evidence to support the contention that there might be harm to a "fair trial", there is no indication such a trial is even being contemplated at the present time. Even if an individual were to be charged as a result of this incident, any trial on the matter would be months if not years from now. As well, the requested records would have to be disclosed to the accused and would likely be tendered as evidence against him. As a result, the risk of a jury seeing something that would undermine a fair trial, or any other prejudicial impact on the process, is too remote to satisfy the test to withhold the records.

[71] The appellant further submits that the CCTV camera footage does not fall within the scope of section 8(2)(a) of the *Act*.

The reply representations of the Ottawa police

[72] In reply, the Ottawa police submit that the matter was still under investigation with the TSBC and that "premature disclosure of the videos would place the Ottawa police liable for breaching the directive from the TSBC and interfere with the ongoing investigation" and that the "release of the video would reveal potential persons of interest and taint the quality of new evidence still being gathered."

[73] They submit that:

The Fatal Bus Accident still remains an on-going law enforcement matter which continues to be investigated and disclosure of the videos would interfere with a law enforcement matter/investigation because of premature release of the videos would reveal potential persons of interest still being investigated. The disclosure would create a significant risk of compromising the integrity of the recollection of the witnesses or potential witnesses. As we know once our institution releases the information it will be published or distributed as the requestor chooses and this in turn will hinder or compromise the investigation.

...

As this investigation is still an Open Investigation and charges may not be seen as forthcoming at this time this cannot be determined until the investigation is complete.

...

The Videos were downloaded and provided to the Transport Safety Board and Ottawa Police Service for the specific time and date to assist for an ongoing investigation and are being compiled and are identifiable as part of the investigation.

The appellant's sur-reply representations

[74] In sur-reply, the appellant submits that:

The public body has conceded in its reply materials that it does not believe these exemptions properly apply to the TSB investigation, yet it is apparent from the materials provided by the Ottawa Police Service that that is the only investigation which is actually on-going. In its materials, OPS states "the videos in this case have been denied as this case is still currently under investigation with the Transport Safety Board". Since the TSB investigation is the only active investigation, and since the public body now states the law enforcement exemption was never meant to apply to that investigation, non-disclosure of the records on that ground is improper.

Despite acknowledging the videos have only been withheld at the request of TSB, OPS also states "premature release of the video would reveal potential persons of interest still being investigated". [The appellant] repeats its initial submissions on why that claim does not satisfy the test for the law enforcement exemption to properly apply. Furthermore, it is no secret there is a video that shows everyone waiting for the bus that day, and that the video is in possession of OPS, and everyone who was present on the platform that day knows they were there. As a result, the OPS argument that showing those same people, doing something they already know they were doing, on a tape that everyone knows exists will reveal a particular individual as a person of interest is simply unbelievable.

[75] As set out above, in the course of the adjudication of this appeal the TSBC conducted its investigation and issued its lengthy report on the incident.

Analysis and finding

Section 8(1)(a)

[76] For section 8(1)(a) to apply, the matter in question must be ongoing or in existence.³³ The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.³⁴ "Matter" may extend beyond a specific investigation or proceeding.³⁵ The institution holding the records need not be the institution conducting the law enforcement matter for the exemption to

³³ Order PO-2657.

³⁴ Orders PO-2085 and MO-1578.

³⁵ *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

apply.³⁶

[77] I find that I have not been provided with sufficient evidence to establish that there is a specific ongoing law enforcement matter under section 8(1)(a). The TSBC has conducted its investigation and issued its report. The Ottawa police have not provided me with sufficient evidence to establish that it was conducting a collateral investigation itself, or that this investigation is ongoing. I have no further information regarding a "review" by the Federal Employment and Social Development Canada (Labour Program) pursuant to the *Canada Labour Code*. I pause to note that at no time was there any evidence, suggestion or assertion of terrorism, sabotage or foul play of any kind. In any event, I have not been provided with sufficient evidence to satisfy me that simply disclosing the CCTV camera footage on the Clips, which I note do not include any images of the accident scene, could reasonably be expected to interfere with any law enforcement matter, as required by section 8(1)(a).

[78] Accordingly, I find that section 8(1)(a) does not apply in the circumstances of this appeal.

Section 8(1)(b)

[79] The law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law enforcement investigations.³⁷ The investigation in question must be ongoing or in existence.³⁸ The institution holding the records need not be the institution conducting the law enforcement investigation for the exemption to apply.³⁹

[80] I find that I have not been provided with sufficient evidence to establish that there is a specific ongoing law enforcement investigation or that disclosing the CCTV camera footage would cause harm under section 8(1)(b). As discussed above, the TSBC has conducted its investigation and issued its report. The Ottawa police have not provided me with sufficient evidence to establish that it was conducting a collateral investigation itself, or that this investigation is ongoing. I have no further information regarding a "review" by the Federal Employment and Social Development Canada (Labour Program) pursuant to the *Canada Labour Code*. Again, at no time was there any evidence, suggestion or assertion of terrorism, sabotage or foul play of any kind.

[81] In any event, I have not been provided with sufficient evidence to satisfy me that simply disclosing the CCTV camera footage on the Clips, which I noted does not include any images of the accident scene, could reasonably be expected to interfere

³⁶ Order PO-2085.

³⁷ Order PO-2085.

³⁸ Order PO-2657.

³⁹ Order PO-2085.

with any law enforcement investigation, as required by section 8(1)(b).

[82] Accordingly, I find that section 8(1)(b) does not apply in the circumstances of this appeal.

Section 8(1)(f)

[83] The institution must show that there is a “real and substantial risk” of interference with the right to a fair trial or impartial adjudication. The exemption is not available as a protection against remote and speculative dangers.⁴⁰

[84] There is no evidence before me that there is any specific ongoing trial or adjudication that would engage the application of section 8(1)(f). In any event, I have not been provided with sufficient evidence to satisfy me that disclosing the CCTV camera footage in the Clips, which I noted does not include any images of the accident scene, could reasonably be expected to interfere with any fair trial or impartial adjudication, as required by section 8(1)(f).

[85] Accordingly, I find that section 8(1)(f) does not apply in the circumstances of this appeal.

Section 8(2)(a): law enforcement report

[86] In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.⁴¹

[87] The word “report” means “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact.⁴² The title of a document does not determine whether it is a report, although it may be relevant to the issue.⁴³

⁴⁰ Order P-948; *Dagenais v. Canadian Broadcasting Corp.* (1994), 120 D.L.R. (4th) (S.C.C.); and Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.).

⁴¹ Orders P-200 and P-324.

⁴² Orders P-200, MO-1238 and MO-1337-I.

⁴³ Order MO-1337-I.

[88] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous.⁴⁴

[89] In keeping with the decisions of this office and the wording of section 8(2)(a), I find that the CCTV camera footage on the Clips do not fall within the scope of the definition of a report under section 8(2)(a) of the *Act*.

[90] Accordingly, I find that section 8(2)(a) does not apply to the Clips in the circumstances of this appeal.

[91] As I have found that the Clips with blurring technology applied, most notably to faces, do not contain personal information and would not qualify, in any event, for exemption under sections 8(1)(a), (b) and (f) and 8(2)(a) of the *Act*, it is not necessary for me to consider the potential application of the public interest override at section 16.

[92] Accordingly, I will order that the CCTV camera footage with blurring technology applied be disclosed to the appellant.

ORDER:

1. I do not uphold the city's decision to deny access to the CCTV camera footage. I order the city to release CCTV camera footage, with blurring technology applied, to the appellant by **November 1, 2016** but not before **October 25, 2016**.
2. In order to ensure compliance with provision 1 of this order I reserve the right to require the city to provide me a copy of the CCTV camera footage as disclosed to the appellant.

Original Signed by: _____
Steven Faughnan
Adjudicator

September 26, 2016 _____

⁴⁴ Order MO-1238.