Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER PO-4207-I

Appeal PA19-00296

Ministry of Northern Development, Mines, Natural Resources and Forestry

November 9, 2021

Summary: This interim order deals with whether a ministry wildfire investigation report and its attachments are exempt from disclosure under section 14(2)(a) (law enforcement report) of the *Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the report is exempt from disclosure, but that the attachments are not exempt. In addition, she does not uphold the ministry's exercise of discretion in withholding the body of the report. The ministry is ordered to disclose the attachments to the appellant and to re-exercise its discretion with respect to the body of the report.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 14(2)(a) and 14(4).

Orders and Investigation Reports Considered: Orders PO-1959, PO-1988, PO-3868-I and PO-3925-I.

OVERVIEW:

[1] This interim order disposes of most of the issues raised as a result of an appeal of an access decision made by the former Ministry of Natural Resources and Forestry[1] (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[1] Now the Ministry of Northern Development, Mines, Natural Resources and Forestry.

The access request was for the investigation report relating to a wildfire that occurred in the Parry Sound area, as well as all attachments to the report including films, electronic records, emails, plans, drawings, photographs, sound recordings, voicemails and DVDs. The fire, known as Parry Sound 33 (PS 33), was significant and garnered public attention. The requester is a not-for-profit advocacy association, representing the interests of approximately 18,000 residents along the east and north shores of Georgian Bay.[2]

[2] The ministry located a record responsive to the request, the Wildfire Investigation Report, and attachments. The ministry notified four third parties of the request. In the end, the ministry issued a decision to the requester denying access to the record in full, claiming the application of the discretionary exemption in section 14(2)(a) (law enforcement report) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision to the office of the Information and Privacy Commissioner/Ontario (the IPC).

[4] During the mediation of the appeal, the ministry issued a revised decision disclosing the six pages of attachments to the record as follows:

- an industrial fire intensity code report,
- export weather data,
- lightning data,
- a weather observation report and
- a radio log.

[5] As a result, the above-referenced pages are no longer at issue. The appellant subsequently advised the mediator that they wished to proceed to adjudication to try to obtain access to the remaining portions of the record.

[6] The file was then transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. The adjudicator assigned to the appeal sought and received representations from the ministry and the appellant. Portions of the ministry's representations were withheld as they met the IPC's confidentiality criteria.[3] The file was then transferred to me to continue the adjudication of the appeal.

---

[2] This information was provided by the appellant in their representations during the inquiry of this appeal.
[3] Set out in Practice Direction 7 of the IPC's Code of Procedure.

[7] For the reasons that follow, I find that the body of the wildfire report is exempt from disclosure under the discretionary section 14(2)(a) exemption, while the attachments are not. I also find that the ministry did not properly exercise its discretion in deciding to withhold the body of the report. The ministry is ordered to disclose the attachments to the appellant and to re-exercise its discretion with respect to the body of the report.

RECORD:

[8] The information remaining at issue consists of a Wildfire Investigation Report and its attachments. The body of the report contains a 20-page narrative portion and a 14-page investigation summary. The attachments consist of photographs, a drawing, maps, a grid search and handwritten notes.

ISSUES:

A. Does the discretionary exemption at section 14(2)(a) apply to the record?

B. Did the ministry exercise its discretion under section 14(2)(a)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the discretionary exemption at section 14(2)(a) apply to the record?

[9] Section 14(2) states, in part:

> (2) A head may refuse to disclose a record,
>
> > (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

[10] The term "law enforcement" is used in several parts of section 14, including section 14(2), and 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).

[11] The term "law enforcement" has been found to include situations such as Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[4]

[12] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[5]

[13] In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report,

2. the report must have been prepared in the course of law enforcement, inspections or investigations, and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.[6]

[14] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.[7]

[15] The title of a document does not determine whether it is a report, although it may be relevant to the issue.[8]

[16] There are two exceptions to section 14(2)(a), which are sections 14(4) and (5).

[17] Section 14(4) states:

> Despite section 14(2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

[18] The section 14(4) exception is designed to ensure public scrutiny of material relating to routine inspections and other similar enforcement mechanisms in such areas

---

[4] Order MO-1337-I.
[5] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[6] Orders 200 and P-324.
[7] Orders P-200, MO-1238 and MO-1337-I.
[8] Order MO-1337-I.

as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.[9]

[19] Generally, "complaint driven" inspections are not "routine inspections".[10] The existence of a discretion to inspect or not to inspect is a factor in deciding whether an inspection is "routine".[11]

[20] Section 14(5) states:

> Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Representations

[21] The ministry submits that the purpose of the exemption in section 14(2)(a) is to maintain the integrity of investigations, maintain public confidence in investigations and to further and protect public assistance in the investigative process. For example, the ministry argues, investigations may depend on assistance from individuals who do not wish to be identified. As well, it is important for investigators to be able to give advice freely and make findings or recommendations in reports without fear of reprisals or public criticism.

[22] In this case, the ministry submits that the record is a wildfire investigation report prepared by staff of the ministry employed by the Enforcement Branch and the Aviation, Forest Fire and Emergency Services Branch, following an investigation into the cause(s) of a fire that took place known as Parry Sound 33 (PS 33). One main purpose of the investigation, the ministry submits, was to determine whether or not charges should be laid arising from the start of PS 33 under the offence provisions in the *Forest Fires Prevention Act* (the *FFPA*). A conviction for an offence under the *FPPA* can result in a fine of up to $25,000 or three months imprisonment (or both) for an individual and a fine up to $500,000 for a corporation.

[23] Turning to the first part of the three-part test in section 14(2)(a), the ministry argues that this part of the test is met because the wildfire investigation report sets out a formal account of the investigators' findings in a manner that includes collating and considering the information and factors that were gathered, and then evaluating them in order to reach a conclusion. The ministry goes on to submit that the record is the

---

[9] Order PO-1988.
[10] Orders P-136 and PO-1988.
[11] Orders P-480, P-1120 and PO-1988.

final and formal report prepared by ministry staff into their investigation of the cause(s) of PS 33. In describing the record, the ministry states:

> It describes the processes employed in the investigation, summarizes key evidence, and sets out the analyses and expectations which led staff to their conclusion. In other words, the Report identifies the evidence and factors viewed by staff as determinative, and sets out their deliberative processes, including the elimination of various potential causes of the fire. The record does not merely list the observations of Ministry staff and the statements made to them.

[24] The ministry also submits that parts two and three of the three-part test have been met because the record was prepared as part of an investigation into a possible violation of the *FFPA* and that the ministry in this regard is a law enforcement institution that has the function of enforcing a regulating compliance with a law, namely the *FFPA*.

[25] The ministry also argues that the fire that was the subject matter of the record was high profile and there were property and other losses experienced by members of the public. As a result, there had been a considerable amount of interest in the investigation. The ministry goes on to argue that it is therefore particularly important that ministry staff have the necessary "room" to set out their deliberations and evaluative accounts in a report without the possibility of being affected by public criticism.[12]

[26] Regarding the exceptions to section 14(2)(a), the ministry submits that neither applies. In particular, it argues that section 14(4) does not apply because the record was not the result of a "routine" inspection, but rather the result of a large fire culminating in an extensive and complex investigation. With respect to the second exception in section 14(5), the ministry submits that it does not apply because the record does not address the topic of success in the ministry's law enforcement program or activities and provides no analysis in this regard, statistical or otherwise.

[27] Regarding the three-part test, the appellant submits that the ministry claims the record qualifies as a report, but has not provided evidence to support this claim. The appellant further submits that the ministry has provided "merely possible or speculative" reasons for withholding the record under section 14(2)(a), which are generalizations, and do not qualify as detailed and convincing evidence about the "potential for harm" or the "serious consequences" of reversing the denial of access to the report. The appellant also argues that the public's right to know the contents of the record outweighs the ministry's need to protect its findings and recommendations.

---

[12] See, for example, Order PO-3469.

[28] The appellant submits that a news release stated that the fire began at the location of a disabled vehicle (an Argo), and there was no provincial offence committed under the *FFPA*. The appellant goes on to submit that apart from wanting to know more about how that vehicle caused the fire and why no charges were laid, they want to know about any investigation into the subsequent days when the fire spread so broadly, burning down 11 properties and more than 11,000 hectares of forest with important biodiversity and habitat for the 1,100 native plant and animal species found in Eastern Georgian Bay, 50 of which are at risk.

[29] The appellant goes on to argue that they are prepared to agree that any sections of the report that relate to enforcement issues should be withheld, but that all general information on the cause of the fire and fact-finding should be disclosed.

[30] The appellant also submits that the exceptions in sections 14(4) and 14(5) apply. With respect to section 14(4), the appellant argues that the *FPPA* requires all forest fires to be investigated and, as a result, all investigation reports are *de facto*, routine in nature. Further, the appellant submits that the ministry's statement that the fire was high profile that resulted in losses reinforces the appellant's case that there is a compelling public interest in disclosure and that it is not a valid argument that the report was not the result of a routine investigation.

[31] Concerning the exception in section 14(5), the appellant submits that withholding the record has created negative conclusions about the ministry and its integrity in the community. For example, the appellant submits that the ministry must be intending to recover its costs for fire suppression by seeking civil action against the construction company working at the site of the fire and is placing its cost recovery interest above the public interest and also that the ministry must be hiding its failure to suppress the fire on the first day, allowing the fire to reignite and decimate such a large area.

[32] In reply, the ministry submits that in order for section 14(2)(a) to apply, it is not necessary to demonstrate that harm will result from disclosure of the record. Instead, it argues, what must be demonstrated is that the record is a "report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law." With regard to the appellant's argument that the exception in section 14(4) applies, the ministry submits that the record was not the result of a routine inspection and that the investigation was what is considered to be a "Class 4 Investigation," which is the highest level investigation and involves more and higher ranking staff than other classes of investigations. Regarding the exception in section 14(5), the ministry reiterates the position it took in its initial representations.

[33] In sur-reply, the appellant submits that it is still the case that the ministry has not provided evidence that the record is a "report" and that because no charges were laid as a result of the investigation, the ministry's reliance on section 14(2)(a) is not supportable. With respect to section 14(4), the appellant's position is that the fact that

the investigation was categorized as "Class 4" is irrelevant and is routine for a severe fire. Turning to section 14(5), the appellant argues that the ministry has provided no evidence that section 14(5) does not apply and that the public has a right to determine whether section 14(5) applies or not.

Analysis and findings

[34] I have reviewed the record at issue, which consists of a 20-page narrative report, a 14-page investigation summary and attachments. I have also considered the representations of the parties. I find that the narrative report and the investigation summary clearly fall within the scope of the section 14(2)(a) exemption and qualify, in combination, as a law enforcement report within the meaning of section 14(2)(a), subject to my findings below under Issue B regarding the ministry's exercise of discretion. Conversely, I find that the attachments do not qualify as being a law enforcement report for the purposes of section 14(2)(a). For ease of reference, I refer to the 20-page narrative portion and the 14-page investigation summary as the "report" or the "body of the report." I refer to the attachments as the "attachments."

[35] First, I am satisfied that the report is a "report" within the meaning of section 14(2)(a). The report is an account of an investigation of a wildfire conducted by the ministry. It is "a formal statement or account of the results of the collation and consideration of information." It does not merely recount statements of fact, but contains an evaluation and conclusion based on the ministry's investigation.[13] I acknowledge that some of the record consists of attachments and I consider this separately below.

[36] Next, I find that the ministry prepared the report in the course of law enforcement, inspections or investigations. The report was prepared in the course of the ministry's investigation of the fire. Finally, I accept that the ministry is an agency that has the function of enforcing and regulating compliance with a law, namely the *FFPA*. Although the ministry has many other functions, the report in question was prepared by the Enforcement Branch and the Aviation, Forest Fire and Emergency Services Branch, following an investigation into the cause(s) of a fire that took place known as Parry Sound 33 (PS 33). From my review of the report, I accept the ministry's submission that one main purpose of the investigation was to determine whether or not charges should be laid under the offence provisions in the *FFPA*.

[37] As previously stated, the report consists of a narrative portion as well as an investigation summary. Upon my review of the report, I find that both sections of this report, including the investigation summary, contain a formal, evaluative account and analysis of the facts of the investigation conducted by the ministry, and not merely

---

[13] Orders 200 and P-324.

observations of fact, and that the investigation summary forms an integral part of the report.

[38] I further find that the exception in section 14(4) does not apply because the report was prepared at the conclusion of an investigation. It does not relate to a routine inspection and was not prepared in the course of a routine inspection.

[39] In Order PO-1988 Senior Adjudicator Sherry Liang discussed the purpose of the section 14(4) exception, stating:

> The inclusion of section 14(4) in the *Act* followed from a recommendation in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report). The drafters of that Report recommended that information gathered for regulatory enforcement purposes be treated the same as information gathered for criminal law enforcement, for the purposes of the law enforcement exemption. However, they were concerned that such an exemption not be too broadly construed:
>
> > …if the notion of material relating to civil and regulatory enforcement is too broadly construed, much that should be made accessible under a freedom of information law would be brought within the exemption. In particular, it would be inappropriate to withhold routinely from public scrutiny all material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.
> >
> > Under the U.S. act, it has been accepted that routine material of this kind not gathered for the purpose of investigating a particular offence is not exempt from the general rule of access merely because it relates to the enforcement of law.
>
> Consistent with the above discussion, orders interpreting section 14(4) of the *Act* have found that "complaint driven" inspections are not "routine inspections" (see, for instance, Order 136). Other orders have concluded that the existence of a discretion to inspect or not to inspect is an important factor in deciding whether an inspection is "routine" (see, for instance, Order P-480 and P-1120).
>
> I agree that the existence of a discretion to inspect is a factor to be considered in deciding whether an inspection is "routine" for the purpose of section 14(4) of the *Act*. Since discretion, however, takes many forms

> and can be of varying levels of significance in the whole scheme of regulatory enforcement, I find that it is not always a determining factor. As was noted in Order 136 by former Commissioner Sidney B. Linden, "it is the nature of the inspection itself" which is important. I turn therefore to consider the nature of the inspections which are recorded in the area inspection reports.

[40] I find that the report resulted from the investigation that originated with PS 33, the main purpose of which was to determine whether or not charges should be laid under the offence provisions in the *FFPA*. In my view, this takes it out of the realm of a report that arises out of a routine inspection. Considering the nature of the investigation underlying the creation of the report, I find that this record does not fall within the scope of the section 14(4) exception.

[41] In addition, I find that exception in section 14(5) does not apply because the report is not a record on the degree of success achieved in a law enforcement program.

[42] I find, therefore, that the body of the report is exempt under the discretionary section 14(2)(a) exemption. I will address the ministry's exercise of discretion under Issue B below.

[43] As stated above, the record has attachments to it, raising the question of whether these attachments are likewise exempt under section 14(2)(a). These attachments are directly referenced in the report and appear to have been attached to the report by the investigating officers who were involved in the investigation.

[44] Previous IPC orders have considered whether attachments to a report, or other documents contained in an investigation file, can be considered part of a report for the purpose of section 14(2)(a).

[45] In Order PO-1959, former Assistant Commissioner Sherry Liang considered whether records contained in a Special Investigations Unit (SIU) file can collectively be considered a law enforcement report within the meaning of section 14(2)(a). Assistant Commissioner Liang stated:

> Essentially, the ministry's submission is that all of the records must be considered together for the purposes of the application of section 14(2)(a). I am unable to accept this submission, and I find that section 14(2)(a) requires consideration of whether *each* record at issue falls within that exemption. . .

[46] In the end, she found that records such as incident reports and police officers' notes did not meet the definition of a "report" because they consisted of observations and recordings of facts instead of formal and evaluative accounts.

[47] In Order PO-3868-I, former Commissioner Brian Beamish found that only parts of

an OPP investigation report and attachments qualified as a "report" for the purposes of section 14(2)(a). He found that the narrative of the report qualified as a report, but hat witness statements appended to the report did not form part of the report itself. He concluded that attachments to a report, such as interview notes, will not necessarily form part of the report.

[48] Conversely, in Order PO-3925-I, Senior Adjudicator Gillian Shaw distinguished the report before her from the reports at issue in the above-referenced orders and found that the record at issue in her appeal was one record with no appendices and was a "seamless account" of an SIU investigation, including its conclusions.

[49] I agree with the analyses in these orders. Applying the approaches taken in these orders and on reviewing the attachments, I find that they do not form part of the report itself, in the circumstances. Like the attachments at issue in Order PO-3868-I, these pages do not include or describe any conclusions or analysis following the collection of the information contained therein. In my view, these attachments, which consist of photographs, a drawing, maps, a grid search and handwritten notes are even less integrated with the body of the report than were the witness statements before former Commissioner Beamish in Order PO-3868-I. Moreover, they do not, on their own, qualify as a law enforcement report within the meaning of section 14(2) because they do not contain formal, evaluative accounts but rather are solely recordings of facts.

[50] In sum, I find that the body of the report – the narrative portion of the report and the investigation summary – meets the requirements of the three-part test and qualifies as a report for the purposes of section 14(2)(a), subject to my findings regarding the ministry's exercise of discretion, but that the attachments do not qualify as a report for the purposes of section 14(2)(a) for the reasons set out above. As the ministry has not claimed any other exemptions with respect to these attachments, and no mandatory exemptions apply, I will order the ministry to disclose them to the appellant.

Issue B: Did the ministry exercise its discretion under section 14(2)(a)? If so, should this office uphold the exercise of discretion?

[51] The section 14(2)(a) 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 IPC may determine whether the institution failed to do so.

[52] In addition, the IPC may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations.

[53] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[14] I may not, however, substitute my own discretion for that of the institution.[15]

[54] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[16]

- the purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific and the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking his or her own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,
- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

Representations

[55] The ministry submits that it exercised its discretion properly, taking into account the relevant considerations listed above and not taking into account irrelevant considerations or acting in bad faith or for improper purposes. The ministry also submits that the record does not contain the appellant's personal information and that it

---

[14] Order MO-1573.
[15] See section 54(2).
[16] Orders P-344 and MO-1573.

is not aware of any relationship between the appellant and any affected parties. The ministry further argues that it also took into consideration the purpose of the exemption in section 14(2)(a), which is to maintain the integrity of investigations, maintain public confidence in investigations, to further and protect public assistance in the investigative process and to allow investigators to give advice and make findings without fear of reprisal or public criticism.

[56] The ministry further submits that it considered whether the contents of the record would likely influence public confidence in the operation of the institution and concluded that the record would not reveal anything that would call into question public confidence in the ministry.

[57] The ministry goes on to argue that it considered its severance obligation under section 10(2), considered every part of the record in order to determine whether or not any of the record should be disclosed and, in fact, during the mediation of the appeal, disclosed portions of the attachments to the appellant, which consisted of factual findings or observations.

[58] The ministry also argues that despite the fact that the public interest override in section 23 does not apply to the exemption in section 14,[17] it has been established that the public interest is a factor an institution must take into account when exercising its discretion. As a result, the ministry submits, it took the public interest into consideration as a factor in exercising its discretion, deciding that disclosure of the record would not contribute to objectives such as open government, public debate or the proper functioning of government institutions. In addition, the ministry advises that after the investigation report was completed (which happened recently), it issued a news release stating that the team of investigators found that the fire originated at the location of a disabled vehicle in a specified remote area and that assistance was sought from a forensic fire expert. As well, the press release stated that while the investigation was able to determine the origin of the fire, no provincial offence under the *FFPA* was found to have been committed. The ministry submits that the record contains information/allegations supplied by members of the public who cooperated in the investigation as well as the evaluative analysis of ministry staff, both of which ought to be protected under section 14. As a result, the ministry submits that there is no compelling public interest which would outweigh the purpose of the exemption claimed. The ministry's position is also that the facts contained in the report are likely accessible separate and apart from the record by way of a request for the documents underlying or collected or made in support of the record.

[59] Lastly, in its initial representations, the ministry states:

---

[17] Section 14 is not listed in section 23 as one of the exemptions that may be "overridden" by the application of the public interest override.

> As well, the Ministry understands that certain request(s) may have been made by or on behalf of cottager(s) who were impacted by the fire. This may make such a request a sympathetic one, but considering the factors for the exercise of discretion as a whole, the Ministry was not persuaded that it should release the Report rather than exercise its discretion [to withhold it] . . .

[60] The appellant submits that the ministry has not provided specific evidence or information that it properly exercised its discretion and therefore the ministry's position that it properly exercised its discretion should be disregarded.

[61] Regarding the ministry's statement that the request may be sympathetic, the appellant submits that there was considerable anxiety and stress concerning this fire throughout the region, with many people downward from the fire affected by smoke clouds up to around 100 kilometres. Some of the properties destroyed, the appellant submits, had been owned by families for generations, with owners grieving the loss of their favourite trees, views and cottage memorabilia. Further, some owners attempted to protect their homes, which was a devastating experience.

[62] The appellant further submits that the ministry's conclusion that public confidence in it would not result from the disclosure of the record is in fact a good reason for disclosure, that the non-disclosure of the record is decreasing public confidence in the ministry and that not disclosing the report is inconsistent with the aims and practices of open, transparent government, such as educating the broader public about the findings and lessons learned from the fire. The appellant goes on to state:

> . . . [I]n this time of climate change when flooding and forest fires are on the rise, Parry Sound 33 could be a precursor for the Georgian Bay coastline, and the findings of the ministry's investigation into the cause of it will contain information that is vital to preventing future wildfires on the coast.

[63] The appellant further argues that while the ministry acknowledged that the report was recently completed, it did not provide its historical practice regarding similar information. This lack of precedent, the appellant submits, lends more weight to the argument that the decision to deny access was improperly made.

[64] Regarding the partial disclosure that the appellant received, they state that those records have no useful value to address why the fire started and informing future decisions and actions to prevent future fires. The appellant also states that they do not need to receive contents relating to the analysis and evaluation of evidence with respect to charges, nor any comments on whether to lay charges or not.

[65] The appellant submits that there is a compelling public interest in the disclosure

of the record such as the following:

- most of the property destroyed is owned by the French River Provincial Park and the balance is Crown land,
- the ministry concedes that there has been a considerable amount of interest in the investigation,
- the individuals who were evacuated from the Key River and area, the Pickerel River, Hartley Bay Road, Henvey Inlet First Nation, Grundy Lake Park,
- the individuals in the town of Alban, which was put on evacuation alert,
- the many businesses in the area that were affected, and
- the extensive reporting by major networks and newspapers.

[66] In response to the ministry's position that the facts about the fire may be available by other means, the appellant submits that this is a "curious and extraneous" representation and that the ministry should provide details of where such facts could be found.

[67] In reply, the ministry reiterates its position in its initial representations and submits that it should not be necessary for a record which qualifies for an exemption to be disclosed in order to prevent the public from having questions or concerns about the ministry's integrity stemming from a decision to claim a discretionary exemption. Further, the ministry reiterates that the record would not disclose anything about the ministry's functioning that would cause public concern.

[68] As an example, the ministry goes on to state:

> . . . [I]t was found that the fire originated at the location of a disabled vehicle. The Report does not, nor is it designed to, shed light on forest fire risks generally (i.e., beyond this particular fire). Except indirectly as it concerns the conduct of the investigation, the Report does not really address the suppression of the fire – that is, it does not speak to the strategy of quality of suppression efforts. The Report also does not provide information that would be valuable in considering extreme weather conditions or climate change.

[69] The ministry further submits that much of the factual information the appellant seeks would be available to them, subject to other applicable exemptions, if they were

to make an access request seeking the information that contributed to the making of the report and that, in fact, such a request has been made.[18]

[70] Lastly, the ministry's position is that should the record, or parts thereof, be ordered disclosed, it is of the view that it would be necessary to contact other parties, including in connection with sections 17 (third party information) and 21(1) (personal privacy) of the *Act*.

[71] In sur-reply, the appellant argues that the narrow scope of the investigation alleged by the ministry cannot be used as a rationale for not disclosing the record and that the public has the right to determine the issues that the record addresses. The appellant then submits that disclosing the report will improve public confidence in the ministry and would contribute to open government.

Analysis and findings

[72] Based on the ministry's representations on its decision to apply the discretionary section 14(2)(a) exemption and my review of the record, I am not satisfied that it considered all of the relevant factors in exercising its discretion. While I am not suggesting that the ministry exercised its discretion in bad faith, I am not satisfied that it exercised its discretion properly and took into account all relevant considerations. In particular, relevant factors for the ministry to consider are whether there is a continuing public interest in the disclosure of the report, whether the disclosure of the record would *promote* public confidence in the ministry and whether the non-disclosure of the record would undermine public confidence in the ministry. While the ministry says it took into account its opinion that the report would not undermine confidence in the ministry, it does not appear to have taken into account these other factors. As a result, I will order the ministry to re-exercise its discretion.

ORDER:

1. I order the ministry to disclose the attachments to the Wildfire Investigation Report to the appellant by **December 14, 2021** but not before **December 9, 2021**.

2. I reserve the right to require the ministry to provide the IPC with copies of the records it discloses to the appellant.

---

[18] According to the ministry, the requester in this access request was not the appellant. Its access decision in response to the request was not appealed to the IPC.

3. I order the ministry to re-exercise its discretion under section 14(2)(a) with respect to the body of the report and to provide the IPC with representations on its exercise of discretion within 30 days of the date of this order.

4. I remain seized of this appeal to review the ministry's re-exercise of discretion.

Original signed by: November 9, 2021
Cathy Hamilton
Adjudicator