Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4286

Appeal PA18-377

Ministry of the Attorney General

August 4, 2022

Summary: The appellant submitted a multi-part access request to the ministry for all records relating to him and to a specific incident in which he was involved. The ministry located responsive records and granted the appellant partial access to them. It withheld information in the records that it claimed was exempt from disclosure under the discretionary exemption in section 49(a) (discretion to refuse requester's own information), in conjunction with the exemptions in sections 14(1)(a), (b), (i) and (l) (law enforcement) and 22(a) (information currently available to the public), and the discretionary exemption in section 49(b) (personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The ministry withheld some information because it consists of duplicate information or because it was deemed to be non-responsive to the request. The appellant appealed the ministry's decision and claimed that additional records ought to exist.

In this order, the adjudicator upholds most of the ministry's decision. She finds that the information withheld under section 49(a), with section 14(1)(i), is exempt from disclosure. She also finds that most of the information withheld under section 49(b) is exempt, however, she orders the ministry to disclose some information that does not qualify for exemption because it contains only the appellant's personal information. She also orders the ministry to disclose the newspaper article that it withheld under section 22(a), and she upholds the ministry's exercise of discretion and its decision to withhold the information that it withheld as not responsive to the appellant's request. Finally, the adjudicator upholds the reasonableness of the ministry's search and finds that there is no reasonable basis to conclude that any additional responsive records exist.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, sections 2(1) (definition of "personal information"), 2(3), 10(1), 21(2)(f), 14(1)(i), 21(2)(h), 21(3)(h), 22(a), 23, 24, 49(a), 49(b).

Orders and Investigation Reports Considered: Orders 11, M-909, MO-1550-F, MO-1573, MO-2185, MO-2246, MO-2263, MO-2344, MO-2554, MO-2954, P-85, P-99, P-134, P-221, P-239, P-244, P-257, P-327, P-427, P-624, P-880, P-900, P-994, P-995, P-1387, P-1409, P-1412, P-1621, P-1670, PO-1880, PO-1954-I, PO-2225, PO-2262, PO-2461, PO-2518, PO-2559, PO-2560, PO- 2592, PO-2617, PO-4222 and R-9800015.

Cases Considered: *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.); *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23; *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII); *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.

OVERVIEW:

[1] This order addresses an individual's right of access to records relating to his sending an unsolicited letter to a judge of the Superior Court of Justice causing some concern and prompting some investigation. In his unsolicited letter, the appellant, a lawyer, referred to a specific decision that the judge had recently issued and provided his views on that decision. He also enclosed two papers he had written about the algebraic connections he believes exist between various religions' holy books. As a result of the concerns raised by the appellant's unsolicited letter to the judge, the appellant was contacted by Superior Court of Justice representatives, who also contacted the Law Society of Ontario (LSO).[1] The appellant subsequently sought access to all information relating to him, as detailed below.

The appellant's access request

[2] The appellant submitted a multi-part access request to multiple offices of the Ministry of the Attorney General (the ministry)[2] under the *Freedom of Information and Protection of Privacy Act* (the *Act*).[3] In his request, the appellant sought access to "any and all information" about himself, "including all decisions, findings, assessments, consents, records and or documents" relating to "his publications on spirituality in 2014 and/or 2015" and a specific incident involving him and a specific Toronto courthouse. He also sought access to all information originating from the ministry or the Ontario

[1] Called the Law Society of Upper Canada at the time. On May 7, 2018, its name was officially changed to the Law Society of Ontario. The LSO is the professional regulatory body for Ontario lawyers and paralegals.

[2] These are: the Justice Sector Security Office (JSSO), the Justice Sector Security and Emergency Management Branch (JSSEM) and the Court Services Division (CSD). The appellant's request also referred to the Judicial Information Technology Office (JITO) and the Superior Court of Justice.

[3] Part of the appellant's request was addressed in a separate appeal involving the Ministry of the Solicitor General and its JOPIS (Justice Officials Protection & Investigation Section) office. That appeal, Appeal PA18- 315, was resolved by Order PO-4167, which I issued on July 26, 2021.

Provincial Police or the LSO.[4]

[3] In response to the request, and before issuing a decision, the ministry consulted an outside party, the LSO. The ministry searched for responsive records and located records relating to the appellant's sending a letter to a judge at the Toronto courthouse identified by the appellant. It then issued a single decision in response to the appellant's request to the CSD, JSSEM and JSSO.

The ministry's decision

[4] The ministry searched the CSD, JSSEM and JSSO and located 93 pages of responsive records. The ministry granted the appellant partial access to them, disclosing some records fully, withholding other records fully, and withholding some information in other records. In its decision, the ministry stated that it withheld information in the responsive records that was exempt from disclosure under the *Act*, not responsive to the appellant's request, or duplicated in the records. The ministry claimed the following exemptions applied to the withheld information: sections 49(a) (discretion to refuse requester's own information), 49(b) (personal privacy), 14(1)(a), 14(1)(b), 14(1)(i) and 14(1)(l) (law enforcement), 21 (personal privacy) and section 22(a) (information publicly available).

[5] The ministry also informed the appellant that it had not searched for court records, stating that such records are not in its custody or under its control.

The appeal to the IPC

[6] The appellant was dissatisfied with the ministry's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal. During mediation, the appellant confirmed that he wished to pursue access to the withheld information in the records, including the information deemed non- responsive to the request and the duplicate information. The appellant also asserted that further records responsive to his request exist at the ministry and that the ministry failed to conduct a reasonable search for responsive records, thus raising the issue of reasonable search. Finally, the appellant raised the possible application of the public interest override in section 23 of the *Act* to the withheld information.

[7] There was no mediated resolution of the appeal and it was transferred to the adjudication stage of the appeal process. An IPC adjudicator conducted an inquiry,

[4] Some parts of the appellant's request were addressed prior to the adjudication stage of the appeal, including the appellant's request for a copy of a Memorandum of Understanding between the Chief Justice of the Superior Court of Justice of Ontario and the Attorney General of Ontario, and a Memorandum of Understanding between the Attorney General of Ontario and the Chief Justice of the Ontario Court of Justice. In this order, I only address the records and issues that remain outstanding at adjudication.

inviting and receiving representations from the ministry and the appellant. The appeal was then transferred to me to complete the inquiry.

The ministry's revised decision

[8] During the inquiry, I asked the ministry whether it continued to claim section 49(a), with sections 14(1)(a) (interfere with law enforcement matter) and 14(1)(b) (interfere with an investigation with a view to a law enforcement proceeding) for the withheld information found at pages 3, 4, 6, 7, 8 and 9. This information had been withheld on the basis that the information relates to an ongoing LSO investigation. In response, the ministry issued a revised decision.

[9] In its revised decision of November 2021, the ministry advised that it had learned that the LSO investigation is complete. As a result, the ministry's revised decision granted the appellant partial access to the records relating to the LSO's investigation because it no longer claimed the exemption in section 49(a), with sections 14(1)(a) and 14(1)(b). Specifically, the ministry disclosed pages 3, 8 and 9 of the records, in their entirety, to the appellant. Accordingly, pages 3, 8 and 9 of the records are no longer at issue in this appeal. The ministry also disclosed certain information from pages 4, 6 and 7 of the records to the appellant. As a result, I do not consider pages 3, 8 and 9, parts of pages 4, 6 and 7, and, sections 14(1)(a) and 14(1)(b) in this order.

[10] In this order, I uphold the ministry's decision to withhold all of the remaining information withheld under section 49(a) and some of the information withheld under section 49(b). However, I order the ministry to disclose some withheld information in the records that I find does not qualify for exemption under section 49(b) of the *Act* because it contains only the appellant's personal information. I also order the ministry to disclose the newspaper article that it withheld under section 22(a). I uphold the ministry's exercise of discretion, and its decision to withhold information that it considers non-responsive to the appellant's request. Finally, I uphold the reasonableness of the ministry's search for responsive records and find that there is no reasonable basis to conclude that any additional responsive records exist.

RECORDS:

[11] Following the ministry's revised decision of November 2021, there are 25 pages of records at issue. They consist of nine pages withheld in full (pages 13-19, 41 and 42), 14 pages withheld in part (pages 1, 2, 4, 5, 6, 7, 12, 20, 26-28, 30, 32, 40), and two pages that the ministry has labelled "duplicate" (pages 10 and 11). The records are mainly emails, along with incident reports and supplementary incident forms, and a newspaper article (pages 14-17). The ministry has withheld information in pages 5, 6, 7, 26, 28 and 30, and all of pages 18 and 19 as non-responsive.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

B. Does the discretionary personal privacy exemption at section 49(b) apply to the information withheld under that section in pages 12, 20, 32, 41 and 42?

C. Does the discretionary exemption at section 49(a), in conjunction with sections 14(1)(i) and 14(1)(l), apply to the information withheld under these sections in pages 2, 4-7, 13 and 32?

D. Does the discretionary exemption at section 22(a) apply to the withheld newspaper article in pages 14-17 of the records?

E. Did the ministry exercise its discretion under sections 49(a) and 49(b)?

F. Does the compelling public interest provision in section 23 of the *Act* apply?

G. Did the ministry conduct a reasonable search for responsive records?

H. Is the information withheld as non-responsive in pages 5, 6, 7, 18, 19, 26, 28 and 30, responsive to the request?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[12] Before I consider the exemptions claimed by the ministry, I must first determine whether the records contain "personal information." If they do, I must determine whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[13] Information is "about" the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional capacity is not considered to be "about" the individual[5] unless it reveals something of a personal nature about the individual.[6] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined

[5] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. According to section 2(3) *Act*, personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
[6] Orders P-1409, R-9800015, PO-2225 and MO-2344.

with other information.[7]

[14] Section 2(1) of the *Act* lists examples of personal information, including the examples listed below, which are relevant in this appeal:

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[15] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."[8] If the records contain the requester's own personal information, the requester's access rights are greater than if the records do not.[9] Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.[10]

[16] Having reviewed the records at issue, I find that all but six pages of them (pages 14 to 19) contain personal information about the appellant, some of the records contain personal information of the appellant and another individual (pages 32 and 40-42), and two pages contain personal information of the appellant only (pages 1 and 27).

[17] The personal information of the appellant in the records includes information about his education and employment history (paragraphs (b) and (h) of the definition of "personal information" in section 2(1) of the *Act*, reproduced above), the views or opinions of another individual about the appellant (paragraph (g)) and his name along with other personal information about him related to his sending the unsolicited letter and how that was perceived and dealt with (paragraph (h)). Pages 30, 41 and 42,

---

[7] Order PO -1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[8] Order 11.
[9] Under section 47(1) of the *Act*, a requester has a right of access to their own personal information and any exemption from that right is discretionary, meaning that the institution can still choose to disclose the information to the requester even if the exemption applies.
[10] See sections 21(1) and 49(b).

contain the personal information of the appellant and another individual, including an individual's telephone number (paragraph (d)), personal opinions or views (paragraph (e)) and their name and personal information about them (paragraph (h)).

[18] The appellant argues that the emails in pages 32, 41 and 42 do not contain personal information about any other individual because they were exchanged in a work context and they contain professional, not personal, information. While these emails were exchanged in a professional context, that fact is not determinative of whether they contain personal information. In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.[11] This is one of those situations.

[19] The withheld information in pages 32, 41 and 42 is not professional information as contemplated by section 2(3) of the *Act*; it is not the title, contact information or designation of the individual that identifies them in a professional capacity. The withheld information arises from a security incident that occurred in the workplace, but it is the individual's personal information because it reveals something personal about the individual. The records confirm that the telephone number is the individual's personal information alone; it constitutes personal contact information and is not a professional telephone number, such as an office telephone number.

[20] The records that do not contain the appellant's personal information are the newspaper article, found at pages 14-17 of the records, and the email and memo at pages 18 and 19. These pages of the records do not contain the personal information of any identifiable individual. Below, I address pages 14-17 under Issue D and pages 18 and 19 under Issue H.

[21] The ministry argues that pages 1 and 27 contain the personal information of another individual; I disagree. These pages contain a name that the appellant misspelled in his letter. That misspelled name is the information the ministry has withheld as personal information in pages 1 and 27. The ministry has also withheld some information discussing the misspelled name and searches that it conducted using the misspelled name. There is no evidence before me that the misspelled name and the information relating to it are about an actual, identifiable individual. This information about a misspelled name does not relate to an identifiable individual involved in civil proceedings, as argued by the ministry, and it does not fall within the definition of "recorded information about an identifiable individual" or constitute personal information.

[22] I find that pages 1 and 27 contain the personal information of only the appellant. Because pages 1 and 27 contain the personal information of the appellant only, the discretionary personal privacy exemption in section 49(b) cannot apply to the

[11] Orders P-1409, R-980015, PO-2225 and MO-2344.

information the ministry withheld under that section in those pages. The section 49(b) exemption, which I discuss further below, applies when a record contains the personal information of both the requester and another individual. The appellant's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure cannot, by definition, be an unjustified invasion of another individual's personal privacy.[12]

[23] Since I have found above that pages 1 and 27 contain the personal information of only the appellant, and no other exemptions have been claimed in respect of this information, I will order the ministry to disclose pages 1 and 27 to the appellant.

[24] The misspelled name and related information that I have found above do not qualify as "personal information" also appear in pages 2, 4, 5 and 6 and have also been withheld by the ministry under section 49(b). I find that this withheld information does not fall within the definition of "personal information" because it is not "about an identifiable individual." Section 49(b) cannot apply to this information and the ministry has not claimed any other exemption to withhold it. I will order the ministry to disclose this information in pages 2, 4, 5 and 6 as well.

[25] I will now consider the application of the exemptions claimed to withhold information in pages 2, 4-7, 12, 13, 20, 32, 41 and 42 of the records, which I have found contain personal information about the appellant.

B. Does the discretionary personal privacy exemption at section 49(b) apply to the information withheld under that section in pages 12, 20, 32, 41 and 42?

[26] The ministry has withheld information in pages 12, 20, 32, 41 and 42 under the discretionary personal privacy exemption in section 49(b) of the *Act*. As such, and because I have found that these pages contain the personal information of both the appellant and other individuals, I must determine whether disclosure of this withheld information would be "an unjustified invasion of personal privacy" under section 49(b).

[27] Section 49 provides some exemptions from the general right that individuals have, under section 47(1) of the *Act*, to access their own personal information held by an institution. Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[28] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy. If disclosing another individual's personal information would not be an unjustified invasion

[12] Order PO-2560.

of personal privacy, then the information is not exempt under section 49(b).

[29] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. If any of the exceptions in sections 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b).

[30] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply. I find that sections 21(1) and 21(4) do not apply to the withheld information in pages 12, 20, 32, 41 and 42.

[31] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker[13] must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[14] The presumption in section 21(3)(h) and the factors in sections 21(2)(f) and (h) are relevant in this appeal.

[32] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b). The ministry claims that the presumption in section 21(3)(h) applies to some of the withheld information in pages 32, 41 and 42. The presumption at section 21(3)(h) covers information that reveals certain aspects of an individual' identity and beliefs. It reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[33] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.[15] Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[34] The list of factors under section 21(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are

---

[13] The institution or, on appeal, the IPC.
[14] Order MO-2954.
[15] Order P-239.

not listed under section 21(2).[16] Each of the first four factors, found in sections 21(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 21(2)(e) to (i), if established, would tend to support non-disclosure of that information. The ministry argues that sections 21(2)(f) and 21(2)(h) apply in the circumstances of this appeal. These sections read:

> 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,
>
> (f) the personal information is highly sensitive,
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence.

[35] The factor in section 21(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.[17]

[36] The factor in section 21(2)(h) weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."[18]

The ministry's representations

[37] The ministry submits that the personal cellular telephone number of an individual that appears in pages 12 and 32 of the records qualifies as highly sensitive information within the meaning of section 21(2)(f), and that it was supplied in confidence as contemplated by section 21(2)(h). The ministry submits that the factors in sections 21(2)(f) and 21(2)(h) also apply to the withheld personal information in pages 32, 41 and 42, which arises from an individual receiving correspondence at the workplace and contains the individual's views and opinions. It asserts that the presumption in section 21(3)(h) applies because some of the withheld information contains the religious views of an individual. The ministry argues that this information is the personal information of the individual alone and not the personal information of the appellant, and therefore, it should not be disclosed. The ministry asserts that disclosure of an individual's telephone number and views and opinions, including religious views, would constitute an unjustified invasion of the individual's personal privacy since the presumption in section

---

[16] Order P-99.
[17] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[18] Order PO-1670.

21(3)(h) applies, and the factors in sections 21(2)(f) and 21(2)(h) apply and weigh against disclosure.

The appellant's representations

[38] The appellant's representations consist of 49 pages of written submissions and a 275-page "Evidence Book." They refer to two "spiritual" papers authored by the appellant on the "algebraic" connections between various religions' holy books, and they contain various numbers, symbols and characters. Having carefully reviewed the appellant's representations, I observe that only small portions are relevant to the issues in this appeal. The appellant argues that no information relating to him should be withheld in the records.

Analysis and findings

[39] Having reviewed the parties' representations and the withheld information at issue, I conclude, for the reasons below, that disclosure of another individual's personal information to the appellant would constitute an unjustified invasion of personal privacy of that individual.

[40] I agree with the ministry that the factors weighing against disclosure in sections 21(2)(f) and 21(2)(h) apply and weigh in favour of privacy protection of an individual's telephone number that appears in pages 12 and 32 of the records, and an individual's personal views and opinions in pages 32, 41 and 42. I also note that the telephone number also appears in page 20 of the records. Regarding the application of the factor in section 21(2)(h), it is clear from the records that the individual supplied their personal information in the records in confidence. I also accept that, in the circumstances of this appeal, disclosure of the individual's personal information, particularly, their views and opinions, could reasonably be expected to cause them significant distress, engaging the factor in section 21(2)(f). The factors in sections 21(2)(f) and 21(2)(h) apply and weigh in favour of privacy protection, while none of the section 21(2) factors weighing in favour of disclosure applies. Considering the circumstances that prompted the creation of the records at issue, the factors in sections 21(2)(f) and 21(2)(h) weigh significantly in favour of withholding the telephone number and the views and opinions of another individual from the appellant.

[41] I also accept that some of the withheld personal information on the same pages indicates an individual's "religious beliefs or associations" and, thus, the presumption in section 21(3)(h) applies and weighs in favour of a finding that disclosure would constitute an unjustified invasion of personal privacy of the individual. I find that no factor favouring disclosure applies to the individual's personal information.

[42] In summary, I must balance the two factors that weigh in favour of protecting the individual's privacy (sections 21(2)(f) and 21(2)(h)), the application of section 21(3)(h) so that disclosure of some of the information is presumed to be an unjustified

invasion of privacy, and the absence of any factor weighing in favour of disclosure of the individual's personal information, against the appellant's right of access. Balancing and weighing the appellant's right of access to his own personal information in the records and the individual's right to privacy, I am satisfied that, considering the particular concerns at play in this appeal, the individual's privacy interests must prevail over those of the appellant. I find that the withheld personal information of the individual in pages 12, 20, 32, 41 and 42 is exempt from disclosure under section 49(b) of the *Act*.

[43] My finding applies equally to the personal information in page 10 of the records, a page that the ministry labelled as "duplicate" in its index.[19] Having reviewed page 10, I confirm that it is a duplicate of parts of pages 32, 33 and 34.

C. Does the discretionary exemption at section 49(a), in conjunction with sections 14(1)(i) and 14(1)(l), apply to the information withheld under these sections in pages 2, 4-7, 13 and 32?

[44] The ministry relies on section 49(a) in conjunction with sections 14(1)(i) and 14(1)(l) to partially withhold information on pages 2, 4-7, 13 and 32.

[45] Section 49 provides a number of exemptions from individuals' general right of access under section 47(1) to their own personal information held by an institution. In this appeal, the ministry relies on section 49(a), in conjunction with sections 14(1)(i) and 14(1)(l). These sections read:

> 49. A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (a) where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.
>
> 14.(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[46] The exemptions in sections 14(1)(i) and 14(1)(l) apply where a certain event or

[19] The ministry also labeled page 11 as 'duplicate' in its index. Page 11 contains information found in pages 33 and 34, all of which has been disclosed by the ministry to the appellant. Accordingly, I will order the ministry to disclose page 11 to the appellant.

harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure of a record must provide detailed evidence about the risk of harm if the record is disclosed, and must show that the risk of harm is real and not just a possibility.[20] However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[21]

[47] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required. Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.[22]

[48] 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.

The ministry's representations

[49] The ministry states that it withheld information on pages 2, 4-7, 13 and 32, regarding the mail delivery protocol in place at the Superior Court of Justice, from the appellant under section 49(a), in conjunction with sections 14(1)(i) and 14(1)(l) of the *Act*. It explains that the withheld information consists of comments made in incident reports and emails that describe the mail delivery protocol in place at the Toronto Courthouse at 361 University Avenue. In support of its claim of this exemption, the ministry explains that, like many buildings within the Ontario Public Service, courthouses have set procedures for the receipt, screening and delivery of mail that are necessary for the security and protection of the building and its occupants.

[50] The ministry submits that disclosure of the withheld information setting out the mail delivery protocol could reasonably be expected to endanger the security of courthouses and their occupants because it would amount to disclosure to the public. The ministry argues that it can reasonably be inferred that there are individuals who might wish to harm courthouses and court staff, and the risk of such harm is beyond speculative. It states that in 2016, it investigated over 300 reports of threats or other security-related concerns involving Ontario courthouses. It also notes that in April 2018,

---

[20] *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23.
[21] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.
[22] Orders P-900 and PO-2461.

a courthouse in Hamilton was evacuated and a man charged after suspicious packages had been found in the immediate vicinity of the building.

[51] The ministry asserts that it can reasonably be inferred that disclosure of the withheld information about the mail delivery protocol would reduce the efficacy of the protocol. It adds that no system of security is perfect and knowledge of a system is obviously a benefit to those who intend to bypass it. In support of its submission, the ministry refers me to previous IPC orders. It submits that in Order MO-2456 the details of computer security software used by a city qualified for the corresponding law enforcement exemption in the *Municipal Freedom of Information and Protection of Privacy Act*. It also submits that in Order P-557, the IPC withheld information about the use of animals in research facilities across the province under section 14(1)(i) and, in doing so, noted at page 4:

> If disclosed, the information in the records would be available to all of the individuals and groups involved in the animal rights movement, including those who may elect to utilize acts of vandalism and property damage to promote their cause.

[52] Finally, the ministry relies on Order PO-2332 in support of its position. It states that, in the context of releasing "obvious" and "common sense" details of security protocols, the IPC noted at paragraph 19, "Even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security." The ministry concludes by asserting that its redactions under sections 14(1)(i) and 14(1)(l) were reasonably made since disclosure could reasonably be expected to endanger the security of a building or system, or procedure established for the protection of a building or system.

The appellant's representations

[53] In his representations, the appellant has addressed only sections 14(1)(a) and (b). He argues that there is no evidence showing "any reasonable or any expectation" of interference with law enforcement or with a law enforcement matter. He submits that he has no criminal record and is not subject to any law enforcement matter, and thus, the ministry has no basis to withhold information in the records under the law enforcement exemption in section 14.

Analysis and finding

[54] Having reviewed all of the information before me, and having considered the information in the records and the parties' representations, I agree that the information withheld under section 49(a), in conjunction with section 14(1)(i), qualifies for exemption.

[55] The withheld information describes the protocols that are in place at a specific courthouse to ensure the safety of the building and its occupants. I am persuaded by

the representations of the ministry that disclosure could reasonably be expected to endanger the security of a building, vehicle, system or procedure, within the meaning of section 14(1)(i). I accept that making the details of the mail protocol public could reasonably be expected to endanger the security of this and other courthouses and their mail systems, by providing instructions on how to bypass mail security protocols. I also accept the ministry's evidence that it has investigated hundreds of reports of threats or other security-related concerns involving Ontario courthouses; this also persuades me that making public the details of procedures established for the protection of the mail sent to courthouses – protection that is reasonably required – would assist individuals whose aim is to endanger the security of Ontario courthouses by giving them information they can use to effectively bypass the protocol. While the appellant submits that he is not subject to any law enforcement matter and has no criminal record, past decisions of the IPC have found that disclosure of the withheld information would be disclosure to the world; it is this disclosure to the world that I consider in upholding the exemption.

[56] Accordingly, I find that the information at pages 2, 4-7, 13 and 32 that the ministry withheld under section 49(a), in conjunction with section 14(1)(i), is exempt from disclosure under those sections and I will consider the ministry's exercise of discretion below.

D. Does the discretionary exemption at section 22(a) apply to the withheld newspaper article in pages 14-17 of the records?

[57] The ministry relies on section 22(a) to withhold a four-page newspaper article from the appellant (pages 14-17) that I have found does not contain the personal information of the appellant. It submits that the newspaper article is about a case, and the article can be found on the newspaper's website. The ministry concludes by stating that the article does not contain any information about the appellant and is available to anyone on the internet.

[58] Section 22(a) permits an institution to refuse to disclose a record where "the record or the information contained in the record has been published or is currently available to the public." Section 22(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.[23] In order to rely on the section 22(a) exemption, the institution must take adequate steps to ensure that the record they allege is publicly available is the record that is responsive to the request.[24]

[23] Orders P-327 and P-1387.
[24] Order MO-2263.

[59] Having reviewed the newspaper article and the ministry's submission that it does not refer to the appellant, I do not understand why the ministry considers the article to be responsive to the appellant's request for information about himself or why it claims section 22(a) to withhold the article. Nonetheless, while it is clear that article has been published by a specified newspaper, it does not appear that the ministry has provided the appellant with the details necessary to access the article from that newspaper's website.

[60] IPC adjudicators have consistently held that, to be able to rely on this exemption, an institution has a duty to identify for the requester the record at issue and inform the requester of its specific location.[25] Applying the same approach here, to be able to rely on the section 22(a) exemption, the ministry must provide the appellant with the specific location of the article. The ministry asserts that the article is publicly available but fails to provide the appellant with the byline and date of the article so that he may obtain access to it, should he wish to do so. I find that the ministry has failed to establish the application of the section 22(a) discretionary exemption to the article. Because the ministry has not claimed any other exemption to withhold the article, I will order it disclosed.

E. Did the ministry exercise its discretion under sections 49(a) and 49(b)?

[61] The section 49(a) and 49(b) exemptions are discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. 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
- it fails to take into account relevant considerations.

[62] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[26] The IPC cannot, however, substitute its own discretion for that of the institution.[27]

[63] Considerations that are relevant to the exercise of discretion in this appeal are:

- the purposes of the *Act*, including the principles that
    - information should be available to the public

[25] See, for example, Order MO-2263 and the orders relied on therein (Orders P-123, P-124, P-191, P-204, and P-327).
[26] Order MO-1573.
[27] Section 54(2) of the *Act*.

    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - 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 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 parties' representations

[64] The ministry submits that it properly exercised its discretion under sections 49(a) and 49(b) of the *Act*. It argues that its exercise of discretion was appropriate, was not in bad faith or for an improper purpose and should be upheld. The ministry states that it considered the circumstances of this appeal, the nature of the records being requested, the context in which the records were created and the interests of the other individuals whose personal information is at issue, in determining that portions of the records should not be disclosed.

[65] The ministry asserts that it considered all relevant factors in coming to its conclusion to withhold some information in the records, including the purposes of the *Act*, the principles that information should be available to the public, and that exemptions from the right of access should be limited and specific. It submits that it also considered the principles that individuals should have a right of access to their own personal information, and that the privacy of individuals should be protected.

[66] The ministry adds that it considered the wording of the various exemptions it relied on and the interests these exemptions seek to protect. It considered the importance of protecting the safety and security of buildings and their security procedures under section 14(1)(i), and the fact that the information withheld under this section does not relate to the appellant personally. It also considered the importance of safeguarding the privacy of affected third party individuals, and, in particular, those whose personal information is collected as part of security concerns. It also considered that disclosure of the withheld information in the records would jeopardize confidence in security procedures and the JSSO, especially in light of the expectation that

information provided about safety and security concerns will be kept confidential. The ministry states that the JSSO acted in accordance with its usual practices in severing third parties' personal information. Finally, the ministry notes that it disclosed many records in whole or in part to the appellant, and it withheld only limited portions of the records. It asserts that this disclosure reveals the narrative that the appellant is seeking with his access request.

[67] The appellant does not address this issue directly, but his myriad unsupported allegations that the ministry acted inappropriately throughout its processing of his request can equally apply to this issue. However, the appellant's representations mostly contain bald allegations against the ministry, and inaccurate statements, and are either irrelevant to the issues before me or without merit, and I do not address them in this order.[28]

Analysis and finding

[68] I am not persuaded by the appellant's myriad unsupported allegations that the ministry acted inappropriately. Insofar as these bald allegations relate to the ministry's exercise of discretion, they do not convince me that the ministry exercised its discretion in bad faith or for an improper purpose, or that the ministry considered irrelevant factors.

[69] Overall, I am satisfied that the ministry considered relevant factors in exercising its discretion under sections 49(a) and 49(b). It considered the fact that the appellant seeks access to his personal information, and that it disclosed much of the appellant's personal information to him. The ministry exercised its discretion under section 49(b) to withhold the personal information of an individual after balancing and weighing the presumptions and factors in favour of privacy protection, and considering the privacy interests of the individual against the access right of the appellant.

[70] I also accept that the ministry considered the wording of each exemption it relied on and the interests each seeks to protect. There is nothing before to me to suggest that the ministry took irrelevant factors into account in exercising its discretion. For the foregoing reasons, I uphold the ministry's exercise of discretion under sections 49(a) and 49(b).

---

[28] For example, the appellant accuses the ministry of "abuse of process" and "abuse of office" because it withheld information in the records from him and granted "slow, piece-meal disclosure" of records to him; he accuses the judge of "abuse of judicial office" for allegedly "secretly" charging him with a crime and commencing a "113 week police investigation" of him; he also writes about the circumstances underlying this appeal and how they relate to different parts of his spiritual papers. There is no information before me to support any of these accusations.

F. Does the compelling public interest in disclosure provision in section 23 of the *Act* apply?

[71] Although the appellant raised the possible application of the public interest override in section 23[29] as an issue in this appeal, he does not identify any public interest in disclosure of the withheld information in the records in his representations. His representations on this issue consist of referring to section 21, quoting the second part of section 23, and quoting two sentences that were included in the Notice of Inquiry sent to him. Viewing his representations as a whole and giving them a broad reading, I understand that the appellant believes that the issues he raises and his interactions with the ministry are of public concern.

[72] The only information to which section 23 could apply, if the two requirements below were met, is the personal information of an individual that I have upheld as exempt from disclosure under section 49(b), because disclosure would be an unjustified invasion of privacy of that individual.

[73] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this public interest must clearly outweigh the purpose of the exemption. As indicated, the appellant has not specified or articulated the nature of the compelling public interest at stake in disclosure of this information, nor has he made any submissions about how such an interest outweighs the privacy interest of the affected party. In these circumstances, I have reviewed the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[30]

[74] Considering the circumstances and the information at issue, the first requirement for establishing the application of the section 23 public interest override is not met in this appeal. The information at issue relates to a discrete set of circumstances involving the appellant and I am unable to conclude that there is any public interest in disclosure of the information I have found to be exempt under section 49(b). Having found that the first requirement of section 23 is not met, I further find that section 23 does not apply in this appeal.

G. Did the ministry conduct a reasonable search for responsive records?

[75] Because the appellant claims that additional records exist beyond those identified by the ministry, I must decide whether the ministry conducted a reasonable search for

---

[29] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[30] Order P-244.

records as required by section 24.[31]

[76] The appellant's request is a multi-part access request to multiple offices of the ministry (JSSO, JSSEM and CSD) for "any and all information" about him, "including all decisions, findings, assessments, consents, records and or documents" relating to "his publications on spirituality in 2014 and/or 2015" and a specific incident involving him and a specific Toronto courthouse. The request seeks records from within Ontario courthouses and it refers to records that are maintained by JITO.

[77] The *Act* does not require the ministry to prove with absolute certainty that further records do not exist. However, the ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[32]

[78] To be responsive, a record must be "reasonably related" to the request.[33] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[34]

[79] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[35] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[36]

The ministry's representations

[80] The ministry submits that it carried out a reasonable search by having experienced employees, knowledgeable in the subject matter of the request, oversee the search to ensure that a reasonable effort to locate responsive records was carried out. The ministry states that it attempted to clarify the request, and when it received the appellant's response that some of the requested information stems from an incident in a Toronto courthouse in 2015 related to his publications on spirituality in 2014 and/or 2015, it appropriately adopted and applied the most liberal interpretation of the request.

[81] The ministry explains that it instructed managers and staff in all regions, corporate branches and offices to carry out a search for the requested records. It adds that the electronic and hardcopy searches it conducted included files in all formats. The ministry asserts that, in implementing the widest scope and by resolving ambiguity in

---

[31] Orders P-85, P-221 and PO-1954-I.
[32] Orders P-624 and PO-2559.
[33] Order PO-2554.
[34] Orders M-909, PO-2469 and PO-2592.
[35] Order MO-2185.
[36] Order MO-2246.

the appellant's favour, it carried out a reasonable search using the proper scope.

[82] The ministry provides two affidavits that set out the details of its search. The ministry confirms that the two search affidavits encompass the CSD, JSSO and JSSEM.

[83] The ministry states that it did not search for responsive records in JITO's record holdings or in the individual court files that comprise court records, because it does not have custody or control of those records. The ministry explains that JITO is an office of the court formed under a Memorandum of Understanding between the Attorney General of Ontario and the Chief Justice of the Superior Court of Justice of Ontario, and a Memorandum of Understanding between the Attorney General of Ontario and the Chief Justice of the Ontario Court of Justice.[37] It adds that JITO was formed to maintain a judicial technology environment with comprehensive security and privacy specifications for judges. The ministry states that it does not have access to or possession of JITO records. It submits that JITO records are court or judicial records that are not in its custody or control, just like individual court files for matters before the courts are court records over which the ministry has neither custody nor control. The ministry relies on Order P-994 to support is submission that court records, which are essential to the adjudicative process and are related to the judicial function of the courts, relate to a court action and are stored in a court file. The ministry concludes by stating that disclosure of JITO or court records would be at the direction of the Chief Justice, in accordance with section 76(1) of the *Courts of Justice Act*, which confirms that ministry staff acts at the direction of the Chief Justice of the court when possessing such records. The ministry confirms that the court has authority over court records such as "decisions, findings, assessments, consents" held in individual court files and their content, use and disposal, while the ministry only relies on such records as required or directed by the court. Finally, the ministry notes that while court records and ministry records may both be housed in a courthouse, they are not integrated.

[84] The first of the two affidavits the ministry provides is sworn by a lawyer in the CSD of the ministry. This affiant attests that:

- she has been employed as counsel with the CSD of the ministry since 2001 and has knowledge of the roles and responsibilities of staff and managers of the CSD, of the computer drives used and of the ministry's records storage filing systems and of record retention policies

- since 2014, her responsibilities have included overseeing searches and preparing recommendations for access requests involving CSD, and she has overseen searches for and responses to over 100 access requests

- in accordance with section 24(2) of the *Act* and prior to commencing the search for responsive records, the Freedom of Information Office for the ministry sought

[37] The ministry has provided copies of these two memoranda to the appellant, as noted in footnote 4, above.

further clarification from the appellant; specifically, it sought information on which judicial district or courthouse location might have custody or control of the records, and any other information that the appellant felt may be relevant or helpful in identifying the records

- in response to the request for clarification, the appellant objected and provided only that a portion of the request arose from a Toronto courthouse

- given the appellant's partial clarification, the ministry undertook the most broad and liberal search for responsive records; this search was for records responsive to the appellant's request for any and all information about him, including all decisions, findings, assessments, consents, records and/or other documents (data) held, stored or maintained by CSD and originating from the ministry, and all documents on the policies, mandates, procedures, organization and committees of CSD effective June 2015 and effective as of 2018 and in respect of the appellant

- to carry out the search, managers from each of the provincial regions, corporate branches and offices received a copy of the appellant's request and partial clarification; they were then asked to search all electronic or hardcopy records for records that refer to the appellant, and to direct their staff to search all electronic or hardcopy records for records that refer to the appellant

- managers and staff were asked to focus, but not limit, their search to keywords — the appellant's first and last name and the name of his law firm, or any combination of the three — between 2014 and 2018

- all records found that were responsive to the appellant's request were provided to the appellant without redactions in the decision letter dated July 31, 2018

- managers and staff who carried out the search for records were asked if records responsive to the appellant's request may have been deleted, and they all responded that, in accordance with CSD training they save, categorize and organize their records to ensure that their records are maintained and all records can be located, if necessary.

[85] The second affidavit is sworn by a Security Coordinator at the JSSO of the ministry. This affiant attests that:

- she has been employed with the JSSO for more than a decade and knows the security procedures and protocols, and the file management and record storage processes of the office

- the JSSO responds to incidents affecting the security of the judiciary and ministry staff, including threats, workplace violence, intimidation, harassment, persistent/aggressive communication or any other event

- the JSSO is an office within the JSSEM of the ministry; all operational records relating to security incidents are maintained by the JSSO, not by the JSSEM; the JSSEM does not have operational records

- each incident generates its own file and the JSSO maintains both hardcopy and electronic files relating to incidents

- to carry out the search, JSSO received a copy of the request and conducted a keyword search using the appellant's name; the JSSO identified one file

- the JSSO records responsive to the request that were identified during the search were addressed in the decision letter dated July 31, 2018; a second search was conducted in June 2019 to ensure that no records had been missed, however, no additional records were located

- JSSO staff are trained in the security field and understand the need for accurate and comprehensive record retention, in addition to the instruction and training in accordance with ministry practices; as a result, JSSO records are saved and categorized to ensure that records are maintained, and that all records can be located

- JSSO staff do not delete operational records

- the courthouse at 361 University Avenue in Toronto has a Mail Delivery Protocol that is detailed in full at page 19 of the records and described in part at various points in the records

- in her experience, a procedure for the receipt, screening and delivery of mail is necessary for security reasons and to protect the safety of Ontario Public Service buildings and recipients; the JSSO reports several security incidents pertaining to courthouses every year.

The appellant's representations

[86] The appellant's representations on this issue are not directly relevant. The appellant rejects the ministry's affidavits as "false" because, he alleges, they contain "substantive fallacies." He then describes the alleged "fallacies" and alleges that the ministry has acted dishonestly. He also criticizes the affidavits because they do not name him but rather refer to an unidentified "appellant" and they do not contain "any material search particulars."

[87] Regarding JITO and court records, the appellant challenges the ministry's representations as false and part of a "malfeasant pattern." The appellant's representations include allegations that the ministry acted inappropriately. For example, the appellant alleges that the ministry "altered the definition" of "court records" found in Order P-994 and "inserted false citations on same." He asserts that the ministry's

submission that court records are "records related to a court action and are stored in a file" "materially" alters the statement in Order P-994 that "court records consist of those record which relate to a court action and which are found in a court file."

Analysis and finding

[88] I accept the ministry's affidavit evidence and I find that the ministry conducted a reasonable search for records responsive to the appellant's request using the proper scope. The ministry clarified the appellant's request and it instructed managers and staff in all regions, corporate branches and offices to carry out a search for the requested records. The ministry's affidavits were sworn by experienced employees, knowledgeable in the subject matter of the appellant's request, and they constitute sufficient evidence to show that the ministry made a reasonable effort to identify and locate responsive records. The ministry searched for responsive records within CSD, JSSO and JSSEM, and it searched for and located responsive records relating to the appellant and the specified incident at a specific Toronto courthouse.

[89] The appellant's representations on the issue of reasonable search contain unsupported allegations about the ministry's affidavits that do not provide a reasonable basis to suggest that additional responsive records exist beyond the 93 pages of responsive records that the ministry located in response to his request, including the records that it disclosed to him in full.

[90] The responsive records consist of communications between courthouse staff and judicial offices, and they relate to the appellant and his sending an unsolicited letter to a judge. As a whole, the records address the incident from the judge's receipt of the appellant's letter to the actions taken afterwards in response to the security concerns that the appellant's letter raised. Considering the various records before me and their contents that relate directly to the incident and its aftermath, there is no basis for me to conclude that any additional responsive records would or should exist.

[91] I have considered the fact that the appellant specifically listed JITO and the courts in his request as two of the numerous locations he believes responsive records could exist. However, when I consider the comprehensive search undertaken by the ministry and the numerous records that it did yield, I find that there is no reasonable basis for me to conclude that records relating to the appellant's sending a letter to a judge in 2015 at a specific Toronto courthouse would exist beyond the many records identified by the ministry and addressed in this appeal and order. JITO is an office of the court tasked with maintaining the integrity and security of judicial information. There is no reasonable basis to believe that records relating to the appellant and the specific incident should or could exist in the records of an office of the court responsible for judicial information. Similarly, there is no basis for me to conclude that any responsive records could reasonably be expected to exist in the individual court files that comprise court records. If a specific court file did exist, the appellant would be a party to it and would certainly be aware of it; however, the appellant gives no indication

or information about the existence of any court file to which he is a party and that would contain responsive records.

[92] Even if I were persuaded that additional records could exist in the court files of Ontario courthouses (within or outside of JITO), I accept the ministry's position that it is not required to search for these records because they are not in the custody or control of the ministry.[38] Like the adjudicator in Order PO-4222, I find that it was reasonable for the ministry to direct the appellant to seek copies of records within various court files from the relevant courthouse.[39]

[93] Based on the evidence before me and on my review of the records at issue in this appeal, I find that there is no reasonable basis to believe that any additional responsive records exist.

H. Is the information withheld in pages 5, 6, 7, 18, 19, 26, 28 and 30 responsive to the request?

[94] The ministry has withheld some information in pages 5, 6, 7, 26, 28 and 30 of the records, and pages 18, 19 in full, on the basis that the withheld information is not responsive to the appellant's request. Because the appellant seeks access to the information that the ministry withheld as not responsive, I must determine whether that information is, in fact, responsive. To do so, I must consider section 24 of the *Act*, which requires requesters to provide sufficient detail to enable an institution to identify responsive records with reasonable effort,[40] and obliges institutions to seek clarification when a requester does not sufficiently describe the records sought.[41]

[95] Previous IPC orders have held that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, any ambiguity in the request should be resolved in the requester's favour.[42]

The parties' representations

[96] The ministry submits that it took a large and liberal approach to the request and implemented the widest scope it could, resolving ambiguity in the appellant's favour. Regarding the parts of the records that it withheld as being non-responsive to the request, the ministry describes each withheld part and explains the reason for its removal.

---

[38] See Orders P-995 and PO-4222.
[39] Order PO-4222 at para 68.
[40] Section 24(1)(b) states: A person seeking access to a record shall, provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.
[41] Section 24(2) states: 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).
[42] Orders P-134 and P-880.

[97] The ministry states that it withheld the printing date of the records at pages 5, 6 and 7 as not responsive because it post-dates the request. It adds that it similarly withheld the handwritten notes on pages 5 and 6, relating to the processing of the access request, because they post-date the request and are not responsive. It states that it withheld all of pages 18 and 19, which contain general information on the mail procedure at the courthouse, as not responsive because they do not refer to the appellant. It adds pages 18 and 19 would be exempt from disclosure under sections 14(1)(i) and (l), in any event. Finally, the ministry explains that it withheld parts of pages 26, 28, 30 and 40, which refer to the vacation schedule of an employee, because they are not responsive to the request.

[98] In his representations, the appellant makes unsupported, inflammatory claims about the ministry's evidence. It is not necessary for me to set out the appellant's representations on this issue in any further detail.

Analysis and finding

[99] Having reviewed the information withheld as non-responsive and the parties' representations, I agree with the ministry that the information withheld on the basis that it is non-responsive does not reasonably relate to the appellant. The appellant's variously phrased allegations that the ministry's representations are "false" are completely unfounded and I dismiss them on this basis. I find that the printing dates and the handwritten notes about the processing of the request withheld on pages 5, 6 and 7, are not responsive to the appellant's request. I also find that pages 18 and 19, which contain information on the mail procedure at the courthouse, are not responsive to the request. Finally, I find that the information relating to a staff member's vacation, and withheld in pages 26, 28, 30 and 40, is similarly not responsive to the appellant's request. As a result, I uphold the ministry's decision to withhold this non-responsive information.

ORDER:

1. I order the ministry to disclose pages 1, 11, 14-17 and 27, in their entirety, and the portions of pages 2, 4, 5 and 6 that relate to a misspelled name and the searches conducted about the misspelled name. The portions of pages 2, 4, 5 and 6 to be disclosed are those that the ministry withheld under section 49(b). The ministry is to make this disclosure by **September 8, 2022**, but not before **September 5, 2022**.

2. I uphold the ministry's decision in all other respects.

Original Signed By: August 4, 2022

Stella Ball
Adjudicator