

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER PO-3762-I

Appeal PA15-482

Ministry of Community Safety and Correctional Services

August 4, 2017

**Summary:** The appellant sought access to records relating to a crime committed against her and was granted partial access to the requested records. The ministry relied on the discretionary personal privacy exemption in section 49(b) of the *Freedom of Information and Protection of Privacy Act* to withhold some records in part and others in their entirety. The ministry also withheld some records on the basis that they were not responsive to the request. The adjudicator finds that the records withheld as not responsive are responsive and orders the ministry to issue an access decision for them. The adjudicator also upholds the section 49(b) claim for portions of the records, but orders disclosure of some information that can be severed under section 10(2) without disclosing information found to be exempt under section 49(b). She remains seized of the appeal to address the one remaining issue.

**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"), 10(2), 21(2)(a), (e), (f) and (i), 21(3)(b), and 49(b).

**Orders and Investigation Reports Considered:** M-493, M-530 and P-995.

### OVERVIEW:

[1] The appellant submitted an access request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and*

*Protection of Privacy Act (the Act)* for records related to a crime committed against her. The appellant stated that she was raped<sup>1</sup> in 1980 and her clothes were sent to Centre of Forensic Services (CFS), which produced a report in February 1981. The appellant enclosed a copy of the CFS report with her request. She indicated her understanding that CFS records were stored off site for at least 50 years and she asked for samples, slides, and/or notes related to the investigation of her rape. Specifically, slides of the substance on her clothing and notes of the analyst or any other material. The appellant added that if the samples were destroyed, she wanted to know the reason for their destruction. Finally, the appellant asked the ministry to forward unredacted copies of any of the requested slides and notes directly to a specific police service (the police).

[2] The ministry took the position that the appellant's request was not sufficiently detailed to enable it to locate records responsive to the request. It sought clarification from the appellant on the specific records she was requesting. In response, the appellant stated that she seeks access to unredacted copies of all the notes, reports, and documents pertaining to the information gathered and the conclusions reached as a result of all testing done at CFS on her clothes. She added that she also wants to know if CFS has the slides used for the tests and the samples tested (semen, hair, saliva etc.). She reiterated that if CFS has the slides, they should be sent to the police; if CFS does not have the slides, she wants to know where and when they were destroyed and why.

[3] Following the appellant's clarification, the ministry located 68 pages of responsive records. It then issued an access decision granting the appellant partial access to the records. The ministry relied on the discretionary personal privacy exemption in section 49(b) with reference to the presumptions in sections 21(3)(a) and 21(3)(b) and the factor in section 21(2)(f), to withhold some pages in full and other pages in part. The ministry also withheld portions of the records on the basis that they were not responsive to the request.

[4] The appellant appealed the ministry's access decision to the Office of the Information and Privacy Commissioner (the IPC). In her appeal letter, the appellant indicated that the ministry's decision did not address the most important part of her request, namely, the date that the slides and other forensic evidence were destroyed and the name of the person who ordered their destruction. The appellant also indicated that the records sent to her were heavily redacted, and she asked whether the police received unredacted copies of this material. She also stated that she has a great interest in obtaining the information and that she should not have to bear the cost of obtaining a court order for release of the information. She also asked who held the evidence that is documented in record 39 as having been collected.

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<sup>1</sup> At the appellant's request, I identify the crime as "rape" in this order.

During mediation, the ministry confirmed that CFS does not have the slides requested by the appellant and it advised that it has no information in the CFS file detailing whether or when the slides were destroyed. It also stated that CFS advised that the slides may have been returned with evidence items to the police or may have been disposed of within CFS at the conclusion of the testing performed in the early 1980s. The ministry directed the appellant to the police to answer her questions about when the other forensic evidence was destroyed, who ordered the destruction, and who held the evidence that was collected. Finally, the ministry advised that records 9 and 58 would only have been disclosed to the police if the case were going to trial and a disclosure request for the case file had been made by the Crown. It added that when CFS prepared the case file following the appellant's request, CFS forwarded the information to the ministry's freedom of information office and did not send any unredacted copies of the records to the police.

[5] The appellant advised that she already has a copy of page 12 of the records and is not pursuing access to it. She also advised that she is not satisfied with the ministry's decision to withhold the remaining information at issue and with the ministry's response to her questions about the destruction of the slides. The appellant also requested a legible copy of pages 3, 9, 30, 32, 37, 46 and 60 of the records. In response, the ministry advised that the copies it provided were the best copies of the records available.

[6] A mediated resolution of the appeal was not possible and it was moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[7] I sought and received representations from the ministry and the appellant and shared these in accordance with the IPC's *Practice Direction Number 7*. In its representations, the ministry withdrew its reliance on section 21(3)(a). Accordingly, I removed this issue from my inquiry and will not address it in this interim order. In her representations, the appellant stated that she does not seek access to the names of other victims or laboratory technicians. Accordingly, I have removed this information from the scope of the appeal and will not address it in this interim order.

[8] In this interim order, I find that the records withheld as not responsive are responsive to the appellant's request and I order the ministry to issue an access decision for them. I also order the ministry to disclose pages 58, 59 and 68 to the appellant. I uphold the ministry's decision to withhold under section 49(b) the names, dates of birth, general residence information and file numbers related to the individuals identified as suspects in the records, but I order the ministry to disclose all the remaining withheld information to the appellant under section 10(2) of the *Act*. I remain seized of the matter to address an issue regarding the scope of the request/reasonableness of the search.

## **RECORDS:**

[9] The records remaining at issue are the portions withheld under section 49(b) from the following records:

Pages 3, 21 and 37 - Handwritten Notes

Page 11 - Case Submission

Page 15 - CFS Report dated February 1981<sup>2</sup> (page 2)

(duplicated at page 66 of the records)

Pages 16 and 17 - CFS Report dated March 1982

Page 53 – [named] Regional Police Service Memo dated November 2011

Page 56 - Email String dated November 24, 2011

Pages 58 and 59 - Case Contact Log

Page 68 - Email dated March 23, 2015.

[10] These six pages that have been withheld in full under section 49(b):

Page 20 - Action Memo

Pages 22-26 - Handwritten Notes.

[11] And the portions of the following pages that have been withheld as not responsive to the request:

Page 7 - STR Quality Review Sheet

Pages 8 and 9 - DNA Summary Worksheet

Page 10 - DNA Form 112

Page 51 - Case Contact Log.<sup>3</sup>

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<sup>2</sup> The specific dates of certain documents are excluded from this order for confidentiality reasons.

<sup>3</sup> The ministry initially partially withheld this record under section 49(b), however, in its representations, it submits that the withheld portion of the record is not responsive to the request.

## **DISCUSSION:**

### **A. Do the records for which the ministry has claimed section 49(b) contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[12] 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,
- (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;

[13] The list of examples of personal information under section 2(1) is not exhaustive.

Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>4</sup>

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

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(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.

[15] 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.<sup>5</sup>

[16] 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.<sup>6</sup> However, when 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.<sup>7</sup>

### ***The parties' representations***

[17] In its representations, the ministry does not address each of the records individually. It submits that the records for which it has claimed the personal privacy exemption contain personal information within the meaning of the definition in section 2(1) of the *Act*, including: the names and dates of birth of affected individuals and the fact that these affected individuals were involved in both a police investigation and a CFS investigation; the name, telephone number and occupation of an affected individual and a summary of a discussion between the affected individual and a member of the CFS; and the name of an individual that has been crossed out but that appears next to the name of a suspect, suggesting that there may be an association between these individuals.

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<sup>4</sup> Order 11.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA).

<sup>6</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

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

***Analysis and finding***

[19] All of the records at issue relate to the investigation of the appellant's rape and contain various details about it, the steps taken in the subsequent investigation that was conducted, and the results of the investigation. As these records are all contained in a file relating to the investigation of the appellant's rape, they all contain information about her in a personal capacity including her name along with other information that would reveal something personal about her, such as, the various articles and samples that were collected from her and examined during the investigation, and the results of the comparisons of these samples to samples collected from individuals who were identified as possible suspects. There is one record, the Action Memo at page 20, that does not contain the appellant's name or other identifying information about her in its body. Nonetheless, I find that it reveals something personal about the appellant as it relates to the investigation of her rape and identifies one of the individuals considered to be a suspect.<sup>8</sup>

[20] Pages 58, 59 and 68 contain the name, telephone number and occupation of an individual, along with information about this individual's conversations with CFS staff. While the ministry asserts that this constitutes the personal information of this individual, the records indicate that the individual was acting in a professional capacity at the time the records were created. The records also indicate that this individual contacted CFS staff on behalf of the appellant. I find that all of the information relating to this individual appears in a professional capacity in these records and does not reveal anything of a personal nature about the individual. A second name also appears in one of the records and the record describes this individual's professional involvement in the appellant's investigation. I find that all of the information relating to this second individual also appears in a professional capacity and does not reveal anything of a personal nature about this individual. As a result of my finding that pages 58, 59 and 68 do not contain the personal information of any individuals other than the appellant, these pages cannot qualify for exemption under section 49(b) of the *Act*. The ministry has not claimed any other exemptions for the information it has withheld from pages 58, 59 and 68 and I find that no other exemption applies. As a result, I will order these pages disclosed in full to the appellant.

[21] In addition to containing the personal information of the appellant, the remaining records, pages 3, 11, 15, 16, 17, 20 to 26, 37, 53 and 56, also each contain information about one or more other individuals, including their names, dates of birth and gender, and their identification as possible suspects in the appellant's rape. The records also contain details about various samples taken from these individuals for forensic review

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<sup>8</sup> Page 20 also includes the names of other individuals identified as victims. However, because the appellant indicates in her representations that she does not seek access to the names of other victims, this information is no longer at issue in this appeal.

and the results of the examination of these samples when compared to the samples of the appellant. I find that these records all contain the personal information of the appellant and of one or more other individuals. Accordingly, the appellant's access to these records is governed by section 49(b) of the *Act*.

## **PERSONAL PRIVACY**

### **B. Does the discretionary exemption at section 49(b) apply to the withheld information in pages 3, 11, 15, 16, 17, 20, 21, 37, 51, 53, 56 and 66, and pages 22-26 that have been withheld in full?**

[22] Section 49 provides a number of exemptions from the general right of access individuals have under section 47(1) to their own personal information held by an institution. Section 49(b) gives the ministry the discretion to refuse to disclose to the appellant a record that contains personal information of both the appellant and another individual if disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy. Since the section 49(b) exemption is discretionary, the ministry may also decide to disclose the information to the appellant.<sup>9</sup>

[23] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy. If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). There is no suggestion that any of paragraphs (1) to (4) of section 21 applies and I find that none does.

[24] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the IPC will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>10</sup> If any of paragraphs (a) to (h) of section 21(3) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). In this appeal, the ministry claims that the presumption at paragraph (b) applies. Section 21(3)(b) states:

(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

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<sup>9</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the ministry's discretion under section 49(b).

<sup>10</sup> Order MO-2954.



is necessary to prosecute the violation or to continue the investigation[.]

[25] The presumption only requires that there be an investigation into a possible violation of law.<sup>11</sup>

### ***The ministry's representations***

[26] The ministry submits that the records were created as part of or in relation to a CFS investigation that was initiated to support a police investigation. It explains that the CFS investigation was initiated to provide critical evidence required for the law enforcement investigation of the police and that, in these circumstances, the records were compiled and are identifiable as part of an investigation into a possible violation of law even though they were mostly compiled by CFS.

[27] The ministry claims that the factor in section 21(2)(f) applies to the records. It relies on Order P-1618 to argue that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the police is "highly sensitive" for the purpose of section 21(2)(f). It adds that the age of the records, being over 30 years old, increases the likelihood that disclosure of the withheld information would cause the affected individuals significant distress. The ministry also notes that some of the affected individuals are identified as suspects but there is no evidence these individuals were convicted of any associated crimes; it contends that disclosure of the personal information of these individuals in these circumstances could reasonably be expected to cause them significant distress due to the stigma of being identified as a suspect.

[28] The ministry relies on two other factors that it argues weigh in favour of privacy protection. First, it submits that none of the affected individuals have consented to disclosure of their personal information to the appellant, nor have they been notified of the request and appeal. The ministry asserts that the affected individuals are entitled to an opportunity to be heard prior to their personal information being disclosed. Second, it submits that Ontario police work closely and collaboratively with CFS with the expectation that personal information they provide to CFS will be treated in a strictly confidential manner. The ministry expresses concern that disclosure of the records without the consent of the police may harm the working relationship between CFS and the police to the detriment of public safety.

[29] In respect of the absurd result principle, the ministry states that it is not clear how much knowledge the appellant has of the contents of the responsive records. Regardless, it 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 individuals whose personal information has been collected or is being used as a

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<sup>11</sup> Orders P-242 and MO-2235.

part of a law enforcement investigation. It relies on Order PO-2291 which, it submits, rejected the application of the absurd result principle to law enforcement records and noted that there is a particular sensitivity inherent in the information contained in law enforcement records and that disclosure would not be consistent with the fundamental purpose of the *Act* to protect the privacy of individuals.

[30] The ministry argues that severing identifying information may not remove the personal information from the records because the records relate to a law enforcement investigation. It submits that this reasoning was applied in Order PO-2955 to police records and should also be applied in this appeal. The ministry also relies on Order P-230, which it submits supports the adoption of an expansive definition of personal information that includes information that could reasonably be expected to identify an individual.

### ***The appellant's representations***

[31] The appellant does not dispute the ministry's claim of section 21(3)(b). She states that her interest is in the results of the tests conducted and the methods used to obtain information. She submits that an individual would be less distressed, rather than more distressed as argued by the ministry, by the release of a record more than 30 years old. She also notes that the ministry could contact the individuals whose personal information appears in the records to seek their consent.

[32] The appellant states that the most important point in her appeal is that she seeks information about the slides containing DNA from her assailant. She states that she asked for information about the destruction of slides and who ordered it and the ministry has not addressed this issue. She asserts that she is entitled to the information about the destruction of the slides and that the factor in section 21(2)(a) applies to the samples that she claims were destroyed and are not included in the records at issue. She argues that the careful execution of duties and proper recordkeeping by ministry employees, so as to ensure evidence is properly preserved for court, surely are included in the "activities of the institution" referenced under section 21(2)(a).

### ***Analysis and findings***

[33] It is not disputed and I find that the presumption in section 21(3)(b) applies to all of the records at issue as they were compiled and are identifiable as part of an investigation into a possible violation of law.

[34] Turning to the factors that I must consider and weigh in determining whether disclosure of the personal information of other individuals to the appellant would be an unjustified invasion of personal privacy, I accept the ministry's submissions on sections 21(2)(f) and the absurd result principle given the particular sensitivity inherent in records compiled in a law enforcement context. I also note that there is no consent to disclosure from the individuals whose personal information is contained in the records.

These individuals were not notified by the ministry of the request, nor were they notified by the IPC during the appeal. In these circumstances, I am satisfied that disclosure of the personal information of individuals who are identified as suspects in the records would be likely to cause these individuals significant distress despite the passage of time. I find that section 21(2)(f) applies and weighs in favour of privacy protection, and I give this factor considerable weight.

[35] The ministry's representations also allude to the factors in sections 21(2)(e) and 21(2)(i). These factors relate to circumstances where the disclosure of the personal information may expose the individual to whom the information relates to unfair harm or unfairly damage that individual's reputation. I am satisfied that, due to the seriousness of the crime and the fact that the individuals identified as suspects in the records were not convicted of it, disclosure of the suspects' names could expose them to unfair harm or damage their reputations. I find that the factors in sections 21(2)(e) and (i) apply with respect to the personal information, such as names, dates of birth, general residence information and file numbers related to the suspects identified in the records. Factors 21(2)(e) and (i) weigh in favour of privacy protection and I give them considerable weight as well.

[36] I have considered section 21(2)(a) and I take the appellant's submission to mean that in the circumstances of this investigation – where critical evidence that could be reviewed with contemporary technology and forensics appears to have been lost, and an arrest has never been made – disclosure of the withheld information is desirable to subject the activities of the CFS and/or the ministry to public scrutiny. I do not accept that this applies to all of the personal information of the suspects contained in the records, particularly their names, dates of birth, general residence information, and file numbers related to them and not related to the appellant.

[37] Having found that the presumption in section 21(3)(b) applies to the records and that the only applicable factors all weigh in favour of privacy protection, I conclude that the appellant's right to access the personal information of other individuals in the records does not outweigh those individuals' right to privacy protection in this appeal and that section 49(b) applies.

[38] However, applying section 10(2) of the *Act*, which requires the ministry to disclose as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions, I find that severing the names, dates of birth, general residence information and file numbers related to the individuals identified as suspects in the records removes the ability to identify them, thereby protecting their privacy. Severing in this manner results in all of the remaining information about these individuals contained in the records, including the descriptions of the items and exhibits they provided to the police and the results of the testing performed, losing its personal quality and thus, no longer qualifying for exemption under section 49(b) of the *Act*. I make this finding with the knowledge that the appellant already has a redacted copy of page 12 of the records, a fact that the

complainant confirmed during the course of my inquiry. I also make this finding after accepting the ministry's submissions that the police work with CFS with the expectation that personal information be treated strictly confidentially; the implication being that the police would not disclose to the appellant information about the suspects that could make them identifiable. As the ministry has not claimed any other exemptions in respect of this information and I find that no mandatory exemption applies to it, I will order it disclosed.

[39] I find that only the names, dates of birth, general residence information and file numbers related to the individuals identified as possible suspects in the records qualify for exemption under section 49(b) of the *Act*, subject to my review of the ministry's exercise of discretion below.

### **C. Should I uphold the ministry's exercise of discretion?**

[40] Because the section 49(b) exemption is discretionary, the ministry may disclose the information at issue, despite the fact that it could withhold it. The ministry must exercise its discretion. On appeal, the IPC may determine whether the ministry failed to do so or that it 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.

[41] In either case the IPC may send the matter back to the ministry for an exercise of discretion based on proper considerations.<sup>12</sup> The IPC may not, however, substitute its own discretion for that of the ministry.<sup>13</sup>

[42] Relevant considerations may include those listed below as well as additional unlisted considerations that may be relevant:<sup>14</sup>

- 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

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<sup>12</sup> Order MO-1573.

<sup>13</sup> Section 54(2) of the *Act*.

<sup>14</sup> Orders P-344 and MO-1573.

- 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.

[43] The ministry submits that it exercised its discretion properly in not releasing the records that are the subject of this appeal. It states that it exercised its discretion after considering the public policy interest in protecting the privacy of personal information belonging to affected individuals who are associated with a law enforcement investigation and who are not aware that their personal information is subject to disclosure pursuant to this appeal. It also considered the public policy interest in safeguarding the confidentiality of CFS records due to the fact that the police service that conducted the investigation is not aware that the records are subject to disclosure pursuant to this appeal and may be opposed to or have concerns about its disclosure. The ministry also submits that it provided the appellant with as much information as possible while exempting the personal information of other individuals.

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

[45] As I have found the names, dates of birth, general residence information and file numbers related to the suspect individuals exempt under section 49(b), I will address only the ministry's exercise of discretion to withhold this information. The considerations identified by the ministry are mostly relevant. I am puzzled by the ministry's mention of the police service which conducted the investigation as a consideration because it appears from the records that the police service is aware of this matter. Nonetheless, this is not determinative and need not be discussed further here. I also note that the ministry does not state that it considered the appellant's need and desire to access this information or her concerns about knowing the results of the investigation of a serious crime committed against her more than thirty years ago; this is an oversight on the part of the ministry as it clearly turned its mind to the appellant's

position when it decided to disclose parts of the records that contain her personal information to her.

[46] I find the ministry exercised its discretion in deciding to withhold the information I have found exempt under section 49(b), and although it could have provided more complete submissions on the factors it considered, I am satisfied that it did not exercise its discretion in bad faith or for an improper purpose. I uphold the ministry's exercise of discretion in withholding the information I have found exempt.

#### **D. Are pages 7 to 10 and 51 responsive to the request?**

[47] In determining whether records are considered responsive to a request, the IPC has stated that they must "reasonably relate" to the request.<sup>15</sup> The ministry has withheld pages 7 to 10 and 51 in their entirety claiming that these records are not responsive to the request. In its representations, the ministry identifies pages 7 to 10 and 51 as among the records responsive to the request that were prepared by staff at the CFS as part of or in relation to an investigation. In addressing the issue of responsiveness specifically, the ministry states that it identified pages 7 to 10 and 51 as not responsive because these pages contain other unrelated case numbers used for the purpose of DNA testing.

[48] Based on my review of these pages of the records, I disagree with the ministry. The case numbers reflected on page 51 are not unrelated case numbers. The information the ministry has withheld in page 51 is the end of the last entry of page 50, which the ministry has already disclosed to the appellant. I find that the withheld information on page 51 is responsive to the request.

[49] Turning to pages 7 to 10 of the records, I note the ministry's conflicting representations. It includes these pages in its list of responsive records but withholds them as not responsive, and then addresses only some of the information in these pages in asserting that the case numbers are unrelated. I accept the ministry's submission that these pages contain various numbers presumably related to other cases or individuals. However, the ministry has not explained the relationship between the various numbers in pages 7 to 10 and the appellant's case file, nor has it explained the significance of the various numbers and what they represent. I do not accept the ministry's position that these case numbers are not responsive to the appellant's request. The case numbers are included in DNA testing that appears to relate to the appellant and that is contained in her case file. I find that pages 7 to 10 are responsive to the request.

[50] Having found that pages 7 to 10 and 51 are responsive, I will order the ministry to issue an access decision for them.

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<sup>15</sup> See Orders P-880 and PO-2661.

**E. Additional issue: What is the scope of the request and did the ministry conduct a reasonable search for responsive records?**

[51] As noted above, the appellant's request states that if certain samples were destroyed she wants to know the reason for their destruction. She confirmed in her appeal that the ministry's decision did not address this aspect of her request, nor did the ministry advise her of the date that the evidence was destroyed and the name of the person who ordered the destruction. In this appeal, the ministry has stated that CFS does not have the slides requested by the appellant and that it has no information in the CFS file detailing whether or when the slides were destroyed.

[52] In her representations, the appellant asks me to order the ministry to conduct a search to locate the slides and notes of the forensic evidence she seeks, or provide full disclosure of the efforts it made to determine whether this information and evidence was forwarded to the police or destroyed (including an explanation of when and why these samples were destroyed and at whose instruction). In its reply representations, the ministry states that it has already addressed, to the best of its abilities, the appellant's request for information about who ordered the destruction of the slides containing DNA from the appellant's assailant. It also submits that it conducted an exhaustive search for responsive records in accordance with its statutory duty under the *Act*. And it asserts that, as the issue of whether the ministry conducted a reasonable search for records was not identified as an issue in dispute in this appeal, it cannot be raised and is outside the scope of the appeal.

[53] Previous IPC orders have confirmed that a right to "information" does not include the right to require an institution to provide an answer to a specific question;<sup>16</sup> however, in some circumstances questions can be interpreted as requests for records.<sup>17</sup> It is not clear to me whether the ministry considered the appellant's request for information about the destruction of records as simply a request for an explanation, or as a request for records regarding the destruction of records, and whether its "exhaustive search" included these types of records that may not be contained in the CFS file. In these circumstances, and based on the positions taken by the parties, I have decided to remain seized of this appeal to address the issues raised relating to the scope of the request and/or whether the ministry conducted a reasonable search for records responsive to this portion of the request.<sup>18</sup>

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<sup>16</sup> See Order 17.

<sup>17</sup> See for example, Orders M-493, M-530 and P-995.

<sup>18</sup> I do not accept the ministry's position that the search issue cannot be addressed if it was not initially identified as an issue.

**ORDER:**

1. I uphold the ministry's decision to withhold the names, dates of birth, general residence information and file numbers related to the suspects that appear in pages 3, 11, 15, 16, 20, 21, 22, 24, 37, 53, 56 and 66 of the records under section 49(b). For clarity, I attach to the ministry's copy of this order a copy of these pages of the records highlighting the information that is exempt from disclosure.<sup>19</sup>
2. I order the ministry to disclose to the appellant by **September 12, 2017, but not before September 5, 2017:**
3. pages 58, 59 and 68 in their entirety, and
  - a. all of the remaining withheld information in the records.
  - b. I order the ministry to issue an access decision regarding pages 7 to 10 and 51 in accordance with the relevant statutory provisions of the *Act*.
4. I remain seized of this appeal to address the scope of the request/ reasonableness of the ministry's search regarding the issue identified in paragraph 53 above.

Original Signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ August 4, 2017

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<sup>19</sup> Also highlighted in these pages of the records are the withheld names of other victims.