

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4312

Appeal PA19-00433

Ministry of the Solicitor General

October 24, 2022

Summary: The ministry received and responded to an 18-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to specified OPP records related to the requester. The ministry issued a decision granting partial access to the responsive records withholding information under section 49(a) (discretion to refuse access to requester's own personal information), read with section 14(1)(l) (law enforcement), and section 49(b) (personal privacy) of the *Act*. The appellant appealed the ministry's decision to the IPC. In this order, the adjudicator partially upholds the ministry's decision, but she orders the ministry to disclose additional information to the appellant.

Statutes Considered: The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 14(1)(l), 21(3)(b), 21(2)(f), 24, 49(a), and 49(b).

Orders Considered: Order P-1618.

OVERVIEW:

[1] This order determines the issue of access to Ontario Provincial Police (OPP) records relating to the requester. The Ministry of the Solicitor General (the ministry) received an 18-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for specified OPP records related to the requester. The requester noted the officers involved, dates of incidents, and the specific records he is seeking access to.

[2] The ministry issued a decision granting partial access to the records responsive to the request. Access to the withheld information was denied under section 49(a) (discretion to refuse access to requester's own personal information), read with section 14(1)(l) (law enforcement), and section 49(b) (personal privacy) of the *Act*. The ministry also noted that certain information was withheld because the ministry claims it is non-responsive to the appellant's request.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.

[4] During mediation, the appellant advised that he believes further records responsive to his request should exist, and that he seeks access to the withheld information in the records that were located.

[5] Subsequently, the ministry issued a supplemental access decision granting further access to a previously withheld record. Access to the withheld information continued to be denied under section 49(a), read with section 14(1)(l), and section 49(b) of the *Act*.

[6] The appellant confirmed receipt of the supplemental decision, and advised that he continues to seek access to the withheld information, including the information the ministry claims is non-responsive to his request. The appellant maintained his position that further records responsive to his request should exist.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry by inviting representations from the ministry, initially. I received representations from the ministry and shared the non-confidential representations with the appellant,¹ and invited representations from the appellant. The appellant submitted representations, and I shared the appellant's non-confidential representations with the ministry.² I then invited reply representations from the ministry, but it declined to submit any.

[8] In this order, I uphold the ministry's search as reasonable, and I partially uphold the ministry's access decision. I order the ministry to disclose additional information to the appellant that I find is responsive to the request, but not exempt under the *Act*.

RECORDS:

[9] The information remaining at issue in this appeal consists of portions of 65 pages

¹ Some portions were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC's *Code of Procedure*.

² Some portions were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC's *Code of Procedure*.

of OPP reports and officers' handwritten notes summarized as follows:

Record #	Description	Pages	Exemptions claimed
1	Occurrence Summary of 2018/08/04 (Incident #1)	1	Non-responsive (N/R), 49(b), 49(a) & 14(1)(l)
2	General Report Incident #1	2-3	N/R, 49(b), 49(a) & 14(1)(l)
3	Supplementary Occurrence Report Incident #1	4	N/R
4	Supplementary Occurrence Report Incident #1	5	N/R
5	Handwritten notes of specified Constable	6-10	N/R, 49(b), 49(a) & 14(1)(l)
6	Handwritten notes of specified Constable	11-22	N/R, 49(b), 49(a) & 14(1)(l)
7	Occurrence Summary of 2017/08/22 (Incident #2)	23	N/R, 49(b), 49(a) & 14(1)(l)
8	General Report Incident #2	24-27	N/R, 49(b), 49(a) & 14(1)(l)
9	Handwritten notes of specified Constable	28-33	N/R, 49(b), 49(a) & 14(1)(l)
10	Occurrence Summary of 2018/07/12 (Incident #3)	34	N/R, 49(b), 49(a) & 14(1)(l)
11	General Report Incident #3	35-38	N/R, 49(b), 49(a) & 14(1)(l)
12	Supplementary Occurrence Report Incident #3	39	N/R, 49(b)
13	Handwritten notes of specified Constable	40-45	N/R, 49(b), 49(a) & 14(1)(l)
14	Occurrence Summary of 2018/07/14 (Incident #4)	46	N/R, 49(b), 49(a) & 14(1)(l)
15	Handwritten notes of specified Constable	47	N/R, 49(b), 49(a) & 14(1)(l)
16	Occurrence Summary of 2015/06/18 (Incident #5)	48	N/R, 49(b), 49(a) & 14(1)(l)
17	General Report Incident #5	49-51	N/R, 49(b)
18	Handwritten notes of specified Staff Sergeant	52-55	N/R
19	Handwritten notes of specified Sergeant	56	N/R, 49(b)
20	Handwritten notes of specified Sergeant #2	57-60	N/R, 49(b), 49(a) & 14(1)(l)
21	Handwritten notes of specified Constable	61-63	N/R
22	Handwritten notes of specified Constable	64-65	N/R, 49(a) & 14(1)(l)

ISSUES:

- A. What is the scope of the request? What information is responsive to the request?
- B. Did the ministry conduct a reasonable search for records?
- C. Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- D. Does the discretionary personal privacy exemption at section 49(b) of the *Act* apply to the information at issue?
- E. Does the discretionary exemption at section 49(a) (discretion to discretion to refuse requester’s own personal information), read with the section 14(1)(l) (law enforcement) exemption, apply to the information at issue?
- F. Did the ministry exercise its discretion under sections 49(a) and 49(b), as the case may be? If so, should I uphold the exercise of discretion?

DISCUSSION:

Issue A. What is the scope of the request? What information is responsive to the request?

[10] The ministry withheld portions of each record on the basis that they are not responsive to the appellant’s request. The appellant disputes this.

[11] To be considered responsive to the request, records must “reasonably relate” to the request.³ Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.⁴

Representations of the ministry

[12] The ministry submits that it withheld information as non-responsive because it relates to the retrieval of the record in response to the request, consists of portions of officers’ notes that contain information that is not related to the appellant’s request, and consist of internal police codes.⁵ The ministry submits that previous IPC orders⁶ have accepted that these types of information are not responsive to an appellant’s request.

³ Orders P-880 and PO-2661.

⁴ Orders P-134 and P-880.

⁵ The ministry also claims the exemption at section 49(a), read with section 14(1)(l), for the police code information.

⁶ Orders PO-1845, PO-2254, and Order PO-3443.

Representations of the appellant

[13] The appellant notes that a large portion of the records are marked "N/R", and states that he does not believe it is possible that such a large part of the records could be exempt for this reason.

Analysis and findings

[14] I have reviewed the portions of each record that the ministry states are non-responsive to the appellant's request. I find that the ministry has correctly identified them as non-responsive to the appellant's request. I conclude that these withheld portions are not reasonably related to the request; they contain information about other OPP matters unrelated to the appellant's involvement with the OPP, and information relating to the retrieval of the record in response to the request.

[15] I do not reach the same conclusion with respect to the police codes. In my view, these reasonably relate to the request. However, I will deal with the ministry's alternative exemption claim for the police codes under Issue E below.

[16] Accordingly, I uphold the ministry's decision to withhold the information it identified as non-responsive to the appellant's request, except for the police codes.

Issue B. Did the ministry conduct a reasonable search for records?

[17] The appellant claims that further records responsive to his request exist. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.⁷ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[18] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.⁸ 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 (responsive) to the request.⁹

[19] 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 such records exist.¹⁰

⁷ Orders P-85, P-221 and PO-1954-I.

⁸ Orders P-624 and PO-2559.

⁹ Orders M-909, PO-2469 and PO-2592.

¹⁰ Order MO-2246.

Representations of the ministry

[20] The ministry submits that it conducted a reasonable search for responsive records. In support of its position, the ministry submitted the affidavit of the interim Freedom of Information Coordinator for a specified region of the OPP (FOI Coordinator). The relevant portions of the FOI Coordinator's evidence are as follows:

- The FOI Coordinator is a Sergeant with the OPP and has been a member of the OPP since 1994. She has served as the FOI Coordinator since 2018, and is knowledgeable of the requirements and procedures for responding to requests under the *Act*. She is also familiar with the record holdings of the OPP that were searched for this appeal.
- After being notified of the appellant's request by the ministry's FOI Analyst, the FOI Coordinator commenced the search for records by inputting the appellant's name, as well as applicable dates, and addresses provided by the appellant into Niche RMS, the OPP records database where all incident records are stored. She identified responsive records, and printed them off the database.
- The FOI Coordinator determined that OPP officers' notes were also responsive to the request, and that these records would be located at a specified detachment of the OPP. She contacted the OPP officers who have responsive notes, and requested they provide their notes to her. In the case of officers who had retired, she contacted administrative personnel from the detachment and requested they provide the responsive notes from any retired officers to her. She provided all officers' notes to the ministry's FOI Analyst.
- Subsequently, the FOI Coordinator conducted a further search for responsive records at the request of the ministry's FOI Analyst, and the second search followed the same process as the first.
- The FOI Coordinator states that she has no reason to believe that any responsive records have been destroyed. She states that the searches conducted were diligent and thorough, in that she searched Niche RMS, the OPP record database, using the appellant's name, and other information the appellant provided, which is in accordance with their usual practice. She then contacted the relevant OPP officers and administrative personnel, and asked them to print off and provide all responsive OPP officers' notes.

Representations of the appellant

[21] The appellant states that he is satisfied with the records yielded in response to parts 11, 13, 15, 16, and 17 of his request, so I will not deal with these parts of his request. However, he submits that the ministry has not provided him with all records responsive to his request, and further records responsive to his request should exist. He relies on his knowledge as a former police officer to support his position. He lists several

dates and incidents for which he claims that supplementary reports and further records should exist. The appellant also listed the contents of a Crown Brief obtained from the Ministry of the Attorney General to support his position that several OPP reports were not disclosed to him in response to his access request.¹¹ The appellant states that he already has copies of some of the records at issue in this appeal because they were part of the Crown Brief from when he was charged with mischief.

[22] The appellant states that the OPP tried to transfer their obligation to supply records by telling him that three parts of his request, part 4 (Return to Justice #1), part 5 (Detention Order), and part 14 (Return to Justice #2), are property of the Court, and can be requested from the Court. The appellant argues that the OPP prepared these records, so they must have a copy of them. He further argues that just because the Court has a copy of these records does not negate the OPP's obligation to disclose them.

[23] The appellant alleges that the OPP and ministry are refusing to provide him with all the records they have because they do not want to reveal that the OPP did not properly investigate his charge of mischief.

Analysis and findings

[24] I am satisfied that the ministry conducted a reasonable search for records responsive to the appellant's request. My reasons follow.

[25] The ministry has described the individuals involved in the search, where it searched, and the results of its search. In my view, the ministry's search was logical, and it has searched all of its record holdings that may contain records responsive to the appellant's request. As noted above, 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.¹² I am satisfied that the ministry has provided sufficient evidence to establish this to be the case here.

[26] In reaching this conclusion, I have also considered whether the appellant has established a reasonable basis to conclude that additional records exist. I find that he has not.

[27] The appellant submitted an 18-part request for OPP records relating to him and his property. From my review, it appears that he received records responsive to most of his request except for parts 4 (Return to Justice #1), 5 (Detention Order), 6 (photographs), and 14 (Return to Justice #2).

¹¹ The list of documents in the Crown Brief was not shared with the ministry, because the appellant states that he only has permission to share it with me for the purposes of this appeal.

¹² Orders M-909, PO-2469 and PO-2592.

[28] The appellant argues that the document list from the Crown Brief supports his position that further responsive records should exist, and that several OPP reports were not disclosed to him. From my review of the list of documents contained in the Crown Brief, and the records at issue in this appeal, I do not find that the Crown Brief contains OPP reports that were not provided to the appellant. Furthermore, I do not find that the Crown Brief provides a sufficient basis upon which to find that the ministry did not conduct a reasonable search for responsive records. I am unable to comment further on the contents of the Crown Brief due to the appellant's request that I not reveal its contents. However, contrary to the appellant's submissions, I accept that the Crown Brief may contain records that the ministry may not have in its record holdings. I have formed this conclusion based on my review of the record titles, and the records that were disclosed to the appellant. With respect to parts 4, 5, and 14 of the appellant's request, the ministry has advised the appellant that these records can be obtained from the Court. I accept that these types of records may not exist in the ministry's record holdings, and I find that it was reasonable for the ministry to direct the appellant to seek copies of these records from the relevant Court.¹³ Therefore, I am not satisfied that the appellant's arguments establish a reasonable basis to conclude that these records exist within the ministry's record holdings.

[29] I acknowledge that the appellant has concerns with how the OPP conducted their investigation which led to him being charged with mischief. However, I am not persuaded that ordering the ministry to conduct another search will locate further records that the appellant claims should exist.

[30] 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 it has made a reasonable effort to identify and locate responsive records.¹⁴ I am satisfied that it has, and I uphold the ministry's search as reasonable.

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

[31] In order to determine which parts of the *Act* apply, it is necessary to decide whether the record contains "personal information" and, if so, whose. "Personal information" is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

¹³ Orders PO-4286 and PO-4222.

¹⁴ Orders P-624 and PO-2559.

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(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,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(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;

[32] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.¹⁵

[33] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.¹⁶

[34] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.¹⁷

[35] To qualify as personal information, it must be reasonable to expect that an

¹⁵ Order 11.

¹⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

individual may be identified if the information is disclosed.¹⁸

Representations of the ministry

[36] The ministry submits that the withheld information contain personal information as that term is defined by section 2(1) of the *Act*. The ministry states that this personal information belongs to the appellant, and to individuals other than the appellant who either called the OPP for police assistance or who assisted the OPP in the investigation they conducted when they responded to the request for assistance. The ministry states that the personal information contained in the records is extensive and includes dates of birth, personal telephone numbers, home addresses, records of conversations with affected parties that were collected as part of an OPP law enforcement investigation, and the names of these same individuals, which would be linked to their involvement in the investigation.

[37] The ministry submits that given the interaction between the appellant and at least some of the affected parties, it is reasonable to expect that the affected parties could be identified from disclosure of other information in the records at issue. The ministry submits, therefore, that none of the information about the affected parties should be disclosed. The ministry states that it relies upon previous IPC orders¹⁹ to support its position.

[38] The ministry submits that it has also withheld WIN identifier numbers (WIN numbers) belonging to OPP employees (Computer Assisted Dispatch Operators) on pages 1, 23, 34, 35, 46, and 48-49 of the records.

Representations of the appellant

[39] The appellant acknowledges that the records contain personal information of other individuals. However, he states that the withheld information is not all "personal information" as that term is defined under the *Act*.

[40] The appellant has stated that he does not seek access to the withheld WIN numbers of the OPP employees listed in the records. Accordingly, I find that this information is no longer at issue in this appeal, and I will not address it further in this order.

Analysis and findings

[41] Based on my review of the records and the representations of the parties, I find that the records contain the personal information of the appellant, and other identifiable individuals. I will refer to the other identifiable individuals as the affected parties.

¹⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

¹⁹ Orders PO-2955, PO-3766, and PO-3897.

[42] I find that the records contain the personal information of the appellant and the affected parties such as their age, sex, address, telephone number, driver's licence, their views or opinions, views or opinions about them, and their name along with other information, which fits within paragraphs (a), (c), (d), (e), and (h) of the definition of "personal information" in section 2(1) of the *Act*. I accept the ministry's argument that in some cases, given the appellant's knowledge of the parties whose personal information appears in the records, additional information qualifies as personal information since the individuals about whom the information is about could be identified if that information were disclosed.

[43] I considered whether the appellant's personal information could be severed from the records. However, based on my review of the records, I find that the appellant's personal information is inextricably intertwined with that of the affected parties' and cannot be reasonably severed. Accordingly, I will consider whether the personal information of the affected parties is exempt from disclosure under the exemptions claimed.

[44] However, on pages 2 and 24, some of the information that the ministry has severed is not personal information. For example, the ministry has severed information such as the occurrence number and date, and headings of the report, which I find do not constitute "personal information" under the *Act*. I also find that some of the information about OPP officers that has been severed, such as their name and badge number, is not personal information because it is about the officers in their professional capacity, and does not reveal anything of a personal nature about them. Based on all this, the personal privacy exemption cannot apply to this information.²⁰ However, the ministry has also applied the law enforcement exemption at section 14(1)(l) to pages 2 and 24. As such, I will also consider the applicability of that section to this information under Issue E below.

[45] Having found that the records contain the personal information of the appellant and the affected parties, I will now determine whether their withheld personal information is exempt from disclosure under section 49(b) of the *Act*.

Issue D. Does the discretionary personal privacy exemption at section 49(b) of the *Act* apply to the information at issue?

[46] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this right.

[47] 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

²⁰ I note that the ministry has disclosed this information elsewhere in the records.

would be an “unjustified invasion” of the other individual’s personal privacy.

[48] 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 other individual’s personal privacy.

[49] If disclosing another individual’s personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[50] 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 section 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).

[51] 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. Considering the records at issue, none of the situations in section 21(4) are applicable to the appeal before me.

[52] 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-maker²¹ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.²²

[53] 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.²³ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[54] 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 not listed under section 21(2).²⁴

Representations, analysis and findings

[55] The ministry submits that disclosure of the withheld personal information would constitute an unjustified invasion of the personal privacy of the affected parties identified in the OPP law enforcement records.

²¹ The institution or, on appeal, the IPC.

²² Order MO-2954.

²³ Order P-239.

²⁴ Order P-99.

[56] The appellant submits that the section 49(b) exemption does not apply to all the information that the ministry has withheld. The appellant alleges that the ministry is improperly withholding information from him, because it does not want to reveal that the OPP did not properly investigate his charge of mischief, and because it would shed light on the illegal seizure of his property by the OPP.

Section 21(3)(b) presumption: investigation into a possible violation of law

[57] The ministry submits that the section 21(3)(b) presumption applies to the withheld personal information. The ministry submits that the records were prepared by the OPP because the OPP were requested to attend a specified location, which caused them to investigate whether an offence had occurred. The ministry further submits that one of the records states that a charge was laid for mischief, which is an offence under the *Criminal Code*.

[58] Section 21(3)(b) states:

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

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

[59] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. The personal information at issue relates to witnesses and complainants that appear in reports about multiple OPP investigations. As the ministry noted, charges were laid for mischief, which is an offence under the *Criminal Code*, for one of the occurrences contained in the records. Even if no criminal proceedings were commenced against an individual, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.²⁵ Accordingly, I am satisfied that the records for the other occurrences also relate to investigations into a possible violation of law. Therefore, I find that section 21(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the affected parties.

[60] Under section 49(b), the presumptions in section 21(3) must be weighed and balanced with any factors in section 21(2) that are relevant.

[61] The appellant appears to be arguing that the factor at section 21(2)(a) (public scrutiny) applies to the withheld personal information. This factor weighs in favour of disclosure, if it is found to apply.

²⁵ Orders P-242 and MO-2235.

[62] The ministry argues that the factor at section 21(2)(f) (highly sensitive) applies to the withheld personal information. This factor weighs against disclosure, if it is found to apply.

[63] Sections 21(2)(a) and (f) state:

21(2) 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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny; and

(f) the personal information is highly sensitive;

Section 21(2)(a) – public scrutiny

[64] Giving them a broad reading, the appellant's representations argue that the factor at section 21(2)(a) applies, and weighs in favour of disclosure of the affected parties' personal information. He alleges that the OPP has acted improperly against him, and he states that his property was illegally seized. He states that he has questions about the OPP's conduct, and how they handled the investigations relating to him. He submits that he wants the withheld information in the records to confirm his belief that there was unlawful seizure of his property and "malicious prosecution" of him by the OPP.

[65] Based on the evidence before me, I am not persuaded that section 21(2)(a) applies to the present circumstances of this appeal. Section 21(2)(a) contemplates disclosure in order to subject the activities of the government, as opposed to the views or actions of private individuals, to public scrutiny.²⁶ The withheld information is the personal information of the other individuals involved in OPP occurrences detailed in the records, including complainants and witnesses. From the appellant's representations, it appears that he wants the withheld personal information to review the conduct of the OPP officers. However, it is unclear how the disclosure of the affected parties' personal information would assist with this. Therefore, I find that disclosure of the withheld personal information of the affected parties would not subject the conduct of the OPP to public scrutiny for the purposes of section 21(2)(a) of the *Act*.

[66] While I do not find that section 21(2)(a) applies to the withheld personal information, I recognize that the appellant's arguments can be characterized as raising "inherent fairness issues" as an unlisted factor that should apply to weigh in favour of disclosure, and I will address this below.

²⁶ Order P-99.

Section 21(2)(f) – highly sensitive

[67] The ministry submits that the factor at section 21(2)(f) applies to the circumstances of this appeal, and weighs against disclosure of the withheld personal information. The ministry argues that there is a reasonable expectation of significant distress to the affected parties, if their personal information were disclosed. The ministry submits that when individuals request police assistance, there is a reasonable expectation that police records that are created will only be used for law enforcement purposes. The ministry submits that the circumstances in which the records were created, along with the expectation of privacy when members of the public request police assistance means that the personal information in the records is inherently “highly sensitive”. The ministry cites IPC orders P-1618 and PO-3766 in support of its position.

[68] In order for section 21(2)(f) to apply, the withheld personal information must be considered to be highly sensitive, which means there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁷ In Order P-1618, the former Assistant Commissioner Tom Mitchinson found that the personal information of individuals who are “complainants, witnesses or suspects” as part of their contact with the OPP is “highly sensitive” for the purpose of section 21(2)(f). I accept this reasoning and adopt it in this appeal. Given that the withheld information is personal information of complainants and witnesses in OPP investigations, I find that its disclosure to the appellant could reasonably be expected to cause significant personal distress to the affected parties. Therefore, I find that section 21(2)(f) applies in this appeal, and weighs against disclosure of the withheld personal information of the affected parties.

Unlisted factors

[69] As referenced above, the appellant’s arguments appear to raise an inherent fairness principle that ought to weigh in favour of disclosure. It is the appellant’s position that he requires the withheld personal information to understand how the OPP conducted the investigation that resulted in his property being seized, and him being charged with mischief. After reviewing the withheld personal information and considering the circumstances of this appeal, I accept the appellant’s submission in this regard, and conclude that it raises inherent fairness issues, which is an unlisted factor that has been found to weigh in favour of disclosure. Previous IPC orders have held that individuals who face accusations are entitled to know the case which has been made against them.²⁸ In this appeal, the OPP’s investigation resulted in the seizure of the appellant’s property, and a charge being brought against the appellant. Therefore, there is reason to conclude that the appellant is entitled to know who the OPP spoke to, and what led to his mischief charge, and I find that inherent fairness is an unlisted factor that applies to weigh in favour of disclosure.

²⁷ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁸ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

[70] The appellant states that he received copies of certain records²⁹ from the Crown after being charged with mischief. As a matter of fairness, I have also therefore considered whether this is an unlisted factor that may apply to the withheld personal information in those records, weighing in favour of its disclosure.

[71] The appellant claims that he already has copies of some of the records at issue, but he cannot share or use these records without the permission of the Ministry of the Attorney General due to a non-disclosure agreement. That is the reason why the appellant is seeking access to these records under the *Act*.

[72] Previous IPC orders have articulated the principle that disclosure under the *Act* to an appellant is tantamount to disclosure to the world, so that the consequences of disclosure into the public domain, and not merely to a particular requester, are relevant considerations.³⁰ While the appellant already has a copy of some of the records, if I were to order disclosure of the affected parties' personal information, they would lose the personal privacy protection afforded to them under the *Act*. As the appellant has acknowledged himself, he cannot use the records unless he is granted access to them under the *Act*. Therefore, based on the circumstances of this appeal, I do not accept that this is an unlisted factor that weighs in favour of disclosure of the personal information of the affected parties contained in the records, and I find that it does not apply.

Conclusion

[73] In the discussion above, I have found that the section 21(2)(f) factor, and the section 21(3)(b) presumption apply to the personal information at issue, weighing against its disclosure. I have also found that inherent fairness is an unlisted factor that applies to the personal information at issue, weighing in favour of disclosure.

[74] Considering the personal information at issue, weighing the relevant factors, and balancing the interests of the parties, I am not persuaded that the appellant's desire to access the withheld personal information to confirm his beliefs about the OPP's conduct outweighs the privacy interests of the affected parties, whose personal information is contained in the OPP reports. I find that disclosing the personal information at issue would result in an unjustified invasion of the personal privacy of the affected parties, and I find therefore that it is exempt under section 49(b) of the *Act*. I will consider the ministry's exercise of discretion at Issue F, below.

²⁹ Since the appellant states that he does not have permission to share the Crown Brief, I cannot specify which records are contained in it.

³⁰ Orders P-1537, PO-2461, MO-2304, MO-2986 and others.

Issue E. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information), read with the section 14(1)(l) (law enforcement) exemption, apply to the information at issue?

[75] The ministry claims that section 49(a), read with section 14(1)(l), applies to police code information contained within the records. Although section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, section 49 provides some exemptions from this general right of access.

[76] Section 49(a) of the *Act* reads:

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

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

[77] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.³¹

[78] In this case, the ministry relies on section 49(a) read with section 14(1)(l).

[79] Section 14(1)(l) states:

(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(l) facilitate the commission of an unlawful act or hamper the control of crime.

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

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

³¹ Order M-352.

³² The term "law enforcement" appears in many, but not all, parts of section 8.

[81] Many of the exemptions listed in section 14 apply where a certain event or harm “could reasonably be expected to” result from disclosure of the record.

[82] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.³³

[83] However, the exemption does not apply just because a continuing law enforcement matter exists,³⁴ and parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.³⁵

[84] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.³⁶ However, they do not have to prove that disclosure will in fact result in harm.

Representations of the ministry

[85] The ministry submits that the OPP is a law enforcement agency, and the records at issue were created during OPP law enforcement investigations. The ministry submits that it has applied section 14(1)(l) to withhold portions of the records containing patrol, location, zone, and ten codes.³⁷ The ministry submits that it has withheld these police codes in accordance with its usual practice, because disclosure of these police codes could make it easier for individuals carrying out criminal activities to know how systems within the OPP operate, and specifically how members of the OPP communicate with each other, and other law enforcement agencies. The ministry argues that disclosure of police codes could jeopardize the security of law enforcement systems, and the safety of the OPP staff identified by them. The ministry relies upon an established body of IPC jurisprudence, such as Order PO-3742, that have upheld police codes as being exempt under section 14(1)(l), based on the reasonable expectation of harm were they to be disclosed.

Representations of the appellant

[86] The appellant states that he is not interested in accessing police codes contained in the records, but he does not agree that the ministry has properly withheld information under section 14(1)(l). The appellant also states that the ministry has not

³³ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

³⁴ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

³⁵ Orders MO-2363 and PO-2435.

³⁶ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

³⁷ I will refer to these collectively as “police codes” in this order.

provided detailed evidence to support the harm that could result from disclosure of this information.

Analysis and findings

[87] Previous IPC orders,³⁸ including Order PO-3742, which the ministry references, have held that police operational codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release. I agree with and adopt this reasoning in this appeal. Based on my review of the records, with two exceptions, I am satisfied that the ministry has properly identified the police codes contained in the records, and I find they are exempt under section 49(a) read with section 14(1)(l) of the *Act*.

[88] The ministry also withheld information on pages 2 and 24 under section 14(1)(l). As stated above, the ministry states that it has only applied the section 14(1)(l) exemption to police codes. From my review of pages 2 and 24, I find that some of the information the ministry has withheld on those two pages does not contain police codes. Therefore, I find that the section 14(1)(l) exemption does not apply to the information withheld on pages 2 and 24. Since I have found that no exemptions apply to some of the information the ministry has withheld on pages 2 and 24 of the records, and the ministry has made no further alternative exemption claim for this information, I order the ministry to disclose it to the appellant.

Issue F. Did the ministry exercise its discretion under sections 49(a) and 49(b), as the case may be? If so, should I uphold the exercise of discretion?

[89] The sections 49(a) and (b) exemptions are discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, I may determine whether the institution failed to do so.

[90] In addition, I may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[91] In either case, I may send the matter back to the institution for an exercise of discretion based on proper considerations.³⁹ I cannot, however, substitute my own

³⁸ Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO-2409.

³⁹ Order MO-1573.

discretion for that of the institution.⁴⁰

[92] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:⁴¹

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

Representations of the ministry

[93] The ministry submits it has acted appropriately in exercising its discretion to not release personal and law enforcement information contained in the records at issue. The ministry submits that it has acted in accordance with its usual long-standing practice, including withholding highly sensitive personal information belonging to affected parties collected during law enforcement investigations, and that this practice

⁴⁰ Section 54(2).

⁴¹ Orders P-344 and MO-1573.

and the interests of these parties has predominantly guided its decision-making.

[94] The ministry submits that it also provided the appellant with as much information as possible, while withholding personal information about affected parties, law enforcement information, and non-responsive information. The ministry submits that in so doing it has achieved an appropriate balance consistent with the principles of the *Act*.

Representations of the appellant

[95] The appellant's representations do not specifically address the ministry's exercise of discretion, but he alleges that the ministry has improperly applied the exemptions to withhold information that he is entitled to access.

Analysis and findings

[96] After considering the representations of the parties, and the circumstances of this appeal, I find that the ministry did not err in its exercise of discretion with respect to its decision to deny access to the withheld information under sections 49(a) and 49(b) of the *Act*.

[97] I am satisfied that the ministry considered relevant factors, and did not consider irrelevant factors in the exercise of discretion. In particular, it is evident that the ministry considered the fact that the records contain the appellant's own personal information, and I am satisfied that the ministry provided him with access to as much information as possible while protecting the privacy of the other individuals whose information is contained in the records.

[98] Accordingly, I find that the ministry exercised its discretion in an appropriate manner in this appeal, and I uphold it.

ORDER:

1. I order the ministry to disclose portions of pages 2 and 24 of the records to the appellant by **November 29, 2022** but not before **November 24, 2022**. I have identified the portions that the ministry must disclose by highlighting them on the copy of the records provided to the ministry with this order.
2. I otherwise uphold the ministry's access decision.
3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed upon request.

Original Signed by: _____
Anna Truong
Adjudicator

October 24, 2022 _____