Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3742

Appeal PA16-456

Ministry of Community Safety and Correctional Services

June 29, 2017

Summary: The ministry received a request for access to information relating to a specified occurrence involving the appellant. The ministry granted partial access to the requested information ultimately relying on sections 49(a) (discretion to refuse requester's own information), in conjunction with section 14(1)(l) (facilitate commission of an unlawful act), and 49(b) (personal privacy) to deny access to the portion they withheld. The ministry also claimed that certain information was not responsive to the request. During mediation the appellant took the position that the ministry did not conduct a reasonable search for responsive records. In this order the adjudicator upholds the reasonableness of the ministry's search and finds that certain information is not responsive to the request. He also finds that section 49(a) in conjunction with section 14(1)(l) only applies to police operational codes and that section 49(b) only applies to certain information of identifiable individuals other than the appellant that is contained in the records. The information that does not qualify for exemption under sections 49(a) or 49(b), or that would be absurd to withhold, is ordered disclosed to the appellant.

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

Orders Considered: MO-1173, MO-1314, MO-2108, MO-2134, P-1014, PO-2449, PO-2955 and PO-3013.

OVERVIEW:

[1] The Ministry of Community and Safety and Correctional Services (the ministry)

received the following access request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*):

> Please release all information on file with occurrence [specified occurrence number] made by [identified police officer]. I want all details including access to Toronto area information received by the Hawkesbury OPP [Ontario Provincial Police]. Includes all witnesses.

[2] The records arose out of a complaint made by the appellant that he was being followed by a particular vehicle on three occasions and another vehicle on one occasion. The ministry identified records responsive to the request and granted partial access to them. The ministry relied on sections 49(a) (discretion to refuse requester's own information) in conjunction with sections 14(1)(l) (facilitate commission of an unlawful act) and 14(2)(a) (law enforcement report) and 49(b) (personal privacy) to deny access to the portion it withheld. The ministry also indicated that some information was not responsive to the request.

[3] The requester (now the appellant) appealed the ministry's decision.

[4] During mediation the appellant took the position that additional records ought to exist and the ministry agreed to conduct a further search for responsive records, however none were located. The appellant maintained his position that other records ought to exist and the reasonableness of the ministry's search for responsive records was added as an issue in the appeal.

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

[6] I commenced my inquiry by sending the ministry a Notice of Inquiry setting out the facts and issues in the appeal. The ministry provided responding representations. The appellant also forwarded materials to this office in response to a letter he received advising that the Notice of Inquiry had been sent to the ministry.

[7] In its representations, the ministry advised that it was no longer relying on the application of section 14(2)(a) to deny access to withheld information, but would instead be claiming that this information was exempt under section 49(a) in conjunction with section 14(1)(l). Accordingly, the application of section 14(2)(a) is no longer at issue in the appeal. I then sent a Notice of Inquiry along with the ministry's representations to the appellant. The appellant provided responding representations.

[8] Amongst other things, the appellant's representations set out his various concerns about the conduct of the OPP and that he seeks the information in order to

commence a correction application under section 47(2)[1] of the *Act* if the information is "fraudulent, malicious and incorrect". He submits that the conduct of the OPP has prohibited him from obtaining employment and refers to various statutes in support of his position.

[9] In this order I uphold the reasonableness of the ministry's search and find that certain information is not responsive to the request. I also find that section 49(a) in conjunction with section 14(1)(l) only apples to police operational codes and that section 49(b) only applies to certain information of identifiable individuals other than the appellant that is contained in the records. The information that does not qualify for exemption under sections 49(a) or 49(b), or that would be absurd to withhold, is ordered disclosed to the appellant.

RECORDS:

[10] The records at issue consist of an Occurrence Summary, a General Occurrence Report and a police officer's notes.

PRELIMINARY MATTER:

[11] To be considered responsive to the request, records and information in the records must "reasonably relate" to the request.[2] The ministry takes the position that the date of the printing of the Occurrence Summary and General Occurrence Report from its computer system and the number of the employee who printed the documents is not responsive to the request. I agree.

[12] The ministry also takes the position that the Workplace Identification Number (WIN) employee number of an assisting employee who entered the information on the General Occurrence Report is also not responsive to the request. I do not agree as this individual's information may fit within the scope of the request for information about a witness. The ministry's withholding of that information is addressed in the decision that follows.

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[1] Section 47(2) provides that every individual who is given access under subsection 47(1) to personal information is entitled to, (a) request correction of the personal information where the individual believes there is an error or omission therein; (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

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

ISSUES:

A. Did the ministry conduct a reasonable search for records?

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

C. Does the discretionary exemption at section 49(a) in conjunction with section 14(1)(l) apply to the information at issue?

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

DISCUSSION:

Issue A: Did the ministry conduct a reasonable search for records?

[13] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[3] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[14] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[4] To be responsive, a record must be "reasonably related" to the request.[5]

[15] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[6]

[16] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[7]

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

[4] Orders P-624 and PO-2559.

[5] Order PO-2554.

[6] Orders M-909, PO-2469 and PO-2592.

[7] Order MO-2185.

[17] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[8]

The ministry's representations

[18] The ministry submits that:

> … when a request is made for records of the kind at issue in this appeal, the ministry typically conducts a fairly standard search of Niche RMS, which is a shared police records data base, as well as a search for investigating officer's notes. The search, in this appeal, was consistent with those we typically perform.

[19] In support of its position the ministry provided an affidavit of an administrative clerk explaining her search efforts. She states that:

> Between May 13 and May 17, I conducted a search for records. My search consisted of searching Niche RMS, our OPP records data base, using the occurrence number [provided by the appellant in the request]. I requested the officer's notes of Constable [name provided by the appellant in the request], who was the Investigating officer assigned to this occurrence. Constable [named constable] provided his notes to me. I send all of the responsive records back to the OPP Freedom of Information Liaison on May 17.
>
> I do not believe that any responsive records have been destroyed, because they were created relatively recently. The occurrence dates back to 2012.
>
> I believe that my search has been diligent and thorough, in that I conducted a standard search of OPP record holdings, using the occurrence number to search for records, which is in accordance with our usual practices.

[20] The ministry asserts that at no time during the course of this appeal did the appellant provide any evidence in support of his assertion that additional records exist.

[21] The appellant did not provide any representations in support of his position that the police did not conduct a reasonable search for responsive records or that there should be additional responsive records.

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[8] Order MO-2246.

Analysis and finding

[22] As set out above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody and control. I find that, based on the searches it conducted, the ministry has made a reasonable effort to locate records responsive to the request.

[23] Accordingly, I find that the ministry has conducted a reasonable search for records responsive to the appellant's request at issue in this appeal.

Issue B: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[24] 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), in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
> >
> > (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,
> >
> > (e) the personal opinions or views of the individual except if they relate to another individual,
> >
> > (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[25] 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.[9] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.[10]

[26] 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.

[27] 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.[11]

[28] 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.[12]

The ministry's representations

[29] The ministry submits that the personal information at issue in this appeal includes:

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[9] Order 11.

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

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

[12] Orders P-1409, R-980015, PO-2225 and MO-2344.

> (a) The make, model, the licence plate number, and related information about a motor vehicle owner; and,
>
> (b) The name of an affected third party individual, including the individual's relationship to the appellant.

[30] In addition to the foregoing, the ministry submits that there is a WIN employee number of an assisting employee who entered the information on the General Occurrence Report, and that this information belongs to the employee and qualifies as their personal information.

[31] The ministry takes the position that the WIN number is personal information because:

> … it is a unique identifier that can be used to facilitate access to personal information about the employee, particularly when combined with the employee's name, which has been disclosed. The WIN number is linked to employment records containing highly personal information used for human resources purposes.

[32] The ministry relies upon Order MO-2134, where a similar type of employee number was found to be a firefighter's personal information and submits that although the WIN number is employment related, disclosing the information would reveal something of a personal nature about the employee whose name appears in the records at issue in this appeal.

[33] With respect to the make, model, license plate number and related withheld information about a motor vehicle that appears in the records, relying on the findings in Order PO-2449, the ministry submits that this also meets the definition of personal information under the *Act*.

[34] The ministry further submits that:

> … due to the subject matter of the records (i.e., an OPP investigation where the appellant appears to know one or more affected third party individuals and vice-versa), severing identifying information such as names would not serve to remove personal information from the records. In other words, it is reasonable to expect that affected third party individuals could be identified if the information in the records was disclosed. The ministry submits that this same reasoning was applied in Order PO-2955 to similar police records, and it ought to be adopted for the purpose of this appeal.

[35] The appellant provided no representations regarding this issue.

Analysis and findings

[36] I have reviewed the records and find that they contain the personal information of the appellant and other identifiable individuals that falls within the scope of the definition of personal information in section 2(1) of the *Act.*

[37] I recognize that the information was recorded in the course of the execution of the police employee's professional, rather than their personal, responsibilities. However, I find that disclosure of the WIN number, particularly when taken with the employee's name (which has already been disclosed to the appellant) reveals something of a personal nature about the employee. I find that the undisclosed information represents an identifying number that has been assigned to the employee, who is also identified in the record by name. I also note that the number provides a link to other personal information of the employee, i.e., human resources information. Accordingly, I find that the employee number qualifies as the employee's personal information within the meaning of paragraph (c) of the definition.

[38] With respect to the license plate number that appears at pages 1, 2 and 5 of the records, in the circumstances of this appeal, I find that it qualifies as an "identifying number" of an identifiable individual other than the appellant pursuant to paragraph (c) of the definition. Although license plate numbers are associated with vehicles, Orders MO-1173, MO-1314 and MO-2108 confirm that a license plate number qualifies as an "identifying number" assigned to an individual and, thereby, constitutes the personal information of the owner of the vehicle.

[39] I am not satisfied that the information pertaining to the make and model of a vehicle on the first page of the Occurrence Summary, in the circumstances of this appeal, meets the definition of personal information under the *Act*. I have highlighted this information in green on a copy of the records that I have provided to the ministry along with this order.

[40] Having found that the records contain the mixed personal information of the appellant and other identifiable individuals, I will consider the appellant's right to access the withheld information under sections 49(a) and 49(b) of the *Act.*

Issue C: Does the discretionary exemption at section 49(a) in conjunction with section 14(1)(l) apply to the information at issue?

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

[42] Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,

> where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[43] 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.[13] In this case, the ministry relies on section 49(a) in conjunction with section 14(1)(l).

[44] Section 14(1)(l) reads:

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

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

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
> >
> > (c) the conduct of proceedings referred to in clause (b)

[46] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[14]

[47] 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.[15] The institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much

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[13] Order M-352.

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

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

and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences. [16]

[48] The ministry submits that the police operational codes qualify for exemption under section 14(1)(l) of the *Act* and states:

> The ministry maintains that it has withheld these codes in accordance with its usual practice, and in particular because the disclosure of these codes could make it easier for individuals carrying out criminal activities to have internal knowledge of how systems within the OPP operate. The ministry maintains that disclosure of internal police codes could jeopardize the security of law enforcement systems and the safety of the OPP staff identified by them …

[49] The ministry further submits that the records include confidential law enforcement information documenting the steps the investigating member of the OPP used for the purpose of recording his investigation, and which, when placed in the shared records data base, could be used for communications purposes with other OPP law enforcement personnel. The ministry submits that by recording this information, members of the OPP can subsequently retrieve it in the event that there are future interactions with the appellant, or the records are otherwise relevant for a law enforcement purpose. In addition, the ministry submits:

> The records include steps that the investigating officer took to conduct part of the investigation. We submit that this information is not widely known, and there is a strong law enforcement interest in ensuring that this information not be ordered disclosed. The ministry is concerned that disclosure will detrimentally affect crime control.

[50] And further that:

> The ministry is concerned that members of the OPP will be less likely to record information and to communicate candidly with one another, if the records that they create are more likely to be disclosed in the manner contemplated by this appeal. The ministry submits that this outcome would also have the subsequent result of facilitating crime or hampering its control.

[51] The ministry also submits that the records contain information related to affected third party individuals who are identified in OPP investigative records and that this information is inherently sensitive, and for that reason alone, should not be disclosed. It

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

submits that it:

> … is concerned that the disclosure of the records would discourage members of the public from cooperating with the OPP, if the public believes that the confidentiality of the information they provide will not be safeguarded. The ministry submits this type of outcome could be expected to hamper the ability of the OPP and interfere with its law enforcement operations, which in tum would either facilitate the commission of crime or hamper its control.

Analysis and findings

[52] A long line of orders[17] has found that police operational codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release. I make the same finding here.

[53] I do not agree with the ministry's assertion that releasing the balance of the withheld information would facilitate the commission of an unlawful act or hamper the control of crime in the manner contemplated by section 14(1)(l) of the *Act*. The ministry's position casts the net far too widely and in my view the ministry fails to provide sufficient evidence to support its bald assertions that disclosing the other information that the ministry asserts is subject to section 14(1)(l), which is the type of information typically found in occurrence reports and police officer's notes, could reasonably be expected to result in the section 14(1)(l) harms alleged.

[54] Accordingly, I find that only the police operational codes qualify for exemption under section 49(a) in conjunction with section 14(1)(l) of the *Act*.

[55] I have highlighted the information that I have found not to qualify for exemption under section 14(1)(l) and which pertains to the appellant only and not to other identifiable individuals, in green on a copy of the records that I have provided to the ministry along with this order.

[56] I will now address the balance of the information at issue in the appeal.

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

[57] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may

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[17] For example, Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO-2409.

refuse to disclose that information to the requester.

[58] Section 49(b) reads:

> 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

[59] Section 21 of the *Act* provides guidance in determining whether the unjustified invasion of personal privacy threshold is met. If the information fits within any of the paragraphs of sections 21(1) or 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b).

[60] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and 21(3) and balance the interests of the parties.[18] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). In this appeal, the ministry asserts that the presumption in section 21(3)(b) and the factor at section 21(2)(f) apply. The appellant does not specifically refer to any specific factor favouring disclosure but the tenor of his representations appear to raise the possible application of the factor at section 21(2)(a). Those sections read:

> 21(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,
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> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
> >
> > (f) the personal information is highly sensitive; …
>
> 21(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

[18] Order MO-2954.

> is necessary to prosecute the violation or to continue the investigation; …

[61] To be considered highly sensitive under section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.[19]

[62] Even if no criminal proceedings were commenced against any individuals, the presumption at section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[20]

[63] 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.[21] 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.[22]

The ministry's representations

[64] The ministry asserts that the bulk of the withheld information falls within the scope of the section 21(3)(b) presumption:

> All of the records we have withheld under this exemption relate to an OPP investigation initiated as a result of a complaint filed by the appellant. While no charges resulted, the presumption nevertheless applies, because if the investigating OPP officer had found, as a result of his investigation, that an offence had been committed, he could have, as an OPP officer, laid one or more charges pursuant to the relevant law.

[65] In addition, the ministry submits that the same information qualifies as highly sensitive under section 21(2)(f). Relying on Orders P-1618 and PO-3659, the ministry submits that this office has found that "the personal information of individuals who are 'complainants, witnesses or suspects' as part of their contact with the OPP is 'highly sensitive' for the purpose of section 21(2)(f)". The ministry submits that this reasoning should be applied to the records, especially as one of the affected third party individuals could be characterized as a potential suspect.

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[19] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[20] Orders P-242 and MO-2235.

[21] Orders M-444 and MO-1323.

[22] Orders MO-1323 and MO-1378.

[66] The ministry further submits that the disclosure of the information could cause significant personal distress:

> … given the fact that the records were created in 2012, or almost 5 years ago. The ministry submits that it would be distressing for affected third parties to learn that personal information about themselves had been ordered disclosed, so long after the occurrence in question, …

[67] With respect to the employee WIN numbers, the ministry submits that:

> … Given that the WIN number is predominantly used for human resources purposes, and is linked to personal information held about the employee relating to their employment, we submit that any disclosure could be expected to increase the possibility of personal information being disclosed in an unauthorized manner, especially in this instance, where the appellant has also been provided with the employee's name. The ministry submits it has an obligation to protect this personal information from unauthorized access pursuant to the *FIPPA*, that unauthorized access would cause the employee significant distress, and we rely upon Order MO-2134, which contains a similar finding.

[68] Relying on Order PO-3013[23] the ministry submits that the absurd result principle does not apply because disclosure would be inconsistent with the purpose of the exemption, to protect the privacy of the affected third parties whose personal information has been collected as part of OPP law enforcement activities.

[69] The ministry further submits that it has exercised its discretion properly in not releasing the full records that are the subject of this appeal and states that it exercised its discretion based on the following considerations:

> (a) The public policy interest in safeguarding the privacy of affected third party individuals, and in particular those whose personal information is collected as part of a law enforcement investigation;
>
> (b) The concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the expectation that information the public provides to the police during the course of a law enforcement investigation will be kept confidential; and,
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> (c) The OPP has acted in accordance with its usual practices, in severing law enforcement records containing affected third parties' personal information.

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[23] The ministry references paragraph 68 of the order.

The appellant's representations

[70] With respect to the ministry's position that the presumption at section 21(3)(b) applies even though no charges resulted, the appellant asserts that the investigation was "willful and malicious" because it was initiated by a complaint from the appellant and the OPP should have realized that he "was a law abiding citizen who had not committed any crime and should have ended their investigation, so there was no need to persecute me further by following me to [named part of Ontario] to destroy my next job at [named employer]".

[71] The appellant further challenges the decision to withhold the information asserting that the ministry "is refusing to release the documents to protect a third party who could be a potential suspect".

[72] The appellant further asserts that:

> The police did not show [an appropriate] standard of care and maliciously racially profiled me until I approached them. This was not an investigation, it was an extreme and cowardly act of racial profiling that wasted tax-payer's money, and in the process, destroyed a law-abiding citizen's life, his marriage, family and his children's future.

Analysis and findings

[73] It should be noted at the outset that this was an investigation that arose out of the appellant's complaint that he was being followed by two vehicles.

[74] I agree with the position of the ministry that the presumption against disclosure in section 14(3)(b) applies in this appeal because the personal information in the occurrence report was compiled and is identifiable as part of an investigation into a possible violation of the *Criminal Code*[24].

[75] Section 21(2)(a) contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[25] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 21(2)(a).[26]

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[24] R.S.C., 1985, c. C-46.

[25] Order P-1134.

[26] Order P-256.

[76] In Order P-1014, Adjudicator John Higgins concluded that public policy supported "proper disclosure" in proceedings such as the workplace harassment investigation at the centre of that appeal, and that the support was grounded in a desire to promote adherence to the principles of natural justice. Adjudicator Higgins agreed with the appellant in that appeal that "an appropriate degree of disclosure to the parties" involved in such investigations was a matter of considerable importance. However, on the facts of that appeal, the adjudicator concluded that "the interest of a party to a given proceeding in disclosure of information about that proceeding is essentially a private one." Accordingly, because the appellant in that matter wished to review the records for himself to try to assure himself that "justice was done in this particular investigation, in which he was personally involved," Adjudicator Higgins found that the factor at section 21(2)(a) did not apply.

[77] Although the records in the current appeal are not related to an investigation into a complaint of workplace harassment, in my view, the analysis of Adjudicator Higgins provides some guidance in the matter before me. In this regard, I am not satisfied that the appellant's motives in seeking access to the records are more than private in nature to satisfy him that the conduct of the OPP in relation to him and its investigation of the matters involving him were appropriate. There was no evidence provided by the appellant to suggest that there is a systemic problem, nor does the appellant provide any reliable foundation to support an allegation that he was racially profiled. I note that the records relate to a criminal complaint made by the appellant, rather than one made against him, and it relates to a complaint that someone was following him rather than him being followed by the OPP. In any event, in my view, the withheld information would not in any way be related to any allegation of racial profiling nor would its disclosure result in greater scrutiny of the OPP, the ministry or any other agency of Ontario. As in Order P-1014, this is a private interest, and I therefore find that section 21(2)(a) is not a relevant consideration. Accordingly, I find that the factor in section 21(2)(a) does not apply to the information in the records that remains at issue.

[78] Given the application of the presumption in section 21(3)(b), and the fact that no factors favouring disclosure were established, and balancing all the interests, I am satisfied that the disclosure of the remaining withheld personal information would constitute an unjustified invasion of another individual's personal privacy.[27] Accordingly, I find that this personal information is exempt from disclosure under section 49(b) of the *Act*. I am also satisfied that the undisclosed portions of the records cannot be reasonably severed, without revealing information that is exempt under section 49(b) or

[27] As I have found that the section 21(3)(b) presumption applies it is not necessary for me to also consider the application of the factor at section 21(2)(f).

resulting in disconnected snippets of information being revealed.[28]

[79] That said, I have considered the circumstances of this appeal with respect to the possible application of the absurd result principal. In my view, it would be absurd to withhold the name of a third party party individual as well as that individual's relationship to the appellant that appears on page 4 of the records, which was provided to the police by the appellant. I have highlighted this information in green on a copy of the records that I have provided to the ministry along with this order.

[80] Finally, I have considered the circumstances surrounding this appeal and I am satisfied that the ministry has not erred in the exercise of its discretion with respect to sections 49(a) and 49(b) of the *Act* regarding the withheld information that will remain undisclosed as a result of this order. I am satisfied that it did not exercise its discretion in bad faith or for an improper purpose. The ministry considered the purposes of the *Act* and have given due regard to the nature and sensitivity of the information in the specific circumstances of this appeal. Accordingly, I find that the ministry took relevant factors into account and I uphold its exercise of discretion in this appeal.

SUMMARY

[81] I have concluded that certain information is not responsive to the request and that the ministry conducted a reasonable search for responsive records. I have also concluded that information pertaining to the make and model of a vehicle on the first page of the Occurrence Summary does not meet the definition of personal information under the *Act*. I also concluded that section 14(1)(l), in conjunction with section 49(a), only applies to the police operational codes and not to the other information for which it is claimed. I also find that section 49(b) applies to much of the remaining personal information at issue pertaining to identifiable individuals other than the appellant and should be withheld but that the absurd result principle applies to the name of an individual as well as that individual's relationship to the appellant that appears on page 4 of the records. The information that does not qualify for exemption under sections 49(a) or 49(b), or that would be absurd to withhold, is ordered disclosed to the appellant.

ORDER:

1. I uphold the reasonableness of the ministry's search for responsive records.

2. I order the ministry to disclose to the appellant the additional information that I have highlighted in green on a copy of the records that I have provided to the

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

ministry along with this order by sending it to him by **August 9,2017** but not before **August 2, 2017**.

3. In order to ensure compliance with paragraph 2, I reserve the right to require the ministry to send me a copy of the records as disclosed to the appellant.

Original Signed by: June 29, 2017

Steven Faughnan
Adjudicator