Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4283

Appeal MA19-00730

Strathroy-Caradoc Police Service

November 24, 2022

Summary: The appellants are the parents of a child whose tragic death was the subject of investigation by the Strathroy-Caradoc Police Service (the police) and the Ontario Provincial Police (OPP). Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the appellants made a request to the police for access to records to relating to a "decision to cease" the investigation into their child's death. The police denied the appellants' access request, initially on the ground there was (at the time) an ongoing law enforcement investigation. Some time after the appellants appealed the police's decision to the IPC, the police and the OPP arrested and charged an individual in connection with the child's death. Based on this development, the police now assert that any responsive records are excluded from the *Act*, under section 52(2.1), because they relate to the ongoing prosecution of the charged individual.

At a later stage of the inquiry, the police clarified that there never was a "decision to cease" the investigation. The police released some records to the appellants in an attempt to demonstrate this. The appellants challenged both the police's claim that responsive records are excluded under section 52(2.1), and that there exist no additional records about a decision to cease the investigation. In this order, the adjudicator finds that records responsive to the appellants' request (which would include any records concerning a "decision to cease" the investigation) are excluded from the *Act* because of their connection to an ongoing prosecution. She dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 17 and 52(2.1).

Orders and Investigation Reports Considered: Orders PO-3999, MO-3847-I, MO-3890-F, MO-3122, and PO-4287.

OVERVIEW:

[1] The appellants are the parents of a child whose tragic death was the subject of investigation by the Strathroy-Caradoc Police Service (the police) and the Ontario Provincial Police (OPP). Since their child's death, the appellants have made a number of access requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) and its provincial counterpart (the *Freedom of Information and Protection of Privacy Act*), in an attempt to obtain information about the investigation. Further below, I discuss some of these requests, and the resulting appeals filed by the appellants to the Information and Privacy Commissioner of Ontario (IPC). This order concerns the appellants' appeal to the IPC in respect of their request to the police under the *Act* for records relating to a "decision to cease" the investigation into the death of their child.

[2] The police denied the appellants' access request, initially on the ground there was (at the time) an ongoing law enforcement investigation being conducted by the OPP, which claim the appellants disputed. Some time later, the police and the OPP arrested and charged an individual in connection with the child's death. Based on this development, the police amended their access decision, asserting that any responsive records fall within the exclusion at section 52(2.1) of the *Act* for records relating to an ongoing prosecution. This remains the police's position.

[3] At a later stage of the IPC's inquiry into this appeal, the police clarified that there was never a "decision to cease" the investigation into the death of the appellants' child. Instead, the police state, for various reasons that I will describe further below, the investigation continued under the management of the OPP. In an effort to demonstrate this to the appellants, the police partially released[1] to the appellants some records documenting a meeting between the OPP and members of the police regarding the transfer of the investigation to the OPP. The police maintain that there are no other records (including any that are not excluded from the *Act*) that are responsive to the appellants' request for records concerning a "decision to cease" the police investigation into their child's death.

[4] The appellants challenge the police's claim that records responsive to their access request are excluded from the scope of the *Act*. They also believe there are additional records of the meeting between the OPP and the police concerning the investigation, and that the police have not demonstrated reasonable efforts to locate these records.

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[1] As I explain further below, it is the police's position that these records, too, are subject to the section 52(2.1) exclusion; it is therefore the police's position that these releases occurred outside the *Act*.

[5] In this order, I find that records responsive to the appellants' access request (including any additional records of the meeting, if they exist) are excluded from the scope of the *Act* under section 52(2.1). As a result, there is no right of access to them under the *Act*. I dismiss the appeal on this basis.

[6] Below I set out the reasons for my finding. Before I do, I will provide some necessary context for this appeal and several other appeals filed by the appellants concerning the investigation into their child's death.

The access request and the police's decision giving rise to this appeal

[7] This appeal is one of three active appeals that the appellants filed with the IPC.[2] A fourth appeal was resolved by way of Order PO-4287, which I issued on August 10, 2022. There are also 10 previous appeals that were resolved by way of IPC orders that are currently the subject of judicial review applications. I will describe the current and previous appeals in more detail below.

[8] This appeal arises from the appellants' September 2019 request to the police under the *Act* for information relating to a "decision to cease" the investigation into their child's death. Specifically, the appellants sought the following:

> … all documentation, as well as officers involved in the decision to cease the ongoing law enforcement manslaughter investigation into [the appellants' son]. …
>
> In summary […] all records in the care and control of the [police] relating to and/or information leading to including but not limited to the officers involved, dates, and reasons for the decision to cease the ongoing law enforcement manslaughter investigation by [the police] into [the appellants' son].

[9] In response, in October and December 2019, the police issued decision letters denying the appellants' access request in full. One of their grounds for denying the request was their view that it was a duplication of a previous request the appellants had made in November 2017. Consistent with their decision on the appellants' November 2017 request, the police denied the appellants' September 2019 request (the request at issue in this appeal) on the basis of the discretionary exemptions from the right of access at sections 8(1)(a) (law enforcement matter) and 8(1)(b) (law enforcement investigation) of the *Act*. These exemptions require that the applicable law enforcement matter or investigation be "ongoing." It was the police's assertion, at the time of their October and December 2019 decisions, that the death investigation was ongoing.

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[2] The appellants also have an active complaint against a hospital, filed under the *Personal Health Information Protection Act, 2004*, relating to the same underlying facts. I will not address that complaint in this order.

[10] The appellants appealed the police's denial of their September 2019 request to the IPC, and this appeal file (Appeal MA19-00730) was opened. Under the *Act*'s provincial equivalent, the appellants also appealed to the IPC three decisions made by another institution, the Ministry of the Solicitor General (the ministry), in respect of three related access requests they had made to the ministry. In this order, I will refer to the four separate but related appeals (namely, this appeal against the police, and the three related appeals against the ministry) as the "2019 appeals." I will provide more detail about the 2019 appeals below. Generally speaking, they all concern records relating to the investigation into the death of the appellants' child.

[11] After attempts at mediation did not result in the settlement of the issues, the four 2019 appeals were moved to the adjudication stage of the IPC appeal process.

Adjudication of Appeal MA19-00730

[12] An IPC adjudicator initially conducted a joint inquiry into the three related 2019 appeals against the ministry. The three appeals against the ministry involve records that, broadly speaking, concern allegations of misconduct in relation to the death investigation.[3] The three appeals were then transferred to another IPC adjudicator. The same adjudicator was also assigned this appeal (Appeal MA19-00730) when it reached the adjudication stage.

[13] In January 2021, that adjudicator decided to place all four 2019 appeals (including this appeal) on hold because of potential overlap between an issue to be decided in the 2019 appeals and matters currently before the Divisional Court on the appellants' applications for judicial review of two orders of the IPC.

[14] Specifically, in IPC Order PO-3999 (issued in October 2019), the IPC disposed of five previous appeals filed by the appellants against the ministry. In IPC Orders MO-3847- I (issued in October 2019) and MO-3890-F (issued in January 2020), the IPC disposed of five previous appeals filed by the appellants against the police.

[15] Orders PO-3999, MO-3847-I, and MO-3890-F are currently the subject of judicial review applications brought by the appellants to the Divisional Court.

[16] In her letter to the parties explaining her decision to place the four 2019 appeals on hold, the adjudicator observed that a common issue arising in both the judicial review applications and the four 2019 appeals is the institutions' reliance on certain law

[3] The three appeals against the ministry are Appeals PA19-00059, PA19-00060, and PA19-000099. Appeal PA19-00059 concerns records relating to an investigation into the appellants' allegations of breach of trust by an officer involved in the death investigation. Appeal PA19-00099 concerns records created by an officer of the OPP's Professional Standards Bureau in connection with the appellants' allegations of employee misconduct by certain other officers involved in the death investigation. Appeal PA19-00060, which was resolved by way of Order PO-4287, concerned records relating to the appellants' interactions with two OPP victim liaison officers in relation to the death investigation.

enforcement exemptions in the *Act* and in the *Act*'s provincial counterpart.[4] Given this, and the overlap in the parties and in some of the records at issue in the four 2019 appeals and the three above-noted IPC orders, the adjudicator decided to place the four 2019 appeals on hold pending the court's decisions on the judicial review applications.

[17] The four 2019 appeals were later reassigned to me as the new adjudicator.

[18] After these files were transferred to me, there were some significant developments with consequences for the four 2019 appeals.

[19] On June 23, 2021, the OPP announced that the OPP and the police had arrested and criminally charged an individual following their joint investigation into the death of the appellants' child. The ministry later confirmed to the IPC that the investigation into this matter was concluded.

[20] In view of the above developments, I asked the police to consider issuing a revised decision to the appellants, taking into account the changed circumstances since their October and December 2019 decisions on the appellants' current access request.

[21] The police issued a revised decision on November 8, 2021. In this decision, the police confirm that the investigation is now complete and that criminal charges have been laid against an individual. However, the police maintain their decision to deny access to responsive records. The police now rely on section 52(2.1) of the *Act*, which excludes from the scope of the *Act* records relating to a prosecution where proceedings have not been completed. The police maintain that the prosecution of the individual charged in the child's death is ongoing.

[22] The appellants confirmed receipt of the police's revised decision, and their interest in pursuing this appeal.

[23] As a result of these developments, I decided to remove the hold on this appeal, and to conduct an inquiry into this matter. Initially, I asked the parties to address the police's new claim that the requested records fall outside the scope of the *Act* by virtue of the exclusion at section 52(2.1) of the *Act*.

[24] Later during the inquiry, the police clarified that "there was never a decision made by the [police] to 'cease' the investigation as alleged by the appellants." The police partially released two records to the appellants in support of their statement. They are: an email chain between members of the police and the OPP in advance of a meeting to discuss the transfer of the investigation to the OPP; and an excerpt from the notebook entry of the deputy chief of the police from the day of the meeting. The appellants confirmed during the inquiry that they do not seek access to the small bits of

[4] In the context of this appeal, this issue arises because of the police's (initial) reliance on certain law enforcement exemptions at section 8(1) of the *Act* to withhold responsive records.

information the police withheld from the records. In other words, the police's severances to these records are not at issue in the appeal. However, the appellants continue to believe that there exist additional records of the meeting between the police and the OPP that the police have not identified, and that are subject (i.e., not excluded from) to the *Act*.

[25] During the inquiry, I sought and received representations from the parties on all relevant issues raised by the appeal, including the application of section 52(2.1) and, for any responsive records not subject to section 52(2.1), the reasonableness of the police's search efforts. The parties' representations were exchanged in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[26] In this order, I find that any and all records reasonably related to the appellants' access request—which would include any additional records of the meeting, if they exist— are excluded from the scope of the *Act* by virtue of section 52(2.1). On this basis, I dismiss the appeal.

RECORDS:

[27] The records at issue are those responsive to the appellants' request for all documentation and records relating to a "decision to cease the ongoing law enforcement manslaughter investigation by [the police]" into the death of their child.

[28] The police did not provide the IPC with responsive records during the appeal. However, as I explain below, I have been able to decide the issues in this appeal in consideration of all the materials before me, including the evidence of the parties.

DISCUSSION:

Does the section 52(2.1) exclusion for records relating to a prosecution apply to the records at issue?

[29] For the reasons that follow, I conclude that records reasonably related to the appellants' access request are excluded from the *Act* by virtue of section 52(2.1).

[30] Section 52(2.1) excludes from the scope of the *Act* records relating to an ongoing prosecution. As a result, the *Act*'s access scheme does not apply to those records. This section states:

> This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[31] The purposes of section 52(2.1) include maintaining the integrity of the criminal justice system, ensuring that the rights of the accused and the Crown to a fair trial are

not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the sharing and publication of records relating to an ongoing prosecution.[5]

[32] The term "prosecution" in section 52(2.1) means proceedings in respect of a criminal or quasi-criminal charge brought under an Act of Ontario or Canada.

[33] The phrase "relating to" in section 52(2.1) means there must be "some connection" between the records and the case to be made by the prosecuting authority.[6]

[34] The phrase "in respect of" requires some connection between "a proceeding" and "a prosecution."[7] All proceedings in respect of the prosecution have been completed only after any relevant appeal periods have expired. Whether a prosecution has been "completed" depends on the facts of each specific case.[8]

[35] It is not in dispute that a charge has been laid under the *Criminal Code* against an individual in connection with the death of the appellants' child. It is not in dispute that the proceedings in connection with this charge qualify as a "prosecution" within the meaning of section 52(2.1). And it is not in dispute that this prosecution is ongoing: The charge was laid in June 2021, with a trial date to be set.

[36] However, it is the appellants' assertion that records responsive to their request are not excluded from the *Act* because they are not records "relating to" that prosecution within the meaning of section 52(2.1). Instead, the appellants say, the records they seek are administrative records that will not be used in the prosecution because they have no probative value. The appellants explain that they seek records relating to an administrative decision made by police supervisors to cease the investigation into their child's death; the appellants want to understand why the police made this decision.

[37] As noted above, the police clarified during the inquiry process that there never was a "decision to cease" the police investigation. Rather, the police say, in March 2018, for various reasons that I describe further below, the OPP and the police together decided that the investigation would continue under the management of the OPP without the involvement of any specifically assigned members of the police; however, a police liaison remained assigned to the investigation. As a result, and as I discuss in more detail below, I understand the police's position to be that there simply do not exist records relating to a "decision to cease" the police investigation (i.e., because

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[5] *Ministry of Attorney General and Toronto Star*, 2010 ONSC 991 (CanLII) (*Toronto Star*).
[6] *Toronto Star,* cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police),* 2003 SCC 8 (CanLII), [2003] 1 SCR 66 at para 25, and Order MO-3919- I.
[7] *Toronto Star*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, cited above, at para 25.
[8] Order PO-2703.

there never was such a decision made).

[38] At the same time, in their initial responses to the appellants' access request, the police addressed records relating more generally to "the law enforcement manslaughter investigation that was conducted by" the police. (This is the language used by the police in their October and November 2019 decision letters to the appellants.) In other words, the police initially interpreted the appellants' access request in a broad manner, to encompass records relating more broadly to the police's investigation into the death of the appellants' child, and not merely any records concerning a "decision to cease" the police investigation—which latter records, the police now state, do not exist.

[39] I understand that the police's initial access decisions may have contributed to some early confusion about the police's position in this appeal. Specifically, it was not evident to the appellants (nor to me) until later in the inquiry process that the police deny there was any "decision to cease" the police investigation into the child's death. However, I find no fault in the police's having given the appellants' request a large and liberal interpretation at the outset. For ease of reference I reproduce the appellants' request again here:

> … all documentation, as well as officers involved in the decision to cease the ongoing law enforcement manslaughter investigation into [the appellants' son]. …
>
> In summary […] all records in the care and control of the [police] relating to and/or information leading to including but not limited to the officers involved, dates, and reasons for the decision to cease the ongoing law enforcement manslaughter investigation by [the police] into [the appellants' son].

[40] Based on their broad reading of the appellants' request (i.e., to encompass all records relating to the police's investigation), the police denied the request, initially on the ground that the records at issue concerned a then-active investigation, and later (after the conclusion of that investigation) on the ground the records relate to an ongoing prosecution. It remains the police's position that records responsive to the appellants' request, read in this broad manner, are excluded from the *Act* because of their connection to the ongoing prosecution.

[41] Based on the liberal interpretation applied by the police, I will accept for the purposes of this appeal that records relating generally to the police investigation into the death of the appellants' child "reasonably relate" to the access request at issue in this appeal. I find, for the reasons that follow, that such records are excluded from the *Act* by virtue of section 52(2.1).

[42] For the section 52(2.1) exclusion to apply, there must be "some connection" between the records at issue and the prosecution in question. I am satisfied that this

connection exists between the current prosecution of the individual charged with the child's death and records relating broadly to the police investigation into this matter. Such records would include any records that may exist relating to a "decision to cease" the police investigation.

[43] The appellants dispute that there exists any such connection between the records they seek and the prosecution. They characterize the records they seek as administrative records whose probative value in the prosecution the police have failed to demonstrate. In this way, they seek to distinguish the records they seek (containing only "administrative" information) from records containing evidentiary information that the Crown will rely upon at trial—the latter records, the appellants agree, would be subject to the exclusion at section 52(2.1). In support of their position, they cite Order MO-3122.

[44] Order MO-3122 concerned a request under the *Act* to a police board for the costs, including overtime hours, incurred in a 27-hour standoff that led to an arrest and charges under the *Criminal Code*. In that order, the IPC adjudicator rejected the police board's claim that the responsive records were records "relating to" the prosecution of the arrested individual, and so found that the prosecution exclusion did not apply to those records.

[45] The adjudicator in Order MO-3122 described the responsive records in that case as administrative records generated by the police board's human resources and fleet/property units, and she found that the police board had not provided sufficient evidence to establish the necessary degree of connection ("some connection") between the records and the prosecution. The adjudicator in that order described some ways in which that connection could be shown: for example, where records are shown to have been prepared for the purposes of the prosecution, to form part of the prosecution file, or to have probative value in the prosecution. On the facts before her, however, the adjudicator concluded that she had not been provided with evidence to support any such findings.

[46] The appellants cited this same order (Order MO-3122) in their arguments to me in a different appeal, one of their three 2019 appeals against the ministry. That appeal against the ministry concerned the application of the identical exclusion (relating to an ongoing prosecution) in the *Act*'s provincial counterpart.[9] In the order resolving that appeal (Order PO-4287), I addressed the appellants' proposal that Order MO-3122 established certain additional requirements for the application of the prosecution exclusion: in particular, their claims that in order to meet the test of "some connection" between records at issue and a prosecution, an institution must provide proof that the records were prepared for the purpose of prosecution, or that they form part of the prosecution file, or that they have probative value in the prosecution.

[9] Section 65(5.2) of the *Freedom of Information and Protection of Privacy Act*, which contains identical wording to section 52(2.1) of the *Act*.

[47] In Order PO-4287, I did not accept that Order MO-3122 establishes such a test. I observed that the adjudicator in Order MO-3122 had merely been describing some of the types of evidence that the institution in that case could have presented, but did not present, in support of its exclusion claim. The adjudicator in Order MO-3122 found that in the absence of this type of evidence, or other evidence to support the institution's claim, she could not be satisfied that there existed "some connection" between the records at issue in that appeal and the prosecution in question there.

[48] By contrast, in the case now before me, there is evidence to establish "some connection" between the records at issue (being records relating broadly to the police's investigation into the death of the appellants' child) and the prosecution of the individual charged with the death.

[49] First, I do not accept the analogy the appellants ask me to draw between the records at issue in this appeal and the cost breakdowns that were at issue in Order MO-3122. In that case, given the purely administrative nature of the records, the adjudicator could not discern from the records themselves what connection, if any, they would have to the prosecution, and the institution in that case failed to provide other evidence sufficient to establish such a connection. In the appeal before me, the responsive records relate broadly to a police investigation that culminated in the laying of criminal charges against an individual who is now being prosecuted in connection with those charges. Even if a subset of the responsive records could be said to relate to a "decision to cease" the police investigation, I do not agree that such records could be characterized as purely administrative records, akin to those considered in Order MO-3122. Unlike the records at issue there, the responsive records in this appeal, by their very subject matter, are far likelier to have a connection to the prosecution in question.

[50] Second, and most significantly, the police state, and I have no reason to doubt, that the police provided all the records at issue to the OPP, who in turn provided them to the Crown for the purposes of the prosecution. This establishes that, at least at this time, the records are potentially relevant in the prosecution.

[51] The Divisional Court in *Toronto Star* (cited above) made clear that the prosecution exclusion is not limited to materials in the Crown or prosecution brief, and that, particularly in the case of a complex prosecution, it may be difficult to accurately state what records are within or outside the brief. Documents that are not part of the Crown brief may become part of the Crown brief later, and prosecution materials may relate or become integral to the prosecution over the course of the proceedings.[10] The police are not required to establish that the records will in fact be relied upon by the Crown in the prosecution, or to quantify the probative value of the records, in order to establish the application of the exclusion in these circumstances. However, it is still necessary to establish "some connection" between the records at issue and the claimed exclusion that is relevant to the statutory scheme and objects understood in their

[10] *Toronto Star*, cited above, at paras 55-56.

proper context.[11] I am satisfied that there exists this degree of connection here.

[52] For these reasons, I find that the exclusion at section 52(2.1) of the *Act* applies to records responsive to the appellants' access request, broadly read. Such records would include any records relating to a "decision to cease" the police investigation. As a result, the *Act* does not apply to the records.

[53] Because of my finding, it is not necessary to address some of the additional grounds raised by the appellants in support of their pursuit of the records. These submissions, including on the presence of their own personal information in the records, the case for disclosure on compassionate grounds, and the possibility of severance of the records, are premised on their having a right of access to the records under the *Act.* I have found above that the *Act* does not apply in the circumstances.

[54] I do wish, however, to acknowledge here the parties' positions on a significant point of contention between them, which each party addressed with care during the inquiry. It relates to the question of whether there was, in March 2018, a "decision to cease" the investigation into the death of the appellants' child.

[55] During the inquiry in this appeal, the police clarified that there was never was a "decision to cease" the police investigation. Instead, they say, the police and the OPP decided in March 2018 that the investigation (which had been jointly conducted by the OPP and the police up to that point) would continue under the management of the OPP without the involvement of any specifically assigned members of the police; however, a police liaison would remain assigned to the investigation.

[56] The police explain that there were a number of factors involved in this decision. Among others were the appellants' complaint to the Office of the Independent Police Review Director (OIPRD) and a civil action they had commenced against the police and several police officers in connection with the police investigation. The police say that the continued involvement in the joint investigation of the particular police officers named in the appellants' OIPRD complaint and civil action became untenable, and, because of the relatively small size of the police force, it was difficult to replace these officers from within the force. By contrast, given its size, the OPP had the resources to assign additional OPP officers to the investigation while avoiding potential conflicts as a result of the OIPRD complaint and civil action.

[57] In addition, around March 2018, the OPP Detective Inspector who had shared (with a member of the police) primary case management duties in the joint investigation obtained a new position within the OPP. This led to a change of personnel, with the assignment of a new OPP Detective Inspector to the case manager role. At the same time, the police staff sergeant who had shared primary case management duties excused himself from his role, given the fact he was one of the parties named in the

[11] *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (CanLII), at para 39.

civil action brought by the appellants.

[58] For these reasons and others, the police state, in March 2018 the newly assigned OPP case manager requested a meeting with the police chief and deputy chief for the purpose of introductions. That meeting occurred on March 26, 2018. At that meeting, the police state, the OPP and police jointly decided that the police "would no longer have any assigned investigators on the Case Management team. Rather, the OPP would assume that responsibility and the [police] would remain available to assist with any tasks that might be assigned to it by the OPP and to assist with administrative record compliance issues." To facilitate any such requests, the police deputy chief was designated as the police liaison for the investigation.

[59] It is thus the police's position that there never was a "decision to cease" the police investigation into the death of the appellants' child. Given this, despite their reliance on the exclusion at section 52(2.1) for records broadly related to the appellants' access request, I understand the police to be asserting that there simply do not exist records of the nature described by the appellants (i.e., because no such decision was ever made). To support their position, during the inquiry, the police partially released to the appellants two records relating to the March 26, 2018 meeting between members of the OPP and the police.[12] In providing these records to the appellants, the police were careful to state that they were releasing the records despite their position that the records are excluded from the scope of *Act*, and that they were doing so on compassionate grounds and in an effort to resolve the appeal. The police maintain that there exist no other records reasonably related to any "decision to cease" the investigation.

[60] The appellants made a number of arguments in support of their view that there must exist additional records of the March 26, 2018 meeting, including, specifically, additional notes taken by meeting attendees. In general, they submit that there are procedural,[13] ethical, and legal[14] obligations on the part of the police that give rise to a reasonable basis to believe there must be additional records of this meeting. The appellants also challenged the police's evidence regarding the reasonableness of their

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[12] They are: an email chain between members of the police and the newly assigned OPP case manager for the investigation, arranging for the March 26, 2018 meeting; and an excerpt from the notebook entry of the police deputy chief from the date of the meeting. As noted above, the appellants do not challenge the police's severances to those records.

[13] The appellants cite portions of the 2017 Ontario Major Case Management Manual, a ministry document that sets out standards for the management and operation of major case investigations by police forces. The appellants observe that the manual indicates that one of the functions and responsibilities of a major case manager is a duty to "maintain thorough and complete investigative notes."

[14] The appellants cite *Wood v. Schaeffer*, 2013 SCC 71 (CanLII), in which the Supreme Court of Canada considered whether the legislative scheme that then governed investigations of the Ontario Special Investigations Unit entitled officers involved in those investigations to speak with counsel before completing their notes. They also cite *R. v. B.(M.)*, 2006 ONCJ 526 (CanLII), in which a judge commented on the adequacy of an officer's notetaking in her decision on a defendant's application under the *Canadian Charter of Rights and Freedom* to stay criminal charges laid against him.

search for such records, among other reasons because this evidence was provided in the form of a letter rather than by sworn affidavit (as I had requested in my Notice of Inquiry to the police).[15]

[61] During the inquiry, I had asked the parties to address the reasonableness of the police's search for responsive records in the event I were to find the *Act* applies to them. The parties devoted significant time and effort to address the matter of records concerning the March 26, 2018 meeting, after this became a point of contention between them. However, any such records, if they exist, are excluded from the scope of the *Act* for the reasons set out above. Given this, I make no finding about the reasonableness of the police's search for such records.

[62] Before I conclude, I want to acknowledge the appellants' deeply personal representations about their desire for records about matters concerning their child. As I noted in Order PO-4287, the exclusion for records relating to an ongoing prosecution is a time-limited exclusion. Although the records the appellants seek are not now subject to the *Act*, the exclusion ceases to apply when all proceedings in respect of the prosecution have been completed. The appellants may wish to pursue their access rights under the *Act* at that time.

ORDER:

I dismiss the appeal.

Original Signed By: November 24, 2022
Jenny Ryu
Adjudicator

[15] In correspondence to the parties, I noted that the IPC, as an administrative tribunal, is not bound by the traditional rules of evidence. It is generally open to tribunal adjudicators to rely on unsworn evidence, hearsay evidence, and opinions, and to accord such evidence its proper weight: *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC) at paragraph 60. See also IPC Orders MO-4003-R [application for judicial review dismissed in *Brown v. Information and Privacy Commissioner of Ontario*, 2021 ONSC 8081 (CanLII)], PO-2242, and MO-3404.