Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3682

Appeal MA16-261

Ottawa Police Services Board

October 30, 2018

Summary: This appeal deals with a request made under the *Municipal Freedom of Information and Protection of Privacy* (the *Act*) for access to all general occurrence reports in relation to a high profile incident in Ottawa, Ontario which resulted in the death of a victim as well as the alleged perpetrator. The police located a record responsive to the request, and denied access to it in its entirety, claiming the mandatory exemption in section 14(1) (personal privacy), as well as the discretionary exemptions in sections 8(1) (law enforcement) and 13 (danger to safety or health). During the mediation of the appeal, the police also claimed that the Royal Canadian Mounted Police had a greater interest in the record under section 18(4). In addition, the appellant raised the possible application of the public interest override in section 16.

In this order, the adjudicator finds that section 18(4) has no application in this appeal. She also finds that the majority of the record at issue contains the personal information of a significant number of identifiable individuals, which is exempt from disclosure under section 14(1) of the *Act*. She further finds that police ten code information is exempt under section 8(1)(l). She upholds the police's exercise of discretion to withhold police ten codes, and finds that the public interest override in section 16 does not apply to the personal information that is exempt under section 14(1). Conversely, she finds that 11 pages of the record that do not contain personal information are not exempt under sections 8(1), 13 or 14(1), and orders the police to disclose those pages to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of "personal information"), 8(1)(g), 8(1)(i), 8(1)(l), 13, 14(1), 14(3)(b), 16 and 18(4).

Orders and Investigation Reports Considered: PO-1665 and PO-2563.

OVERVIEW:

[1] An individual submitted an access request to the Ottawa Police Services Board (the police) for access to copies of all general occurrence reports relating to the high profile deaths of two named individuals on a specified date in Ottawa, Ontario.

[2] The police located a record responsive to the request, and denied access to it in full, claiming the application of sections 8(1)(g), (i) and (l) and 8(2)(a) (law enforcement), 9 (relations with other governments) and 14(1) in conjunction with sections 14(2)(f), (h) and (i) and 14(3)(a) and (b) (personal privacy). The police also stated that section 51(1) of the *Act* (records available through litigation) was considered as part of this decision.

[3] The requester, now the appellant, appealed the police's decision to this office. During the mediation of the appeal, the police advised that section 51 of the *Act* was included in the decision in error. Accordingly, section 51 is not at issue in this appeal. The appellant raised the issue of compelling public interest under section 16 of the *Act* and believes that it ought to apply in this case.

[4] The appeal then moved to the adjudication stage of the appeals process. The adjudicator assigned to the appeal sent a Notice of Inquiry to the police first, seeking representations. In response, the police issued a revised decision letter to the appellant, advising that the record related to an open investigation and confirming that they were denying access to the record in its entirety, claiming the application of several exemptions. The police further noted that once the investigation was closed, the appellant could re-apply for access to the record. Lastly, the police provided the appellant with a fee estimate of $3,935.00, which included the breakdown of the fees.

[5] In light of the police's revised decision, the appeal was moved back to mediation in an effort to clarify and/or resolve the issues under appeal.

[6] During this time, the appellant advised the mediator that he was appealing the fee estimate and seeking a fee waiver, and also requested a more detailed index of records. He again raised the possible application of the public interest override in section 16. The police issued a further revised decision letter to the appellant, denying access to the record in full, claiming the mandatory exemption in section 14(1) (personal privacy), as well as the discretionary exemptions in sections 8(1)(g) (intelligence information), 8(1)(i) (security), 8(1)(l) (facilitate commission of an unlawful act), 13 (danger to safety or health) and 18(4) (another institution has a greater interest in the records). With respect to section 18(4), the police advised the appellant that during their investigation, all of the records were transferred to the Royal Canadian Mounted Police (the RCMP), who took over the investigation.

[7] The appeal was then moved back to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I am the adjudicator that was assigned to conduct the inquiry. I provided the police, initially, with the opportunity to provide representations. In their representations, the police advised that they were willing to waive the fee. As a result, fee and fee waiver are no longer at issue in the appeal. The appellant also provided representations, which were shared with the police. The police did not provide reply representations.

[8] For the reasons that follow, I find that section 18(4) has no application in this appeal because the police did not transfer the appeal under section 18(3). I also find that the majority of the record at issue contains the personal information of several identifiable individuals, which is exempt from disclosure under section 14(1). I also find that police ten code information is exempt under section 8(1)(l). I uphold the police's exercise of discretion and find that the public interest override in section 16 does not apply in these circumstances. Conversely, I find that 11 pages of the record that do not contain personal information are not exempt under either sections 8(1) or 13, and I order the police to disclose those pages to the appellant.

RECORD:

[9] The record, which is a general occurrence report, consists of the main page and entity information, will states from both civilians and police officers, forensic records, documentation of seized property, a list of witnesses, investigative actions taken by police officers, officers' notes, drawings made by witnesses, sworn statements of witnesses and summaries of witness statements. In total, there are 1056 pages.

ISSUES:

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

B. Does the mandatory exemption at section 14(1) apply to the personal information in the record?

C. Do the discretionary exemptions at section 8(1)(g), (i), (l) apply to the record?

D. Does the discretionary exemption in section 13 apply to the record?

E. Did the police exercise their discretion under section 8(1)? If so, should this office uphold the exercise of discretion?

F. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Preliminary Issue: What is the relevance of section 18(4) in the circumstances of this appeal?

[10] In their representations, the Ottawa Police are claiming that section 18(4) applies, which states:

> For the purpose of section 18(3), another institution has a greater interest in a record than the institution that receives the request for access if,
>
> > (a) the record was originally produced in or for the other institution; or
> >
> > (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

[11] The Ottawa Police submit that when the incident that is the subject matter of the record took place, two locations were involved. The first location was within the Ottawa Police's jurisdiction, while the second location was within the RCMP's jurisdiction. The Ottawa Police commenced the investigation by gathering statements from the individuals involved at the first location. Shortly thereafter, the Ottawa Police submit, it was determined that the RCMP would take carriage of the investigation and that the Ottawa Police would assist. Once all involved officers submitted their documentation and all witness interviews were completed, a copy of the electronic general occurrence report (the record at issue) was provided to the RCMP as part of their investigation.

[12] The appellant submits that the Ottawa Police have a greater interest in the record, as the record was created by them. The appellant further submits that even if the RCMP was recognized as an institution under the *Act*, the Ottawa Police have not explained why they did not transfer the access request to the RCMP within 15 days, as required by section 18(3) of the *Act*. Lastly, the appellant argues that the Ottawa Police have not provided him with a formal notice that they transferred his access request to the RCMP.

[13] Section 18 of the *Act* states:

> (1) In this section,
>
> > "institution" includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*.
>
> (2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution

> has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,
>
> (a) forward the request to the other institution; and
>
> (b) give written notice to the person who made the request that it has been forwarded to the other institution.
>
> (3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.
>
> (4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,
>
> (a) the record was originally produced in or for the other institution; or
>
> (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.
>
> (5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

[14] The record at issue relates to a high profile and tragic incident that took place on Parliament Hill in Ottawa, Ontario in which one individual shot another. Both the victim and the alleged perpetrator of the crime did not survive.

[15] The Ottawa Police first raised the issue that the RCMP has a greater interest in the record (section 18(4)) during the second round of mediation of the appeal by way of the second revised decision letter. The Ottawa Police referred to the application of section 18(4) again in their representations to this office during the adjudication stage of the appeals process. However, at no time did the Ottawa Police actually transfer the request to the RCMP pursuant to section 18(3), or notify the appellant that they had transferred the request.

[16] Without having to decide whether the RCMP would be considered to be an institution under the *Act*, section 18(4) identifies the circumstances where another

institution may have a greater interest in identified records; however, it specificially applies to circumstances where an institution has transferred a request under section 18(3). The Ottawa Police have not transferred the request under section 18(3) and, therefore, section 18(4) has no application in this appeal.

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

[17] 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 if 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;

[18] 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.[1]

[19] Sections 2(2) and 2(2.1) also relate to the definition of personal information. They state:

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (2.1) 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.

[20] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[2] 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.[3]

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

[22] The police submit that the record contains the personal information of several individuals involved in a police investigation, including their name, sex, date of birth, address, telephone number, personal views and statements. The police also note that the record does not contain the appellant's personal information.

[23] The appellant agrees that there must be personal information contained in the record, but states that he is not seeking access to others' personal information such as race, national or ethnic origin.

Analysis and findings

[24] I find upon my review of the record that all of it, with the exception of some of the pages identified as "Forensic Action" and "Related Property Reports," contain the personal information of numerous identifiable individuals.

---

[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Witnesses

[25] With respect to the witnesses to the incident, including individuals who did not actually witness the incident but who intervened following the incident, I make the following findings. The record contains identifiable information relating to these individuals' sex, and in some cases, marital or family status, falling within paragraph (a) of the definition of personal information in section 2(1) of the *Act*. In addition, the record contains information relating to these individuals' addresses and telephone numbers, which qualifies as personal information under paragraph (d) of the definition. Other personal information about these individuals in the record includes their personal opinions and views, falling within paragraph (e) of the definition. Lastly, the record contains the individuals' names where it appears with other personal information relating to them, which qualifies as personal information under paragraph (h) of the definition of personal information. This personal information, I find, includes the actions and observations of the witnesses leading up to and following the incident that is the subject matter of the record.

The alleged perpetrator

[26] I find that the record contains an extensive amount of personal information about the alleged perpetrator, including the views or opinions of other individuals about him, which falls within paragraph (g) of the definition of personal information, as well as his name where it appears with other personal information relating to him, or where the disclosure of his name would reveal other personal information about him, which qualifies as personal information under paragraph (h) of the definition.

The victim

[27] I find that the record also contains an extensive amount of information about the victim, including information relating to his medical history, which qualifies as personal information under paragraph (b) of the definition of personal information. Further, the record contains the views or opinions of other individuals about the victim, which falls within paragraph (g) of the definition of personal information, as well as his name where it appears with other personal information relating to him, or where the disclosure of his name would reveal other personal information about him, which qualifies as personal information under paragraph (h) of the definition.

[28] To be clear, I find that the record as a whole, with a few exceptions, contains extensive personal information about several individuals, including both the victim and the alleged perpetrator, particularly information that qualifies as personal information under paragraph (h) of the definition. I find that the descriptions of the incident as it relates to the victim and the alleged perpetrator qualifies as the personal information of the victim and the alleged perpetrator. In other words, the record by and large, with a few exceptions, is about those two identifiable individuals, and qualifies as their personal information. I also note that section 2(2), which states that personal

information does not include information about an individual who has been dead for more than thirty years, does not apply in these circumstances as the deceased individuals that form the subject matter of the request have not been dead for more than thirty years.

The appellant

[29] The record does not contain the appellant's personal information.

Information that does not qualify as "personal information"

[30] As previously stated, some of the pages identified as "Forensic Action" and "Related Property Reports" do not contain any personal information. These pages are located at pages 1020, 1021, 1024, 1025, 1034, 1051, 1052, 1053, 1054, 1055 and 1056. Since these pages do not contain personal information, section 14(1) cannot apply to them. The police are also claiming the application of sections 8(1) and 13 to this information, which I consider below under issues C and D.

[31] With respect to the personal information contained in the record, I will now determine whether it is exempt from disclosure under the mandatory exemption in section 14(1).

Issue B: Does the mandatory exemption at section 14(1) apply to the personal information in the record?

[32] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[33] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[34] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[35] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section

16 applies.[5] The police rely on the presumptions in paragraphs 14(3)(a) and (b).

[36] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[6] Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).[7]

[37] The police submit that the personal information in the record was provided by the individuals in confidence, and for the purpose of assisting in a police investigation. The police further submit that the record contains medical information relating to the injuries sustained by the deceased individuals.

[38] The police go on to submit that they contacted one of the deceased individual's next of kin, who objected to the disclosure of the victim's personal information. The police state:

> If this information is released in a public forum it would cause the family and other involved individuals to have to relive the events of that tragic day.

[39] The appellant reiterates that he is not seeking personal information, and acknowledges that section 14(1) creates a mandatory exemption to the disclosure of personal information except in specified circumstances. The appellant also submits that section 4(2) of the *Act* requires an institution to disclose as much of any responsive record as can be severed without disclosing material that is exempt from disclosure.

Analysis and findings

[40] As previously stated, section 14(1) is a mandatory exemption. Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. I find that none of the exceptions in paragraphs (a) to (e) apply in these circumstances.

[41] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14(1). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if

---

[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[6] Orders P-242 and MO-2235.
[7] *John Doe*, cited above.

section 14(4) or the "public interest override" at section 16 applies.[8]

[42] I find that all of the personal information contained in the record was compiled by the police and is identifiable as part of an investigation into a possible violation of law, namely the shooting of one individual by another. As a result, I find that disclosure of this personal information is presumed to be an unjustified invasion of the personal privacy of the victim, the witnesses to the incident, the individuals who intervened after the incident, and the alleged perpetrator and it is, therefore, exempt from disclosure under section 14(1) of the *Act*. I further find that none of the exceptions listed in section 14(4) apply.

[43] I also find that, even if none of the presumptions in section 14(3) applied, no factors favouring disclosure in section 14(2) would apply and the factor in section 14(2)(f), which does not favour disclosure would apply, given how highly sensitive the personal information in the record is, particularly the personal information of the victim and the alleged perpetrator.

[44] The appellant has stated in his representations that he is not seeking access to individuals' personal information, and that any personal information that is contained in the record can be severed. I have already found on my review of the record that the entire record, with a few exceptions, consists of the personal information of the victim, the alleged perpetrator and other individuals. I also find that the breadth of personal information contained in the record, if severed, would result in only the disclosure of meaningless snippets of information to the appellant. On that basis, I find that it is not reasonable to sever the pages of the record that contain exempt personal information.

[45] The appellant has raised the possible application of the public interest override in section 16, which I consider under Issue F, below.

Issue C: Do the discretionary exemptions at section 8(1)(g), (i), (l) apply to the record?

[46] The remaining information at issue consists of some of the pages identified as "Forensic Action" and "Related Property Reports," which I found not to contain personal information. The police are claiming the application of sections 8(1)(g), (i) and (l) of the *Act* to this information. These sections state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

[8] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[47] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1), and includes policing.[9]

[48] The term "law enforcement" covers a police investigation into a possible violation of the *Criminal Code.*[10] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[11]

[49] It is not enough for an institution to take the position that the harms under section 8 are self-evident from the record.[12] The institution must provide evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[13]

[50] The police submit that the record contains CPIC information and codes in relation to the deceased offender, intelligence forensic information relating to weapons, and police ten codes.

[51] The appellant argues that the police have not provided detailed and convincing evidence of possible harm, should the information be disclosed. The appellant further submits that any portions of the record that is exempt under section 8(1) could be severed from the record, and that the police have not addressed this suggestion.

Analysis and findings

[52] With respect to the police codes contained in the records, the IPC has issued many orders regarding the release of police codes and has consistently found that section 8(1)(l) and the provincial equivalent apply to "ten" codes.[14] These orders adopted the reasoning in Order PO-1665, where former Adjudicator Laurel Cropley found:

---

[9] See paragraph (a) of the definition of law enforcement in section 2(1).
[10] Orders M-202 and PO-2085.
[11] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[12] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[13] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[14] See Orders M-93, M-757, MO-1715 and PO-1665.

> In my view, disclosure of the "ten-codes" would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

[53] Similarly, Adjudicator Cropley found that the rationale and conclusions in that order continued to be applicable in Order PO-2563, where she stated:

> Moreover, given the difficulty of predicting future events in the law enforcement context and the nature of the information at issue, I find that the ministry provided "detailed and convincing" evidence to establish a "reasonable expectation of harm" with respect to the ten-codes, alerts, location and zone codes.

[54] I adopt Adjudicator Cropley's reasoning for the purposes of this appeal with respect to the ten code information contained in the record. I am satisfied, based on the approach taken by this office in the past, that disclosure of ten codes could reasonably be expected to result in the harms listed in section 8(1)(l). Therefore, I find that any ten codes contained in the record qualify for exemption under section 8(1)(l) of the *Act*, subject to my review of the police's exercise of discretion.

[55] With respect to the application of sections 8(1)(g), (i) and (l) to the remaining information at issue, the entirety of the police's representations states:

> The record contains CPIC information and codes in relation to the deceased offender, intelligence information relating to weapons, including serial numbers, in reference to involved individuals and police ten codes.

[56] Under section 42 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution. The requirement in meeting the burden of proof in section 8(1) is that the institution must demonstrate that disclosure of the information may reasonably be expected to cause the harms set out in the applicable paragraphs of section 8(1). 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.

[57] I find that not only have the police not provided sufficient evidence that disclosure of the record at issue may reasonably be expected to: interfere with the gathering of or reveal law enforcement intelligence information; endanger the security of a building, vehicle or of a system or procedure established for the protection of items; or facilitate the commission of an unlawful act or hamper the control of crime, they have not provided any evidence at all, other than stating what type of information

is contained in the record. As previously stated, the burden of proof is not met with respect to section 8(1) where an institution simply asserts that the harms are evident from the record itself.

[58] As a result, the police have not met the burden of proof with respect to the records for which they have claimed sections 8(1)(g), (i) and (l), with the exception of the police ten codes. Therefore, I do not uphold these exemptions with respect to the remaining information. The police are also claiming the application of the discretionary exemption in section 13 to the same information, which I consider below.

Issue D: Does the discretionary exemption in section 13 apply to the record?

[59] The remaining information at issue consists of some of the pages identified as "Forensic Action" and "Related Property Reports," which I found not to contain personal information. The police are claiming the application of section 13 to this information, which states:

> A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[60] For this exemption to apply, the police must again demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[15]

[61] The police submit that the disclosure of the record would cause undue harm to the families of the two deceased individuals and others by "being traumatized all over again," and that bringing this incident to light again will cause the family to fear harassment from the media and others, as was experienced shortly after the incident.

[62] The appellant states that while hurt and dread are natural reactions to violent crimes and the loss of a loved one, in order for this exemption to apply, the police must provide evidence beyond the merely possible or speculative that disclosure of non-personal information from the record could reasonably be expected to seriously threaten the safety or health of an individual.

Analysis and findings

[63] I find that the police have not provided sufficient evidence to demonstrate a risk of harm from disclosure that is well beyond the merely possible or speculative. I further find that while the disclosure of the information at issue may be emotionally

---

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

traumatizing for certain individuals, and may attract the attention of the media, this does not constitute sufficient evidence to show that disclosure of the information could reasonably be expected to seriously threaten the safety or health of an individual, including the family members of the deceased or any other individuals.

[64] Consequently, I find that section 13 is not applicable in these circumstances. As no other exemptions have been claimed with respect to pages 1020, 1021, 1024, 1025, 1034, 1051, 1052, 1053, 1054, 1055 and 1056, I will order the police to disclose these pages to the appellant.

Issue E: Did the police exercise their discretion under section 8(1)(l)? If so, should this office uphold the exercise of discretion?

[65] As previously stated, I have found that the police ten codes are exempt from disclosure under section 8(1)(l). The section 8(1)(l) 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.

[66] 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, or it fails to take into account relevant considerations.

[67] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[16] This office may not, however, substitute its own discretion for that of the institution.[17]

[68] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[18]

- the purposes of the *Act*, including the principles that information should be available to the public, and that exemptions from the right of access should be limited and specific;
- the wording of the exemption and the interests it seeks to protect;
- 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; and
- the historic practice of the institution with respect to similar information.

---

[16] Order MO-1573.
[17] Section 43(2).
[18] Orders P-344 and MO-1573.

[69] The police submit that, in exercising their discretion, they took the following factors into consideration:

- whether the information should be available to the public;
- whether the appellant was seeking his own information; and
- whether the appellant has a sympathetic or compelling need to receive the information.

[70] The police go on to argue that the appellant was not involved in the incident and has no personal connection to any of the involved individuals. Therefore, the police determined that the appellant was not seeking his own information and has no sympathetic or compelling need to receive information contained in the record.

[71] The appellant submits that, in exercising their discretion, the police heavily relied on the exemption in section 14(1), which is not relevant, and that they disregarded the purpose of the *Act*, which is that information should be available to the public, exemptions should be limited and specific and every person has a right of access or to part of a record that is in the custody or under the control of an institution (section 4(1)).

[72] The appellant goes on to argue that when an institution is reluctant to disclose information without justification, it can create suspicions about their motives in the minds of the public. The police, the appellant submits, have not considered that transparency will increase public confidence in their operation.

[73] Lastly, the appellant submits that the police routinely provide copies of detailed information to criminal defendants during the disclosure process, severing personal and sensitive information, but disclosing much more extensive information than what the appellant is requesting. The police failed to consider that this historical practice is essentially the same one that the appellant is requesting, he argues.

Analysis and findings

[74] In the circumstances of this appeal, I find that the police took relevant factors into consideration. I find that the police properly considered whether the information in the record that was withheld under the discretionary exemption in section 8(1)(l) should be available to the public (which is one of the purposes of the *Act*), as well as its historical practice.

[75] Lastly, the appellant's position is that the police provide detailed information to defendants during the disclosure process, while severing personal and sensitive information. While I have already explained why the record cannot be severed in this instance, I also note that the disclosure of information to a defendant in a criminal matter is a distinct process with a different purpose than the disclosure of information

to a member of the public who has made an access request under the *Act*. In this context therefore, I uphold the police's exercise of discretion and its decision to withhold ten codes under section 8(1)(l) of the *Act*.

Issue F: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption?

[76] The appellant claims that section 16 should be applied to override the application of section 14(1). The law enforcement exemption in section 8 may not be overridden by section 16.

[77] Section 16 of the *Act* 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.

[78] 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.

[79] 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.[19]

[80] 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.[20] Previous orders have stated that in order to find a compelling public interest in disclosure, the 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.[21]

[81] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[22] Any public interest in *non*-disclosure that may exist also must

---

[19] Order P-244.
[20] Orders P-984 and PO-2607.
[21] Orders P-984 and PO-2556.
[22] Order P-984.

be considered.[23] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[24]

[82] A compelling public interest has been found to exist where, for example the integrity of the criminal justice system has been called into question.[25]

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

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[26]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;[27] or
- the records do not respond to the applicable public interest raised by appellant.[28]

[84] The police's position is that there is no compelling public interest in the disclosure of the record, because there has been a significant amount of information already disclosed regarding the incident by the RCMP,[29] as well as wide public media coverage of the incident. The police go on to argue that the record at issue does not respond to the applicable public interest raised by the appellant.

[85] The appellant states that he is seeking access to the record at issue for research purposes in order to try to answer questions that have not been answered in police summary reports or media reports, and to present a more accurate account than the Canadian public has thus far received.

[86] The appellant submits that there were dozens of media reports about the incident and that the Prime Minister of Canada (at that time) gave an address on the topic of these events, as did the leaders of all of Canada's political parties. The RCMP Commissioner, at his appearance before the Standing Committee on Public Safety and National Security, requested that a video of the alleged perpetrator of the attacks be broadcast for the Canadian public.

[87] The appellant further submits that a compelling public interest must mean more than public curiosity, and that section 16 of the *Act* requires that the information at issue must serve the purpose of informing the citizenry about the activities of their

---

[23] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[24] Orders PO-2072-F, PO-2098-R and PO-3197.
[25] Order PO-1779.
[26] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[27] Order P-613.
[28] Orders MO-1994 and PO-2607.
[29] The police included a link to the RCMP's website and indicated that the site could be searched using the names of the deceased individuals as search terms.

government, 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.

[88] The appellant goes on to argue that the incident that is the subject matter of the record was used by the Canadian Government to justify new legislation (Bill C-51) strengthening intelligence and police powers at the expense of civil liberties of Canadians, as well as to support the presence of Canadian troops in the Middle East.

[89] The appellant states:

> Every Canadian citizen has lost civil rights because of the [date] events in Ottawa. Every Canadian citizen has a reason to insist on knowing what happened on that day and why it happened so they can make an informed judgement about whether the measures taken by the government before, during and after were reasonable and if they are likely to be effective.
>
> The public has, in addition, an interest in knowing how warnings of violent attacks issued by Canadian intelligence and security agencies are used by police to protect citizens. There were numerous warnings of coming terrorist attacks. Appendix D, a memo issued by the Privy Council Office on [date], illustrates this. And although the warnings may seem routine and vague (the PCO warning says, "there is no information that an attack is imminent") this would be an unjustified conclusion.

[90] In response to the police's representations, the appellant submits that although there were many media reports regarding the incident, it would be "patronizing" to hold that citizens' need to know is satisfied by sensational, selective, inaccurate or false statements made by the media. Citizens' need to know is satisfied, the appellant argues, not by the quantity of information, but by the quality of information they receive. In addition, the appellant argues that the police summaries that have been released have serious deficiencies, which he lists. The appellant also lists what he considers to be unanswered questions about the incident, as it relates to the police.

Analysis and findings

[91] I find in the circumstances that there is not a compelling public interest in the disclosure of the personal information contained in the record. While I find that there is a compelling public interest in the incident that is the subject matter of the request, I agree with the police that a significant amount of information has already been disclosed and this information is adequate to address any public interest considerations, and that there has already been wide public coverage or debate of both the incident and its ramifications. The appellant admits that there has been extensive media coverage of the incident, although he takes issue with the quality of the coverage.

[92] The appellant's position is that the information contained in the records may

shed light on the Canadian Government's actions, notably its justification of Bill C-51, which increased police powers at the expense of civil liberties, as well as knowing how warnings of violent attacks issued by Canadian intelligence and security agencies are used by police to protect citizens. On my review of the record, I find that the record does not respond to the issues raised by appellant, and that the record would not shed further light on the actions of the Canadian Government, Canadian intelligence and security agencies, or the police as it relates to the aforementioned government actions.

[93] Consequently, I find that there is not a compelling public interest in the disclosure of the personal information contained in the record, and section 16 is not applicable.

[94] Even if I found that there was a compelling public interest in the disclosure of the personal information contained in the record, I find that the purpose of the personal privacy exemption in section 14(1) outweighs the compelling public interest in this instance. As I found previously, the record contains extensive and sensitive personal information. In my view, the privacy interests in this appeal are at the higher end of relative seriousness and sensitivity, and outweigh the public interest in the disclosure of the record.

ORDER:

1. I order the police to disclose pages 1020, 1021, 1024, 1025, 1034, 1051, 1052, 1053, 1054, 1055 and 1056 to the appellant by **December 5, 2018** but not before **November 30, 2018**. If there are police ten codes contained in these pages, they may be severed.

2. I reserve the right to require the police to provide copies to this office of the records it discloses to the appellant.

Original Signed by: October 30, 2018

Cathy Hamilton
Adjudicator