

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3476

Appeal MA15-606

Peel Regional Police Services Board

July 31, 2017

Summary: The Peel Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for information about police street check cards and racial data. The police denied access to six records.

In this order, the adjudicator partially upholds the police's decision under section 7(1) (advice or recommendations) and finds that the public interest override in section 16 applies to four records. She also finds that the discretionary law enforcement exemption in section 8(1)(g) (intelligence information) does not apply to one record.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 7(1), 8(1)(g), 16.

Orders Considered: Order PO-2681.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police or Peel Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for the following:

- Requesting all records (including mini-card) filled out on me in April 2015 (license plate [#]).

- All records (emails, reports) held by [two police chiefs, Chief #1 and Chief #2] relating to race stats/personal information collected on "mini-cards" during street checks.

[2] The appellant later submitted another access request to the police for the following information relating to street checks:

All records (emails, data/reports, minutes of staff analysts' meetings) generated or received by Deputy Chief [name (the Deputy Chief)] in relation to street check race data/analysis. Search especially for emails (between 2006 to end January 2015) as pertaining to Peel Police street check race analysis and data.

[3] The police issued one access decision which dealt with both requests, which stated:

You requested access to all records (including mini-card) filled out on you in April 2015. Access cannot be provided to you because based on the information provided by you, no such record exists.

You have requested all records (emails, reports) held by [Chief #1] relating to race stats/personal information collected during "street checks" Access cannot be provided to you because no such records exist.

After careful review a decision has been made to partially release the information contained in records (emails, reports) held by Chief [#2, (the Chief)] and [the Deputy Chief] relating to race stats/personal information collected during street checks, pursuant to sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(d), 8(1)(e) and 8(1)(g) [discretionary law enforcement exemptions] of the *Act*.

[4] The police then provided a supplemental decision indicating that they were now also relying on the following additional exemptions under the *Act*: sections 7(1) (advice or recommendations), 12 (solicitor-client privilege) and 14(1) (personal privacy).

[5] The appellant then filed an appeal with the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[6] During the course of the mediation stage of the appeal, the appellant advised she was not pursuing the police's decision that no records exist with respect to cards filled out on her.

[7] Also during the mediation stage, the police issued a revised access decision resulting in further disclosure of the records.

[8] The appellant then advised the mediator that she wishes to pursue access to

Records 56, 63-68, 116-119, 120-154, 168-173 and 200 and that a public interest in disclosure exists, thereby raising the application of section 16. In addition, the appellant advised that she believes additional emails exist, particularly emails written between June and September 2015, thereby raising the issue of whether the police conducted a reasonable search for the requested records. At the end of the mediation stage of this appeal, the only exemption claims remaining were for sections 7(1) and 8(1)(g) (intelligence information).

[9] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were sought and exchanged between the police and the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[10] In their representations, the police also claimed section 7(1) for Record 1.

[11] Neither the police nor the appellant addressed the issue as to whether the police conducted a reasonable search for responsive records, although asked to do so in the Notice of Inquiry. In this absence of representations on this issue, I have removed this issue from the scope of the appeal.

[12] In this order, I partially uphold the police's decision under section 7(1) and find that the public interest override in section 16 applies to four records. I also find that the discretionary law enforcement exemption in section 8(1)(g) does not apply to one record.

RECORDS:

[13] The records at issue are described in the following chart:

Record #	Page(s) #	Description	Exemption claimed
1	56	Email from the Chief to the Deputy Chief dated March 26, 2014 notes regarding PRP 17s [street checks]	8(1)(g), 7(1)
2	63 - 65	Email chain with the Chief regarding PRP 17s and Racial Identification	7(1)
3	116 - 119	Email chain with the Chief and the Deputy Chief dated Oct. 22, 2014 regarding Race Descriptors on Street Check Data	7(1)
4	120 - 154	Email Chain with the Deputy Chief and the Chief dated Oct. 24, 2014 with attached Street	7(1)

		Check Board Report	
5	168 - 173	Email Chain with the Chief dated Jan. 29, 2015 regarding modifications to electronic PRP 17s	7(1)
6	200	Email from the Chief dated June 9, 2015 regarding contact cards	7(1)

ISSUES:

- A. Does the discretionary law enforcement exemption at section 8(1)(g) (law enforcement intelligence information) apply to Record 1?
- B. Does the discretionary advice or recommendations exemption at section 7(1) apply to the records?
- C. Did the institution exercise its discretion under section 7(1)? If so, should this office uphold the exercise of discretion?
- D. Is there a compelling public interest in disclosure of Records 2, 3, 4, 5, and 6 that clearly outweighs the purpose of the section 7(1) exemption?

DISCUSSION:

A. Does the discretionary law enforcement exemption at section 8(1)(g) (law enforcement intelligence information) apply to Record 1?

Section 8(1)(g) states:

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

interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

The term "intelligence information" means:

Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from

information compiled and identifiable as part of the investigation of a specific occurrence.¹

[14] The police state that the email in Record 1 sets out a number of questions to be analyzed. They state that they rely on section 8(1)(g) as the questions relate to the police's Executive Command in relation to street checks (PRP 17) forms.

[15] The appellant states that she has already received a copy of the information contained in Record 1 by means of another freedom of information request. She quotes extensively from the record received from the other request.

[16] The police did not provide reply representations on this or any of the other issues.

Analysis/Findings

[17] The police do not dispute the appellant's submission that she has received the information in this record, and based on my review of Record 1, I agree with the appellant's submission that she has received information that is substantially similar to that in Record 1.

[18] As well, the police have not provided any information in their submission that would support the application of section 8(1)(g). The information in Record 1 is a series of questions and does not reveal information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law.

[19] I find that section 8(1)(g) does not apply to Record 1. Disclosure of this record could not reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

[20] I will now consider whether section 7(1) applies to Record 1, along with the remaining records.

B. Does the discretionary advice or recommendations exemption at section 7(1) apply to the records?

Section 7(1) states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

¹ Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

[21] The purpose of section 7 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.²

“Advice” and “recommendations” have distinct meanings. “Recommendations” refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

“Advice” has a broader meaning than “recommendations”. It includes “policy options”, which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant’s identification and consideration of alternative decisions that could be made. “Advice” includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.³

“Advice” involves an evaluative analysis of information. Neither of the terms “advice” or “recommendations” extends to “objective information” or factual material.

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁴

[22] The application of section 7(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 7(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 7(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.⁵

[23] Section 7(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by section 7(1).⁶

[24] Examples of the types of information that have been found *not* to qualify as advice or recommendations include

² *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

³ See above at paras. 26 and 47.

⁴ Order P-1054

⁵ *John Doe v. Ontario (Finance)*, cited above, at para. 51.

⁶ *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.

- factual or background information⁷
- a supervisor's direction to staff on how to conduct an investigation⁸
- information prepared for public dissemination⁹

[25] The parties provided representations on each record. I will review these representations and determine the application of the section 7(1) exemption to each record individually.

Record 1

[26] The police state that this email is a request for advice or recommendations of Peel Regional Police Executive Command in relation to street checks (PRP 17) analysis. They state that this email sets out queries that may infer the nature of the advice to be given.

[27] The appellant relies on the same representations for section 7(1) as she did for section 8(1)(g) for this record.

Analysis/Findings re: Record 1

[28] The police were asked to answer the following questions for this and the other records:

- What is the advice?
- What is the recommended course of action?
- Was the advice given by an officer or employee of an institution or a consultant retained by an institution? Please explain.
- If the advice or recommendation is not contained in the record, how could disclosure of the record reveal the advice or recommendation?

[29] The police did not specifically answer these questions.

[30] This email is a series of questions. I find that it does not reveal advice or recommendations within the meaning of section 7(1) as it does not consist of advice or recommendations, nor does it consist of information the disclosure of which would permit the drawing of accurate inferences as to the nature of actual advice or

⁷ Order PO-3315.

⁸ Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).

⁹ Order PO-2677

recommendations. Therefore, the section 7(1) exemption does not apply to Record 1. As no other discretionary exemptions have been claimed and no mandatory exemptions apply, I will order this record disclosed.

Record 2

[31] The police state that this is an email chain forwarding emails from Peel Regional Police Executive Command regarding the ability of officers to input race into the computerized PRP 17 Form. They state that this email chain is indicative of the need for ongoing analysis of the internal information technology system.

[32] The appellant's representations focus on the police's exercise of discretion and the public interest in disclosure of this record.

Analysis/Findings re: Record 2

[33] Based on my review of the email chain that comprises Record 2, I agree with the police that it contains advice or recommendations on the information relating to the ability of officers to input race into the computerized PRP 17 Form and ongoing analysis of the internal information technology system. None of the exceptions in section 7(2) apply.

[34] Accordingly, this record is exempt by reason of section 7(1), subject to my review of the police's exercise of discretion and the public interest override in section 16.

Record 3

[35] The police state that this is an email chain in relation to the gathering of race information on PRP 17 forms and to potential modifications to the internal information technology system of the police service.

[36] The appellant's representations focus on the police's exercise of discretion and the public interest in disclosure of this record.

Analysis/Findings re: Record 3

[37] Based on my review of the email chain that comprises Record 3, I agree with the police that it contains advice or recommendations in relation to the gathering of race information on PRP 17 forms and to potential modifications to the internal information technology system of the police service. None of the exceptions in section 7(2) apply.

[38] Accordingly, this record is exempt by reason of section 7(1), subject to my review of the police's exercise of discretion and the public interest override in section 16.

Record 4

[39] The police state that this is an email chain with an attached final version of a Street Check Board Report that sets out proposed directives and quality control in relation to street checks and racial data. They state that this record includes advice and recommendations in relation to the collection of race information on PRP 17 Forms.

[40] The police further state that this report was not submitted for review, remains of a draft nature, and has not been released in a public meeting.

[41] The appellant assumes that Record 4's attached report is a draft of a report entitled "Street Checks Process" dated September 23, 2015, as presented to the September 25, 2015 Peel Police Services Board. The appellant provided me with a copy of this 2015 report.

Analysis/Findings re: Record 4

[42] Record 4 is a report, with a cover email chain.

[43] Record 4 is a different record from the 13-page September 23, 2015 Street Check Process Report provided by the appellant. The report in Record 4 is 33 pages and is entitled "Street Check Board Report." I agree with police that the report sets out proposed directives and information about quality control in relation to street checks and racial data. This record contains advice or recommendations.

[44] Therefore, I find that Record 4 is subject to section 7(1). I do not have evidence to determine that this record is subject to the exceptions to section 7(1) in section 7(2).

[45] I will consider whether the police exercised their discretion in a proper manner and whether the public interest override in section 16 applies to this record.

Record 5

[46] The police describe this record as an email chain regarding modifications to electronic PRP 17 forms relating to recommendations in relation to potential changes to the police's computer system.

[47] The appellant's representations focus on the police's exercise of discretion and the public interest in disclosure of this record.

Analysis/Findings re: Record 5

[48] I agree with the police that this record is an email chain containing recommendations in relation to potential changes to the police's computer system. This record is subject to section 7(1) and none of the exceptions in section 7(2) apply.

[49] Accordingly, this record is exempt by reason of section 7(1), subject to my

review of the police's exercise of discretion and the public interest override in section 16.

Record 6

[50] The police state that this email is not in relation to police business but rather that of the Ontario Association of Chiefs of Police (the Association) of which the Chief is a member. As such, they submit that the email does not constitute a record for the purposes of section 2 of the *Act* and should not have been included within the responsive material. The police also rely on section 7(1) of the *Act* as the email pertains to the Chief providing advice and direction to the Association.

[51] The appellant states that the content of this email is "contact cards," also known as "street check forms," which does potentially make this email police business.

Analysis/Findings re: Record 6

[52] I agree with the appellant that this record is responsive to the request as it contains information about street checks. As well, I find that this record contains advice or recommendations.

[53] This record is subject to section 7(1) and none of the exceptions in section 7(2) apply. Therefore, this record is exempt by reason of section 7(1), subject to my review of the police's exercise of discretion and the public interest override in section 16.

Conclusion

[54] I have found that Record 1 is not exempt under section 7(1) and I will order this record disclosed. I will now consider whether the police exercised their discretion for the remaining records in a proper manner, and whether the public interest override in section 16 applies to the remaining records.

C. Did the institution exercise its discretion under section 7(1)? If so, should this office uphold the exercise of discretion?

[55] The section 7(1) exemption is discretionary and permits 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.

[56] 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.

[57] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁰ This office may not, however, substitute its own discretion for that of the institution.¹¹

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹²

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[58] For Record 2, the police state that they have exercised their discretion under section 7 in light of the following considerations:

¹⁰ Order MO-1573.

¹¹ Section 43(2).

¹² Orders P-344 and MO-1573.

- Information is provided by staff to assist in formulating a course of action that will ultimately be accepted or rejected;
- The email chain is indicative of the need for ongoing analysis of the internal information technology system;
- [They] have considered but do not see a public interest in the release of this type of communication.

[59] For Record 3, the police state that they have exercised their discretion under section 7 in light of the following considerations:

- The email chain is providing information on a course of action that will ultimately be accepted or rejected. This relates to potential modifications to the internal information technology system of the police service.
- [They] have considered but do not see a public interest in the release of this type of communication.

[60] For Record 4, the police state that they have exercised their discretion under section 7(1) in light of the following considerations:

- The report was prepared to seek advice on a course of action that would be ultimately accepted or rejected. This report was not submitted for review but remained of a draft nature.
- The report sets out proposed direction in relation to directives and quality control in relation to street checks and racial data.

[61] The police did not provide representations on the exercise of their discretion for Records 5 and 6.

[62] The appellant's representations discuss each record and focus on the nature of the information and the extent to which it is significant to her "...and citizens, especially the Black Community in understanding the actions of the police service, but also Peel Regional Police values...".

Analysis/Findings

[63] The police were asked in the Notice of Inquiry to answer the following questions with respect to the exercise of their discretion:

- In denying access to the record, did the institution exercise its discretion under section 7(1)?
- What factors did the institution consider in exercising its discretion?

- Did the institution exercise its discretion in bad faith or for an improper purpose?
- Did the institution take into account all relevant factors?
- Did the institution take into account any irrelevant factors?

[64] As noted above, the police did not provide representations on the exercise of discretion for two records, Records 5 and 6. For Record 5, I find, based on all of the evidence, that I do not have sufficient information that the police exercised their discretion in a proper manner concerning this record.

[65] For the sake of completeness, I will also consider whether the public interest override applies to Record 5. If the public interest override applies to this record, I will order it disclosed as it will not be necessary for the police to re-exercise their discretion on this record.

[66] Record 6 is a short email between the Chief and the Association. For Record 6, taking into account the contents of this record, both parties' representations and the type of information that the appellant is seeking, I find that the police exercised their discretion in a proper manner. This record does not address the appellant's concerns set out in her representations, as such the appellant does not have a compelling need to receive the information in Record 6. As well, disclosure will not increase public confidence in the operation of the police.

[67] Therefore, I will uphold the police's decision that Record 6 is exempt under section 7(1), subject to my review of the application of the public interest override in section 16 to this record.

[68] For Records 2 to 4, I find that the police exercised their discretion in a proper manner, taking into account:

- the purposes of the *Act*, including the principle that
 - exemptions from the right of access should be limited and specific
- the wording of the section 7(1) exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- 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

[69] Therefore, subject to my review of the public interest override in section 16 for Records 2 to 4, these records are exempt under section 7(1).

D. Is there a compelling public interest in disclosure of Records 2, 3, 4, 5, and 6 that clearly outweighs the purpose of the section 7(1) exemption?

Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[70] For section 16 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.

[71] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.¹³

[72] The police only provided initial representations. It did not provide reply representations in response to the appellant's detailed representations.

[73] In its initial representations, the police merely state that for Records 2 and 3 they have considered, but do not see, a public interest in the release of this type of communication. For Record 4, the police state that they have considered the public interest in releasing this type of report and determined that in light of its draft status, it would not be of assistance in understanding the actions of the police service.

[74] The police did not provide any representations on the applicability of section 16 to Records 5 and 6.

[75] The appellant provided extensive representations as to the public interest in Peel's street check system as reflected in the records and her reasons for seeking the information at issue.

[76] The appellant states that she has been filing freedom of information requests since January 2007. In 2012, she secured a copy of the City of Mississauga Corporate Security's (MissCorpSec) electronic database, which revealed that from 2006 through 2012 almost 60% (59.5%) of all loitering bans/arrests were issued to Black or West Indian individuals. She submits that of greater significance was the discovery that no one had ever monitored the City of Mississauga's Corporate Security database

¹³ Order P-244.

throughout that time.

[77] As a result, the appellant states that she turned her attention to MissCorpSec's "community partner", Peel Police, to see if the same race statistics were likely happening there.

[78] The appellant states that by 2012, led by the Toronto Star, the public's attention turned to a police street check practice and the related PRP 17 cards.

[79] The appellant states that the police have no oversight of their PRP 17 Street Check Database with respect to race at all.

[80] The appellant states that as Record 2 is about the ability of officers to input race into the computerized PRP 17 Form, this email chain is highly likely to explain how and/or why close to 50% of all Peel Police street check forms in 2014 and 2015 were assigned "No Race" (aka "Blank Data"). She states that:

So Peel Police knew in July 2014 that there were viability issues with their Street Check (Carding) Database yet one year later, August 28, 2015, their "internal information technology system" is still churning out duplicate street check race data to the Toronto Star - and exposing these problems isn't in the public interest?!

Not to mention that Peel Police street check race statistics are dramatically skewed because, as [name] Assistant Manager, Criminal Intelligence Analysis, explains, "[Toronto Star race] data only reflects street checks where information on a person's description (e.g. race) is completed."

[81] The appellant submits that it would help the Black Community to know what this Peel Police "Racial Identification" "course of action" is, and whether this knowledge would help them "adding in some way to the information" the Black Community already has and "make effective use of the means of expressing public opinion or to make political choices."

[82] Concerning Record 3, the appellant states that this record is about the gathering of race information on PRP 17 forms. She states that in 2014 and 2015, almost half of all PRP 17 street check forms "have officers selecting 'No Race'," yet in both Peel Police September 2015 street check reports to the Board, use the average 22.5% "No Race." She submits that is why the police's PRP 17 street check database records from 2014 are so crucial to shed light on the operations of government and to inform or enlighten the citizenry about the activities of their government or its agencies.

[83] The appellant states that as Record 3 concerns potential modifications to the internal information technology system, this record might provide the key to solving the "Mystery of the 'No Race' Spike to 50%" that year.

[84] The appellant states that the police continue to withhold Record 4, a Street Check Board Report, that the Peel Police Services Board has never seen and despite the Board specifically calling for a “for a full review of street checking practices by the Peel Regional Police (PRP)” at the Board’s June 12, 2015 meeting.

[85] The appellant states that the police have already released several draft versions of “Analysis of Street Checks 2009–2014” including the earliest, original version. She states that by examining each successive draft she was able to track the changes to PRP’s race statistics as well as read the emails suggesting changes (such as removing race data from a Board report, “options” for presenting race data differently, what “No Race” really meant, and that the percent of Black street checked was not 20.7% as reported to the Board/public but reached beyond 27%).

[86] Record 5 is an email chain regarding potential changes to the police’s computer system.

[87] The appellant states that her previous freedom of information requests reveal chronic problems with the inputting of information on PRP 17s and in the ability of the street check database to provide accurate street check race data when Peel Police run a query. She states that disclosure of each successive modification to the police’s PRP 17 street check database, as well as the emails suggesting these modifications to race classifications, racial data, “options”, “No Race” etc., would provide citizens, especially the Black Community, assistance in understanding the actions and values of the police.

[88] The appellant did not provide representations on the public interest in disclosure of Record 6.

Analysis/Findings

[89] As noted above, for section 16 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.

[90] I will first consider whether there is a compelling public interest in disclosure of each record. If so, I will go on to consider whether this interest clearly outweighs the purpose of the exemption.

Compelling Public Interest

[91] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government.¹⁴ Previous orders have stated that in order to find a compelling public interest in disclosure, the

¹⁴ Orders P-984 and PO-2607.

information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹⁵

[92] A public interest does not exist where the interests being advanced are essentially private in nature.¹⁶ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁷

[93] A public interest is not automatically established where the requester is a member of the media.¹⁸

[94] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".¹⁹

[95] Any public interest in *non*-disclosure that may exist also must be considered.²⁰ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".²¹

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation²²
- the integrity of the criminal justice system has been called into question²³
- public safety issues relating to the operation of nuclear facilities have been raised²⁴
- disclosure would shed light on the safe operation of petrochemical facilities²⁵ or the province's ability to prepare for a nuclear emergency²⁶

¹⁵ Orders P-984 and PO-2556.

¹⁶ Orders P-12, P-347 and P-1439.

¹⁷ Order MO-1564.

¹⁸ Orders M-773 and M-1074.

¹⁹ Order P-984.

²⁰ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²¹ Orders PO-2072-F, PO-2098-R and PO-3197.

²² Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²³ Order PO-1779.

²⁴ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

²⁵ Order P-1175.

²⁶ Order P-901.

- the records contain information about contributions to municipal election campaigns²⁷

[96] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations²⁸
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations²⁹
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding³⁰
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter³¹
- the records do not respond to the applicable public interest raised by appellant³²

[97] Both the police and the appellant were asked the following questions in the Notice of Inquiry concerning the existence of a compelling public interest:

- Is there a public interest in disclosure of the record? If so, is this interest compelling? Please explain.
- Is there a public interest in non-disclosure? Please explain.

[98] As noted above, only the appellant provided detailed representations on section 16.

[99] Record 2 is an email chain regarding the ability of officers to input race into the computerized PRP 17 Form. I agree with the appellant that there is a compelling public interest in the input of race by police officers into the street checks database.

[100] The issue of street checks of individuals by race by the police has garnered much public interest, as noted by the newspaper articles referred to by the appellant. I find that disclosure of the information in Record 2 would shed light on the police's efforts to have accurate race-related statistics on street checks.

[101] Record 3 is an email chain in relation to the gathering of race information on PRP

²⁷ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

²⁸ Orders P-123/124, P-391 and M-539.

²⁹ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

³⁰ Orders M-249 and M-317.

³¹ Order P-613.

³² Orders MO-1994 and PO-2607.

17 or street forms and to potential modifications to the internal information technology system of the police.

[102] For the same reasons as set out above for Record 2, I find that there is a compelling public interest in disclosure of this record.

[103] Record 4 sets out advice and recommendations in relation to the collection of race information on PRP 17 forms and the proposed direction of directives and quality control in relation to street checks and racial data. The police determined that in light of its draft status, it would not be of assistance in understanding the actions of the police service.

[104] I find that the report in Record 4 is a final report. The cover email in Record 4 that circulated the report at issue in this record refers to the report as being the "final version."

[105] I disagree with the police's submission that the report in Record 4 is draft report because it has not been submitted for review and has not been released in a public meeting. There is no requirement in *MFIPPA* that in order for a report to be a final report that it must have been submitted in a public meeting. As well, the police have not indicated in their representations what other individuals were yet to review this 2014 report in Record 4 nor have they produced a more recent version of this report.

[106] Based on my review of the contents of Record 4, I find that there is a compelling public interest in disclosure of Record 4. The report in Record 4 contains detailed information that is of assistance in understanding the actions of the police in accurately reflecting race statistics in its street check process. It includes details of the police's street check process technologically and in person during street checks. It also provides details as to how to improve the street checks system.

[107] Record 5 is an email chain regarding modifications to electronic PRP 17 forms containing recommendations in relation to potential changes to the police's computer system.

[108] For the same reasons as set out above for Record 2, I find that there is a compelling public interest in disclosure of this record.

[109] Records 2, 3, 4, and 5 all concern the issue of why the police's technology system is not accurately reflecting race data on street checks of individuals. Based on my review of these records and the lack of specific representations from the police on the application of section 16, I find that I do not have sufficient evidence to determine that there is a public interest in non-disclosure of the information at issue in these records.

[110] As I have found that a public interest exists in disclosure of Records 2, 3, 4, and 5, I will consider below whether this public interest clearly outweighs the purpose of the

established section 7(1) exemption claim in the specific circumstances of this appeal.

[111] Record 6 is an email pertaining to the Chief providing advice and direction to the Association. The appellant did not provide representations on this record concerning the application of section 16. This record does not contain information that specifically addresses the concerns set out in the appellant's representations about the collection of race data and the PRP cards.

[112] Based on my review of Record 6, I find that I do not have sufficient evidence that there is a compelling public interest in disclosure of this record. Therefore, I find that section 16 does not apply to override the application of section 7(1) to Record 6 and that this record is exempt under section 7(1).

Purpose of the exemption

[113] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[114] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³³

[115] Both the police and the appellant were asked the following questions in the Notice of Inquiry concerning the existence of a compelling public interest:

- What is the purpose of the exemption? To what extent is the purpose being served in this case?
- Does the compelling public interest in disclosure of the records clearly outweigh the purpose of the exemption in this case? Please explain.

[116] As noted above, only the appellant provided detailed representations on section 16.

[117] I have considered the purpose of the section 7(1) exemption, that is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.

[118] Based on my review of Records 2, 3, 4, and 5, and based in particular on the content of the appellant's representations, I find that the compelling public interest in disclosure of the records clearly outweighs the purpose of the section 7(1) exemption.

³³ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

In this case, the public interest in the street check process, including the discrepancies between race data collected on the PRP forms and the street check database, outweighs the police's need to ensure that their employees provide free and frank advice.

[119] Therefore, I find that the public interest override in section 16 applies to override the section 7(1) exemption for Records 2, 3, 4, and 5. These records shed light on the important issues related to the police's race tracking and street checking.

[120] Accordingly, I find that Records 2, 3, 4, and 5 are not exempt under section 7(1) by reason of section 16 and I will order disclosure of them. As well, I will order disclosure of Record 1, as it has been found not to be exempt under sections 7(1) or 8(i)(g) of the *Act*.

ORDER:

1. I order the police to disclose Records 1 to 5 to the appellant by **September 3, 2017**.
2. I uphold the police's decision that Record 6 is exempt under section 7(1).

Original Signed by: _____
Diane Smith
Adjudicator

_____ July 31, 2017