

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4096

Appeal PA17-380

Ministry of Natural Resources and Forestry

December 17, 2020

Summary: The Ministry of Natural Resources and Forestry (the ministry) received a request for access to information about privacy training provided to ministry staff relating to the deployment and use of remote surveillance cameras in provincial parks and remote wildlands. The ministry granted partial access to responsive records, but withheld personal information of identifiable individuals under the mandatory personal privacy exemption in section 21(1). The ministry also withheld information from the records pursuant to the discretionary law enforcement exemption in section 14(1)(c) (reveal investigative techniques and procedures). The requester appealed the ministry's access decision to this office. In this order, the adjudicator upholds the ministry's decision and dismisses this appeal.

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"), 14(1)(c), and 21(1).

Orders Considered: PO-2751, PO-3653 and PO-3852.

OVERVIEW:

[1] This appeal relates to information contained in two PowerPoint presentations about the installation and use of remote surveillance cameras by the Ministry of Natural Resources and Forestry (the ministry).

[2] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to information relating to its policies and training of staff about privacy considerations and remote game cameras.

[3] The request is for access to information summarized below:

- the ministry's remote game camera use policies (or working drafts where no policies exist), including information about the cameras' use and data generated;
- information about the ministry's privacy training curriculum for staff and volunteers "in the field" before commencing their duties, including training regarding their obligations about *FIPPA*, best practices and what to do in the event of a privacy breach or in situations where staff may be compelled to function as "whistle-blowers" in the event of privacy breaches or concerns;
- information regarding the number of privacy training hours provided to staff and volunteers, the frequency of refresher training, evaluation mechanisms and testing used to assess effectiveness of privacy training; and
- signed statements or declarations (with personal information removed) signed by staff or volunteers attesting to their understanding of and intent to comply with ministry privacy policies enacted under *FIPPA*.

[4] The requester specified that he was not seeking access to information relating to the training of office staff, such as senior management or staff employed full- or part-time in permanent head-office positions, but rather for front-line workers, temporary workers, students, interns and volunteers, researchers and middle-management who work "in-the-field", i.e., in the parks themselves, as well as in district offices.¹

[5] After clarification from the appellant, the ministry issued an interim decision with a fee estimate. The ministry then issued an access decision granting full access to all but two responsive records – PowerPoint slide decks – to which it granted partial access. The ministry denied access to some of the withheld information on the basis of the mandatory personal privacy exemption in section 21(1), and to the remaining withheld information on the basis of the discretionary law enforcement exemption in section 14(1)(c) (reveal investigative techniques and procedures).

[6] The requester, now the appellant, appealed the ministry's decision. The parties participated in mediation to explore the possibility of resolution.

[7] During mediation, the ministry issued a revised decision granting access to additional information from the two slide decks to which it had previously denied access. The appellant continued to seek access to all of the remaining withheld information.

[8] When a mediated resolution could not be reached, the file was moved to the

¹ The request specifically excluded data regarding conservation officers.

adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. During my inquiry, the ministry, in its representations in response to a Notice of Inquiry, the non-confidential portions of which were shared with the appellant, withdrew its section 14(1)(c) claim over additional portions of the withheld records, resulting in further disclosure to the appellant.² As a result, only access to information on the slides described under the heading "Records," below, and denied pursuant to sections 21(1) and 14(1)(c), is at issue in this appeal.

[9] In this order, I find that the records contain the personal information of identifiable individuals. I find that disclosure of this personal information would be an unjustified invasion of the individuals' personal privacy pursuant to section 21(1), with reference to section 21(3)(b), because the information was compiled and is identifiable as part of investigations into possible violations of law. I also find that information withheld from the records is exempt from disclosure under section 14(1)(c) because it reveals investigative techniques and procedures used in law enforcement. Finally, I find that the ministry properly exercised its discretion in withholding information pursuant to section 14(1)(c) and I uphold the ministry's decision.

RECORDS:

[10] The records consist of two PowerPoint slide presentations used to train conservation officers in the use and deployment of remote surveillance cameras. The only information remaining at issue is information withheld from 10 slides, including speaker notes and photographs from two slide decks, identified by the ministry as follows:

Slide deck	Description	Slide numbers at issue
Record A0295746	Remote Surveillance Camera (RSC) Tips and Tricks	224-226 and 229 (speaker notes) 232-235 (photographs and speaker notes)
Record	Remote Surveillance Camera	219 and 220

² With respect to slide deck A0295746, the ministry withdrew its claim that slides 227 and 228 are exempt under section 14(1)(c). With respect to slide deck A0295747, the ministry withdrew its claim that section 14(1)(c) applies to all of slide 219, except for the last sentence of paragraph 2; to paragraph 5 of slide 220, and to all of slide 221. Portions of the ministry's representations that would disclose the contents of the records at issue were not shared, pursuant to *Practice Direction 7*.

ISSUES:

- A. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?
- C. Does the discretionary law enforcement exemption at section 14(1)(c) apply to the information that has been withheld from the records?
- D. Did the ministry exercise its discretion under section 14(1)(c). If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Do the records contain “personal information” as defined in section 2(1) of the *Act*, and if so, to whom does it relate?

[11] In order to determine which sections of the *Act* may apply, I must first determine whether the records contain “personal information” and, if so, whose. “Personal information” is defined in section 2(1) as “recorded information about an identifiable individual.” Section 2(1) sets out a non-exhaustive list of examples of personal information, 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,

[12] The list of examples of personal information in section 2(1) is not exhaustive. Information that does not fall within paragraphs (a) to (h) may still qualify as personal information.³

³ Order 11.

[13] To qualify as personal information the information must be about the individual in a personal capacity. It must also be reasonable to expect that an individual may be identified if the information is disclosed.⁴

Representations

[14] The ministry submits that slides 232-235 of record A0295746 contain personal information of identifiable individuals. The ministry says that some information withheld from pages 232-235 of record A0295746 includes photographs that contain images of identifiable individuals and a vehicle license plate. It submits that the photographs are accompanied by text in the speaker notes that describes specific actions on the part of those individuals that could give rise to illegal activities, as well as notes about individuals who were later convicted of, or confessed to, wildlife-related offences. The ministry submits that it is reasonable to expect that these individuals could be identified if information in these slides was disclosed.

[15] The appellant does not challenge the ministry's representations that the photographs contain personal information of identifiable individuals.

Analysis and findings

[16] Previous orders of this office have recognized that photographs can reveal personal information of an identifiable individual.⁵ Having reviewed slides 232-235, I agree with the ministry that they contain the personal information of the individuals whose physical images or license plates appear in the photographs. The withheld images contain personal information about these individuals such as their colour, approximate age and sex; the license plate is an identifying number assigned to an individual; and the withheld text connects individuals to offences that they were either suspected or convicted of committing. I therefore find that this information is the personal information of identifiable individuals within the meaning of paragraphs (a), (b) and (c) of section 2(1).

Issue B: Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[17] The ministry withheld portions of slides 232-235 of record A0295746 pursuant to the mandatory personal privacy exemption at section 21(1). The ministry maintains that disclosure of personal information in these slides would result in an unjustified invasion of personal privacy and relies on the presumption in section 21(3)(b). The ministry also withheld portions of the accompanying speaker notes on these slides on the basis of

⁴ Order PO-1880, upheld in judicial review in *Ontario (Attorney General) v. Pascoe*, 2002 CanLII 30891 (ONCA), [2002] O.J. No. 4300 (C.A.).

⁵ See, for example, Orders M-528, MO-1378 and MO-1410.

the discretionary law enforcement exemption in section 14(1)(c), which I will discuss below, under Issue C.

[18] Where a requester seeks access to the personal information of another individual, section 21(1) prohibits the institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[19] If the information fits within any of the exceptions to section 21 in paragraphs (a) to (e) of section 21(1), or paragraphs (a) to (d) of section 21(4), it is not exempt from disclosure. The information in this appeal does not fit within any of these paragraphs.

[20] Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, the information is also not exempt from disclosure. The section 21(1)(f) exception, which permits disclosure if it would not be an unjustified invasion of personal privacy, requires a consideration of additional parts of section 21.

[21] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21.

[22] The ministry relies on the presumption in section 21(3)(b), which states that:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[23] Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the “public interest override” at section 23 applies.⁶

Representations

[24] The ministry submits that the photographs in slides 232-235 of record A0295746 were taken in the context of investigations into possible violations of law. The ministry says that the accompanying text in the speaker notes indicates that individuals depicted in the photographs were later convicted of, or confessed to having committed, offences. The ministry says that disclosure to the appellant of the speaker notes and images on

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

these slides is not necessary to prosecute the violations or to continue the investigations.

[25] The appellant does not comment on whether disclosure of the images would constitute an unjustified invasion of personal privacy, although he does say that he is not seeking access to identifying information of individuals that he says might be withheld under section 21(1). He argues that, in response to previous requests he has made for access to information (regarding, among other things, the locations and GPS coordinates of remote game cameras), the ministry has tried to “over-sever” by withholding more information than necessary from photographs, such as their context and the activities in which individuals were engaged. The appellant submits that he seeks access to as much information as possible about the activities that are photographed on the slides. He argues that, because cameras do not distinguish between lawful and unlawful acts, seeing how the ministry uses images captured by the cameras in a law enforcement setting would help him better understand their use by the ministry in a non-law enforcement setting.

Analysis and findings

[26] Based on my review of slides 232-235 of record A0295746, I am satisfied that the personal information has been properly withheld under section 21(1).

[27] I find that slides 232-235 contain information that was compiled and is identifiable as part of investigations into possible violations of law. Slides 232-235 contain photographs of individuals engaged in suspected illegal activities involving wildlife, including their images and a license plate number that I have already found to be their personal information. The slides also contain text in the accompanying speaker notes regarding the investigations, confessions or convictions relating to the individuals pictured that I have also found to be personal information. I find that the information regarding suspected unlawful acts, confessions and/or convictions was compiled and is identifiable as part of the ministry’s investigations into possible violations of law.

[28] For these reasons, I find that the personal information withheld from slides 232-235 falls within the presumption in section 21(3)(b) and that its disclosure is presumed to constitute an unjustified invasion of the affected individuals’ personal privacy. Accordingly, I find that this information is exempt under the mandatory personal privacy exemption in section 21(1).

Issue C: Does the discretionary law enforcement exemption at section 14(1)(c) apply to the information that has been withheld?

[29] As noted above, the ministry has withheld portions of four training slides in

record A0295746, portions of the speaker notes in slides 232-235 of record A0295746,⁷ and portions of two slides in record A0295747 pursuant to the discretionary law enforcement exemption at section 14(1)(c).

[30] The ministry submits that its enforcement branch has the authority to enforce various legislation, including the *Fish and Wildlife Conservation Act, 1997*,⁸ *Public Lands Act*,⁹ *Lakes and Rivers Improvement Act*,¹⁰ and the *Endangered Species Act, 2007*,¹¹ and that the slides at issue were specifically developed to train conservation officers for use in their investigations of offences under these acts.

[31] Section 14(1)(c) states that:

(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;

[32] The term "law enforcement" is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(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)

[33] The term "law enforcement" has covered various situations, including:

- a municipality's investigation into a possible violation of a municipal by-law that could lead to court proceedings;¹²
- police investigations into possible *Criminal Code* violations;¹³

⁷ That were not withheld under section 21(1), above.

⁸ S.O. 1997 c.41.

⁹ R.S.O. 1990, c. P.43.

¹⁰ R.S.O. 1990, c. L.3.

¹¹ S.O. 2007, c. 6.

¹² Orders M-16 and MO-1245.

¹³ Orders M-202 and PO-2085.

- a children's aid society investigation under the *Child and Family Services Act* that could lead to court proceedings;¹⁴
- fire marshal code inspections under the *Fire Protection and Prevention Act*, 1997.¹⁵

[34] By contrast, this office has said that "law enforcement" does not apply to the following situations:

- an internal investigation by an institution under the *Training Schools Act* where the institution lacked authority to enforce or regulate compliance with any law;¹⁶ and,
- a coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.¹⁷

Representations

The ministry's representations

[35] The ministry submits that disclosure of the information it withheld under section 14(1)(c) would reveal investigative techniques and procedures used to train conservation officers for work in the field investigating possible contraventions of the various legislation enforced by the ministry.

[36] The ministry submits that the remote surveillance cameras are used in investigations into offences and that the techniques and procedures described in the records relate to investigations. The ministry submits that its enforcement branch has the authority to conduct investigations or inspections that could lead to proceedings in a court and which could result in sanctions or penalties on conviction. It says that the information withheld under section 14(1)(c) contains preferred deployment techniques and addresses safety concerns for conservation officers when investigating in the field.

[37] The ministry submits that the records are directly related to "law enforcement" according to paragraph (b) of the definition of that term in section 2(1) of the *Act*, because conservation officers are not permitted to install or use remote surveillance cameras before they have received the type of approved training for which the ministry says the records were created, and because, as stated in materials already disclosed to

¹⁴ Order MO-1416.

¹⁵ Order MO-1337-I.

¹⁶ Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.).

¹⁷ Order P-1117.

the appellant, the cameras are only to be used to “gather evidence or information.”

[38] The ministry says that a key objective of the records is to teach conservation officers how to ensure that the cameras are properly located and camouflaged in order to avoid detection by suspects or potential offenders. It says that some of these techniques are specialized and “custom” to the ministry. It says that disclosure of these investigative techniques and procedures would educate potential offenders on how to protect themselves against ministry surveillance, such as how to avoid having their images caught on film. The ministry argues that making its preferred and custom techniques used for placing and hiding remote surveillance cameras known to the public would make them more easily discoverable by potential offenders. This, it argues, would interfere with its ability to gather law enforcement intelligence information and hinder or undermine the effectiveness of the techniques and the ability of its enforcement branch to investigate offences and deter future contraventions.

The appellant’s representations

[39] The appellant submits that he is concerned that the ministry is deploying surveillance cameras for law enforcement and non-law enforcement purposes¹⁸ in remote areas without appropriate research or consultation with stakeholders regarding the privacy impact on individuals who choose to retreat to remote provincial parks and wildlands.

[40] He has submitted extensive representations about the importance of privacy in remote areas. He argues that individuals have a heightened expectation of privacy in remote areas and wildlands where they often go to “get away” from urban life.

[41] The appellant does not deny the value of remote surveillance cameras in a law enforcement context or of remote game cameras used to study wildlife and at-risk species for the purposes of conservation and research. He argues, however, that they must be deployed in a way that considers the privacy of law-abiding individuals who visit remote parks and wildlands to escape urbanization and omnipresent surveillance. He argues that in the deployment of remote surveillance cameras in law enforcement and non-law enforcement contexts, the public must be consulted and made aware of the cameras’ uses and locations so that it can better determine what it finds acceptable.¹⁹

¹⁸ Such as research and conservation efforts using remote game cameras.

¹⁹ In addition to his representations made in this appeal, the appellant has provided a 75-page policy manual he prepared regarding the use of remote game cameras, surveillance and privacy, and has referred me to representations made in support of his previous request for access to information regarding, among other things, locations and GPS coordinates of remote game cameras. Although I have read the extensive materials provided by the appellant for this appeal, including his policy manual, I have

[42] The appellant also relies on the ministry's previous disclosure of information relating to remote game cameras. Specifically, he says that the ministry was ordered to disclose the locations and GPS coordinates of certain remote game cameras in Orders PO-3653 and PO-3852, so that concealment techniques are discernible by visiting these locations since they are publicly available.²⁰ The appellant says that, even without coordinates from the ministry, it is possible to determine the location of cameras from the photographs, submitting that he was able to closely approximate the GPS coordinates of a remote game camera used by the ministry from photographs of wolves published in an online magazine. He writes that there is a trove of information available online regarding remote game cameras, including tools and techniques for their concealment. He argues that, among other things, considering the availability of surveillance cameras on the market and the fact that many hunters are also conservation officers, there are few, if any, tools available or known to the law enforcement community that are not already known outside it.

[43] The appellant disagrees that the effectiveness of tools and techniques is hampered by public access. He says that knowing that the ministry may cover a camera using moss or hide it high in a tree does not make the moss or the tree camouflage less effective. He says that it is generally expected that the cameras will be camouflaged and it is the competent application of camouflage tools and techniques, and not the tools or techniques themselves that determines the success or failure of a camera's deployment.

[44] Finally, although the appellant says that his request does not seek data regarding conservation officers, he notes that the ministry partially disclosed records that are used by conservation officers. He argues that the remaining information cannot therefore be withheld using a law enforcement exemption since the ministry already disclosed portions of the slide decks in response to his request for information not relating to conservation officers.

Analysis and findings

[45] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.²¹

[46] It is not enough for an institution to take the position that the harms under

only summarized those of his representations in response to the Notice of inquiry that are relevant to the specific exemptions claimed by the ministry to withhold portions of the records that are at issue in this appeal.

²⁰ The ministry has disclosed locations, including GPS coordinates, for some remote game cameras in response to previous access to information requests made by the appellant.

²¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

section 14 are self-evident from the record.²² 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.²³

[47] In order to meet the “investigative technique or procedure” test in section 14(1)(c), the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.²⁴ Senior Adjudicator John Higgins stated in Order PO-2751 that:

... The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that its effectiveness would not be hindered or compromised by disclosure and, accordingly, that the technique or procedure in question is not within the scope of section 14(1)(c).

[48] The techniques or procedures must be “investigative.” The exemption will not apply to “enforcement” techniques or procedures.²⁵

[49] The ministry argues, and I find that, that the information withheld under this exemption reveals investigative techniques and procedures used by conservation officers to investigate unlawful activity involving wildlife. As noted above, the ministry submits and I accept that this information is required training for conservation officers before they can deploy and use remote surveillance cameras. The records also contain information about what the ministry describes as specialized techniques and recommended tools, recommended locations of remote surveillance cameras, and information about safety and tactical considerations. It includes practical examples of successful use of these techniques in investigations.

[50] I accept the ministry’s submission that, insofar as the records are used to train and educate conservation officers, they could also reasonably be expected to educate potential offenders on how to protect themselves against ministry surveillance if disclosed, such as how to avoid having their images caught on film.

[51] I agree with the ministry that disclosure of specialized internal techniques used to train conservation officers before they can deploy remote surveillance cameras to the

²² Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

²³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 54.

²⁴ Orders P-170, P-1487, MO-2347-I and PO-2751.

²⁵ Orders PO-2034 and P-1340.

public could reasonably be expected to undermine their ability to investigate offences and to deter future contraventions. Similarly, disclosure of preferred tools used by the ministry for camouflaging or otherwise hiding remote surveillance cameras from view would reveal the ministry's recommendations for locations and techniques for installation to better avoid detection. In my view, there is little value in a specialized tool used to train conservation officers for use in investigations that is then also made available to the public.

[52] I accept the appellant's submission that there is a significant body of public knowledge, especially online, regarding remote surveillance cameras. However, I have no basis on which to find that the very limited information withheld by the ministry is not specialized and should not remain confidential.

[53] Having reviewed the records, I also find that they contain information about limitations on investigative procedures in certain specific settings. I accept the ministry's position that disclosure of information about limits to investigations could reasonably be expected to enable potential offenders to exploit those limitations.

[54] The appellant relies on Orders PO-3653 and PO-3852, in which the ministry was ordered to disclose records relating to, among other things, the locations of wildlife monitoring trail cameras, including their GPS coordinates, deployed in a remote provincial park for research purposes.

[55] I find that Orders PO-3653 and PO-3852 are distinguishable from the present appeal. In both cases, the ministry claimed that information about the location of wildlife monitoring cameras was exempt under section 14(1)(l) because its disclosure would facilitate the commission of an unlawful act, namely vandalism to or theft of the cameras. In each case, the adjudicator found that the ministry had failed to establish a link between disclosure of the information and harm to the cameras. The adjudicators found that individuals who are suitably motivated to steal or vandalize remote wildlife monitoring cameras already had enough general information to locate them.

[56] Further, in Order PO-3653, the described purpose of the remote wildlife trail cameras was "to support research" which was "likely to be disseminated." The adjudicator was satisfied that over time, more photos taken by the cameras may make their way into the public domain, which would making locating the cameras progressively easier.

[57] Unlike in Order PO-3653, there is no information before me to suggest that information relating to specialized, internal training of conservation officers used in law enforcement investigations is or will be in the public domain.

[58] Further, the risk of harm in this case is not to equipment in the form of theft or vandalism, but to the integrity of the investigations themselves. As I have already noted, I am satisfied that disclosure of specialized or unique investigative techniques that are not in the public domain, and that would not be public but for disclosure, could

undermine the investigations in which they are intended to be used.

[59] Accordingly, for the reasons set out above, I find that disclosure of the information at issue and withheld from slides 224, 225-226, 229 and 232-235 of record A0295746 and from slides 219-220 of record A0295747, could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. This information is exempt under section 14(1)(c), subject to my review of the ministry's exercise of discretion, below.

Issue D: Should the ministry's exercise of discretion under section 14(1)(c) be upheld?

[60] The section 14(1)(c) 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. The Commissioner may also 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.

[61] While this office may send the matter back to the institution for an exercise of discretion based on proper considerations,²⁶ it may not, however, substitute its own discretion for that of the institution.²⁷

Relevant considerations

[62] Relevant considerations may include, but are not limited to, those listed below:

- the purposes of the *Act*, including 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
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or organization
- whether disclosure will increase public confidence in the operation of the institution

²⁶ Order MO-1573.

²⁷ Section 43(2) of the *Act*.

- 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.

[63] In withholding information from the records pursuant to section 14(1)(c), I find that the ministry properly exercised its discretion.

Representations

[64] The ministry submits that it properly exercised its discretion under section 14(1)(c) in deciding to deny access to certain information withheld from the records. The ministry submits that it considered the circumstances of the request, the purposes of the *Act*, and the nature of the discretionary law enforcement exemption.

[65] The ministry says that it exercised its discretion in good faith and for purposes consistent with the policy intentions for the exemption. The ministry submits that it took into account all relevant considerations and did not base its decision on irrelevant considerations.

[66] The appellant submits that the ministry exercised its discretion inappropriately. He submits that the ministry failed to consider that disclosure of its considerations, techniques, methods, practices or tools (techniques and tools) with respect to deployment of remote cameras will eventually likely be public knowledge. He says that the ministry failed to consider that disclosing this information will not render the ministry's techniques and tools any less effective.

[67] He argues that full disclosure should be granted in order to give effect to government transparency and to analyze the operations of government.

Analysis and findings

[68] As noted above, this office is entitled only to consider whether the ministry did, in fact, properly undertake an exercise of its discretion, but cannot substitute its own discretion for that of the ministry. Section 43(2) of the *Act* states:

(2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the commissioner shall not order the head to disclose the record or part.

[69] In this case, I do not find that the ministry took into account improper considerations in the exercise of its discretion. In denying access to the withheld information pursuant to section 14(1)(c), I find that the ministry properly exercised its discretion to do so.

[70] In disclosing all but the portions of the 10 slides at issue, I find that the ministry considered the need to be transparent and that information should be available to the public, and balanced it with its need to withhold limited and specific information regarding tools used to support its law enforcement mandate to investigate illegal

activities involving the exploitation of wildlife in provincial parks.

[71] In this case, the information withheld from the slides describes limited and very specific techniques associated with the deployment of remote surveillance cameras used for the investigation of illegal activity. Given the near-full access granted to the appellant, I am satisfied that the ministry attempted to give the appellant as much access as possible while protecting limited information relating to its investigation techniques.

[72] I therefore find that the ministry properly exercised its discretion under section 14(1)(c) in withholding limited information regarding investigative techniques after weighing relevant factors. I am satisfied that the ministry did not take into account irrelevant factors in exercising its discretion, and there is no evidence before me that the ministry acted in bad faith. I find no basis on which to interfere with the ministry's exercise of discretion in this appeal, and I uphold it.

ORDER:

I uphold the ministry's decision and dismiss this appeal.

Original signed by: _____
Jessica Kowalski
Adjudicator

December 17, 2020 _____