

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4152

Appeal PA19-00126

Ministry of the Solicitor General

June 1, 2021

**Summary:** The appellant seeks access to a 911-call recording and records relating to an incident he was involved in. The ministry located two records, the 911-call recording and a report. The ministry withheld the recording, in full, under section 49(b) (personal privacy) of the *Act* and portions of the report under sections 49(b) and 49(a), read with section 14(1)(l) (facilitate commission of an unlawful act), of the *Act*. The ministry also withheld portions of the report as non-responsive. The appellant appealed the ministry's decision. In this order, the adjudicator upholds the ministry's decision in part. The adjudicator finds the personal information in the records is exempt from disclosure under section 49(b) and upholds the ministry's exercise of discretion to withhold it. In addition, the adjudicator upholds the ministry's application of section 49(a), read with section 14(1)(l), to withhold portions of the report and finds that some portions of it are not responsive to the appellant's request. Finally, the adjudicator orders the ministry to issue an access decision to the appellant regarding internal communications or logging codes in the report, which are responsive to the appellant's request.

**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 privacy*), 14(1)(l), 21(1), 21(2)(f), 21(3)(b), 24, 49(a) and (b).

**Orders and Investigation Reports Considered:** Orders MO-2911, MO-3594, PO-3742 and PO-3873-R.

### OVERVIEW:

[1] The appellant made a request to the Ministry of the Solicitor General (formerly the Ministry of Community Safety and Correctional Services) (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the audio recording of a 911 call and "911 dispatch documents" related to an incident involving the appellant.

[2] After locating responsive records, the ministry issued an access decision to the appellant granting him partial access to dispatch records of the Ontario Provincial Police (OPP) (a division of the ministry) and denying access to the 911-call recording in its entirety. The ministry cited the following exemptions to withhold the records: section 49(a) (discretion to refuse requester's own information) in conjunction with section 14(1)(l) (facilitate commission of an unlawful act) and section 49(b) (personal privacy) of the *Act*. To support its personal privacy claim, the ministry referred to the presumption against disclosure in section 21(3)(b) (personal information compiled and identifiable as part of an investigation) and the factor favouring non-disclosure at section 21(2)(f) (highly sensitive personal information). The ministry also claimed some of the severed information in the report is not responsive to the appellant's request.

[3] The appellant appealed the ministry's decision to this office.

[4] During mediation, the ministry advised the appellant it withheld the 911-call recording, in full, under the personal privacy exemption in section 49(b) of the *Act*. The ministry advised the appellant it withheld computer-generated printing information, such as the date of printing, from the dispatch documents on the basis that it is not responsive to the appellant's request. The ministry also withheld police codes appearing in the dispatch documents under section 49(a), in conjunction with section 14(1)(l), and confidential police employee numbers (used for employee administration purposes) under section 49(b) of the *Act*.

[5] The appellant confirmed his interest in obtaining access to the records.

[6] Mediation did not resolve the appeal and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the appeal began the inquiry by seeking representations from the ministry and an affected party (whose interests may be affected by the disclosure of the records) in response to a Notice of Inquiry, which summarizes the facts and issues under appeal. Both submitted representations. The affected party confirmed they did not consent to the disclosure of the records relating to them.

[7] The adjudicator then invited the appellant to submit representations in response to the ministry's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The affected party's submissions were not shared with the appellant due to confidentiality concerns. The appellant submitted representations.

[8] The appeal was then transferred to me to complete the inquiry. I note the appellant submits, in his representations, the records provided by the ministry were incomplete. Specifically, the appellant submits the 911-call recording is missing from the records. I confirm the recording is at issue in this appeal and I had the opportunity to review it during the inquiry and in preparing this order.

[9] In the discussion that follows, I uphold the ministry's decision in part. I find the records contain personal information relating to the affected party and the appellant. I also find the WIN numbers contained in the report constitute personal information within the meaning of section 2(1) of the *Act*. I find the entire recording and the personal information

in the report are exempt under section 49(b) and I uphold the ministry's exercise of discretion to withhold this information. I uphold the ministry's application of section 49(a), read with section 14(1)(l), to withhold portions of the report and uphold the ministry's exercise of discretion to withhold that information. I also uphold the ministry's decision to withhold some portions of the report as non-responsive, but order it to issue an access decision to the appellant regarding the internal communication or logging codes in the report, which are responsive to the appellant's request.

## **RECORDS:**

[10] The two records at issue are an audio recording of a 911 call (the recording) and a five-page "Event Details" report (the report) for the incident involving the appellant.

## **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 discretionary exemption at section 49(a), read with section 14(1)(l) (facilitate commission of an unlawful act), apply to the information at issue?
- C. Does the personal privacy exemption in section 49(b) apply to the information at issue?
- D. Did the ministry exercise its discretion under sections 49 and section 14(1)(l)? If so, should this office uphold the exercise of discretion?
- E. What is the scope of the request? What records are responsive to the request?

## **DISCUSSION:**

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

[11] In order to determine which sections of the *Act* may apply, 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) of the *Act* as "recorded information about an identifiable individual."

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the individual.<sup>1</sup> However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals

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<sup>1</sup> See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

something of a personal nature about the individual.<sup>2</sup>

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

[14] The affected party submits the records contain personal information relating to them.

[15] The ministry submits the majority of the records contain personal information relating to the affected party. Specifically, the ministry submits the voice of the affected party, when combined with information they reveal about themselves in the 911 call, makes them identifiable. The ministry submits the personal information contained in the records includes the affected party's name, their voice, and the content of the discussions they had with the OPP.

[16] The ministry acknowledges the OPP collected this information from the affected party in the course of their employment. Nonetheless, the ministry takes the position that the disclosure of this personal information would reveal something of an inherently personal nature about the affected party. The ministry submits the affected party provided their personal information not as part of the usual course of their employment, but as a result of circumstances leading to the OPP being called to attend the affected party's place of employment.

[17] The appellant did not address whether the records contain personal information within the meaning of section 2(1) of the *Act*.

[18] I have listened to the recording and find it contains the personal information of the appellant. Specifically, I find the record contains the appellant's name (considered to be *personal information* under paragraph (h) of the definition of that term in section 2(1)) and the views of another individual about him (paragraph (d)).

[19] In addition, I find the recording contains personal information relating to the affected party. As discussed above, the affected party called 911 during the course of their employment. They did not disclose their full name in the recording, only their first name. Nonetheless, the introductory wording of the definition of *personal information* in section 2(1) states that *personal information* means recorded information about an identifiable individual. Due to the appellant's involvement in this incident, I find it is possible for the appellant to identify the affected party if the record was disclosed to him. Therefore, I find that once identified, the information about the affected party qualifies as their personal information under paragraph (h) of the definition, because it reveals something of a personal nature about them.<sup>3</sup>

[20] I have also reviewed the report and find it contains personal information relating to the appellant. Specifically, I find the record contains the appellant's name (paragraph (h)), date of birth and sex (paragraph (a)), and the views of another individual about him (paragraph (d)). For similar reasons as above, I find the report contains personal information relating to the affected party.

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<sup>2</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>3</sup> Order MO-3961.

[21] The ministry also withheld the Workplace Identification Numbers (WIN) from disclosure, claiming it is personal information within the meaning of section 2(1) of the *Act*. The ministry states it “relies upon a significant body of jurisprudence that has upheld the Ministry withholding police codes and WIN numbers.” I reviewed the report and find the WIN numbers constitute *personal information*. I find support for this finding in Order PO-3742, in which the adjudicator found that disclosure of the WIN number would reveal something of a personal nature about the employee. Specifically, the adjudicator stated,

... the undisclosed information represents an identifying number that has been assigned to the employee, who is also identified in the record by name. I also note that the number provides a link to other personal information of the employee, i.e. human resources information. Accordingly, I find that the employee number qualifies as the employee’s personal information within the meaning of paragraph (c) of the definition.

This analysis has been followed in a number of IPC decisions and was adopted specifically in relation to the 911 operator’s WIN numbers in Reconsideration Order PO-3873-R. Given these circumstances, and upon review of the record before me, I find the WIN numbers are personal information within the meaning of that term in section 2(1) of the *Act*.

[22] In conclusion, I find the records contain personal information belonging to the appellant, the affected party and other identifiable individuals. As the records contain personal information belonging to the appellant, I will consider whether he is entitled to access to the records under Part III of the *Act*.

**Issue B: Does the discretionary exemption at section 49(a), read with section 14(1)(l) (facilitate commission of an unlawful act), apply to the information at issue?**

[23] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Section 49(a) states,

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information

[24] Section 49(a) of the *Act* recognizes the special nature of requests for one’s own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.<sup>4</sup> Where access is denied under section 49(a), an institution must demonstrate that, in exercising its discretion, it considered whether it should release the record(s) to the requester because the record(s) contain his or her personal information.

[25] In this case, the ministry applied the law enforcement exemption in section 49(a), read with section 14(1)(l), to a portion of the report. Specifically, the ministry states it

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<sup>4</sup> Order M-352.

applied section 49(a), read with section 14(1)(l) to the portion of the report containing patrol, location and zone codes. The ministry states it withheld these codes in accordance with its usual practice and because the disclosure of these codes could make it easier for individuals carrying out criminal activities to have internal knowledge of how systems within the OPP operate. The ministry refers to an established body of jurisprudence and specifically Order PO-3742, which upheld these codes as being exempt under section 14(1)(l).

[26] The appellant did not specifically address the application of the law enforcement exemption in his representations. However, he takes the position that the ministry redacted portions of the records without justification.

[27] As the ministry states, there is a long line of orders that found police operational codes qualify for exemption under section 14(1)(l),<sup>5</sup> because of the reasonable expectation of harm from their release. I make the same finding here and uphold the ministry's application of section 49(a), read with section 14(1)(l) to the patrol, location and zone codes in the report, subject to my review of their exercise for discretion below.

**Issue C: Does the personal privacy exemption in section 49(b) apply to the information at issue?**

[28] Under section 49(b), where a record contains the personal information of both the requester (here, the appellant) and another individual and disclosure of the record would be an unjustified invasion of another individual's personal privacy, that information may be exempt from disclosure. Section 49(b) states,

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure could constitute an unjustified invasion of another individual's personal privacy.

Even if the personal information falls within the scope of section 49(b), an institution may exercise its discretion to disclose the information to the requester after weighing the requester's right of access to their own personal information against the appellant's right to protection of their privacy.

[29] In this appeal, I must determine whether disclosing information relating to the affected party in the recording and the report would constitute an unjustified invasion of their personal privacy under section 49(b).

[30] Section 21 provides guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 49(b). If the information fits within any of the paragraphs of sections 21(1) or 21(4), disclosure is not an invasion of personal privacy and the information is not exempt under section 49(b). None of the parties claim that any of the exceptions in section 21(1) or exceptions in section 21(4) apply and I am satisfied that none apply.

[31] In the circumstances of this appeal, in determining whether the disclosure of

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<sup>5</sup> See, for example, Orders PO-2209, PO-2339, PO-2409 and PO-3742 among many others.

personal information relating to the affected party would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and 21(3) and balance the interests of the parties.<sup>6</sup>

[32] The ministry claims the application of the presumption in section 21(3)(b) in its representations. Section 21(3)(b) states,

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

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

The ministry submits the OPP created the records in response to a request to attend a retail business to investigate whether an offence occurred. Given the circumstances surrounding the creation of the records, the ministry claims the application of the presumption in section 21(3)(b). Neither the affected party nor the appellant referred to the presumptions in section 21(3)(b).

[33] I reviewed the records and find the presumption in section 21(3)(b) applies to the personal information at issue, because the evidence before me demonstrates there was a police investigation into the incident involving the appellant. Specifically, I am satisfied the presumption applies to the personal information relating to the affected party and the WIN numbers in the report.

[34] The ministry also claims the factor favouring nondisclosure in section 21(2)(f) applies to the personal information that remains at issue. Section 21(2)(f) states,

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is highly sensitive

The ministry submits the personal information in the records is *highly sensitive* in that its disclosure could reasonably be expected to result in significant personal distress to the affected party. The ministry states the information was collected during a 911 call made by the affected party and with a reasonable expectation the call would only be shared with the appropriate first responder services for assistance. The ministry refers to Order MO-3594, in which the adjudicator found that 911 calls to the police for assistance contained *highly sensitive* personal information and upheld the institution's application of the municipal equivalent of section 21(2)(f) to the personal information at issue.

[35] The affected party did not explicitly refer to section 21(2)(f) in their representations. However, the affected party is clearly concerned about any of their personal information being disclosed to the appellant, particularly due to the nature of the incident.

[36] The appellant did not address the application of the personal privacy exemption in

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<sup>6</sup> Order MO-2954.

his representations. He claims the ministry applied the personal privacy exemption without justification.

[37] Given the circumstances surrounding the creation of the records and the nature of the records at issue, that is in relation to a 911 call made by the affected party, I find the factor in section 21(2)(f) applies in favour of nondisclosure of the personal information at issue. I find the disclosure of the records could reasonably be expected to result in significant personal distress to the affected party if their personal information was disclosed to the appellant. Accordingly, I find the factor at section 21(2)(f) is a relevant factor weighing in favour of the nondisclosure of the personal information at issue.

[38] The appellant did not refer to any of the factors in section 21(2) that weigh in favour of disclosure of the personal information at issue and I find that none apply.

[39] In its representations, the ministry addresses the absurd result principle, which considers whether the requester originally supplied the information or is otherwise aware of it. Where these circumstances are present, the information may not be exempt under section 49(b) because to withhold the information would be absurd and inconsistent with the purpose of the exemption.<sup>7</sup> The absurd result principle has been applied where, for example: the requester sought access to his or her own witness statement;<sup>8</sup> the requester was present when the information was provided to the institution;<sup>9</sup> and the information is clearly within the requester's knowledge.<sup>10</sup>

[40] The ministry submits it is not clear how much knowledge the appellant has of the contents of the responsive records. Regardless, the ministry submits the absurd result principle does not apply because disclosure would be inconsistent with the purpose of the exemption, that is, to protect the privacy of an affected third-party individual whose personal information was collected as a result of their 911 call.

[41] I agree with the ministry. It is clear the appellant was present when the 911 call was made. However, it is not clear how much knowledge the appellant has regarding the information conveyed by the affected party. The appellant did not provide any information to demonstrate that the information subject to the ministry's section 49(b) claim is clearly within his knowledge even though he was present when the information was provided. In light of the circumstances, I find the disclosure of the personal information at issue would not be absurd or inconsistent with the purpose of the personal privacy exemption.

[42] Therefore, I find the WIN numbers and the personal information relating to the affected party are exempt from disclosure under the personal privacy exemption in section 49(b) of the *Act*. I have considered whether some of the personal information of the appellant may be severed from the records and disclosed to him, but I find the appellant's personal information is inextricably intertwined with the affected party's and cannot be severed without identifying the affected party or resulting in an unjustified invasion of their personal privacy.

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<sup>7</sup> Orders M-444 and MO-1323.

<sup>8</sup> Orders M-444 and M-451.

<sup>9</sup> Orders M-444 and P-1414.

<sup>10</sup> Orders MO-1196, PO-1679, and MO-1755.



[43] In conclusion, I uphold the ministry's application of section 49(b) to withhold the personal information at issue, subject to my review of its exercise of discretion below.

**Issue D: Did the ministry exercise its discretion under sections 49 and section 14(1)(l)? If so, should this office uphold the exercise of discretion?**

[44] The exemptions in sections 49 and 14(1)(l) are discretionary and permit an institution to disclose the information subject to these exemptions despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. The IPC may find 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 fails to take into account relevant considerations. In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>11</sup> However, the IPC may not substitute its own discretion for that of the institution.<sup>12</sup>

[45] The ministry submits it acted appropriately in exercising its discretion to not release personal and law enforcement information in the recording and the report. The ministry claims it acted in accordance with their "usual long-standing practices, including withholding highly sensitive personal information belonging to affected third party individuals collected during a law enforcement investigation." The ministry takes the position that it provided the appellant with a broad right of access to his own personal information and achieved an appropriate balance consistent with the principles of the *Act*.

[46] The appellant submits the ministry's exercise of discretion was not reasonable. He does not provide any further submissions to support his position.

[47] I reviewed the parties' representations and the information at issue. Based on this review, I am satisfied the ministry considered relevant factors in exercising its discretion and did not take into account irrelevant factors.

[48] Specifically, I am satisfied that in exercising its discretion under sections 49(a) and (b), the ministry considered the sensitivity of the personal information at issue, the importance of the law enforcement exemption, the circumstances surrounding the creation of the records, and balanced the appellant's right of access to his personal information with the privacy interests of the affected party. There is no evidence before me to suggest the ministry took into account irrelevant considerations or that it exercised its discretion in bad faith or for an improper purpose.

[49] Accordingly, I am satisfied the ministry did not err in exercising its discretion to withhold information exempt under sections 49(a), read with section 14(1)(l), and 49(b) and I will not interfere with it on appeal.

**Issue E: What is the scope of the request? What records are responsive to the request?**

[50] The ministry withheld portions of the report from disclosure on the basis that they are not responsive to the appellant's request.

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<sup>11</sup> Order MO-1573.

<sup>12</sup> Section 43(2) of the *Act*.

[51] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24 states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[52] Previous orders have found that institutions should adopt a liberal interpretation of the request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour.<sup>13</sup>

[53] To be considered responsive, the records must *reasonably relate* to the request.<sup>14</sup>

[54] The appellant's original request states that he requests the "911 call, audio recording, which was placed on [identified date] as well as 911 dispatch related documents which are pertinent to [incident number]."

[55] The ministry submits it adopted a broad interpretation of the request, in accordance with the *Act*. The ministry submits the information identified as not responsive is not reasonably related to the appellant's request because it contains internal codes that members of the OPP use to communicate with each other or to log information. The ministry claims the non-responsive information is not comprehensible to anyone outside of the OPP and would not have any meaning to the appellant. The ministry states it also withheld the bottom line of the pages of the report which contains the printing date of the record. This information was generated as a result of the access request and is not responsive.

[56] The appellant did not address this issue in his representations.

[57] I reviewed the information identified as not responsive. Based on that review, I uphold the ministry's decision to withhold it, in part. First, I find the information that reflects when the record was printed and by whom is not responsive to the appellant's request. It was created after the appellant filed his request and is not covered by the scope of his request.<sup>15</sup>

[58] However, I find the internal communication or logging codes are responsive to the

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<sup>13</sup> Orders P-134 and P-880.

<sup>14</sup> Orders P-880 and PO-2661.

<sup>15</sup> See Order PO-2554.

appellant's request. The appellant seeks access to all of the records related to the 911 call made in relation to the incident. The report was created in response to this incident and is therefore responsive, regardless of whether the appellant or other individual would find it comprehensible or not. The requirement for responsiveness is whether the information is *reasonably related* to the request, not whether an individual would understand the information. Given the appellant's request and the fact that the report was created in response to the incident that resulted in the 911 call, I find the internal communication or logging codes are responsive.

[59] Therefore, I will order the ministry to issue an access decision to the appellant regarding these internal codes.

**ORDER:**

1. I uphold the ministry's decision to withhold the entire recording and part of the report under section 49(b) of the *Act*.
2. I uphold the ministry's decision to withhold portions of the report under section 49(a), read with section 14(1)(l) of the *Act*.
3. I order the ministry to issue an access decision to the appellant regarding the internal codes in the report, considering the date of this order as the date of the request.

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ June 1, 2021