Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER PO-3655-I

Appeals PA13-34 and PA13-426

Ministry of Community Safety and Correctional Services

September 29, 2016

Summary: An individual sought access to information about OPP involvement with a "contract matter" between himself and the local municipality. The ministry granted partial access to the responsive records, relying on section 65(6) (labour relations and employment records), section 49(a), in conjunction with sections 14 (law enforcement), 17(1) (third party information) and 19 (solicitor-client privilege), and section 49(b) (personal privacy) to deny access to the withheld information. Upon appeal of the ministry's access decision to this office and during the inquiry, the ministry modified its exemption claims under section 14 and abandoned section 19. In this order, the adjudicator partly upholds the ministry's decision respecting responsiveness and the application of the exemptions in sections 49(a) and 49(b), and upholds the ministry's exercise of discretion. The adjudicator orders disclosure of the appellant's personal information to him, as well as other withheld portions that do not qualify for exemption. The adjudicator remains seized of the appeals, including with regard to the possible disclosure of two records, pending further notification of the relevant parties.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 2(3), 2(4), 10(2), 14(1)(d) and (l), 14(2)(a), 17(1), 21(1)(a), 21(2)(a), (f), (g) and (h), 21(3)(b), and (d), 49(a) and 49(b).

Orders and Investigation Reports Considered: Orders MO-2374, MO-2468-F, MO-2510, MO-2954, MO-3310, P-1014, P-1124, PO-2751, PO-2916 and PO-2934.

OVERVIEW:

[1] This order addresses the issues raised by an individual's request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records "held by the Ontario Provincial Police (the OPP) or any ministry of the Ontario government" about himself and two named companies. The subject matter of the request concerned a "contract matter" between the individual and a municipality. Later clarification of the request by the individual identified a specific date and time when the named municipality had placed "private security guards at all town facilities … during … an 'IT Transition'…"

[2] Following receipt of the clarification, the ministry conducted a search for OPP records and issued a decision letter advising that access to the records that had been located was denied in full pursuant to section 49(a), in conjunction with sections 14(1)(a), 14(1)(b), 14(1)(l) and 14(2)(a) (discretion to refuse requester's own information/law enforcement), section 49(b), with reference to sections 21(2)(f) and 21(3)(b) (personal privacy) and the exclusion in section 65(6) (labour relations and employment records) of the *Act*. The ministry noted that some information contained in the responsive records, such as computer generated text associated with the printing of the report, is not responsive to the request.

[3] The requester (now the appellant) appealed the ministry's decision to this office and Appeal PA13-34 was opened to address the issues.

[4] The ministry subsequently issued a supplemental decision letter to advise the appellant that they were adding section 21(2)(h) to the exemptions already claimed and that section 65(6) was no longer being relied upon.

[5] When a mediated resolution of Appeal PA13-34 proved not to be possible, the file was transferred to the adjudication stage of the appeal process. The adjudicator formerly responsible for the appeal sent a Notice of Inquiry outlining the issues for determination to the ministry to seek representations. After receiving the Notice of Inquiry, the ministry wrote to the appellant advising that since the related investigation was closed, it would be issuing a new access decision on access following notification of third parties whose interests might be affected by disclosure to seek their views, pursuant to section 28 of the *Act*.

[6] One of these affected parties, the town, advised the ministry that it did not consent to the disclosure of any records pertaining to it because the ministry had not provided copies of the records for review. The ministry subsequently issued a new decision and granted partial access to the responsive records, withholding the remaining information on the basis of section 49(a), together with sections 14(1)(c), 14(1)(l), 14(2)(a), 17(1) (third party information) and 19 (solicitor-client privilege), and section 49(b), with reference to sections 21(2)(f), 21(2)(h), 21(3)(a), 21(3)(b) and

21(3)(d). The ministry also indicated that some information was not responsive to the request. Finally, the ministry advised that it provided notice to one affected party – the town – of its intention to grant partial access to the requested records. The adjudicator then sent a revised Notice of Inquiry to seek the ministry's representations on the new decision.

[7] In the meantime, the affected party town had received the ministry's notice regarding the partial access it intended to grant to the appellant. In the notice, the ministry explained to the town that the records were created by the Oxford County Detachment of the OPP and provided a brief description of the connection between the records and the town.

[8] On September 30, 2013, the affected party town filed an appeal letter with this office that stated:

> The records should not be disclosed to the requester as the Municipality has not had an opportunity to review the requested records. In order to understand the contents of the records in question and determine if the Municipality can grant access, the record would first have to be disclosed to the Municipality.

[9] Appeal PA13-426 was opened as a third party appeal and it was streamed directly to the adjudication stage of the appeal process due to its connection with the requester's Appeal PA13-34.[1]

[10] The ministry provided copies of the records identified as responsive to the request in Appeal PA13-34, but did not provide this office with a copy of the records that show which portions were withheld and which portions of the smaller set of records it intended to disclose in Appeal PA13-426.

[11] In seeking the ministry's representations, the adjudicator asked the ministry to confirm the description of the records and to identify which portions are at issue in Appeal PA13-426. Efforts were also made to correlate the description of the records that had been provided to the town upon notification with the records in the ministry's index. In addition, the ministry was asked to respond to the issues, including providing submissions on why it decided to disclose the information in Appeal PA13-426. The ministry submitted representations relating to both appeals and modified its exemption claims at that time.[2] The ministry indicated that it had notified some, but not all, of the individuals identified in the records. After considering this position, the adjudicator reviewed the records at issue in both appeals, identified a number of affected parties

---

[1] The town is the affected party in Appeal PA13-34 and the appellant in Appeal PA13-426. In this order, this party will be referred to simply as the "town" "rather than third party appellant," to distinguish it from the requester in PA13-34, who will be referred to as the "appellant."

[2] These modified exemption claims are clarified in the discussion of each exemption.

and sought representations from them.[3] Two affected parties provided consent to disclose their personal information and a third individual provided an explanation for their objection to the disclosure of their personal information that raised the issue of responsiveness.

[12] Next, the adjudicator invited the appellant and the town to provide representations by sending them the ministry's full representations and a summary of the objecting affected party's position. In response, the appellant provided representations, but the town did not because it maintained that it was not possible to prepare submissions because neither the records nor an adequate description of them had been provided.

[13] The appeals were then transferred to me, and this order addresses both of them. In this order, I find that some of the records identified by the ministry as responsive are not responsive to the appellant's request because they relate to concurrent, but separate, town matters. The remaining records contain the personal information of the appellant and other identifiable individuals. Some information about those individuals fits within section 2(3) of the *Act* and cannot therefore be withheld under section 49(b). I partly uphold the ministry's application of section 49(a), together with section 14(1)(l), as well as section 49(b). I uphold the ministry's exercise of discretion under sections 49(a) and 49(b), but order the disclosure of the non-exempt information. I remain seized of this appeal, and reserve my decision on the disclosure of records that were prepared for the town by a third party consultant to allow for continuation of the inquiry and further submissions from the relevant parties.

RECORDS:

[14] The records at issue consist of occurrence reports, officers' notes, e-mails, reports, briefing notes, correspondence and meeting minutes. Approximately 180 pages of records were identified by the ministry as responsive in Appeal PA13-34, of which 21 overlapping pages are said to be at issue in Appeal PA13-426. This number is diminished according to my finding on responsiveness, below, as well as by the fact that the six-page witness statement at pages 147-152 is duplicated by pages 153-158.[4]

---

[3] In the cover letter accompanying the Notice of Inquiry sent to these individual affected parties, the adjudicator directed them to contact the ministry's Freedom of Information and Privacy Coordinator if they had questions about the records.

[4] This is a joint witness statement given by two individuals. The only difference between pages 147-152 and pages 153-158 is the name of the affected party witness at the top of the first page. This minor difference is not material to my findings.

ISSUES:

A. Did the ministry properly identify information as responsive to the request?

B. Do the records contain "personal information" according to the definition in section 2(1) of the *Act*?

C. Would disclosure result in an unjustified invasion of personal privacy under the discretionary exemption in section 49(b)?

D. Do the records contain third party information that qualifies for exemption under the discretionary exemption in section 49(a), together with section 17(1)?

E. Do the records contain law enforcement information that is exempt under the discretionary exemption in section 49(a), in conjunction with sections 14(1)(d), 14(l) or 14(2)(a)?

F. Did the ministry properly exercise its discretion under sections 49(a) and 49(b)?

DISCUSSION:

A. Did the ministry properly identify information as responsive to the request?

[15] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. A person seeking access to a record must make a request in writing to the institution that the person believes has custody or control of the record, and must provide sufficient detail to enable an experienced employee of the institution to identify the records that are responsive to the request.

[16] 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.[5]

[17] To be considered responsive to the request, the records (or information) must "reasonably relate" to the request.[6]

[18] The issue of responsiveness arises in this appeal because the ministry withheld portions of the records on the basis of them not being responsive to the request. Additionally, one of the affected parties responded to notification by this office by arguing that the record identified by the ministry as pertaining to this party, a witness

---

[5] Orders P-134 and P-880.

[6] Orders P-880 and PO-2661.

statement, is not responsive to the request.

[19] The ministry did not make submissions on the issue of responsiveness. However, it appears from the severances applied to the records that the principal reason for withholding information on this basis was to prevent disclosure of information that the ministry routinely withholds as non-responsive, such as the date and time of the printing of the record or information about other OPP investigations or events. There is severance of other information in the body of the records, but not all of these portions are identified.

[20] The appellant's representations do not refer to the issue.

Analysis and findings

[21] Information must be reasonably related to the request to be considered responsive to it. Past orders have upheld the severance of coded "administrative information," including information about when the record was retrieved or printed, as non-responsive because the information does not reasonably relate to the subject matter of the request.[7] I uphold the severance of that type of information in this appeal, as well as other severances to the officers' notes consisting of details about weather and road conditions, which are entered as standard information at the beginning of a shift. This type of information is also not related to the subject matter of the appellant's request.

[22] Additionally, based on my review of the officers' notes, I uphold the ministry's severance of information that relates to other investigations or police administrative matters. With two exceptions, I am satisfied that these portions have also been properly withheld because they do not relate to the matter involving the appellant.

[23] The exceptions to this finding are six-line portion of officer's notes at page 71 and a four-line portion of the officer's notes on page 125, which have been withheld as non-responsive, but are related to the matter identified by the appellant in his request. As these portions of pages 71 and 125 are responsive to the appellant's request, I do not uphold the ministry's decision to sever them, but will consider whether the exemptions claimed for the rest of the same OPP officers' notes apply.

[24] There is another aspect of the ministry's decision on this issue to review. Paraphrasing it again, the appellant's request was for records in the OPP's custody or control related to a "contract matter" between him and the town. The request named two companies related to the appellant and, in clarification subsequently provided by him, also identified a specific incident related to the contract matter.

[25] On my review of the records, however, it is clear that in addition to the "contract

---

[7] For example, Orders MO-2877-I, PO-2253, PO-3228 and PO-3273.

matter" concerning the appellant, there were a number of separate, unrelated human resources and administration matters taking place within the town offices that did not pertain to the appellant. Although the information relating to those matters may have been gathered concurrently with others created by the OPP respecting the appellant's "contract matter," even a liberal interpretation of the request does not support a finding that they are responsive. In all, I find that 32 of the pages identified by the ministry as responsive contain no reference to the appellant (or the two related companies) and are not about his "contract matter" with the town, including the IT transition event mentioned in the clarification. The records consist of supplementary occurrence reports, witness statements, correspondence and website articles. The ministry's decision was to partially or completely withhold most of these records, with the exception of website articles (at pages 201-205), based on the law enforcement and personal privacy exemptions. However, since pages 11-12, 14, 106, 128-129, 130-133, 134-135, 136-138, 139-141, 142-143, 194-199, 200 and 201-205 are not reasonably related to the appellant's request, I find that they are not responsive. This finding removes these pages from the scope of the appeal, and they will not be addressed further in this order.

[26] Related to this finding are portions of other responsive records that remain at issue, but which contain information about the unrelated town matters. The supplementary occurrence report at pages 17-28 and the witness statement at pages 159-169, for example, include information relating to the other town human resources or administrative matters because that information was incidentally collected by the OPP in the course of investigating the complaint. In some places, the ministry's annotation of these records with the exemption claims and non-responsiveness does not clearly identify which parts are withheld on the latter basis. For the reasons already given, I am satisfied that there are portions of records that are not responsive to the appellant's request, and I will identify those portions of the records on the copies I send to the ministry with this order.

[27] In summary, my responsiveness finding results in the addition of portions of pages 71 and 125 to my review under the ministry's exemption claims, as well as the removal of 32 full pages and portions of others from the scope of the appeal.[8] To decide the exemption claims, I must first review whether the records contain "personal information" as that term is defined in section 2(1) of the *Act.*

B. Do the records contain "personal information" according to the definition in section 2(1) of the Act?

[28] To determine whether the records contain "personal information" and, if so, to whom it relates, I refer to the following definition of the term in section 2(1) of the *Act*:

---

[8] The ministry has already disclosed information that I find to be non-responsive here, apparently based on written consents received from affected parties and, possibly, by reason of the exercise of discretion under section 49(b).

"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;

[29] The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[9]

[30] 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.

---

[9] Order 11.

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

[31] 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.[10] 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.[11] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[12]

Representations

[32] According to the ministry, as with most OPP investigations, a significant amount of personal information belonging to a complainant, witnesses and other affected parties was collected in the course of them being interviewed by, interacting with, or being spoken about to, OPP officers during the investigation. The collected information includes names, addresses and phone numbers, but also "substantive and inherently sensitive personal information about themselves and their opinions of others…". The ministry submits that although individuals are not named in some of the records, both the nature of the information and the context would tend to identify those individuals.[13]

[33] The ministry submits that disclosure of the information would not only identify these affected parties, but would also link them to the OPP investigation, because "much of the personal information is contained in records such as occurrence summaries, occurrence reports and witness statements that are, and have the appearance of being police records."

[34] The ministry maintains that the records contain information about many additional affected parties who may have been contacted in their professional capacity, but whose information has crossed the threshold to "personal information." According to the ministry, "it is clear from the nature of these law enforcement records that none of these individuals provided the personal information in a professional or business capacity." Relying on Order P-1124, where records about employee attendance at a

---

[10] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[11] Orders P-1409, R-980015, PO-2225 and MO-2344.
[12] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[13] As an example, the ministry refers to the anonymous letter written to the town's municipal council by employees (pages 194-199) and argues that the town's workforce is so small that disclosure of the letter would potentially identify the authors. However, I concluded above that this letter is not responsive to the request and it is no longer within this order's scope.

training course were found to contain personal information, the ministry submits that information about municipal employees or officials involved in a law enforcement investigation is beyond their "routine, day-to-day" responsibilities and thus constitutes their personal information.

[35] The town's submissions do not address the issue of whether the records contain personal information according to the definition in section 2(1), because it was unable to do so "without seeing copies of the records and knowing the content of the records."[14]

[36] One of the notified affected parties provided representations which were withheld as confidential during the inquiry. In summary, however, the affected party believes that many of the records contain their personal information.[15]

[37] Respecting the information provided by the town to the OPP, the appellant submits that elected officials or officers of the town were clearly acting in an official, not personal, capacity. The appellant disputes the ministry's reliance on Order P-1124, arguing that when the mayor and CAO of the town contacted the OPP to seek an investigation, they were doing so strictly in their professional capacities.

Analysis and findings

[38] In order to determine if section 49(b) applies, or if section 49(a) is engaged, as claimed by the ministry, I must first decide whether the records contain "personal information" and, if so, to whom it relates. Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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.

[39] Based on my review of the records, I find that they contain the personal information of the appellant and other individuals. Specifically, I find that the records contain personal information about the appellant that fits within paragraphs (a), (b), (d) and (h) of the definition of personal information in section 2(1) of the *Act*. Although the ministry claims in its submissions that the opinions expressed by individuals about themselves *and* others is their own personal information, I reject the latter part of that submission. Paragraph (g) of the definition refers to "the views or opinions of another individual about the individual," and I find that the records also contain personal

---

[14] In response to the town's submission that this office should provide it with copies of the records, the adjudicator advised the town that the IPC does not disclose records or order an institution to disclose records to a party to an appeal for the purpose of making representations. The town was advised to contact the ministry to request further information and to review the town's own records-holdings.

[15] A number of these same records were removed from the scope of the appeal under Issue A, above, because they are not responsive to the appellant's request for information about his contract matter.

information about the appellant as contemplated by that paragraph, since they include the views or opinions of other individuals about him.

[40] I find that the records also contain the personal information of other identifiable individuals that fits within paragraphs (a), (b), (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*. This information includes addresses, phone numbers, ages, birthdates, employment, views or opinions, and names, together with other information about these individuals.

[41] Acknowledging that some of the withheld information is about affected parties contacted in their professional capacity with the town, the ministry relies on Order P-1124 to argue that "none of the individuals [can be said to have] provided information in a professional or business capacity" because information about municipal employees or officials involved in a law enforcement investigation is beyond their "routine, day-to-day" responsibilities and thus constitutes their personal information. I disagree with the ministry's view of Order P-1124. This order stands for the principle, articulated in numerous later orders as well, that even though information may pertain to an individual in that person's professional capacity, where that information relates to an investigation into, or assessment of, the performance or improper conduct of that individual, the characterization of the information changes and becomes personal information.[16] Indeed, there is some information about one of the affected parties who held an official role with the town that "crosses the threshold" and therefore qualifies as that individual's personal information. I account for this finding in my review of section 49(b).

[42] However, the ministry has withheld not just information relating to that town employee but also a number of others. In particular, the ministry has withheld the names and some "phone book information" of town officials or employees and the observations, comments or actions of those individuals as recorded by the OPP during the investigation.

[43] In the first category of information, I note that these names belong to the affected parties who filed a complaint with the OPP or provided information to the OPP that is directly linked to the "contract matter" between the appellant and the town. Section 2(3) of the *Act*, which creates an exception to the personal information definition for the "name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity," is relevant here. As a starting point, therefore, I find that the names and other "phonebook" information about these town employees fits within section 2(3) of the *Act*.[17] In similar circumstances in Order MO-3310, Adjudicator Hamish Flanagan concluded that the name of the individual who contacted the municipal police force to request an

---

[16] Orders MO-1657, MO-1558-I, PO-2414, PO-2516, PO-2524, MO-2395 and MO-2510.
[17] Redacted from page 86, for example.

investigation was not that individual's "personal information" because "the affected party's complaint to the police falls within and was carried out as part of that individual's employment responsibilities" and, further, that "disclosing the affected party's name would not reveal something of a personal nature about the individual." I reach the same conclusion here. There is no indication that the performance of these town employees and officials was under scrutiny in relation to this "contract matter," thereby making the finding in Order P-1124 relevant; nor would there have been any reason for them to contact the OPP about this matter if not for their position with the town. Accordingly, I find that the information about these town employees and officials fits within section 2(3) of the *Act* and does not qualify as personal information. It follows that this particular information cannot be withheld under the personal privacy exemption.

[44] Before reviewing the second type of information collected from town officials and employees, I note that the ministry has also withheld the cell phone numbers of OPP officers. No specific representations were provided about these numbers being withheld by reason of the personal privacy exemption, but they are variously identified in the records as non-responsive or subject to the ministry's law enforcement exemption claims. For completeness, I will review whether they qualify as personal information. In my view, where a cell phone number appears in an official context, together with other contact information about an individual professionally, as these numbers do in the current appeal, it does not fit within the definition of personal information in section 2(1) of the *Act*. Rather, in keeping with my finding about town officials directly above, I find that the cell phone numbers of OPP officers are not personal information, but instead constitute professional information as contemplated by section 2(3) of the *Act*.

[45] The second category of information collected from town officials and employees includes their observations, comments or actions as recorded by the OPP during the investigation into the complaint. The ministry argues that by virtue of its association with a law enforcement investigation, the collected information is rendered "personal," notwithstanding that the individuals were responding as town employees or officials in relation to a town matter. The ministry has offered this argument previously and it has been dismissed. In Order PO-2934, for example, Adjudicator Laurel Cropley wrote:

> The Ministry has argued that the nature of this information is personal, due to its connection to the police investigation. I am not persuaded that the characterization of statements given by individuals in their professional or employment capacity automatically changes simply because they are given to the police during an investigation. Previous orders of this office have not drawn this distinction. For example, in Order P-1409, Senior Adjudicator John Higgins considered records that contained information pertaining to the views or activities of government officials relating to events that took place in September 1995 at Ipperwash Provincial Park, where a shooting occurred and an individual was killed, as well as comments made by "spokespersons" and "native

> leaders." Following an extensive discussion of the distinction between personal and professional capacity, he concluded that references to individuals as "spokespersons" (for occupiers of the park and for occupiers of another property), native leaders and the views and/or activities of government officials did not constitute the personal information of these individuals, where the information related to their employment or official functions and did not contain evaluations or criticisms of these individuals.
>
> Although the records at issue in that case did not contain statements made to the police as is the case in the current appeal, the seriousness and sensitivity of the context in which the records were made is similar. (See also: [Order] MO-2374, relating to the views and opinions of employees during a forensic audit) …

[46] Adjudicator Cropley then reviewed Order MO-2510, where information gathered during a police investigation into a motor vehicle accident had been collected from three individuals whose employment responsibilities included road construction and signage. There, the adjudicator concluded that the withheld comments of two affected parties did not cross from the professional over into the "personal information" realm because their involvement "was predominantly in the context of their employment responsibilities relating to road construction and/or road signage." However, information collected from a third affected party qualified as "personal information" because although this individual had similar employment responsibilities, his conduct was being questioned. In other words, the necessary catalyst is scrutiny of the employee's actions. After expressing her agreement with the reasoning in Order MO-2510, Adjudicator Cropley stated:

> … [S]imply providing a statement to the police during an investigation is insufficient to change the character of information provided in an employment context into something that is inherently personal in nature about the individuals who provided the statement. I have reviewed the withheld portions of the records and find that there is nothing in them to indicate that any of these individuals' conduct was scrutinized and questioned; nor do they contain any other information that could be characterized as "inherently personal." Rather, the comments made by the individuals referred to in the records relate directly to the events that occurred and the actions they took in dealing with the workplace incident.

[47] Order MO-2374, also referenced in Order PO-2934, related to a forensic audit done of the City of Vaughan's IT system to determine the source of email leaks. Relevant in this appeal is the finding that comments and observations by employees did not qualify as personal information. Adjudicator Jennifer James explained her rationale as follows:

> With respect to the information relating to the City's Information Technology staff, it appears that the entire team was interviewed and asked to share their views, if any, about how the emails ended up in the public domain and their recollection of the incident. As a result, some of the information contained in the summary and audit reports refer to their thoughts and views about what happened. Again, those interviewed describe their understanding of the City's response including any actions they performed in the course of their employment in response to the incident. The City submits that this information qualifies as "personal information" as the purpose of the collection of the information was to determine how and if the e-mails were accessed from the City's servers. In my view, this information relates solely to the individual's expertise. As a member of the City's Information Technology department, these individuals have expert knowledge relating to the City's servers. Accordingly, the audit team sought their opinions as to how the e-mails could have been accessed. It was also the audit team's responsibility to gather information as to what steps were taken by the City after the incident. I find that this information relates solely to these individuals' professional, official or business capacity and thus does not qualify as their "personal information".

[48] I reach the same finding in this appeal regarding information obtained by the OPP from town employees and officials relating to the town's IT system. The involvement of several of the affected parties in this appeal is directly related to their employment responsibilities with the town in an IT capacity or other duties connected to system administration. Accordingly, I find that the information about the IT matter in the form of comments, observations or actions taken is only related to these particular town employees or officials in a professional capacity. I make the same finding respecting the comments, observations or actions taken by the town's consultants in relation to these same matters. Therefore, with exceptions for information about their employment (paragraph (b) of the definition) and other limited details fitting within section 2(1), I find that the remaining information collected from these particular individuals would not reveal something of a personal nature about them, if disclosed, and that it does not qualify as personal information under the *Act.*

[49] I note here that several records withheld under section 49(b), along with various parts of section 21(2) or 21(3) do not contain any personal information at all, or only that belonging to the appellant. Examples of these findings are pages 15, 46-49, 52, 54, 56, 62-64, 69-71, 86, 99, 178 and 206-208. Such information cannot be withheld under the personal privacy exemption since only *personal* information may be. Additionally, disclosure to the appellant of records containing only his own personal information could not result in an unjustified invasion of another individual's personal privacy. However, since the ministry expanded its claim to section 14(1)(d) to all of the records at the inquiry stage, I must still address this claim below.

[50] In conclusion, since the responsive records contain the personal information of the appellant, the third party information, law enforcement and personal privacy exemptions must be considered under sections 49(a) and 49(b), which are the relevant discretionary exemptions in Part III of the *Act.* I begin with section 49(b).

C. Would disclosure result in an unjustified invasion of personal privacy under the discretionary exemption in section 49(b)?

[51] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, but this right of access is subject to a number of exceptions.

[52] One such exception is section 49(b) which gives the ministry discretion to deny access to information if its disclosure would constitute an unjustified invasion of another individual's personal privacy. Section 49(b) can only apply if the record contains the *personal* information of another identifiable individual with that of the appellant. Further, if the information falls within the scope of section 49(b), that does not end the matter because the ministry is still obliged to exercise its discretion in deciding whether to disclose the information by weighing the requester's right of access to the requester's own personal information against the other individual's right to protection of his or her privacy. Where a record does *not* contain the appellant's own personal information and only another individual's, section 21(1) prohibits the ministry from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[53] Whether the relevant exemption is section 21(1) or section 49(b), sections 21(1) to (4) are considered in determining whether the unjustified invasion of personal privacy threshold is met.

[54] The exceptions in sections 21(1)(a) to (e) are relatively straightforward. None of the exceptions in section 21(1)(b) to (e) apply in this appeal, but section 21(1)(a) (consent) does, and I address this issue below. Section 21(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. Section 21(4) has no application in the circumstances of this appeal.

[55] When the exemption of records under section 49(b) is at issue, this office will consider and weigh the factors and presumptions in sections 21(2) and (3), balancing the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.[18] As explained in Order MO-2954, section 49(b) is "…permissive in nature, which … reflects the intention of the legislature that careful balancing of the privacy rights versus the right to access one's own personal information is required in cases where a requester is

---

[18] Order MO-2954.

seeking his own personal information."[19]

[56] In addition, where an appellant originally supplied the information, or is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[20] This is referred to as the absurd result principle.

[57] In denying access under this exemption, the ministry relies on the presumptions against disclosure in sections 21(3)(b) and (d) and the factors favouring privacy protection in sections 21(2)(f) and (h). One of the affected parties also raises section 21(2)(g). These parts of section 21 state:

> (2) 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,
>
> > (f) the personal information is highly sensitive;
> >
> > (g) the personal information is unlikely to be accurate or reliable; and
> >
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence…
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (b) 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;
> >
> > (d) relates to employment or educational history;

Representations

[58] The ministry states that the records fall squarely within the "mandatory presumption" in section 21(3)(b) because they were created or collected during an OPP law enforcement investigation involving the municipality. The ministry states that the investigation has concluded and no charges were laid, but if the OPP had discovered that criminal offences occurred, charges under the *Criminal Code* or another statute could possibly have been laid. The ministry submits that IPC orders have long recognized that investigations need not result in criminal proceedings for section

---

[19] At paragraph 74 of Order MO-2954.

[20] Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622.

21(3)(b) to apply. The mere fact of there being "an investigation into a possible violation" of law is sufficient.

[59] The ministry also submits that it has withheld portions of pages 9 to 14, 16, 20, 22, 25-28, 87-88 and 134-138 under the presumption in section 21(3)(d) because they contain information about the employment history of named individuals, such as employment status, termination and recruitment.

[60] Respecting the factors in section 21(2), the ministry submits that two of them are relevant in this appeal. Beginning with section 21(2)(f), the ministry argues that the information in the records is highly sensitive because:

- affected third party individuals have not consented to the release of their personal information and disclosure against, or without consideration of, their wishes could be expected to cause significant distress;

- once the personal information is disclosed, it ceases to be protected by the *Act* and control by the affected third parties over this law enforcement investigation information would also be lost; and

- personal information about complainants, witnesses or suspects as part of their contact with the OPP is "highly sensitive" for the purpose of section 21(2)(f) (Order P-1618).

[61] Regarding the factor in section 21(2)(h), the ministry submits that the affected parties provided the information to the OPP "with the expectation that it would be held in strict confidence and would be used solely for law enforcement related purposes." The ministry expresses the concern that disclosure of such information in this case will lead to "the public and public institutions such as municipalities" ceasing to cooperate with the OPP and other law enforcement agencies when they are conducting investigations. More specifically,

> The ministry questions why anyone would willingly cooperate with the police if they know information about themselves and an investigation about them was later going to be disclosed in the manner contemplated by this appeal. The ministry submits that this outcome is contrary to the public policy goal of encouraging the public to seek police assistance, that it would compromise the ability of the police to carry out their statutory mandate to investigate potential crimes, and that this would lead to the erosion of public confidence in the police.

[62] Some of the submissions provided by affected parties address the personal privacy exemption and the non-confidential portions can be summarized, as follows:

- any information that was provided was done so only in order to assist in an investigation into a possible violation of law; as such, the information was provided in confidence as set out in section 21(2)(h);
- this same individual also expresses concern that the record contains errors, thus raising the possible application of section 21(2)(g); and
- not having been able to review the records prior to making submissions, all available exemptions under the *Act*, including the personal privacy exemption, are relied upon.

[63] Several affected parties provided written consent to the disclosure of their personal information, but the ministry did not issue a revised decision releasing information related to any of the individuals. Some of the records, or portions of records, associated with the individuals who provided this consent to the ministry, however, have been removed from the scope of the appeal because the information is not responsive to the request.[21] Two other individuals provided their written consent and this is accounted for in my findings below.

[64] The appellant takes the position that "all records should be released immediately" since they are all traceable to the investigation into the false allegations made by the town in relation to the "contract matter." The appellant's representations allude to the factor in section 21(2)(a), decrying the claim to the personal privacy exemption for information collected from town officials whose actions, he submits, ought to be subject to scrutiny. The appellant argues that "the public has a right to know how elected officials are behaving in making false accusations to the OPP for an improper purpose" because such officials ought to be held to a high standard.

[65] The appellant also asserts that scrutiny is required so that the public can see how large sums of taxpayer money were spent initiating and pursuing an OPP investigation into baseless allegations. Finally, the appellant submits that the records can be severed, if necessary.

Analysis and findings

[66] Previously, I found that some records, or portions of records, initially identified by the ministry as responsive to this request are not, in fact, reasonably related to the appellant's request. I also found that some of the withheld information did not qualify as "personal information" because it fell within section 2(3) of the *Act*. Therefore, my review of section 49(b) is conducted in relation to the remaining, intertwined, personal information of the appellant and the other identifiable individuals.

---

[21] For example, pages 130-133, 139-141, and 142-143.

Section 21(1)(a) – consent

[67] Section 21(1)(a) prohibits an institution from disclosing "personal information to any person other than the individual to whom the information relates except, upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access." For consent to operate as an exception to the mandatory section 21(1) exemption, it must be in writing, and provided to the institution that has custody and control of the records containing the individual's personal information. The individual can provide this consent either directly to the institution or indirectly through this office on appeal.[22] Although the ministry's submissions suggest that none the affected parties have consented to the release of their personal information, this is contradicted by the consents obtained from five affected parties. I have reviewed these written consents and I am satisfied that they meet the criteria for validity that has been established by this office.

[68] Records or information related to three of the consenting affected parties who provided statements to the OPP have been removed from the scope of the appeal as non-responsive, and are not included in this analysis. However, the ministry withheld records that contain the personal information of the other two individuals who provided written consent. I am satisfied that information on pages 75-79 and 81-83 contained in officer's notes recording contact with, or information about, those two individuals is information to which they are entitled to have access. Several portions of other records, including page 40, also fall under this consent. I find that section 21(1)(a) applies to the personal information of these two individuals, and I will order disclosure of it to the appellant. It should be noted here that the middle parts of two of the pages that are to be disclosed by operation of section 21(1)(a) are very poor quality. The ministry should provide legible copies of pages 76 and 79 to the appellant.

[69] Regarding the appellant's claim that the failure of other affected parties to respond to notification should be taken as consent to disclosure, this is clearly at odds with the requirements of section 21(1)(a). Therefore, apart from the information related to the two individuals who gave their written consent to disclosure, I find that section 21(1)(a) does not apply.

Section 21(3)(b) – investigation into a possible violation of law

[70] To begin, in relying on section 21(3)(b) (and 21(3)(d)) to withhold information, the ministry refers to them as mandatory presumptions. In a review of records with mixed personal information of an appellant and others under section 49(b), however, the presumptions in section 21(3) do not serve as a compulsory basis for refusing disclosure when – on balance - the balance of relevant reasons in sections 21(2) and

---

[22] See, for example, Orders PO-1723, PO-2215 and PO-2280.

21(3) together weigh in favour of disclosure.[23]

[71] With regard to the presumed invasion of privacy in section 21(3)(b), I am satisfied that this provision is established in the circumstances of the appeal. I accept that an investigation into a possible violation of law occurred, as the section requires. I agree with the ministry that it was open to the OPP to lay charges had there been sufficient indication of criminal wrongdoing and that the fact that no charges were laid is not determinative. Recognizing that the types of information set out in section 21(3) are generally regarded as particularly sensitive,[24] I find that the presumption in section 21(3)(b) weighs in favour of privacy protection for the withheld personal information on pages 1-8, 9-10, 13, 16-28, 30, 37, 40, 55, 57-58, 64, 68, 72-79, 81-83, 87-88, 90-91, 94-96, 98, 101-105, 107-110, 113-115, 120, 122-124, 144-146, 147-152 (duplicated at 153-158), 159-169 and 171-177.

Section 21(3)(d) – education or employment history

[72] In my consideration of the presumed invasion of privacy in section 21(3)(d), I noted that the listing of pages in the ministry's representations on this provision differs from the identification of the pages in the ministry's index that are subject to the claim. I reviewed the records as identified in the index to ensure completeness, and I accept the ministry's submission that some records contain information about the employment history of individuals other than the appellant, including their employment status, termination and recruitment. Specifically, I find that section 21(3)(d) applies to portions of pages 3, 9, 87-88, 91 (duplicated at 114), 94, 102, 109-110, 144-146, 147, 153, 159-169, and 171-177. In making this finding, I observe that much of the employment information is about the appellant. Clearly, its disclosure to him could not result in an unjustified invasion of personal privacy, and this is accounted for in my final severances to the records.

Section 21(2)(a) – public scrutiny

[73] The appellant's submissions suggest that the factor favouring access in section 21(2)(a) is relevant because the public "has a right to know" about the town's actions in filing a false complaint against him. Based on my findings on the personal information issue, there will already be a great deal of disclosure of information relating to the town's actions in this matter, as uncovered by the OPP in their investigation. For the most part, therefore, the remaining personal information at issue here is the withheld personal information about individuals that does not relate in any way to the appellant's

---

[23] See Order MO-2954, issued in September 2013, which expands upon the analysis to be conducted under section 49(b) acknowledged by the Divisional Court in *Grant v. Cropley,* (2004) CanLII 11694 (ON SCDC). With the emphasis on the discretionary nature of an institution's decision-making under section 49(b), the application of any of the section 21(3) presumptions does not result in the mandatory application of the personal privacy exemption.

[24] Order MO-2954.

"contract matter" with the town. I am not persuaded that its disclosure is desirable for the purpose of subjecting the activities of either the town or the OPP (as the institution to which this request was made) to public scrutiny. Accordingly, I find that the factor weighing in favour of disclosure in section 21(2)(a) does not apply.

Section 21(2)(f) – significant personal distress

[74] To establish the application of section 21(2)(f), I must be satisfied that disclosure of the particular information could reasonably be expected to cause significant personal distress to the individual to whom it relates.[25] Given the context in which the records were prepared, I find that this factor applies to the personal information of individuals other than the appellant, but attracts only moderate weight. For the most part, the ministry's submission that disclosure could lead to a loss of control by affected parties over their personal information in relation to a law enforcement investigation is not established because this particular law enforcement investigation focused on the appellant's "contract matter" with the town,[26] not any matter in which the affected parties themselves were implicated. Considering the removal of certain records related to other town matters from the scope of this appeal as non-responsive, I conclude that only some of the personal information provided by the affected party witnesses in response to the questioning by the OPP about the appellant and other circumstances relevant to the investigation could be significantly distressing enough to attract the factor in section 21(2)(f).[27] Consequently, I find that section 21(2)(f) applies to some of the information provided to the OPP by other individuals during this investigation.

Section 21(2)(g) – unlikely to be accurate or reliable

[75] The possible relevance of this factor was raised in passing by one of the affected parties. Past orders have found that this factor is intended to weigh against disclosure where the information is unlikely to be accurate or reliable, leading to potential negative consequences for the individual named in the record.[28] It has been observed in some appeals that it can be difficult for a decision-maker to assess whether comments made by the parties are "unlikely to be accurate or reliable." In this appeal, however, the specific record and other related information referred to by this particular affected party in their confidential submissions has been removed from the scope of the appeal because it is not responsive to the appellant's request. Therefore, in the circumstances of this appeal, I find that the factor in section 21(2)(g) is not relevant in determining whether the disclosure of the affected parties' personal information would constitute an unjustified invasion of personal privacy.

---

[25] Orders PO-2518, PO-2617, MO-2344 and PO-2916.
[26] In this regard, see Order MO-2954.
[27] Order P-1014.
[28] Order PO-2271.

Section 21(2)(h) – supplied in confidence

[76] This factor at section 21(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. The factor requires an objective assessment of the reasonableness of any confidentiality expectation.[29]

[77] I accept that the context and the surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied by them to the OPP during this investigation would be subject to a degree of confidentiality. However, past orders have recognized that there are limits to the expectation of confidentiality in relation to information provided in the course of an investigation. Generally, the limit is set by tracing the personal information belonging to an appellant. In Order P-1014, Senior Adjudicator John Higgins concluded that the factor in section 21(2)(h) applied to "all personal information provided by the witnesses and the complainant which pertains to individuals other than the appellant." Similarly, in Order PO-2916, I found that section 21(2)(h) applied only to the personal information of the affected parties, which was intermingled with the views and opinions expressed about the requester in that appeal. Following this past approach in this appeal, I find that the factor favouring privacy protection in section 21(2)(h) applies only to the personal information of the affected party witnesses or complainants and is a factor weighing in favour of a finding that disclosure of only certain information would constitute an unjustified invasion of personal privacy.

Summary

[78] In my analysis of the ministry's exemption claim under section 49(b), I have balanced the appellant's access rights respecting this information against the competing privacy rights of other individuals. Having done so, I find that the privacy interests in some of the withheld personal information to which the presumptions and factors apply must yield to the appellant's right of access to information about his "contract matter" with the town, and that section 49(b) does not apply it. However, upon consideration of most of the personal information about other individuals that is contained in the responsive records, I find that its disclosure would result in an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, it qualifies for exemption under section 49(b).

[79] I have also considered whether the absurd result principle applies. Under this principle, whether or not the factors in section 21(2) or the presumptions in section 21(3) apply, where the appellant originally supplied the information or is otherwise aware of it, it may be found not exempt under section 49(b), because to find otherwise

---

[29] Order PO-1670.

would be absurd and inconsistent with the purpose of the exemption.[30] Having done so, I conclude that the absurd result principle does not apply in the circumstances of this appeal because the evidence before me does not establish either of the two reasons for applying it.

[80] The non-exempt information and the personal information of the appellant can be severed from the information that is exempt under section 49(b). Given the volume of records at issue in this appeal, I will not list the particulars of my findings on section 49(b) here. Instead, they are shown on the copies of the records sent to the ministry with this interim order.

[81] I must now review whether section 49(a) applies to the information I have not already concluded is exempt under section 49(b). First, I will address the ministry's claim that the third party information exemption in section 17(1) applies to two records.

D. Do the records contain third party information that qualifies for exemption under the discretionary exemption in section 49(a), together with section 17(1)?

[82] The ministry claims that section 17(1) applies to two records, both of which are draft forensic audit reports prepared by a consultant retained by the town. The two records are identified as pages 180-186 and pages 187-193 in the ministry's index.[31] At adjudication, the ministry revised its position, advising that it now only claimed the exemption in relation to pages 180-191. On my review of the records, however, I note that pages 192 and 193 are the final page of, and appendix to, the second report. It could be that the ministry merely misidentified the pages; regardless, pages 192 and 193 are integral to the second report and since section 17(1) is a mandatory exemption, they remain part of the analysis of this issue.

[83] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[32] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[33]

[84] For section 17(1) to apply, the ministry and/or the third party whose information is subject to a request for access under the *Act* must satisfy each part of the following three-part test:

---

[30] Orders M-444 and MO-1323.
[31] The first draft forensic audit report is unreadable due to the poor quality reproduction of the copy provided.
[32] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).
[33] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.[34]

[85] The ministry contacted the town to obtain its views on the disclosure of a number of records including, it appears, the draft forensic audit reports. As stated, however, the town indicated it was not in a position to make full submissions, expressing concern about the adequacy of the information provided by the ministry regarding the nature and content of the records. Putting these concerns aside for the moment, of greatest relevance to the ministry's section 17(1) claim is the fact that the ministry and the town are both "institutions:" the ministry is subject to *FIPPA* and the town is covered by *MFIPPA.*

[86] This fact, together with past review of such matters by this office, raises the question of whether the ministry is entitled to rely on section 17(1) to withhold records on behalf of the town as an affected third party that also happens to be an institution.

Representations

[87] The ministry states that the draft forensic audit reports were prepared by a "consulting company with specialized expertise" and consist of a review of the town's information technology (IT) systems. According to the ministry, these records should be protected because "its authors have not been notified of the fact that the report[s are] subject to disclosure pursuant to this appeal." The ministry reproduces a passage from the second report[35] as evidence that the consultant has asserted a proprietary interest in the records that precludes access under the *Act.*

---

[34] Section 17(1) states: A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[35] This passage is not set out in the order as this would disclose the contents of a record claimed to be exempt.

[88] Although the ministry suggests that the forensic audit reports' authors are unaware of the potential for disclosure under the *Act,* it is clear from the appeal file that the ministry did indeed notify the third party consultant under section 28 of the *Act*.[36] Upon notification, the consultant declined to consent to the disclosure of the records. According to the consultant, the records contain "confidential technical and proprietary information belonging to our client [the town]." The consultant adds that the reports were provided to the OPP in confidence to assist in a law enforcement investigation and, further, that their release "could be expected to be harmful to our client's economic interests and cause undue loss." The consultant also suggests that "information might not be provided to police services in the future if its confidentiality is not protected."

[89] As suggested previously, there are no submissions from the town that specifically address the possible disclosure of the draft forensic audit reports.

[90] The ministry's final point is that the nature of the records, their confidentiality terms and the circumstances of their provision to the ministry all dictate that the consultants and the town be given an opportunity to provide submissions regarding whether section 17(1) or other exemptions apply.

[91] The appellant's representations do not directly address the test under section 17(1). Rather, he submits that the reports should be disclosed because they were "paid for with public tax dollars."

[92] None of the remaining parties specifically comments on section 17(1).

Analysis and findings

[93] Two forensic audit reports prepared by a third party consultant for the town are in the ministry's custody or control, along with the cover letter the town wrote to the OPP.[37] These audit reports are among the records responsive to an access request received by the ministry. What is the proper approach to be taken to determining access to the reports when they were prepared for a "client" that is itself an institution subject to Ontario's access laws? What, and whose, interests are at stake must be considered.

[94] Order MO-2468-F addressed the issue of whether the third party information exemption in section 10(1) of *MFIPPA*[38] could apply to records where the alleged harm from their disclosure would be to an affected party institution. The discussion in Order

---

[36] The ministry's notification letter to the consultant is dated July 23, 2013 and the consultant's response followed on August 8, 2013.

[37] The cover letter to the audit reports is identified as page 179 and consists of a March 4, 2013 letter from the town's CAO to an OPP inspector.

[38] Section 10(1) of *MFIPPA* is the equivalent of section 17(1) of *FIPPA*.

MO-2468-F is instructive in the circumstances of this appeal, both for its review of relevant past decisions, such as Orders MO-2186, MO-2192-I, MO-2377-F and P-218, and its finding that the third party information exemption cannot be relied upon for withholding information on behalf of an affected party institution. Starting at page 19 of Order MO-2468-F, Adjudicator Laurel Cropley wrote:

> In Order MO-2186, Adjudicator Beverly Caddigan considered a situation where a municipality submitted a proposal to an institution under the provincial *Act* in response to a Request for Proposals issued by the provincial institution. She came to the following conclusions regarding the municipality's ability to rely on the mandatory exemption in section 10(1) of the *Act*:
>
>> In my view, the exemption under section 10(1) is not applicable to the records at issue in this appeal. This office has long held that section 10(1) is designed to protect the confidential "informational assets" of **businesses or other organizations** that provide information to institutions. This finding has been upheld in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.). In this case, the parties are two public bodies, not businesses or other non-public sector organizations.
>>
>> … where the objective of denying access is to protect the business interests of an institution such as the Municipality, the exemption found in section 11 of the *Act* (economic and other interests)[39] exists for this purpose. [emphasis in the original]

[95] In this appeal, the third party consultant's refusal to consent to the disclosure of the draft forensic audit reports is based on its stated concerns about harm to its client's economic interests, including undue loss, with disclosure of the "confidential technical and proprietary information" it says belongs to the town. Based on my review of past orders, I agree that where the economic (or other) interests of an institution are sought to be protected, the appropriate exemption is section 18 of the *Act*, not section 17. In the circumstances of this appeal, including the evidence that is currently available, I cannot properly evaluate the possible section 18 (or section 11 *MFIPPA*) harms to the town with the disclosure of the forensic audit reports – records that incidentally contain the appellant's personal information. Furthermore, without seeking further representations from the parties, it is not possible to adjudicate the ministry's seemingly contrary assertion that it is the consultant that has a proprietary interest in the forensic audit reports.

---

[39] Section 18 of *FIPPA.*

[96] I also found above that page 179, the cover letter to the reports, does not contain personal information and so cannot be withheld on the basis of section 49(b) or 21(1). However, this record may also contain information affecting the town's interests. The only other exemption claimed by the ministry respecting these two records and their cover letter was section 14(1)(d), which I conclude below does not apply.

[97] Accordingly, I reserve the decision regarding the disclosure of pages 179-193 pending receipt of additional representations that I will seek from the parties. The ministry will be required to obtain, and provide this office with, a legible copy of the first audit report for this purpose. I remain seized of all matters related to the forensic audit reports in the interim.

E. Do the records contain law enforcement information that is exempt under the discretionary exemption in section 49(a), in conjunction with sections 14(1)(d), 14(1)(l) or 14(2)(a)?

[98] As noted previously, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions, including section 49(a), under which the ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. However, section 49(a) is intended to be applied with recognition of 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.[40]

[99] One of the exemptions listed in section 49(a) is the law enforcement exemption in section 14 of the *Act.* The ministry's original claims under the law enforcement exemption were modified during the inquiry, with submissions provided at that time on the newer claim that section 14(1)(d) applies to all records, section 14(1)(l) to certain types of information and section 14(2)(a) to two records, only.

[100] The relevant parts of section 14 of the *Act* state:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

---

[40] Order M-352.

(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; …

[101] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) of the *Act.* The term "law enforcement" has been found to apply to an investigation into a possible violation of the *Criminal Code*.[41]

[102] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[42]

[103] An institution must do more than simply argue 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.[43] The institution must provide sufficient evidence about the potential for harm, thereby demonstrating 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.[44]

Representations

[104] The ministry explains the decision to expand its claim under section 14(1)(d) of the *Act* as being intended to protect the identities of "a complainant or the employees or agents of a complainant." According to the ministry, "the nature of the records is such that revealing any [of] them would likely identify the complainant." The ministry submits that past orders of this office, such as Order MO-2043, have found that the identity of a complainant fits within the exemption.

[105] Similar submissions on section 14(1)(d) were received from several affected parties, but they cannot be set out in any great detail for confidentiality reasons.[45] Generally, however, it can be said that these individuals maintain that their statements to the OPP were provided in confidence and should not be disclosed. One suggests that "informer privilege" applies. Another suggests that although they understood when providing the statement that its purpose was to assist in the investigation and that it may later be disclosed in court proceedings, they were not advised that it could be disclosed (in response to an access request), even if no court proceedings resulted from

---

[41] Orders M-202 and PO-2085.
[42] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[43] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[44] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[45] These submissions also relate to the exemption of their personal information under section 49(b).

the investigation, such as occurred here.

[106] Regarding section 14(1)(l), the ministry indicates that it has applied this exemption to information that would reveal "how sensitive police operations work," as well as police cell phone numbers and police codes. As an example of the first type of information, the ministry submits that pages 117 and 118 contain internal communications, the disclosure of which would inhibit the ability of OPP management to communicate on sensitive law enforcement matters out of concern that they would be subject to disclosure. The ministry maintains that "this inability to communicate would, in turn, harm the ability of the OPP to operate in a cohesive and collaborative manner, and this would, we assert, hamper the control of crime."

[107] The ministry submits that the IPC has consistently upheld section 14(1)(l) in relation to police codes, "such as police ten codes and police cell phone numbers." According to the ministry, disclosure of this information would impair the ability of police to communicate on a confidential basis, "thereby harming police officers' safety and increasing the likelihood that criminal elements could use these records for illegal purposes." The ministry lists nine past orders, including Orders PO-2571 and PO-2660, in support of its position on withholding police ten codes.

[108] The ministry argues that section 14(2)(a) applies to pages 17-28 and 35-40 because they are reports prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law, thereby authorizing the ministry to withhold them. Acknowledging the three-part test adopted by this office for the application of this exemption, the ministry submits that the second and third parts of it are especially straightforward and, in this case, are met. In particular, the ministry states that the second part is satisfied because the two records were created by the OPP as part of a law enforcement investigation and the third requirement is met due to the OPP's mandate under section 19 of the *Police Services Act* to provide policing services in areas of the province that do not have them, which means that it is "clearly a law enforcement agency within the meaning of this part of the test." Returning to the first part of the test, the ministry submits that these records qualify as "a report," even considering the IPC's "narrow interpretation" of the term in decisions such as Order MO-2266 which requires the document to contain more than "mere observation or recordings of fact." The ministry maintains that the records here are reports because they: summarize and evaluate the law enforcement investigation, contain substantive analysis and are organized with a structure that includes distinct, separate headings and, in the case of page 35-40, a subject index.

Analysis and findings

[109] Bearing in mind the standard articulated by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, I find that, with one exception related to section 14(1)(l), the ministry has not tendered sufficient evidence to link disclosure of the remaining

information withheld under sections 14(1)(d), 14(1)(l) or 14(2)(a) with the harms that these law enforcement exemptions are intended to protect against. This finding is attributable, in part, to my conclusion above that the personal information of individuals who cooperated with the OPP in its investigation is exempt under section 49(b). My reasons respecting each exemption under section 49(a) follow.

Section 14(1)(d) - confidential source

[110] To establish the application of section 14(1)(d), which the ministry now says applies to *all* of the withheld records, I must be satisfied that disclosure of the information could reasonably be expected to reveal the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.[46] The ministry was required to provide evidence of the circumstances in which the information was provided so as to establish that there was a reasonable expectation that the identity of the source or the information given by the source would remain confidential.[47] The ministry did not describe the circumstances of the information's provision to the OPP in its representations on section 14(1)(d), but did explain that the new, broad claim was intended to protect the identity of the "complainant or the employees or agents of a complainant" in this matter.

[111] I accept that the records were created – and the information provided – in the context of an existing law enforcement investigation. However, the evidence does not support the claim that any expectation of confidentiality would be reasonable in the circumstances. Past orders have permitted the application of section 14(1)(d) to anyone who is a source of confidential information, whether a natural person or not, and regardless of an individual's capacity, that is, whether the individual is acting in a professional or official capacity or not.[48] In this appeal, the ministry applies the exemption to protect "a complainant or the employees or agents of a complainant," but as was made clear in my analysis of the personal information issue, the ministry severed only the names of certain town officials or employees in official correspondence, not their title.[49] As a result, the corporate complainant's identity has already effectively been disclosed, given the release of the position title along with contextual factors, including the smaller size of the community which makes it more likely that the identity of these individuals is (or was) known.[50] In such a setting, I am unable to conclude that any expectation of confidentiality would be reasonable.

[112] Regarding the claim that "informer privilege" applies, past orders have found

---

[46] Orders MO-1416 and PO-3052.
[47] Orders MO-1383, MO-1416 and PO-3075.
[48] See, for example, Orders PO-1706 and MO-2272.
[49] I also concluded previously that this information about town officials did not qualify as "personal information" because they were carrying out duties in a professional capacity; section 21(1) does not apply.
[50] See Order P-1125.

that the principles of "informant privilege" can be relevant in situations where an individual makes a complaint under a statute. The importance of protecting the identity of an informant or complainant is related to protecting the privacy interests of the particular informer/complainant and to encouraging a general practice of public participation in the enforcement of laws through a policy of confidentiality. The courts have recognized, however, that this type of privilege gives way in situations where the informer is a material witness.[51] It is reasonable to expect that the representatives of the corporate complainant would have been asked to testify in any criminal and/or quasi-criminal proceedings that resulted from the OPP investigation, also suggesting that their involvement could not reasonably be expected to remain confidential.[52]

[113] The ministry also seeks to protect the identity of the corporate complainant's "employees or agents." The ministry does not elaborate on what it means by "agents." Regardless, it is important to highlight my previous findings as to the records containing the personal information of these individuals and any other individuals contacted by the OPP during this investigation. Under the personal privacy analysis conducted, I found the *personal* information of affected parties exempt under section 49(b), given the weight of the section 21(2) and 21(3) factors and presumptions discussed. Ultimately, then, I am satisfied that disclosure of the remaining non-exempt information in the records would not reveal a confidential source of information for the purpose of section 14(1)(d).

[114] Additionally and finally, for those individuals who consented to the disclosure of their personal information to the appellant, I find that section 14(1)(d) also does not apply to any other information these two individuals provided to the OPP during the investigation.[53]

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

[115] According to the ministry's index, section 14(1)(l) is claimed for pages 1-2, 30, 34, 38, 39, 41, 51, 67, 69, 75, 83-84, 90, 97, 107, 113, 117-118 and 125-127. The test for determining whether section 14(1)(l) applies requires that disclosure of the withheld information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Since section 14(1)(l) contains the words "could reasonably be expected to," the ministry was required to provide sufficient evidence to establish a reasonable expectation of these particular harms occurring with disclosure of the 10-codes, OPP officers' cell phone numbers and information allegedly revealing how sensitive police operations work.

[116] First, I accept that past orders have found police codes to be exempt under section 49(a), together with the law enforcement exemption in section 14(1)(l) of the

---

[51] *R. v. Scott* (1991), 1990 CanLII 27 (SCC). See Order PO-1706.
[52] Order MO-1913.
[53] Order P-323.

Act. In this category of information are the "10-codes" mentioned by the ministry, which are codes that represent common phrases, particularly in radio transmissions and other communications between individuals employed in law enforcement. There are also patrol zone codes which identify the particular areas of a community being patrolled. In this order, I follow past IPC orders in concluding that disclosure of this type of information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.[54] Consequently, I find that this information qualifies for exemption under section 49(a), in conjunction with section 14(1)(l).

[117] The ministry also argued that section 14(1)(l) applies to OPP cell phone numbers.[55] In the draft SMEAC report,[56] a list of officers' cell phone numbers was withheld. To establish this position, the ministry was required to demonstrate a risk of harm with disclosure of the particular information that is "well beyond the merely possible or speculative." The quality and extent of the evidence required is dictated by context, including the seriousness of the consequences of disclosure.[57] In my view, police cell phone numbers are distinct from police codes. I concluded previously that in the context in which the cell phone numbers appear, they do not qualify as the officers' personal information, but rather serve as the contact number for each OPP officer in his or her professional capacity. Simply grouping the cell phone numbers in with police codes does not serve to establish a risk of harm beyond the "merely possible" with the disclosure of that information. No reasonable explanation of the nexus between disclosure of the cell phone numbers used by officers in the course of carrying out their duties and the harms in section 14(1)(l) was offered by the ministry. Moreover, it appears to me from the records that officers provided witnesses with their business card, which in some instances contains a cell phone number, so that the witness could contact them. In other places, the cell phone number appears in an email signature line that was disclosed.[58] Based on the submissions provided, therefore, I am not persuaded that disclosure of the police cell phone numbers would impede police communications or otherwise permit "criminal elements" to use them for illegal or nefarious purposes. In the absence of the requisite evidence that disclosure of OPP officers' cell phone numbers would facilitate the commission of an unlawful act or hamper the control of crime under section 14(1)(l), I find that the exemption does not apply to them.[59]

[118] Next, the ministry submits that disclosure of information that would reveal "how

---

[54] Orders M-757, PO-2571, PO-2970 and PO-3421.
[55] As noted previously, in other places in the records, the ministry severed police cell phone numbers on the basis that they were not responsive to the request.
[56] SMEAC stands for Situation Mission Execution Administration Command. This record appears at pages 35-40 and section 14(1)(l) was claimed only in relation to pages 38 and 39.
[57] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.
[58] For example, the detachment manager's email signature contains the same cell phone number as that withheld from page 39 (the SMEAC report), but it was disclosed where it appeared on pages 32-34.
[59] Insofar as this finding differs from the few orders that have upheld section 14(1)(l) on this point, such as Orders M-552 and PO-3232, I decline to follow them. *Stare decisis* does not apply to IPC decisions.

sensitive police operations work," such as the internal communications on pages 117 and 118, could be expected to lead to section 14(1)(l) harms because it would inhibit the ability of OPP management to communicate on sensitive law enforcement matters. I have reviewed pages 117 and 118. This record contains a set of prepared questions and suggested answers for the OPP to respond to the media or public regarding matters related to the appellant's contract matter with the town. It does not contain more than the briefest of background information then available; the OPP investigation was ongoing at the time it was created. There are no details of the actual investigation; nor are there any descriptions of police operations. Effectively, the content of the record was prepared for public dissemination. The application of section 14(1)(l) simply cannot be supported by the evidence the ministry has tendered, and I find that it does not apply to this record.

[119] Notations on pages 30, 38, 90 and 97 indicate that section 14(1)(l) is also claimed for information other than police codes or cell phone numbers. As I noted above, the possible application of section 14 generally requires careful review due to the difficulty of predicting future events in the law enforcement context. However, based on my review of the rest of the non-coded information on these pages, I reject the ministry's position that its disclosure would reveal "how sensitive police operations work." These particular pages contain a brief description of potential assistance that could be provided by the OPP in this situation and some general precautions considered advisable. Disclosure of the withheld portions of pages 30, 38, 90 and 97 would not reveal the functioning of sensitive police operations. The ministry has also not tendered evidence capable of demonstrating a risk of harm that is beyond the "merely possible" for any other remaining information for which section 14(1)(l) is claimed.[60] There being insufficient support for the position that disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime under section 14(1)(l), I find that this exemption does not apply to this remaining information.

Section 14(2)(a) - law enforcement report

[120] The ministry's claim to section 14(2)(a) relates only to the supplementary occurrence report at pages 17-28 and the SMEAC report at pages 35-40, both of which were partly disclosed to the appellant.[61] To establish that section 14(2)(a) applies, the ministry was required to satisfy 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

---

[60] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

[61] The ministry's partial disclosure of pages 35-40 included the title page of the record, which revealed that it is a SMEAC report.

> 3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.[62]

[121] The word "report" is not defined in the *Act*, but past orders have established that for the purpose of section 14(2)(a), the word "report" means "a formal statement or account of the results of the collation and consideration of information." The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.[63] Section 14(2)(a) exempts "a report prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law," rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.[64]

[122] In this appeal, I agree with the ministry that the second and third parts of the test are established because the two records were created in relation to a law enforcement matter by the OPP, which is an agency which has the function of enforcing and regulating compliance with the law.[65]

[123] As for the first part of the test, the ministry argues that the two records each qualify as a report due to their structure and also because they summarize the law enforcement investigation and contain substantive analysis of it. As stated, past orders have found that as a general rule, occurrence reports, supplementary reports and similar records of police agencies do not to meet the definition of "report" under the *Act*, because they are considered to be more in the nature of recordings of fact than formal, evaluative accounts of investigations.[66] I observed above that this office has found that the wording used in section 14(2)(a) supports a strict reading of the exemption. As Adjudicator John Higgins elaborated in Order PO-2751:

> In my view, an overbroad interpretation of this section is not appropriate because the detailed provisions of section 14(1), which is a harms-based exemption, provide broad protection for specific law enforcement interests, and in that context, a sweeping interpretation of section 14(2)(a) would be contrary to the public access and accountability purposes of the *Act* elaborated in section 1(a). The latter section refers to the principles that government-held information "should be available to

---

[62] Orders 200 and P-324.
[63] Order MO-1337-I.
[64] Order PO-2751.
[65] Orders PO-2474, PO-3013 and PO-3273.
[66] Orders PO-1959, PO-3321 and MO-2065.

> the public," and "necessary exemptions from the right of access should be limited and specific."[67]

[124] I agree with this approach to section 14(2)(a) and adopt it in my analysis in this appeal. Regarding the supplementary occurrence report at pages 17-28, I note that large portions of the record are not responsive to the request for the reasons I gave earlier in this order.[68] Even considering the supplementary occurrence report as a whole, including the remaining responsive portions that are not exempt under section 49(b), I am unable to conclude that section 14(2)(a) applies, because I am not satisfied that this record qualifies as a report, notwithstanding its length. Based on my review, I find that it consists of observations and recordings of fact related to the concluded investigation. Although there are a few comments which might be considered evaluative, I am satisfied that the record consists primarily, and essentially, of descriptive information. Accordingly, I find that section 14(2)(a) does not apply to it.

[125] Respecting the SMEAC record at pages 35-40, I reach a similar conclusion. I find that the record does not qualify as a report for the purpose of section 14(2)(a) because a review of its content belies the ministry's submission that it provides an account of this investigation. I note that pages 35 and 36 were disclosed in full, while pages 37-40 were only partly withheld. Above, I upheld the ministry's claim of section 14(1)(l) to a small portion of page 39, and I need not review that information under section 14(2)(a). Page 40 contains a name belonging to one of the individuals who provided a valid consent under section 21(1)(a); I noted above that this information about the individual could not be withheld under section 14. With regard to the remaining withheld portions of the SMEAC record, therefore, it consists of the names of two town officials (pages 37 and 40) and OPP officers' cell phone numbers (page 39), information that is clearly fact, with no analytical or evaluative element to it. Even the portion of page 38 that sets out the intended role of the local OPP detachment does not do more than briefly and factually state what is to be done in the situation. In the overall context, the SMEAC record does not qualify under section 14(2)(a), and I find that this exemption does not apply.

[126] Since section 49(a) is a discretionary exemption, even if the information falls within the scope of one of the exemptions – here, section 14(1)(l) - the ministry was still required to consider whether to disclose the information to the requester. I will now review the ministry's exercise of discretion under sections 49(a) and 49(b) in relation to information I have found to be exempt.

---

[67] In the passage following this excerpt, Adjudicator Higgins enumerated the "wide variety of law enforcement interests addressed by section 14(1)," including the specific protections or facilitating roles offered by each part of section 14(1).

[68] With the present annotations to the records, there is no basis for distinguishing between the parts the ministry considered non-responsive and the ones claimed to be exempt. Nonetheless, some portions are non-responsive because they relate to other matters incidentally arising during the OPP's investigation of the complaint related to the appellant's contract matter with the town.

F. Did the ministry properly exercise its discretion under sections 49(a) and 49(b)?

[127] In situations where an institution has the discretion under the *Act* to disclose information even though it may qualify for exemption, this office may review the institution's decision to exercise its discretion to deny access. In this situation, this office may determine whether the institution erred in exercising its discretion, and whether it considered irrelevant factors or failed to consider relevant ones. The adjudicator, in reviewing the exercise of discretion by an institution may not, however, substitute his or her own discretion for that of the institution.

[128] The onus of proof rested with the ministry to demonstrate that it properly exercised its discretion. Therefore, where the ministry denied access under either section 49(a) or section 49(b), it was required to show that, in exercising its discretion, it considered whether a record should be released to the appellant because the record contains his personal information. My review of the ministry's exercise of discretion is limited to the information that I have found to be exempt.

Representations

[129] The ministry submits that it exercised its discretion to withhold information based on the need to protect the privacy of affected parties who are involved in OPP investigations. The ministry also explains that it sought to ensure the integrity of confidential systems used for internal purposes and to exercise its discretion consistently in accordance with usual practices.

[130] The appellant challenges whether the ministry exercised its discretion in good faith and for a proper purpose, given that it expanded the claim to section 14(1)(d) at the inquiry stage. The appellant submits that the ministry is acting in bad faith in stating that the records cannot be severed. Lastly, the appellant argues that the public has a right to know how town officials "acted for an improper purpose:" he alleges that the OPP's investigation was suspect and an abuse of authority and, therefore, that the ministry's exercise of discretion was tainted.

Findings

[131] My consideration of the ministry's exercise of discretion relates only to the information for which I upheld the exemption claims because the non-exempt information will be ordered disclosed. Although the appellant suggests that the ministry's expansion of its section 14(1)(d) claim to all records is evidence of bad faith in the exercise of discretion, the fact that I did not uphold the application of this exemption means that it is not necessary to review the exercise of discretion under it.

[132] Relevant considerations by an institution in the exercise of discretion may include:

- the purposes of the *Act*, including the principles that: information should be available to the public; exemptions from the right of access should be limited and specific; and the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect;
- whether the requester has a sympathetic or compelling need to receive the information;
- 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; and
- the historic practice of the institution with respect to similar information.

[133] Not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant.[69] An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law.[70]

[134] In the circumstances of this appeal, and with consideration of the particular information for which I have upheld the application of sections 49(a) or 49(b), I am satisfied that the ministry exercised its discretion in a proper manner. The appellant's obvious concerns about the *bona fides* of the town's complaint aside, there is no evidence before me of anything undue in the ministry's exercise of discretion. The ministry did sever the records to disclose information it concluded was not exempt. I am satisfied that in doing so, the ministry considered relevant factors, including the nature of the personal information it withheld, as well as the dual purposes of access and privacy in the *Act*. I am also satisfied that the ministry did not consider irrelevant factors.

[135] As a result, I uphold the ministry's exercise of discretion under sections 49(a) and 49(b).

ORDER:

1. I partly uphold the ministry's decision regarding the responsiveness of the records. Any information that I found to be newly non-responsive in this interim

---

[69] Orders P-344 and MO-1573.
[70] Order MO-1287-I.

order is highlighted in orange on the copies of the records sent to the ministry with this interim order.

2. Information previously withheld by the ministry as non-responsive and confirmed by this interim order is also highlighted for reasons of clarity on records to distinguish it from my findings under sections 49(a) and 49(b).

3. I uphold the ministry's decision to withhold information under section 49(b), in part. I have highlighted the exempt information in yellow on the copies of the records provided to the ministry with this interim order.

4. I also uphold the ministry's decision to withhold the following information under section 49(a), together with section 14(1)(l): ten-codes, patrol zones and other police codes contained in the records. This exempt information is also marked in yellow on the ministry's copy of the records sent with this interim order.

5. I reserve my decision on the ministry's denial of access to the forensic audit reports at pages 180-193 under section 17(1) and the cover letter at page 179, pending the further notification of the relevant parties and the continuation of the inquiry to determine their possible exemption under the *Act*.

6. I order the ministry to disclose the other responsive records or portions of records which I have found do not qualify for exemption under sections 49(a) or 49(b) to the appellant by **November 4, 2016** but not before **October 31, 2016**. To be clear, with this interim order, I provide only copies of pages where the ministry's access decision has been varied, not those pages where the ministry's decision is upheld.

7. In order to verify compliance with this interim order, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant pursuant to provision 5.

8. I remain seized of these appeals, including with regard to the issues related to the possible exemption of the forensic audit reports at pages 180-193 of the records.

Original Signed by: September 29, 2016

Daphne Loukidelis
Adjudicator