Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3672

Appeal PA15-579

Ministry of Community Safety and Correctional Services

December 6, 2016

Summary: Under the *Freedom of Information and Protection of Privacy Act*, the appellant requested records from the ministry relating to an Ontario Provincial Police investigation that resulted in criminal charges against her. The ministry identified an Occurrence Summary and General Occurrence Report as responsive, and granted partial access. The ministry relies on section 49(b) (personal privacy), and section 49(a) (discretion to refuse requester's own information) in conjunction with section 14(1)(l) (facilitate commission of an unlawful act) to justify its denial of access. In this order, the adjudicator upholds the application of sections 49(a) and (b) to parts of the withheld information. The adjudicator orders disclosure of the remaining information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1)(l), 21(1)(b) and (d), 21(2)(a), (d), (e), (f) and (g), 21(3)(b), 23, 29(1)(b), 49(a) and 49(b).

Orders and Investigation Reports Considered: P-230, P-880, PO-1880, PO-2291 and PO-2660.

Cases Considered: *Ontario (Attorney General v. Pascoe*) [2002] O.J. No. 4300 (C.A.).

OVERVIEW:

[1] The appellant submitted the following access request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Act*:

> Reference # [ministry access request file number] (November 24, 2011 letter received). The above was requested for any police investigation by the O.P.P. and could not track without the location of station. I am now requesting Caledon O.P.P. to release any records in their control and possession of any investigation, undercover or otherwise.

[2] The ministry sought clarification regarding the date range for the request and the appellant confirmed that it was 2004 to 2008.

[3] The ministry located two responsive records, which are an Occurrence Summary and a General Occurrence Report. These records relate to an investigation of the appellant that resulted in her being charged with impaired driving, and driving with over 80 milligrams of alcohol per 100 millilitres of blood.

[4] The ministry issued a decision granting partial access to the records. The ministry denied access to part of the information under the following provisions:

- section 49(a) (discretion to refuse one's own information) in conjunction with sections 14(1)(l) (facilitate commission of unlawful act) and 14(2)(a) (law enforcement report); and

- section 49(b) (personal privacy) in conjunction with sections 21(3)(b) (investigation into a possible violation of law) and 21(2)(f) (highly sensitive).

[5] The ministry also severed some information from the records on the basis that the information is not responsive to the request.

[6] The appellant filed an appeal of the ministry's decision.

[7] The appeal was assigned to a mediator under section 51 of the *Act.* Mediation did not resolve the issues. At the conclusion of mediation, the appellant continued to seek access to all information that has been withheld from the records, including information the ministry claims as non-responsive.

[8] This appeal was then transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[9] I began the inquiry by sending a Notice of Inquiry to the ministry and two affected parties inviting them to provide representations. After it received the Notice of Inquiry, the ministry decided to release additional information, and sent a supplemental decision letter dated April 12, 2016 to the appellant, with a copy to this office.

[10] The ministry subsequently provided its representations in this appeal. In its representations, the ministry withdrew its reliance on section 14(2)(a) of the *Act*, which had been claimed in conjunction with section 49(a). Section 14(2)(a) is therefore no longer at issue in this appeal. The affected parties did not provide representations.

[11] I then sent a Notice of Inquiry and a copy of the ministry's representations to the appellant and invited her to provide representations, which she did.

[12] In this order, I uphold the application of sections 49(a) in conjunction with section 14(1)(l), and section 49 (b), to parts of the withheld information. I am ordering disclosure of the remaining information.

RECORDS:

[13] The records remaining at issue consist of the undisclosed portions of an Occurrence Summary and a General Occurrence Report.

ISSUES:

[14] The remaining issues in this appeal are:

A. Issues raised in the appellant's representations

B. Are portions of the records non-responsive?

C. Do the records contain personal information within the meaning of section 2(1) of the *Act* and if so, to whom does it relate?

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

E. Does the discretionary exemption at 49(a) (discretion to refuse one's own information) in conjunction with section 14(1)(l) (facilitate commission of unlawful act) apply?

F. Did the ministry exercise discretion under sections 49(a) and/or (b) and if so, should the exercise of discretion be upheld?

DISCUSSION:

A. Issues raised in the appellant's representations

[15] The appellant's representations raise a number of issues and arguments that fall outside the scope of the issues dealt with in Issues B through F, below. I will address these now.

Scope of the request and the responsive records

[16] The appellant states that she does not require access to the addresses of the two witnesses in relation to the impaired and "over 80" charges, because she already

knows who they are. However, she does not identify them by name and she refers to "four" witnesses elsewhere. Accordingly, I will not remove witnesses' information from what remains at issue. She also indicates that she does not require police codes "unless it relates to any assistance with information of any police investigation for proper answer and defence e.g. undercover officer at the scene of the care and control conviction." As I do not understand this qualification of her statement that she does not require police codes, I will not remove any of them from the information that remains at issue.

Arguments that have no bearing on the records at issue

[17] The appellant mentions a reference in the ministry's representations to "four affected individuals" and the fact that they are "identified as being witnesses or a complainant involved in an OPP investigation." In fact, other than the appellant, the records refer to only two individuals who are not police personnel. The remaining individuals mentioned in the records are all police personnel, and their names have been disclosed.

[18] Because of the reference to "four" affected parties, the appellant appears to believe that the records pertain to matters involving managerial employees at her workplace. In fact, the records relate to an investigation of the appellant that resulted in her being charged with impaired driving, and driving with over 80 milligrams of alcohol per 100 millilitres of blood. Her representations in relation to managerial employees at her workplace, and her suspicions about their activities, are irrelevant. Similarly, her claim that she knows the identity of these individuals, and that it would be absurd to withhold their names from her, is irrelevant.

[19] The appellant provides submissions relating to her children, and refers to a separate appeal file with this office. She states that she can obtain her children's consent to disclosure of the records. This appeal is completely separate from the other appeal file mentioned by the appellant. The consent of the appellant's children is absolutely irrelevant to the issues in this appeal and could not lead to the release of any of the records at issue.

Other issues raised by the appellant

[20] The appellant makes reference to several sections of the *Act* that have no discernible bearing on this case: section 24(2), which requires institutions to assist requesters in reformulating their request; section 24(3), which provides for continuing access; and section 25(1), which applies where a request is transferred to another institution. She recites these provisions without further comment. They are irrelevant to the issues in this appeal.

[21] She quotes section 14(1)(b) of the *Act*, and mentions section 14(1)(a). These sections are not at issue and have no bearing on this appeal.

[22] In addition, without identifying the section number, the appellant cites section 14(4), which requires disclosure of some records that might otherwise be exempt under the "law enforcement report" exemption at section 14(2)(a). As already noted, the ministry no longer relies on section 14(2)(a), and section 14(4) is therefore irrelevant as well.

[23] The appellant also refers to the offence of obstructing justice under the *Criminal Code*. Again, this section has no bearing on the issues in this appeal.

[24] As well, the appellant claims that the disclosure rules in *R. v. Stinchcombe*[1] apply. *Stinchcombe* is concerned with disclosure to the defence during a criminal trial. It has no bearing on this appeal.

[25] She also refers to matters involving the FBI. These comments have no connection to the records or the issues in this appeal and are completely irrelevant.

[26] I will not refer to these submissions again.

Public interest override

[27] In her representations, for the first time, the appellant also claims that the public interest override found at section 23 of the *Act* applies. Section 23 provides:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[28] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[29] In referring to the public interest override, the appellant seeks to support her position by referring to *Stinchcombe* and the managerial employees at her workplace. Neither of these have any bearing on this appeal. She also refers to an alleged obstruction of justice, and the need for accountability, but these arguments apparently relate to the managerial employees at her workplace, and what she describes is entirely irrelevant to the issues in this appeal. Based on the evidence and argument before me, I find that the appellant has failed to identify any public interest that has any relation to the records at issue. In my view, her interest in the records is private. I find that section 23 does not apply.

---

[1] [1991] 3 S.C.R. 326.

Adequacy of the ministry's decision letters

[30] The appellant also claims, again for the first time in her representations, that "the decision letter was inadequate" because it ". . . did not include the dates when the records were produced, the nature of the records and some detail as to their content. . . ."

[31] The requirements for a decision letter refusing access "to a record or part thereof" are specified in section 29(1)(b)[2]. Such a decision letter must identify the specific provision of the *Act* under which access is denied, the reason why the provision applies, the name of the person responsible for making the decision, and the fact that the requester may appeal the denial of access.

[32] The ministry's initial decision letter contained all of these elements. It references the reports referred to in the request itself, and identifies the date range confirmed by the appellant when the request was clarified. In addition, the initial decision letter was accompanied by a partial disclosure of every page of the records, which included the document titles ("Occurrence Summary" and "General Occurrence Report"). In other words, the ministry provided substantial information about the nature of the records and their contents. The other items mentioned by the appellant are not required elements of a decision letter. The ministry's supplementary decision simply revisited the initial decision and provided additional access.

[33] Accordingly, I do not accept the appellant's arguments on this point, and I find that the ministry's decision letters were adequate.

Extending the date range of the request

[34] Also for the first time, in her representations, the appellant says that she "would like to broaden the date range if possible from 2004 to date." As already noted, the ministry clarified the date range with the appellant at the request stage, and the appellant confirmed that it was 2004 to 2008. It would not be appropriate to accept a unilateral expansion of the scope of the appellant's request during the inquiry, and I will not do so.

B. Are portions of the records non-responsive?

[35] To be considered responsive to the request, records must "reasonably relate" to

---

[2] Section 29(1)(b) of the *Act* states: "Notice of refusal to give access to a record or a part thereof under section 26 shall set out, . . . where there is such a record, (i) the specific provision of this Act under which access is refused, (ii) the reason the provision applies to the record, (iii) the name and position of the person responsible for making the decision, and (iv) that the person who made the request may appeal to the Commissioner for a review of the decision."

the request.[3]

[36] I have reproduced the wording of the appellant's request above. The appellant requested records relating to an identified file number. That number appears to reference a previous request she had made to the ministry under the *Act*, for which she provided additional detail in the new request that is now the subject of this appeal.

[37] The ministry states that it:

> . . . has withheld parts of the three pages that are at issue as they contain information which is generated automatically when the records were printed for the purpose of this appeal. The information that is generated includes the time the records were printed, and numeric identifiers which are used internally to identify who printed the records, and at which computer.
>
> The ministry practice has *always* been to sever these records, because they are not responsive to the request, as they are not part of the actual records.

[38] The appellant's representations do not address this issue.

[39] I accept the ministry's representations on this point, and in particular, the fact that the entries it identifies as non-responsive are not part of the original record that was requested; rather, they are notations added at the time of printing that have nothing to do with the original content.

[40] I uphold the ministry's decision to withhold the portions it identifies as non-responsive.

C. Do the records contain personal information within the meaning of section 2(1) of the *Act* and if so, to whom does it relate?

[41] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

[3] Orders P-880 and PO-2660.

> (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;

[42] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[4]

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

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[44] To qualify as personal information, the information must be about the individual

---

[4] Order 11.

in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[5]

[45] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[6]

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

Representations

[47] The ministry submits that the withheld portions of the records ". . . contain personal information within the meaning of the definition in section 2 . . ." of the *Act*.

[48] The ministry claims that the records contain personal information of affected individuals, including those identified as witnesses, as well as a complainant in an OPP law enforcement investigation, and in particular:

- the names, dates of birth, and home addresses of four affected individuals who are identified as witnesses or a complainant involved in an OPP investigation;
- the statement provided by an affected party which, due to its detailed nature would likely reveal the identity of the affected party, and that individual's opinions and actions, which led to the OPP investigation;

[49] The ministry also submits that severing identifying information may not be successful in de-identifying it. The ministry refers to Order P-230, where former Commissioner Tom Wright stated that "[i]f there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information." This same view is expressed in Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*.[8]

[50] The appellant does not address this issue in her representations.

Analysis and conclusions

[51] As noted, there are two records, an Occurrence Summary and a General Occurrence Report. Both concern the investigation of the appellant that resulted in her

---

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

being charged with impaired driving, and driving with over 80 milligrams of alcohol per 100 millilitres of blood. I have reviewed the records. I find that both records contain the appellant's personal information. I will now review the two records in turn.

Occurrence Summary

[52] In this record, the ministry has withheld the VIN number and plate number of the appellant's vehicle, which in my view is her personal information, and is not the personal information of another individual. There is also a status notation on page 1 of the records that provides information about the appellant only.

[53] The ministry has also withheld the name and business contact information of a police officer, and the staff or badge number of another police employee. Based on section 2(3), I find that the officer's name and contact information are not personal information. I also find that the remaining information identified here is not personal information because it relates to the individuals in a business capacity and does not reveal anything of a personal nature.

[54] The ministry has also withheld the name, address, and date of birth of the complainant and one other witness. I find this to be the personal information of these individuals.

General Occurrence Report

[55] The withheld information in this record includes the name of the complainant and the other witness, and a statement made by one of them.

[56] I find that information relating to the complainant and the other witness is the personal information of those individuals.

[57] I also find that the statement, in particular, contains the personal information of the complainant and the other witness. It also contains the personal information of the appellant. I also find that, with appropriate severances, contrary to the ministry's submissions, parts of the statement consist solely of the appellant's personal information.

Conclusions

[58] Only the personal information of individuals other than the appellant can be exempt under section 49(b). I have found that the withheld information about a police officer, and the staff or badge number of another police employee in the Occurrence Summary, are not personal information. I have also found that the VIN number of the appellant's vehicle and a status notation concerning the investigation are her personal information, and not the personal information of another individual. Accordingly, I find that none of this information is exempt under section 49(b).

[59] I have also found that parts of the statement in the General Occurrence Report are the personal information of the appellant only. This information is also not exempt under section 49(b).

[60] Later in this order, I will consider whether the information I have found not to be the personal information of other individuals, and therefore not exempt under section 49(b), is exempt under section 49(a) in conjunction with section 14(1)(l).

[61] I have also found that the records contain the personal information of the complainant and one other witness. This information has not been disclosed, and I will now consider whether it is exempt under section 49(b) of the *Act*.

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

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

[63] Section 49(b) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

[64] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. No party has argued that section 21(4) applies, and I find that it does not.

[65] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will also consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[9]

[66] If the information fits within any of paragraphs 21(1)(a) to (e), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). In her submissions, the appellant refers to sections 21(1)(b) and (d).

[67] These sections state:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

---

[9] Order MO-2954.

> (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

[68] The following parts of sections 21(2) and (3) may be relevant in the circumstances of this appeal:

> (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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
> >
> > . . .
> >
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive;
> >
> > (g) the personal information is unlikely to be accurate or reliable;
>
> (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;

Representations

[69] The ministry submits that disclosure of the withheld personal information in the records would be an unjustified invasion of personal privacy. It notes that none of the affected parties have consented to disclosure.

[70] In particular, the ministry relies on the presumed unjustified invasion of personal

privacy in section 21(3)(b), which applies if the personal information "was compiled and is identifiable as part of an investigation into a possible violation of law." The ministry submits that the records were created pursuant to a law enforcement investigation conducted by the OPP, and are clearly identifiable as such. In this instance, the investigation led to criminal charges being laid.

[71] The ministry also submits that the personal information is highly sensitive, and that the factor favouring non-disclosure in section 21(2)(f) applies. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[10] The ministry relies on Order P-1618, and on this basis, submits that the personal information of individuals who are complainants or witnesses is highly sensitive for the purposes of section 21(2)(f).

[72] The ministry also submits that it is not an absurd result to withhold the undisclosed personal information in the records. Previous orders indicate that, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 49(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[11] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[12]

[73] The ministry submits that the level of knowledge of the appellant concerning the undisclosed personal information of other individuals is not clear. Regardless, it submits that the absurd result principle would not apply because disclosure would be inconsistent with the purposes of the exemption, which is to protect the privacy of individuals. The ministry relies on Order PO-2291, which addressed witness statements collected during a law enforcement investigation. In that order, Senior Adjudicator Frank DeVries stated:

> I find that, in these circumstances, there is particular sensitivity inherent in the records remaining at issue in this appeal, and that disclosure would not be consistent with the fundamental purpose of the Act identified by Senior Adjudicator Goodis in Order MO-1378 (namely, the protection of privacy of individuals, as well as the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, the absurd result principle does not apply in this appeal.

[74] In her submissions, the appellant raises sections 21(1)(b) and (d). Under section 21(1)(b), she says that she is "raising . . . compelling circumstances affecting the health or safety of an individual." Elsewhere in her submissions, she has referred to

---

[10] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[11] Orders M-444 and MO-1323.
[12] Orders M-757, MO-1323 and MO-1378.

circumstances in her workplace and the harm this has caused her, and I am left to surmise that this could be what she is referring to.

[75] The appellant quotes section 14(1)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*, which is the equivalent of section 21(1)(d) of the *Act*. It allows for disclosure of information "under an Act of Ontario or Canada that expressly authorizes the disclosure." Accordingly, I surmise that the appellant relies on section 21(1)(d).

[76] The appellant also submits that:

- disclosure will promote transparency and increase public confidence in the institution, both factors that relate to section 21(2)(a);
- the information is relevant to a fair determination of her rights, in litigation relating to her workplace, under section 21(2)(d);
- the individual to whom the information relates will be exposed to unfairly to pecuniary or other harm under section 21(2)(e);
- the information is not highly sensitive under section 21(2)(f) because there is no evidence that she would commit a crime or cause personal distress;
- Order M-82 indicates that information pertaining to normal everyday working relationships is not highly sensitive;
- the information is unlikely to be accurate or reliable under section 21(2)(g);
- it would be absurd to withhold information she is clearly aware of, including information she knows from litigation, and information she knows from the criminal trial that arose from the investigation dealt with in the records.

Analysis

Section 21(1)(b) and (d)

[77] These sections, if they apply, mean that disclosure is not an unjustified invasion of personal privacy for the purposes of section 49(b). The appellant raises sections 21(1)(b) and (d) as I have noted above, but provides little information about the basis for their alleged application.

[78] Under section 21(1)(b), the appellant states that she is raising compelling circumstances affecting the health or safety of an individual. She does not identify the individual, but elsewhere in her submissions, she refers to her workplace and the harm that she alleges it has caused her. The appellant's workplace circumstances are irrelevant to the issues in this appeal. I find that the appellant has not established

compelling circumstances affecting the health or safety of an individual in relation to the records. Section 21(1)(b) does not apply.

[79] Under section 21(1)(d), the appellant identifies no statute that allegedly authorizes disclosure. I find that section 21(1)(d) does not apply.

21(3)(b): investigation into violation of law

[80] Section 21(3)(b) applies to personal information that "was compiled and is identifiable as part of an investigation of a possible violation of law." It does not apply "to the extent that disclosure is necessary to prosecute the violation or continue the investigation."

[81] The records are a General Occurrence Summary and a General Occurrence Report that were prepared as part of the OPP's investigation of the appellant that led to her being charged with the *Criminal Code* offences of impaired driving, and driving with over 80 milligrams of alcohol per 100 millilitres of blood. Accordingly, I find that they were compiled and are identifiable as part of an investigation of a possible violation of law. There is no evidence to suggest that disclosure is necessary to prosecute the violation or continue the investigation, both of which concluded some years ago.

[82] I find that the presumed unjustified invasion of privacy in section 21(3)(b) applies.

Section 21(2)(a)

[83] This section provides a factor favouring disclosure if it "is desirable for the purpose of subjecting the activities of the Government of Ontario or one of its agencies to public scrutiny." The appellant's basis for invoking the principles of transparency and accountability appear to relate to her claims concerning the circumstances at her workplace. As I have repeatedly stated, these matters are irrelevant to the issues in this appeal. The records themselves are routine police documents and raise no issues of transparency or accountability. I find that section 21(2)(a) does not apply.

Section 21(2)(d)

[84] Section 21(2)(d) provides a factor favouring disclosure. In order for it to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[13]

[85] The appellant mentions a lawsuit she is involved with that relates to her place of employment. Her letter initiating this appeal mentions an "on-going civil case against my employer" and the "need to confirm for my trial if I was under investigation that was a result of employees at my workplace." The records do not address this issue. I therefore find that section 21(2)(d) does not apply in the circumstances of this appeal.

Section 21(2)(e)

[86] This section provides a factor favouring non-disclosure in order to protect an affected person – "the individual to whom the information relates" – from pecuniary or other harm. Given the general tenor of the appellant's representations, I assume that, by referring to this section, she means to suggest that she will be or has been unfairly exposed to pecuniary or other harm in connection with her workplace, and the intent behind this argument is to suggest that because of this harm, the undisclosed information in the records should be released to her.

[87] Section 21(2)(e) is a factor favouring non-disclosure based on *harm to individuals other than the person requesting the information*. As already noted, the appellant's personal information cannot be exempt under section 49(b) and is not under consideration here. I find that section 21(2)(e) does not apply.

[88] Even if it is seen as a circumstance to be considered under the introductory language of section 21(2), rather than an argument under section 21(2)(e), I also reject the appellant's argument that personal harm to her is established as a factor favouring disclosure. Again, these alleged harms relate to her workplace, and have no bearing on the issues in this appeal.

Section 21(2)(f)

[89] Section 21(2)(f) is a factor favouring non-disclosure for information that is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[14]

[90] Relying on Order P-1618, the ministry submits that the personal information of individuals who are complainants or witnesses in a law enforcement investigation is

---

[13] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).
[14] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

highly sensitive for the purposes of section 21(1)(f). The appellant submits that she will not cause anyone undue distress if the information is disclosed.

[91] With respect, the appellant misunderstands this section. The question is not whether she will take actions that will distress those whose personal information is disclosed. The question is whether the disclosure will, for whatever reason, produce significant personal distress for them.

[92] In the circumstances of this appeal, I find that section 21(2)(f) applies. Given the nature of the information in the records, this factor should be given moderate weight.

Section 21(2)(g)

[93] Like section 21(2)(e), section 21(2)(g) is a factor favouring non-disclosure cited by the appellant as a basis for disclosure. It applies in order to protect inaccurate information about one individual from disclosure to another individual. Although the appellant has not made a correction request under section 47(2), the appellant appears to think that the record contains inaccurate information about her, and that it should be disclosed. This section does not apply to the appellant's personal information, which as discussed previously, cannot be exempt under section 49(b) and is not under consideration here. Under the circumstances, I find that section 21(2)(g) does not apply.

Absurd result

[94] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 49(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[15]

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

- the requester sought access to his or her own witness statement[16]
- the requester was present when the information was provided to the institution[17]
- the information is clearly within the requester's knowledge[18]

[96] The appellant claims that the records contain undisclosed information that she knows from litigation relating to her workplace issues, and from the criminal trial that arose from the investigation dealt with in the records at issue. However, she does not

---

[15] Orders M-444 and MO-1323.
[16] Orders M-444 and M-451.
[17] Orders M-444 and P-1414.
[18] Orders MO-1196, PO-1679 and MO-1755.

provide any evidence to back up this claim. The evidence before me does not indicate that the absurd result principle applies, and accordingly, I find that it does not.

Conclusions

[97] I have found that the presumed unjustified invasion of personal privacy in section 21(3)(b) applies to the personal information of individuals other than the appellant in the records. The factor favouring non-disclosure in section 21(2)(f) also applies with moderate weight. No other presumptions, factors or circumstances are established.

[98] Based on sections 21(3)(b) and 21(2)(f), I find that disclosure of the personal information of individuals other than the appellant in the records would be an unjustified invasion of their personal privacy and the exemption in section 49(b) applies to that information.

E. Does the discretionary exemption at 49(a) (discretion to refuse one's own information) in conjunction with sections 14(1)(l) (facilitate commission of unlawful act) apply?

[99] Section 49(a) states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, **14**, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [Emphasis added.]

[100] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[19]

[101] Section 14(1)(l) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

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

---

[19] Order M-352.

context.[20]

[103] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[21] The institution must provide evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences. [22]

[104] In its representations, the ministry states:

> We have exempted all police codes from being disclosed. IPC jurisprudence has consistently upheld the exemption of police codes under subsection 14(1)(l) on the basis that their disclosure would impair the ability of police officers to communicate with one another confidentially, thereby harming police officers safety and increasing the likelihood that criminal elements could use these records for illegal purposes. . . .

[105] The appellant refers to this issue in her representations. In one instance, she simply repeats the ministry's representations. In another, addressed under "Overview," above, she makes a qualified statement to the effect that she is not interested in any police codes. As noted above, because of the qualifier, which is hard to interpret, this information remains at issue.

[106] Order PO-2660, cited by the Ministry, states:

> The application of section 14(1)(l) to the police codes and descriptive information concerning these codes has been considered in numerous orders of this office. Adjudicator Steven Faughnan stated in Order PO-2409:
>
> > In my view, the finding of the Divisional Court in *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.) that the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context, is applicable here. Saying that nothing has happened so far misses the point, since the test is whether harm could reasonably be expected to result from disclosing the operational codes (including the "ten" codes)… A

---

[20] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[21] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[22] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

> long line of orders (for example M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339) have found that police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release.
> . . .

[107] With respect to the police codes in the records, I agree with the ministry's submissions, and I also agree with and adopt the conclusions in Order PO-2660 and the earlier decisions it cites. Accordingly, I find that the police codes in the records are exempt under section 49(a) in conjunction with section 14(1)(l). I note, however, that three severed items on page one of the records do not appear to be a "code" as they use normal English words, not numbers or abbreviations. I will order this information disclosed.

[108] The ministry's representations on this issue also refer to the personal information of individuals other than the appellant. It appears that the ministry relies on this exemption for this information, in addition to section 49(b). I have already found this information to be exempt under section 49(b) and will not consider it here. The remaining information in the records is not exempt under section 14(1)(l).

F. Did the ministry exercise discretion under sections 49(a) and/or (b) and if so, should the exercise of discretion be upheld?

[109] The section 49(a)[23] and 49(b) discretions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[110] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[111] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[24] This office may not, however, substitute its own discretion for that of the institution.[25]

[112] The ministry submits that it exercised its discretion properly. In particular, it

---

[23] relied on by the ministry in conjunction with section 14(1)(l).
[24] Order MO-1573.
[25] Section 54(2).

submits that it has exercised its discretion based on the public policy interest in protecting the privacy of personal information belonging to affected individuals who are associated with a law enforcement investigation, particularly where they are identified as witnesses or complainants. The ministry also states that it severed the record by providing the appellant with as much information as possible, while exempting affected individuals' personal information, and police codes.

[113] The ministry's representations on section 49(a) in conjunction with section 14(1)(l), referred to earlier in this order, make it clear that the ministry decided to apply these sections to exempt police codes from disclosure in order to ensure the confidentiality of police communications.

[114] The appellant submits, without specifically explaining why this is the case, that she has a compelling need for the information. Judging from the rest of her representations, it appears that this perceived need relates to litigation and other matters involving her workplace. I have already found that the appellant's workplace circumstances are irrelevant to the issues in this appeal. In my view, the ministry appropriately took the appellant's need for the information into account by the disclosures it has made to her.

[115] The appellant also submits that the ministry took into account irrelevant factors and overlooked relevant ones. However, beyond adding the words, "49(a) & (b) as already described" she does not explain this submission further. Although I have taken the appellant's entire representations into account in reaching my decisions in this order, I am at a loss to know what relevant and/or irrelevant factors the appellant is referring to here.

[116] The appellant also suggests that there is a public interest in the records. I have already dismissed that claim in the discussion of section 23 under Issue A, above.

[117] In my view, the ministry considered relevant factors in its exercise of discretion and did not consider irrelevant ones. I find that the ministry exercised its discretion properly.

ORDER:

1. I find that the information identified as non-responsive by the ministry is in fact non-responsive.

2. I find that the withheld personal information of individuals other than the appellant is exempt under section 49(b) of the *Act*.

3. I find that the police codes in the records, as defined in this order, are exempt under section 49(a) in conjunction with section 14(1)(l) of the *Act*.

4. I uphold the ministry's decision to withhold the information that is highlighted on the copy of the records that I am sending to the ministry with this order. I order the ministry to disclose to the appellant the parts of the records that are not highlighted on the copy of the records that I am sending to the ministry with this order, on or before **December 29, 2016.**

Original Signed by: December 6, 2016

John Higgins
Adjudicator