Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3979

Appeal PA16-91

Ministry of Natural Resources and Forestry

August 14, 2019

Summary: The requester submitted an access request to the Ministry of Natural Resources and Forestry (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a specific property, including any correspondence to and from Conservation Halton. A third party (the appellant) appealed the ministry's decision to disclose to the requester identifying information about the appellant in two emails, including its name and other information. These emails relate to an alleged environmental violation that the appellant reported to Conservation Halton. The appellant claimed that this information is exempt from disclosure under various exemptions in the *Act*, including the mandatory exemption in section 21(1) (personal privacy) and the discretionary law enforcement exemption in section 14(1)(d) (confidential source). In this order, the adjudicator finds that the information at issue cannot be exempt from disclosure under section 21(1) because it is not "personal information." However, he finds that the appellant is entitled to claim the discretionary exemption in section 14(1)(d), and that the information at issue is exempt from disclosure under that provision. He orders the ministry to exercise its discretion under section 14(1)(d) with respect to this information and to issue an access decision to the requester and the appellant.

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)", 2(3), 2(4), 14(1)(d); *Conservation Authorities Act*, R.S.O. 1990, c. C.27, section 28; and Ontario Regulation 162/06.

Orders Considered: Orders P-300, PO-2591, M-430 and MO-1550-F.

Cases Considered: *R. v. Leipert*, [1997] 1 SCR 281, 1997 CanLII 367 and *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 SCR 815, 2010 SCC 23 (CanLII).

OVERVIEW:

[1] The appellant is a third party that objects to a decision by the Ministry of Natural Resources and Forestry (the ministry) to disclose to a requester, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), information in two emails that identifies the appellant. These emails relate to an alleged environmental violation that the appellant reported to Conservation Halton.[1] The information that identifies the appellant includes its name and other information.

[2] By way of background, the requester is a company that submitted an access request under the *Act* to the ministry for the following records:

> Copies of all building permits, related correspondence and other documents relating to the building and development works on [a specific municipal property in] Burlington, Ontario, from 2007 to 2013 inclusive, including any permits or correspondence to or from Conservation Halton or the Niagara Escarpment Commission or any other authority regulating the development on the property.

[3] In response, the ministry located 135 pages of records that are responsive to the company's access request. Following third party consultations, the ministry issued an access decision to the requester that granted it full access to some records. However, it withheld some records in full and others in part under various exemptions in the *Act*.

[4] The requester did not appeal the ministry's access decision to deny it access to some records and parts of records. However, a third party (the appellant) appealed the ministry's decision to disclose identifying information about itself in two emails. This identifying information is the only information at issue in this appeal.

[5] The Information and Privacy Commissioner of Ontario (IPC) assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the appellant stated that all identifying references to itself should be withheld under the discretionary law enforcement exemption in section 14(1)(d) (confidential source) of the *Act*, which was not claimed by the ministry. It also claimed that this information should be withheld under the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*. The ministry advised the mediator that it was maintaining its position that such information is not exempt from disclosure under the *Act*. The requester stated that it is still pursuing access to this information.

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[1] Conservation Halton is a public body established under the *Conservation Authorities Act*, R.S.O. 1990, c.
C.27, whose mandate includes furthering the conservation, restoration, development and management of watersheds in Halton Region.

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I invited the ministry, the appellant and the requester to submit representations to me on the issues to be resolved in this appeal. I also notified Conservation Halton of the appeal because although the two emails are in the custody or control of the ministry, they originated with Conservation Halton.

[7] In response, I received detailed representations from the appellant and brief representations from Conservation Halton but no representations from the ministry or the requester. In its representations, the appellant claims that the identifying information in the two emails is exempt from disclosure under sections 14(1)(d) and 21(1) of the *Act*, but drops its reliance on section 17(1). Conservation Halton submits that it would redact the information in the emails identifying the appellant because it constitutes the appellant's "personal information."

[8] In this order, I find that the appellant's name and other information cannot be exempt from disclosure under section 21(1) because it is not "personal information." However, I find the appellant is entitled to raise the discretionary exemption in section 14(1)(d), and that the information at issue is exempt from disclosure under that provision. I order the ministry to exercise its discretion under section 14(1)(d) with respect to this information and to issue an access decision to the requester and the appellant.

RECORDS:

[9] The information at issue is identifying information about the appellant in two emails which are found on pages A0266852_3-000015 and A0266852_4-000016 of the records.

ISSUES:

A. Does the mandatory exemption in section 21(1) of the *Act* apply to the information at issue?

B. Is the appellant entitled to claim the discretionary exemption in section 14(1)(d) of the *Act* ?

C. Does the discretionary exemption in section 14(1)(d) of the *Act* apply to the information at issue?

DISCUSSION:

Issue A: Does the mandatory exemption in section 21(1) of the *Act* apply to the information at issue?

[10] The information that identifies the appellant in the two emails includes its name and other information. The appellant submits that this information is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[11] Because section 21(1) is a mandatory exemption, I must consider whether it applies, even if it has not been claimed by the ministry, which is the case here.

[12] Where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. The appellant claims that the only relevant exception to consider is paragraph (f), which it submits does not apply to the information at issue.

[13] Section 21(1)(f) states:

> A head shall refuse to disclose *personal information* to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.
> >
> > [emphasis added]

[14] The wording of section 21(1) makes it clear that this exemption only applies to "personal information." Consequently, it is necessary to first determine whether the information that the appellant and Conservation Halton claim is exempt under section 21(1) is "personal information." That term is defined in section 2(1) of the *Act* 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,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (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,
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> (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;

[15] 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.[2]

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[17] Sections 2(3) and (4) exclude certain information from the definition of "personal information." They state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
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> (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.

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

[18] For the reasons that follow, I find that the information at issue does not qualify as the appellant's "personal information," because it identifies the appellant in an official capacity and therefore falls within sections 2(3) and (4) of the *Act*.

[19] The appellant submits that its name and other information in the records qualify as its "personal information" because it is reasonable to expect that an individual will be identified if this information is disclosed. It further submits that these emails fall within paragraph (f) of the definition of "personal information" in section 2(1), which refers, in part, to "correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature."

[20] With respect to sections 2(3) and (4) of the *Act*, the appellant claims that the information at issue does not identify it in a business, professional or official capacity. It submits that the email that it sent to Conservation Halton was in its role "as a concerned citizen reporting an infraction to the appropriate authority." With respect to the reference to "official capacity" in sections 2(3) and (4), the appellant claims that previous IPC decisions limit the meaning of this term to "official government capacity" and cites Order MO-1550-F.

[21] Conservation Halton simply submits that it would redact the information in the emails identifying the appellant because it constitutes the appellant's "personal information."

[22] I have reviewed the information at issue which includes the appellant's name and other information that would identify it, if disclosed. Although the appellant is an individual and used a personal email address to send the email that notified Conservation Halton about an alleged environmental violation, the signature portion at the end of the email clearly shows that the appellant provided this tip in an official capacity, not a personal capacity.

[23] I am not persuaded by the appellant's claim that Order MO-1550-F found that "official capacity" is limited to individuals who are employed by government. In that decision, the adjudicator stated:

> Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about" the individual within the meaning of the section 2(1) definition of "personal information" (see, for example, Orders P-257, P-427, P-1412 and P-1621).

[24] However, the adjudicator then noted that subsequent IPC decisions have expanded the meaning of non-personal information to include individuals representing less formal groups. He stated:

> This distinction between personal and non-personal information has been extended to situations involving groupings of individuals that are less formal and structured than, for example, a corporation, partnership or government agency. For example, in Order P-1409, former Adjudicator John Higgins found that information relating to an individual identified as a "spokesperson for the occupiers of [Ipperwash Provincial] Park", and other individuals identified as "native leaders", were not those individuals' personal information. Similarly, in Order P-300, I found that information submitted by a spokesperson for a local association did not qualify as "personal information."

[25] In my view, the factual circumstances here are similar to those in Order P-300. I find that the appellant's name and other information in the two emails identify that individual in an official capacity and this information therefore falls within sections 2(3) and (4) of the *Act*. As a result, this information is not the appellant's "personal information." Given that the mandatory personal privacy exemption in section 21(1) only applies to "personal information," I find that this information cannot qualify for exemption under that provision.

Issue B: Is the appellant entitled to claim the discretionary exemption in section 14(1)(d) of the *Act*?

[26] The appellant claims that its name and other identifying information in the records are exempt from disclosure under the discretionary exemption in section 14(1)(d) of the *Act*. The ministry did not claim this exemption (or any other exemption) for this information.

[27] Section 14(1)(d) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
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> > disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

[28] 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 appellant is entitled to claim the application of discretionary exemption in section 14(1)(d) when it has not been claimed by the ministry.

[29] For the reasons that follow, I find that the appellant is entitled to claim the discretionary exemption in section 14(1)(d) with respect to its name and other identifying information in the records.

[30] In Order M-430, the IPC took the following approach to the issue of whether a third party is entitled to rely on a discretionary exemption not raised by the institution:

> As a general rule, the responsibility rests with the head of an institution to determine which, if any, discretionary exemptions should apply to a particular record. The Commissioner's office, however, has an inherent obligation to uphold the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner or his delegate decides that it is necessary to consider the application of a discretionary exemption not originally raised by an institution during the course of an appeal. This result would occur, for example, where release of a record would seriously jeopardize the rights of a third party.[4]

[31] The appellant submits that it should be permitted to claim the section 14(1)(d) exemption because it protects "informer privilege," which is a longstanding principle in the common law. It states that it sent a confidential tip about a potential environmental violation to Conservation Halton after being advised by a resident that large truckloads of fill were being brought onto a residential property and then illegally dumped on wetland. It claims that its tip was investigated by an enforcement officer employed by Conservation Halton, which led to the property owner pleading guilty in court to a charge laid under the *Conservation Authorities Act* (the *CRA*)[5] and an accompanying regulation,[6] which prohibit alteration of regulated areas, including wetlands. It further states that Conservation Halton ordered the property owner to remove the illegal fill and restore the regulated area.

[32] The appellant states that the requester in this appeal is the contractor that placed the fill on the property. It claims that the requester has initiated a lawsuit against the property owner for costs incurred to remove the fill because the property owner apparently refused to pay its share of these costs.

[33] The appellant further states that it is concerned that it will also be sued by the requester if it is identified as the source of the confidential tip that it provided to Conservation Halton about the illegal dumping of fill on wetland. To buttress its case, it points to the fact that a landowner in the area has sued three local residents for speaking out against the illegal dumping of fill. The case has yet to go to trial but has cost those residents thousands of dollars in legal fees.

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[4] See also Orders P-257, M-10 and P-1137. In the latter order, the adjudicator found that 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.
[5] *Supra* note 1.
[6] Ontario Regulation 162/06.

[34] The appellant submits that the factual circumstances in this appeal fall within the rare occasions in which a third party is entitled to raise a discretionary exemption such as section 14(1)(d), because disclosing its identifying information to the requester would seriously jeopardize its right to "informer privilege," which applies to the confidential tip that it provided to Conservation Halton.

[35] To further support its position, the appellant cites the Supreme Court of Canada's decision in *R. v. Leipert*,[7] in which the court found that "informer privilege" prevents not only disclosure of the name of the informant, but of any information which might implicitly reveal his or her identity.[8] In particular, the court stated the following:

> . . . [I]nformer privilege is an ancient and hallowed protection which plays a vital role in law enforcement. It is premised on the duty of all citizens to aid in enforcing the law. The discharge of this duty carries with it the risk of retribution from those involved in crime. The rule of informer privilege was developed to protect citizens who assist in law enforcement and to encourage others to do the same.[9]
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> . . . .
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> In summary, informer privilege is of such importance that it cannot be balanced against other interests. Once established, neither the police nor the court possesses discretion to abridge it.[10]

[36] The appellant further submits that in Ontario (Public Safety and Security) v. Criminal Lawyers' Association,[11] the Supreme Court of Canada commented on the relationship between informer privilege and section 14 of the *Act*:

> We turn first to records prepared in the course of law enforcement, which are dealt with under s. 14 of the *Act*. As jurisprudence surrounding concepts such as informer privilege and prosecutorial discretion attests, there is a strong public interest in protecting documents related to law enforcement. . . . Section 14 of the *Act* reflects this. The legislature in s. 14(1) has in effect declared that disclosure of records described in subsets

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[7] [1997] 1 SCR 281, 1997 CanLII 367.
[8] *Ibid.*, at para. 18.
[9] *Ibid.*, at para. 9.
[10] *Ibid.*, at para. 14. The Supreme Court of Canada has considered the meaning and scope of "informer privilege" in a number of other decisions as well, including *Bisaillon v. Keable*, [1983] 2 SCR 60, 1983 CanLII 26 (SCC), *Named Person v. Vancouver Sun*, [2007] 3 SCR 253, 2007 SCC 43 (CanLII); *R. v. Basi*; [2009] 3 SCR 389, 2009 SCC 52 (CanLII); *R. v. Named Person B*, [2013] 1 SCR 405, 2013 SCC 9 (CanLII); *R. v. Durham Regional Crime Stoppers Inc.*, [2017] 2 SCR 157, 2017 SCC 45 (CanLII); and *R. v. Brassington*, [2018] 2 SCR 617, 2018 SCC 37 (CanLII).
[11] [2010] 1 SCR 815, 2010 SCC 23 (CanLII).

> (a) to (i) would be so detrimental to the public interest that it presumptively cannot be countenanced.[12]

[37] I have considered the evidence submitted by the appellant with respect to whether it is entitled to claim the discretionary exemption in section 14(1)(d) with respect to its name and other identifying information in the records. As noted above, section 14(1)(d) gives an institution the discretion to refuse to disclose a record where the disclosure could reasonably be expected to either:

- disclose the identity of a confidential source of information in respect of a law enforcement matter; or
- disclose information furnished only by the confidential source.

[38] For the section 14(1)(d) to apply, it must be established that one of these two requirements apply.

[39] In deciding whether the factual circumstances in this appeal fall within the rare occasions in which a third party is entitled to raise a discretionary exemption such as section 14(1)(d), I must first determine whether the information at issue in the records is in respect of a "law enforcement" matter, because if it is not, the appellant cannot claim this exemption. The term "law enforcement" is defined in section 2(1) as follows:

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

[40] It is clear from paragraphs (b) and (c) of this definition that the term "law enforcement" applies not simply to policing but to other types of investigations, inspections and proceedings. The IPC has found that the definition of "law enforcement" in paragraphs (b) and/or (c) of section 2(1) of the *Act* covers a number of situations, such as:

- a municipality's investigation into a possible violation of a municipal by-law that could lead to court proceedings;[13]

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[12] *Ibid.*, at para. 44.

- a children's aid society investigation under the *Child and Family Services Act* which could lead to court proceedings;[14] and

- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[15]

[41] Under the *CRA*, a conservation authority has the power to appoint officers to enforce any regulation made under various provisions of that Act. Charges can be laid against individuals or companies that contravene the *CRA* and/or its accompanying regulations, which can lead to court proceedings in which a fine or term of imprisonment is imposed if the alleged offender is convicted.[16]

[42] Although neither the *CRA* nor the accompanying regulations for each conservation authority appears to explicitly refer to officers conducting "investigations or inspections," these officers cannot fulfill their statutory enforcement responsibilities unless they carry out investigations and conduct inspections that are either self-initiated or as a result of a complaint or tip from the public. I find, therefore, that these statutory enforcement duties fall within the definition of "law enforcement" in paragraph (b) of the definition of this term in section 2(1) of the *Act*, because they include investigations or inspections that could lead to proceedings in court in which a penalty or sanctions could be imposed in those proceedings. In addition, I find that a "law enforcement" matter for the purposes of section 14(1)(d) includes investigations and inspections carried out by officers appointed by a conservation authority to determine whether an offence has taken place.

[43] The information at issue in this appeal relates to a tip that the appellant provided to Conservation Halton about the alleged illegal dumping of fill in a wetland. This tip was investigated by an enforcement officer employed by Conservation Halton, which led to charges against the property owner, who plead guilty in court. Accordingly, I find that the information at issue is in respect of a "law enforcement" matter for the purposes of section 14(1)(d).

[44] The appellant's claim that it is entitled to raise the section 14(d) exemption is anchored in its submission that informer privilege is protected by that exemption. The IPC has found that the inclusion of section 14(1)(d) in the *Act* is a recognition of the common-law principle of informer privilege.[17] As noted above, this privilege is a near absolute class-based privilege and can only be breached in very limited and specific

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[13] Orders M-16 and MO-1245.
[14] Order MO-1416.
[15] Order MO-1337-I.
[16] See, for example, sections 28(1)(d) and (e), (16) and (17) of the *CRA* and Ontario Regulation 162/06, which governs Conservation Halton.
[17] Order PO-2591.

circumstances.[18]

[45] In my view, however, the section 14(1)(d) exemption protects information relating to a spectrum of different types of confidential sources in respect of a law enforcement matter. It is not limited to protecting the identity of or the information furnished only by a confidential source in respect of a law enforcement matter that is covered by informer privilege. Consequently, in determining whether the factual circumstances in this appeal fall within the rare occasions in which a third party is entitled to raise a discretionary exemption such as section 14(1)(d), I find that it is not necessary for the appellant to establish that the tip that it provided to Conservation Halton is protected by "informer privilege."

[46] I have considered the evidence provided by the appellant, including the risk of retaliation that it may face from the requester or the property owner if its name and other identifying information are disclosed. I have also considered the fact that section 14(1)(d) is designed not simply to protect the interests of an institution in receiving confidential tips from the public in respect of a law enforcement matter but also the interests of those citizens and organizations who act as confidential sources of information. In these circumstances, I find that the appellant is entitled to claim the discretionary exemption in section 14(1)(d), because disclosing its identifying information to the requester could seriously jeopardize its rights as a confidential source, if this exemption is found to apply.

Issue C: Does the discretionary exemption in section 14(1)(d) of the Act apply to the information at issue?

Section 14(1)(d)

[47] As noted above, section 14(1)(d) gives an institution the discretion to refuse to disclose a record where the disclosure could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter or disclose information furnished only by the confidential source.

[48] In the circumstances of this appeal, I have found that the appellant is entitled to claim this exemption even though it was not claimed by the ministry.

[49] Generally, the law enforcement exemptions in section 14, including section 14(1)(d), must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[19]

[50] For this exemption to apply, the institution (or the appellant in this case) must

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[18] *Supra* notes 7 and 10.
[19] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

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.[20]

[51] For the reasons that follow, I find that the appellant's name and other identifying information in the records are exempt from disclosure under the first requirement of section 14(1)(d).

[52] The appellant states that when it provided a tip to Conservation Halton about the illegal dumping of fill in a wetland area, it had a reasonable expectation that its identity would be kept confidential. It submits that disclosing its identifying information to the requester would disclose the identity of a confidential source of information in respect of a law enforcement matter under the jurisdiction of Conservation Halton, in accordance with the requirements of section 14(1)(d).

[53] I have considered the appellant's representations and the information at issue in the two emails, which includes the appellant's name and other identifying information. The first email is from the appellant to Conservation Halton. In this email, the appellant reports an alleged contravention of the *CRA* and the regulation governing the wetlands overseen by Conservation Halton. The second email is from an individual to both the appellant and Conservation Halton and contains additional information about the alleged contravention. This tip was investigated by an enforcement officer employed by Conservation Halton, which led to charges against the property owner, who plead guilty in court.

[54] Based on the unrebutted evidence submitted by the appellant in this inquiry, I am satisfied that the appellant was acting as a confidential source of information in respect of a law enforcement matter when it reported an alleged contravention of the *CRA* and the regulation to Conservation Halton. Although this evidence shows that the appellant did not receive an explicit promise of confidentiality from Conservation Halton when it reported the alleged environmental violation, I find that the conduct of Conservation Halton following receipt of the appellant's tip gave rise to an implicit promise. For example, the appellant's identity was kept confidential and was not revealed to the property owner or the requester during the investigation and subsequent court proceedings.

[55] I find, therefore, that the appellant's name and other identifying information in the two emails are exempt from disclosure under section 14(1)(d) because disclosing this information to the requester could reasonably be expected to disclose the identity

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

of a confidential source of information in respect of a law enforcement matter.

Exercise of discretion

[56] Because the section 14(1)(d) exemption is discretionary, the ministry is required to exercise its discretion and decide whether this information could be disclosed, notwithstanding the fact that it qualifies for exemption. Even though I have allowed the appellant to claim the section 14(1)(d) exemption and have found that it applies to the information at issue, I cannot substitute my own discretion for that of the ministry.[21] Consequently, I am obligated to allow the ministry to exercise its discretion under section 14(1)(d) and will do so in the order provisions below. To assist the ministry in exercising its discretion, I would direct its attention to the factors set out below.

[57] After exercising its discretion, the ministry should issue an access decision to the requester and the appellant (with copies to me and Conservation Halton) that indicates what considerations it took into account in exercising its discretion under section 14(1)(d) and the outcome (i.e., whether it has decided to withhold or disclose the information). The ministry must only consider relevant considerations, which may include both those listed below and other unlisted considerations.[22] These factors may include:

- the purposes of the *Act*;
- the wording of the section 14(1)(d) 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 the appellant;
- 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 the appellant;
- the age of the information; and

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[21] Order P-58.
[22] Orders P-344 and MO-1573.

- the historic practice of the institution with respect to similar information.

ORDER:

1. I find that the appellant's name and other identifying information in the records are exempt from disclosure under section 14(1)(d) of the *Act*. I have provided the ministry with a copy of the records at issue and have highlighted this information in yellow.

2. I order the ministry, within 21 days of this order, to exercise its discretion under section 14(1)(d) with respect to the appellant's name and other identifying information in the records. It should then issue an access decision to the requester and the appellant, with copies provided to me and Conservation Halton, that sets out what considerations it took into account in exercising its discretion to either withhold or disclose that information under section 14(1)(d); the outcome of its exercise of discretion; and the right of the parties to appeal that decision to the IPC within 30 days.

3. If the ministry decides to withhold the information at issue in the records after exercising its discretion under section 14(1)(d), it should sever the information that is highlighted in green in the copy of the records that I am providing to the ministry under order provision 1, before disclosing the severed records to the requester.

4. If the ministry decides to disclose the information at issue in the records to the requester after exercising its discretion under section 14(1)(d), it must not disclose these records within that 30-day appeal period and cannot disclose them if the appellant appeals its access decision to the IPC.

5. I remain seized of any compliance issues that may arise with respect to this order.

Original Signed By: August 14, 2019
Colin Bhattacharjee
Adjudicator