Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4281

Appeal PA20-00272

Ministry of the Solicitor General

July 25, 2022

Summary: The appellant sought access to names and badge numbers of the police officers who accessed his information on the CPIC and Niche police databases under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The ministry refused to confirm or deny the existence of these law enforcement records under section 14(3) of the *Act*, claiming that any responsive records could be expected to potentially reveal a significant amount of unknown sensitive law enforcement information about law enforcement activity involving the appellant.

In this order, the adjudicator does not uphold the ministry's refusal to confirm or deny the existence of records under section 14(3) because she does not accept that disclosure of the very fact of their existence or non-existence would itself convey information that is eligible to be withheld under section 14 the *Act*. She accordingly orders the ministry to issue another access decision in accordance with the *Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990. C. F.31, as amended, section 14(3).

Orders Considered: Orders PO-1939, PO-2917, and PO-3521-I.

OVERVIEW:

[1] The appellant seeks the names and badge numbers of the police officers with the Ontario Provincial Police (OPP) who he believes accessed his information on the CPIC and Niche police databases.

[2] By way of background, the Canadian Police Information Centre (CPIC) is a national information-sharing system that links criminal justice and law enforcement partners across Canada and internationally. The RCMP[1] manages the CPIC website on behalf of the Canadian law enforcement community.

[3] Concerning the Niche Records Management System (Niche), this is a police data-sharing database and is used in Ontario by the Ontario Police Technology Information Cooperative (OPTIC), the largest data-sharing cooperative in North America. OPTIC includes 8,287 Ontario police officers from 43 municipal agencies and the OPP, who share a single Niche data-sharing system.[2]

[4] The appellant made an access request to the Ministry of the Solicitor General (the ministry)[3] for the following information under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*):

> …all [police] officer name/badge numbers who accessed CPIC/Niche files on [appellant's name] for the period January 2016 - present date of February 15, 2020.

[5] The ministry issued a decision letter stating that it refuses to confirm or deny the existence of responsive records in accordance with section 14(3) of the *Act* because responsive records could be expected to potentially reveal a significant amount of unknown sensitive law enforcement information about law enforcement activity involving the appellant.

[6] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to attempt resolution of this appeal.

[7] Mediation did not resolve the issues in this appeal and the appellant advised the mediator the he would like to pursue the appeal at adjudication, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the ministry's representations, which were shared with the appellant in full. The appellant provided representations in response.

[8] In this order, I find that the police did not properly apply section 14(3) to refuse to confirm or deny the existence of the responsive records and I accordingly order the ministry to issue another access decision in accordance with the *Act*.

---

[1] Royal Canadian Mounted Police.

[2] https://nicherms.com/casestudy/nicherms-forms-foundation-for-the-largest-police-data-sharing-system-in-north-america/.

[3] The OPP is a division of the ministry. The ministry responds to access requests on behalf of the OPP.

DISCUSSION:

Does the discretionary law enforcement exemption at section 14(3) (refusal to confirm or deny the existence of a record) apply to the record(s), if any exist?

[9] The appellant is seeking access to the names and badge numbers of the police officers who accessed his information on the CPIC and Niche police databases for a specified time period. The police denied his access request, relying on section 14(3), which reads:

> A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.[4]

[10] This section acknowledges the fact that in order to carry out their mandates, law enforcement agencies must sometimes have the ability to withhold information in answering requests under the *Act* to carry out their work and mandate. However, it is the rare case where disclosure of the mere existence of a record would frustrate an ongoing investigation or intelligence-gathering activity.[5]

[11] For section 14(3) to apply, the institution must demonstrate that both parts of the following two-part test have been met:

- part 1 - the records (if they exist) would qualify for exemption under sections 14(1) or (2), and
- part 2 - disclosure of the fact that records exist (or do not exist) would itself convey information that could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity.[6]

[12] For part 1 of this test, the ministry relies on sections 14(1)(a), 14(1)(b), 14(1)(e), 14(1)(g), and 14(1)(l), which read:[7]

---

[4] The ministry did not claim the application of section 49(a) with section 14(3), although it should have done so as any responsive records would most likely contain the personal information of the appellant. Section 49(a) provides that "A head may refuse to disclose to the individual to whom the information relates personal information, where section … 14, would apply to the disclosure of that personal information. Given my findings in this order, I decided it was not necessary for me to add the section 49(a) issue.
Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario* (*Ministry of Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), [2007] O.J. No. 4233 (Div. Ct.).

[5] Orders P-255 and PO-1656.

[6] Order PO-1656.

[7] The ministry does not rely on section 14(2) under part 1 of the test under section 14(3).

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[13] Generally, the law enforcement exemptions must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[8]

[14] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[9] The institution must provide detailed 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.[10]

Representations

[15] The ministry has not provided the IPC with any confidential representations or information in this inquiry. All of the following arguments were shared with the appellant.

[16] The ministry states that the CPIC and Niche police databases are databases that the OPP (a law enforcement agency) operate or to which they have access. It states that CPIC is maintained by the RCMP and provides access to its law enforcement records to law enforcement agencies across Canada, and that Niche is a database where OPP policing records are stored.

---

[8] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[9] Order PO-2040 and *Ontario* (*Attorney General*) *v. Fineberg*, cited above.
[10] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4.

[17] The ministry states that the effective maintenance and operation of mission critical police records databases, such as CPIC and Niche, are essential to effective policing operations. It states that ensuring that officers are encouraged to use police records databases as part of their policing duties is key to such databases being kept up to date and complete.

[18] The ministry states that the rationale for its application of section 14(3) to the appellant's request for the names and badge number of the police officers that accessed the CPIC and Niche databases is that, if records responsive to the request existed and were disclosed, this disclosure could be expected to potentially reveal a significant amount of unknown sensitive law enforcement information about law enforcement activity involving the appellant. It submits that disclosure of any responsive information would harm law enforcement operations and individuals protected under section 14, including by:

- revealing the identities of any police officers who accessed records about the appellant in the course of discharging their duties, thereby potentially harming the officers' personal safety;

- revealing to the appellant whether the appellant's police files were being accessed by police officers, which would tend to indicate whether the appellant was being investigated by police, either as part of a law enforcement investigation or through covert surveillance; and,

- revealing to the appellant the number of officers accessing the appellant's files, thereby suggesting both the nature and the scope of any investigation being conducted.

[19] The ministry states that disclosure could result in the following additional harmful consequences:

- Not only would the appellant be provided with sensitive law enforcement information, but the appellant could disseminate it freely to others at will, without any restrictions. If the appellant was, for example, the member of a criminal gang who learned that their files were being accessed by the police, disclosing this fact could tip off other gang members to this same possibility, thereby further harming law enforcement operations;

- If it became widely known that this type of law enforcement information is being disclosed, it might encourage others to file similar types of requests. We reiterate that the integrity and successful operation of police databases depends, in large part, on information about which officers access them not ever becoming publicly known;

- Disclosing names and badge numbers could be used by the appellant or another requester to acquire additional information that could be used to cause further

harms to law enforcement operations. For example, if the name of an officer was revealed, the appellant or another requester might be able to find out what part of the OPP they work in, thereby revealing the nature of a law enforcement investigation that might be taking place; and,

- CPIC is a national police records database operated by the RCMP. Disclosing the types of information requested by the appellant may also impact upon RCMP or other law enforcement agency operations. We note that the RCMP has not been consulted about the potential disclosure of records responsive to this appeal.

[20] For part 1 of the test under section 14(3), the ministry's position is that the exemptions in sections 14(1)(a), 14(1)(b), 14(1)(e), 14(1)(g), and 14(1)(l) would be most likely to apply to any records if they existed. The ministry's representations are repeated, in full, below:

> Section 14(1)(a) - Law enforcement matter: This exemption allows the ministry to withhold records which, if they existed and were disclosed, would interfere with a 'law enforcement matter'. The 'law enforcement matter' in this case is the protection of mission critical policing databases such as Niche and CPIC. The ministry must be able to operate and maintain these records databases to conduct its law enforcement activities. The ministry must be able to document which officers accessed these databases as part of its own quality assurance requirements. However, the ministry must be able to do so knowing that the records it keeps about which officers accessed databases will not be subsequently disclosed in the manner contemplated by this appeal. The ministry submits that to disclose such records would harm the integrity of these databases because of the amount of sensitive law enforcement information that will be disclosed, as we further elaborate upon below.
>
> Section 14(1)(b) - Law enforcement investigation: This exemption allows the ministry to withhold records which, if they existed and were disclosed, could reasonably be expected to interfere with a law enforcement investigation. The ministry submits that if records existed and were disclosed, they could reveal the following:
>
> > The fact that the appellant could be under a police investigation. The appellant might deduce this by the fact that the police would not be accessing appellant's files unless an investigation was likely to be occurring;
> >
> > If the appellant's files were accessed on multiple occasions, the appellant might deduce the size and scope of the investigation; and,

> If officers from a specialized unit such as Intelligence were accessing the files, the appellant might deduce the fact that an investigation was related to intelligence matters.

The ministry is concerned that the disclosure of records, if they existed, could tip off the appellant to the fact that an investigation was happening or had happened. This might lead the appellant to change their behaviour to thwart or evade an investigation. The ministry submits that this information could be expected to harm investigations by providing the appellant with information they would not otherwise know about and that they should not know about. An investigation in these instances could be expected to be harmed if the kinds of information that are described were to be disclosed.

Section 14(1)(e) - Life or physical safety: This exemption allows the ministry to withhold records which, if they existed and were disclosed, we submit could endanger the life or safety of a law enforcement officer. The ministry submits that we must consider the nature of the information being withheld (records about criminal offences, etc.) and the behaviour of individuals who may be captured in these records. The ministry submits that it is reasonable to expect that individuals who are identified in criminal or police records may be more likely to be involved in criminal activities. Disclosing the names and badge numbers of police officers who accessed [the appellant's] files could reasonably be expected to subject them to intimidation or the threat of reprisals, in the hopes that this would thwart an investigation.

Section 14(1)(g) - Law enforcement intelligence information: This exemption allows the ministry to withhold records, which if they existed and were disclosed, could reasonably be expected to "interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons".

Disclosing the names of police officers could reveal the existence of intelligence operations, if these officers were assigned to intelligence operations. Disclosing the existence of this kind of record could have serious repercussions for intelligence gathering. Past IPC orders have recognized the threat of disclosing records which could reveal covert surveillance. Order PO-3521-1, which upheld the application of section 14(3), states:

> If individuals were made aware of the fact that they were the subject of covert surveillance, they may choose to curtail these activities or to better conceal them in order to avoid detection. In this way, I find that disclosure of the responsive records, if they

> exist, could reasonably be expected to interfere with the gathering of intelligence information.
>
> Section 14(1)(l) - Commission of an unlawful act or control of crime: This exemption allows the ministry to withhold records which, if they existed and were disclosed, could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. The ministry submits that the disclosure of the names and badge numbers of police officers who accessed the appellant's CPIC or Niche files could put officers' safety in danger, interfere with investigations or surveillance, and the integrity of police records databases. We submit that it is reasonable to expect that any of these outcomes could either facilitate crime or hamper its control.

[21] To address part 2 of the test under section 14(3), whether disclosure of the fact that records exist (or do not exist) itself convey information that could reasonably be expected to harm a section 14(1) or (2) interest, the ministry states that:

> …confirming the very fact that officers had accessed CPIC or Niche files about the appellant would reveal a significant amount of law enforcement information, that would qualify for one or more of the exemptions listed above. We submit this existence or non-existence of the requested records would reveal to the appellant sensitive law enforcement information that they would not and should not otherwise know. This would be detrimental to law enforcement investigations or intelligence gathering, as well as potentially harming the safety of officers. We submit as a result that the second part of the test to establish section 14(3) has been met.

[22] The appellant did not address the issues relevant to the section 14(3) exemption. Instead, his representations focus on why he wants to obtain this information: to expose the officers that wrongfully accessed his information and breached his privacy.

Findings re part 1

[23] For part 1 of the test, the ministry submits that the records, if they exist, would qualify for exemption under sections 14(1)(a), 14(1)(b), 14(1)(e), 14(1)(g), and 14(1)(l).

[24] As explained below, I find that part 2 of the test is not satisifed – in other words, I am not satisifed that any of the harms specified in section 14(1) could reasonably be expected to result from disclosure of the mere fact that records exist, or do not exist.

[25] Given that finding, it is not necessary for me to make any definitive findings on whether the records, if they exist, would be exempt under any of the exemptions cited by the ministry. However, I have decided to address the ministry's arguments in a

general way, without prejudging any appeal that may come before the IPC on the records, if any exist.

Section 14(1)(a): law enforcement matter

[26] For section 14(1)(a) to apply, I must be able to conclude that disclosure of the records, if they exist, could reasonably be expected to interfere with a law enforcement matter.

[27] The law enforcement matter in question must be ongoing or in existence.[11] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.[12] "Matter" may extend beyond a specific investigation or proceeding.[13]

[28] The institution holding the records need not be the institution conducting the law enforcement matter for the exemption to apply.[14]

[29] The ministry was asked in the Notice of Inquiry (the NOI) if the matter in question is an ongoing "law enforcement" matter, and if so, what the "law enforcement" matter is. The ministry was also asked in the NOI if disclosure of the records could reasonably be expected to interfere with the law enforcement matter.

[30] The ministry has not identified an ongoing or existing law enforcement matter. Instead, the ministry refers to potential law enforcement matters. Its position is that generally disclosing the requested names and badge numbers would harm the integrity of the CPIC and Niche databases because of the amount of sensitive law enforcement information that will be disclosed.

[31] Further, the ministry has not addressed how the specific information that the appellant has requested, the names and badge number of the police officers who accessed his information, could reasonably be expected to interfere with any particular law enforcement matter.

[32] Without any information about the law enforcement matter in question and because I am unable to conclude that disclosure of the information at issue could impact any particular law enforcement matter, I am unable to find that disclosure of the names and badge numbers (if any) could reasonably be expected to interfere with a law enforcement matter. I therefore find that the section 14(1)(a) exemption does not apply to the information at issue.

---

[11] Order PO-2657.
[12] Orders PO-2085 and MO-1578.
[13] *Ontario* (*Ministry of Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), [2007] O.J. No. 4233 (Div. Ct.).
[14] Order PO-2085.

Section 14(1)(b): law enforcement investigation

[33] For section 14(1)(b) to apply, I must be able to conclude that disclosure of the records, if they exist, could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. The law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law enforcement investigations.

[34] The investigation in question must be ongoing or in existence. The institution holding the records need not be the institution conducting the law enforcement investigation for the exemption to apply.

[35] The ministry was also asked in the NOI if there is an alleged interference with a specific ongoing law enforcement investigation. If so, the ministry was asked to explain if disclosure of the records could reasonably be expected to interfere with this law enforcement investigation.

[36] In response, the ministry speculates that if records exist that show that the appellant's files were accessed, that could reveal that the appellant was under a police investigation, and also reveal perhaps the size and scope of the investigation.

[37] The ministry is also concerned that the disclosure of records, if they existed, could tip off the appellant to the fact that an investigation was happening or had happened. This might lead the appellant to change their behaviour to thwart or evade an investigation.

[38] I acknowledge the ministry's concerns; however, the ministry has not provided evidence a specific ongoing law enforcement investigation. Not has it provided evidence to support a conclusion that disclosure of the names and badge numbers of police officers (if any) could reasonably be expected to reveal that these police officers work for the police's intelligence unit, or any particular unit at all.

[39] Therefore, I find that section 14(1)(b) does not apply because I am not able to find that disclosure of the requested police officers' names and badge numbers (if any) could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Section 14(1)(e): life or physical safety

[40] For section 14(1)(e) to apply, I must be able to conclude that disclosure of the records, if they exist, could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. A person's subjective fear,

while relevant, may not be enough to justify the exemption.[15]

[41] The term "person" is not necessarily limited to a particular identified individual, and may include the members of an identifiable group or organization.[16]

[42] The main argument of the ministry under section 14(1)(e) is that disclosing the names and badge numbers of police officers who accessed the appellant's files (if any) could reasonably be expected to subject those police officers to intimidation or the threat of reprisals, in the hopes that this would thwart an investigation. The ministry has not provided any specific evidence to support this concern, but appears to rely on an assumption that generally those involved in criminal activity will engage in further criminal activities. The ministry has not provided any evidence that the appellant himself is an individual involved in criminal activity.

[43] Whether an employee's name appearing in a record gives rise to the harms in section 14(1)(e) has been discussed in prior IPC Orders. In Order PO-2917,[17] Adjudicator Steven Faughnan reviewed the Ministry of Community and Social Services' claim of the application of section 14(1)(e) to the full names of Family Responsibility Office (FRO) employees contained in the records.

[44] In Order PO-2917, Adjudicator Faughnan found that there was nothing in the records to indicate the appellant posed any type of threat of any kind to FRO employees. He stated:

> It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with "difficult" individuals. In a postscript to Order PO-1939, Adjudicator Laurel Cropley stated the following with regard to sections 14(1)(e) and 20 of the *Act*:
>
> > In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20 or 14(1)(e) claim.
>
> Instead, she found that there must be "… evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed."

---

[15] Order PO-2003.
[16] Order PO-1817-R.
[17] Order PO-2917, upheld on judicial review see: *Ontario* (*Community and Social Services*) *v. John Doe*, 2014 ONSC 239 and 2015 ONCA 107.

[45] In Order PO-2917, Adjudicator Faughnan agreed with Adjudicator Cropley's comments in Order PO-1939 and found that there was absolutely no evidence that the appellant's behaviour met the required threshold for exemption under section 49(a), in conjunction with 14(1)(e).

[46] I agree with the approaches taken and the findings in Orders PO-1939 and PO-2917 and I find them relevant to the present appeal.

[47] I find that the ministry has provided insufficient evidence to allow me to reasonably conclude that disclosure could reasonably be expected to endanger the life or physical safety of any OPP officers (if there are any) who searched the appellant's name on the CPIC and Niche databases. Specifically, there is no evidence before me about the particular threat that the appellant poses to OPP officers, if any.

[48] Therefore, I am unable to find that that the ministry has established that the exemption under section 14(1)(e) applies.

Section 14(1)(g): law enforcement intelligence information

[49] For section 14(1)(g) to apply, I must be able to conclude that disclosure of the information at issue could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons.

[50] The term "intelligence information" means:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.[18]

[51] The ministry is concerned that disclosing the names of police officers who searched CPIC or Niche files about the appellant could reveal the existence of intelligence operations, if any officers were assigned to intelligence operations.

[52] The ministry relies on Order PO-3521-I in support of its position. In that order, the appellant requested OPP intelligence-based records relating to an entire First Nation and any individuals associated with it. In Order PO-3521-I, the ministry relied on section 14(1)(g) because the request did not relate to any specific occurrence or investigation.

[53] Both parties to the appeal in Order PO-3521-I agreed that responsive records, if

---

[18] Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario* (*Ministry of Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), [2007] O.J. No. 4233 (Div. Ct.).

they existed, would qualify as "intelligence information" and form the basis for a finding that section 14(1)(g) might apply to them. The adjudicator agreed because, in his view, information contained in any responsive records would have been gathered in a covert manner by a law enforcement agency "with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law". The adjudicator, therefore, found that section 14(1)(g) applied in that order.

[54] In the appeal before me, the appellant is seeking access to the names and badge numbers of police officers that accessed his information on two police databases. I find that I do not have sufficient evidence to determine that the information at issue is information gathered in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law.

[55] The ministry, who did not make any confidential representations, has not provided evidence to explain how disclosure that any particular officer searched CPIC or the Niche file about the appellant could reasonably be expected to reveal that the police officer is assigned to intelligence operations or reveal that the appellant is the subject of covert surveillance.

[56] Therefore, I am unable to find that section 14(1)(g) applies because I am not satisfied that responsive records, if they exist, could reasonably be expected to interfere with the gathering of intelligence information or reveal law enforcement intelligence information.

Section 14(1)(l): commission of an unlawful act or control of crime

[57] For section 14(1)(l) to apply, I must be able to conclude that disclosure of the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[58] The ministry's position is that the existence or non-existence of the requested information would reveal to the appellant sensitive law enforcement information that he would not and should not otherwise know, which would be detrimental to law enforcement investigations or intelligence gathering, as well as potentially harming the safety of officers.

[59] For section 14(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[60] The ministry's representations on this issue are general and lack specificity about the circumstances of the present request, the appellant, and the type and nature of unlawful acts or future crimes that could reasonably be expected to occur if the information at issue is disclosed. The ministry has not provided evidence that disclosure of the requested police officer names and badge numbers could reasonably be expected to make it easier for someone to commit an unlawful act or get in the way of the

control of crime.

[61] Therefore, I am unable to find that section 14(1)(l) applies because I am not satisfied that responsive records, if they exist, could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

Conclusion

[62] In conclusion, based on the ministry's representations, I find that I have not been provided with sufficient evidence to support a finding that any responsive police officers' names and badge numbers, if they exist, would qualify for exemption under sections 14(1)(a), 14(1)(b), 14(1)(e), 14(1)(g), and 14(1)(l) as claimed by the ministry.

[63] Therefore, as the ministry's representations did not satisfy me that any responsive records would qualify for exemption under sections 14(1) or (2), I find that part 1 of the test under section 14(3) has not been met.

Findings re part 2

[64] As I have found that part 1 of the two-part test under section 14(3) has not been established, there is no need for me to consider part 2 of the test under section 14(3). Nevertheless, I have considered the ministry's submissions concerning part 2 of the test under section 14(3).

[65] Part 2 of the test under section 14(3) will be established when I am able to conclude that disclosure of the fact that records exist (or do not exist) itself conveys information that could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity.

[66] The ministry submits that confirming the fact that officers accessed CPIC or Niche files about the appellant would reveal a significant amount of law enforcement information, that would qualify for one or more of the exemptions listed above. It submits that the existence or non-existence of the requested records would reveal to the appellant sensitive law enforcement information that he would not and should not otherwise know. This would be detrimental to law enforcement investigations or intelligence gathering, as well as potentially harming the safety of officers.

[67] I find that part 2 of the test under section 14(3) has not been met. In my view, the ministry has not provided evidence sufficient to establish that disclosure of the fact of the existence of the records themselves, which would indicate that searches had or had not been undertaken, could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity, or result in any of the harms specified in section 14(1).

[68] I have reached this conclusion in part because of my findings outlined above in relation to part 1 of the test, and because the ministry has not identified the particular

law enforcement activity that is at risk. The ministry's representations contain speculative concerns about possible or potential law enforcement activities that are, in my view, unrelated to the appellant or the circumstances and the information at issue in this order. I find that revealing that responsive records exist or do not exist would not in itself convey information that could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity.

[69] Having determined that part 2 of the test to establish section 14(3) is not satisfied, I find that section 14(3) does not apply and the ministry cannot rely on that section to refuse to confirm or deny the existence of records responsive to the appellant's request. Therefore, I will order the ministry to issue a new access decision on these records, without relying on the refuse to confirm or deny provisions of the *Act.*

ORDER:

1. I do not uphold the ministry's decision under section 14(3).

2. I order the ministry to issue another access decision under the *Act* in respect of the appellant's request, without relying on the refuse to confirm or deny provisions of the *Act.*

3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the decision letter issued to the appellant.

Original Signed By: July 25, 2022

Diane Smith
Adjudicator