Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3917

Appeal PA15-600

Ministry of Community Safety and Correctional Services

December 21, 2018

Summary: The requester 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 relating to a private security company (the company). The company appealed the ministry's decision to disclose 101 pages of records to the requester. At the conclusion of mediation, the only issue remaining in dispute was whether these records were exempt from disclosure under the mandatory exemption in section 17(1) (third party information) of the *Act*. The adjudicator noted that the company had raised arguments with the mediator that are akin to the discretionary exemption in section 20 (threat to safety or health), and he invited the parties to submit representations on whether the company could claim that exemption. In addition, the company raised a number of additional issues, including a claim that the requester's request for records is "frivolous," which is a reference to section 10(1)(b) (frivolous or vexatious request) of the *Act*. In addition, it claimed that there is information in the records that is exempt from disclosure under the mandatory exemption in section 21(1) (personal privacy) and the discretionary exemptions in sections 14(1)(c), (f), and (l) and sections 14(2)(a) and (c) (law enforcement). In this order, the adjudicator finds that the records are not exempt from disclosure under sections 17(1) or 21(1). In addition, he finds that the company is not entitled to to raise section 10(1)(b) in the circumstances of this appeal or to claim the discretionary exemptions in sections 14(1)(c), (f), and (l) or sections 14(2)(a) and (c). However, he allows the company to claim the discretionary exemption in section 20 and finds that the names, job titles and email addresses of the company's employees are exempt from disclosure under that provision. He upholds the ministry's decision to disclose the records to the requester but orders it to sever the information relating to the company's employees. In addition, he orders the ministry to exercise its discretion under section 20 with respect to that information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information), 10(1)(b), 20, 21(1), 14(1)(c), (f), and (l) and 14(2)(a) and (c).

Orders Considered: Order P-1137.

OVERVIEW:

[1] The appellant is a private security company (the company) which objects to an access decision by the Ministry of Community Safety and Correctional Services (the ministry) to disclose records to a requester that contain information about the appellant.

[2] By way of background, the requester submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the ministry for the following:

> . . . records which the ministry has retained on a company called [name of company] or called [alternative name of company]. In particular, all complaints or violations of rules/regulations or Act which govern private investigators/security guards in Ontario.

[3] In response, the ministry located 305 pages of records that are responsive to the access request. It then notified the company under section 28(1)(a) of the *Act* that these records might contain information referred to in the mandatory exemption in section 17(1) (third party information) that affects its interests and invited it to submit representations. In response, the company submitted representations to the ministry stating that it objects to the disclosure of all of these records because they contain information that is exempt from disclosure under section 17(1).

[4] After considering the company's representations, the ministry sent a decision letter to the requester which stated that it had decided to provide him with partial access to the records. It denied him access to some records in part and others in whole under the exemptions in sections 13(1), 14(1)(l), 14(2)(a), 15(b), 17(1), 18(1)(d), 19 and 21(1) of the *Act*.

[5] The requester did not appeal the ministry's decision to refuse him access to some records and parts of records. As a result, the withheld parts of those records are not at issue here.

[6] However, the company appealed the ministry's decision to disclose 101 pages of records to the requester. These records, which include emails, letters and other documents, are from the ministry's Private Security and Investigative Services Branch, and relate mainly to public complaints filed against the company and inspections of the company carried out by the ministry.

[7] This office assigned a mediator to assist the parties in resolving the issues in dispute. This appeal was not resolved during mediation, and the mediator issued a report that stated that the only issue remaining in dispute was whether the records that the ministry decided to disclose are exempt from disclosure under section 17(1) of the *Act*. The mediator's cover letters to the company, the ministry and the requester asked them to contact her before a specific date if there were any errors or omissions in the report. None of the parties contacted the mediator to identify any errors or omissions and the appeal was then moved to adjudication for an inquiry.

[8] I started my inquiry by sending a Notice of Inquiry to the company and the ministry on section 17(1). In addition, the Notice noted that the company had raised arguments with the mediator that are akin to the discretionary exemption in section 20 (threat to safety or health) even though that exemption was not claimed by the ministry. In response, I received representations from the company but not the ministry.

[9] In its representations, the company raises several other issues beyond sections 17(1) and 20 that it alleges were discussed with the mediator but not included in her report. For example, it states that the requester's request for records is "frivolous," which is a reference to section 10(1)(b) of the *Act*, which provides institutions with a summary mechanism to deal with frivolous or vexatious requests.

[10] In addition, the company submits that the discretionary exemptions in sections 14(1)(c), (f), and (l) and 14(2)(a) and (c) (law enforcement) apply to some of the information in the records. These discretionary exemptions give the head of an institution the discretion to refuse disclosure of records that fit within the exemptions.

[11] The company also claims that some of the information in the records falls within the definition of "personal information" in section 2(1) of the *Act*, and is exempt from disclosure under the mandatory exemption in section 21(1) (personal privacy).

[12] Finally, although the company claimed during mediation that the mandatory third party information exemption in section 17(1) applies to the records, it did not submit representations on this exemption.

[13] I then sent a Notice of Inquiry to the requester, along with a severed copy of the company's representations. I did not receive any representations from him.

[14] In this order, I uphold the ministry's decision to disclose the records to the requester but order it to sever the names, job titles and email addresses of the company's employees because such information is exempt from disclosure under section 20 of the *Act*. In addition, I order the ministry to exercise its discretion under section 20 with respect to that information.

RECORDS:

[15] There are 101 pages of records at issue in this appeal: pages 20, 35, 36, 37, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 62, 63, 64, 68, 80, 81, 87, 88, 95, 96, 99, 100, 101, 102, 105, 116, 117, 120, 134, 139, 140, 145, 146, 147, 148, 151, 152, 153, 154, 155, 157, 158, 160, 161, 162, 163, 166, 173, 179, 187, 191, 210, 211, 212, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 247, 248, 249, 250, 252, 253, 254, 255, 256, 257, 258, 263, 264, 269, 270, 271, 272, 278, 279, 280, 281, 283, 284, 285, 288 and 289.

ISSUES:

A. Does the mandatory exemption for third party information at section 17(1) apply to the records?

B. Does the mandatory personal privacy exemption at section 21(1) apply to any information in the records?

C. Is the company entitled to claim that the requester's access request is "frivolous" under section 10(1)(b)?

D. Is the company entitled to claim discretionary exemptions that have not been claimed by the ministry?

E. Does the discretionary exemption at section 20 (threat to safety or health) apply to the records?

DISCUSSION:

THIRD PARTY INFORMATION

A. Does the mandatory exemption for third party information at section 17(1) apply to the records?

[16] The company initially claimed that the mandatory exemption in section 17(1) applies to the records and this was the sole issue in dispute identified in the mediator's report. Under section 53 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. However, where a third party appeals an institution's decision to disclose a record or a part of a record,

the burden of proving that such information should be withheld from disclosure falls on the third party.[1]

[17] In the circumstances of this appeal, the ministry decided to disclose the records at issue and the company, which is the third party, appealed that decision. As a result, the burden of proving that the information in these records is exempt from disclosure under section 17(1) falls on the company. However, the company did not submit any representations to me on section 17(1), which means that it has failed to meet the burden of showing that this mandatory exemption applies to the information in the records.

[18] However, given that section 17(1) is a mandatory exemption, I will briefly consider whether it applies to any of the information in the records at issue.

[19] Section 17(1) states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
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> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
> >
> > (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
> >
> > (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[20] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[2] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third

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[1] Order P-42.
[2] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

parties that could be exploited by a competitor in the marketplace.[3]

[21] For section 17(1) to apply, the company must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

[22] The 101 pages of records that are at issue include emails, letters and other documents, from the ministry's Private Security and Investigative Services Branch, and relate mainly to public complaints filed against the company and inspections of the company carried out by the ministry.

[23] Because the company did not submit representations on the application of section 17(1), there is no evidence before me, other than the records themselves, as to whether the information in those records meets the three-part test that must be established for the exemption to apply. Based on my review of the records, few if any of the records appear to reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information (part 1 of the test). However, given the nature of the records, I accept that the company likely supplied the information in these records to the ministry in confidence, either implicitly or explicitly (part 2 of the test).

[24] With respect to part 3 of the section 17(1) test, the party resisting disclosure 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.[4]

[25] The company did not submit any evidence to me to explain whether the prospect of disclosing the records will give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur. For example, it

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[3] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[4] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

does not explain whether disclosing the records could reasonably be expected to "prejudice significantly" its competitive position [section 17(1)(a)] or result in an undue loss or gain for itself or any other person or group [section 17(1)(c)].

[26] In addition, based on my review of the records, I am not satisfied that disclosing them could reasonably be expected to lead to any of the harms set out in sections 17(1)(a) to (d). In summary, I find that the records are not exempt from disclosure under section 17(1) of the *Act*.

PERSONAL PRIVACY

B. Does the mandatory personal privacy exemption at section 21(1) apply to any information in the records?

[27] The ministry did not claim that any information in the 101 pages of records at issue is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*. In addition, this exemption was not identified as an issue in dispute in the mediator's report, which generally fixes the issues that will be considered at the adjudication stage of the appeal process. However, in its representations, the company claims that some information in the records is exempt from disclosure under section 21(1).

[28] Given that the section 21(1) exemption is mandatory, I will consider whether it applies to any information in the records. The personal privacy exemption in section 21(1) of the *Act* only applies to "personal information." Consequently, it is necessary to decide whether the records contain "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,
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> (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,
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> (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;

[29] 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.[5]

[30] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[6]

[31] Section 2(3) excludes certain information from the definition of "personal information." It states:

> 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.

[32] The company claims that the following pages of the inspection records and other associated records contain the "personal information" of its employees: pages 20, 154, 155, 247, 248, 249, 253, 254, 256 and 258. In particular, it submits that these records contain information that identifies its employees by name and work title and also identify which employees acted in the role of company representative during ministry inspections. It submits that this information qualifies as the "employment history" of these individuals under paragraph (b) of the section 2(1) definition of "personal information."

[33] I do not find these submissions to be persuasive. The names, job titles and designations of the company's employees in the records refer to their existing job status

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[5] Order 11.
[6] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

at the time these records were created, not their "employment history." More importantly, however, this information is excluded from the definition of "personal information" by section 2(3), because it identifies these individuals in a business capacity, not a personal capacity.

[34] As noted above, the mandatory personal privacy exemption in section 21(1) only applies to "personal information." Given that the names, job titles and designations of the company's employees in the records do not qualify as their "personal information," I find that this information cannot be exempt from disclosure under section 21(1) of the *Act*.

FRIVOLOUS OR VEXATIOUS REQUEST

C. Is the company entitled to claim that the requester's access request is "frivolous" under section 10(1)(b)?

[35] The ministry did not invoke section 10(1)(b) in order to make a claim that the requester's access request is frivolous or vexatious. In addition, this was not identified as an issue in dispute in the mediator's report. However, in its representations, the company submits that the requester's access request is "frivolous."

[36] Section 10(1)(b) reads:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> > the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[37] In addition, section 5.1 of Regulation 460 reads:

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,
>
> > (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
> >
> > (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[38] The company makes some allegations about the requester's mental health and then cites several reasons why his access request for records relating to the company

should be viewed as "frivolous" and for a purpose other than to obtain access.

[39] However, the wording of section 10(1)(b) makes it clear that this provision can only be invoked if the head of an institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. In other words, the discretionary power in section 10(1)(b) rests with the head of an institution, not with the third parties. The head of the ministry did not claim that the requester's request for records relating to the company is frivolous or vexatious for the purposes of section 10(1)(b). I find, therefore, that the private company is not entitled to raise section 10(1)(b) in the circumstances of this appeal, and I will not consider whether the requester's request for access to records is "frivolous."

OTHER DISCRETIONARY EXEMPTIONS

D. Is the company entitled to claim discretionary exemptions that have not been claimed by the ministry?

[40] The company submits that the discretionary exemptions in sections 14(1)(c), (f), and (l), 14(2)(a) and (c) (law enforcement) and section 20 (threat to safety or health) apply to some of the information in the records that the ministry decided to disclose to the requester. The ministry did not claim any of these exemptions with respect to the 101 pages of records that are issue.

[41] In general, the discretionary exemptions in the *Act* are designed to protect various interests of the institution in question rather than the interests of others. Consequently, it must be determined, as a preliminary matter, whether the company is entitled to raise the application of discretionary exemptions when they have not been raised by the ministry.

[42] This issue has been considered in a number of previous IPC orders. The leading case is Order P-1137, where Adjudicator Anita Fineberg made the following comments:

> The *Act* includes a number of discretionary exemptions within sections 13 to 22 which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.
>
> The *Act* also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17(1) of the *Act* respectively

are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in section 17 or 21(1) of the Act.

[emphasis added]

[43] The section 14 law enforcement exemptions raised by the company state:

(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (f) deprive a person of the right to a fair trial or impartial adjudication;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

(2) A head may refuse to disclose a record,

> (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
>
> (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability;

[44] In addition, section 20 states:

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

[45] I have considered the purpose of the section 14 law enforcement exemptions and the arguments made by the company as to why these exemptions apply to the records. These records relate mainly to public complaints filed against the company and inspections of the company carried out by the ministry. In my view, even though some of these exemptions, such as sections 14(1)(f) and (l) and 14(2)(c), are partly designed to protect the interests of third parties, there is no reasonable prospect that they could apply to the records at issue in this appeal. I find, therefore, that the circumstances in this appeal do not fall within the "most unusual of cases" standard established in Order P-1137 that would allow a third party such as the company to raise the application of these discretionary exemptions when they have not claimed by the head of the ministry and were not identified as an issue by the mediator.

[46] I have also considered the purpose of the section 20 exemption and the arguments made by the company as to why this exemption applies to the records. Because of the requester's past conduct, the company believes that disclosing the records could reasonably be expected to seriously threaten the safety of its employees. Given that the claim that disclosing such information might seriously affect the interests of the company's employees, I find that the fact circumstances here fall within the "most unusual of cases" standard established in Order P-1137 and I will allow the company to claim the discretionary exemption in section 20, even though it has not been raised by the head of the ministry.

[47] In summary, I find that the company is entitled to claim the discretionary exemption in section 20 but not the discretionary exemptions in sections 14(1)(c), (f), and (l) and sections 14(2)(a) and (c).

THREAT TO SAFETY OR HEALTH

E. Does the discretionary exemption at section 20 (threat to safety or health) apply to the records?

[48] As noted above, section 20 states:

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

[49] For this exemption to apply, the institution (or the third party in this case) 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.[7]

[50] An individual's subjective fear, while relevant, may not be enough to justify the exemption.[8]

[51] The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.[9]

[52] The company submits that there is direct evidence that the requester poses a threat to the safety of its employees. It has provided me with copies of some of the requester's postings on the internet, which include an allegation that he is "a target of an unofficial off the record "Scrib/Crib Sheet" Police Investigation carried out by a local Private Investigation Company (the Company)." These postings then appear to suggest that the company's employees are using "backdoor technologies" and "surveillance devices" to target him.

[53] The company states that the requester has reported the company to the police on at least two occasions. In addition, it cites an incident in which the requester showed up unannounced at its offices and delivered a document to an employee containing the lyrics to a song by Beyoncé. He asked that the company cease and desist sending the song into his head. Moreover, the requester had highlighted certain lyrics in the song, including, "What goes around comes back around," "I bet it sucks to be you right now," and "So sad you're hurt."

[54] The company further submits that disclosing the records encourages the requester to believe in a grand conspiracy against him involving the company and other institutions, and that such encouragement is dangerous to those company employees who are identified in the records.

[55] Finally, the company expresses particular concern that there is information on page 263 of the records that will trigger the requester.

[56] Although I sent a Notice of Inquiry to the requester, along with a copy of most of the company's representations, he did not submit any representations in this appeal. As a result, I have no evidence from him on the section 20 exemption.

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[7] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[8] Order PO-2003.
[9] Order PO-1817-R.

[57] The 101 pages of records at issue relate mainly to public complaints filed against the company and inspections of the company carried out by the ministry. The information in these records has nothing to do with the requester and I find that the company has not established that disclosing most of this information could reasonably be expected to seriously threaten the safety or health of its employees, as required by section 20. Although the company has expressed particular concern that disclosing the contents of page 263 of the record will trigger the requester, this amounts to speculation in my view, which is not sufficient to meet the requirements of the section 20 exemption.

[58] However, given the evidence submitted by the company about the requester's conduct towards its employees, which the requester did not contradict, I accept that disclosing the names, job titles and email addresses of these individuals could reasonably be expected to seriously threaten their safety or health. Therefore, I find that this information is exempt from disclosure under section 20, and I will order the ministry to disclose a severed version of the records to the requester.

[59] It is important to note that the section 20 exemption is discretionary, and requires an institution to exercise its discretion. Even though I have allowed the company to claim the section 20 exemption and have found that it applies to specific information in the records, section 54(2) of the *Act* precludes me from substituting my own discretion for that of the institution. Consequently, I am obligated to allow the ministry to exercise its discretion under section 20 and will do so in the order provisions below. To assist the ministry in exercising its discretion, I would direct its attention to the company's submissions on section 20, which are summarized above.

[60] After exercising its discretion, the ministry should issue an access decision to the company and the requester (with a copy to me) that indicates what considerations it took into account in exercising its discretion under section 20 and the outcome (i.e., whether it has decided to disclose or withhold the information). The ministry must only consider relevant considerations, which may include both those listed below and other unlisted considerations:[10]

- 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

[10] Orders P-344 and MO-1573.

    - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect
- 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.

ORDER:

1. I uphold the ministry's decision to disclose the records to the requester, except for the names, job titles and email addresses of the company's employees, which are exempt from disclosure under section 20 of the *Act*.
2. I am providing the ministry with a copy of the records and have highlighted the information that it must sever before disclosing them to the requester.
3. I order the ministry to disclose the severed records to the requester by **January 25, 2019** but not before **January 21, 2019**.
4. I order the ministry, within 14 days of disclosing the severed records to the requester under order provision 3, to exercise its discretion under section 20 of the *Act* with respect to the names, jobs titles and email addresses of the company's employees. It should issue an access decision to the company and the requester, with a copy provided to me, that sets out what considerations it took into account in exercising its discretion to either withhold or disclose that information under section 20; the outcome of its exercise of discretion; and the right of the parties to appeal that decision to the IPC within 30 days. If the ministry decides to exercise its discretion to disclose this information, it must not disclose it within that 30-day appeal period and cannot disclose it if the company appeals its access decision to the IPC.

Original Signed by: December 21, 2018

Colin Bhattacharjee
Adjudicator