Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4336

Appeal PA21-00107

Ministry of the Solicitor General

January 18, 2023

Summary: The appellant submitted a request to the ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for Ontario Provincial Police records relating to herself. The ministry denied access to the records in part, relying on section 49(b) (personal privacy) and section 49(a) (discretion to refuse access to requester's own personal information) read with section 14(1)(a) (law enforcement matter), 14(1)(c) (reveal investigative techniques and procedures) and 14(1)(l) (facilitate commission of an unlawful act) of the *Act*. The ministry also denied access to information it deemed is not responsive to the request.

In this order, the adjudicator upholds the ministry's decisions in part. She finds that some of the information withheld under sections 49(a) and 49(b) is not exempt and orders the ministry to disclose it to the appellant.

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

Orders and Investigation Reports Considered: Orders PO-3742, PO-3273, PO-2291, PO-3013, MO-1786, PO-3742 and MO-3932.

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received a request, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for all information regarding the requester dating back to December 22, 2016, including information from specific Ontario Provincial Police (OPP) detachments and a municipal

police force.

[2] The ministry issued a decision granting partial access to OPP reports regarding the requester. The ministry relied on the following discretionary exemptions to withhold access to the remaining information: section 49(a) (discretion to refuse requester's own information), read with sections 14(1)(a) (law enforcement matter), 14(1)(c) (reveal investigative techniques and procedures) and 14(1)(l) (facilitate commission of an unlawful act), and section 49(b) (personal privacy). The ministry also withheld some information on the basis that it is not responsive to the request.[1]

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

[4] During mediation, the appellant advised the mediator that she also sought access to police officers' hand-written notes in relation to her request. The ministry conducted a search and issued a supplementary decision granting partial access to OPP officers' notebook entries. The remaining information was denied under sections 49(a), 14(1)(a), 14(1)(l), and 49(b) of the *Act*.[2] The ministry also withheld some information on the basis that it was non-responsive.[3]

[5] The appellant confirmed with the mediator that she is seeking access to all of the information that was denied to her in both the occurrence reports and the notebook entries, including the information that was marked as not responsive.

[6] As the parties did not reach a mediated resolution, the appeal was transferred to the adjudication stage of the appeal process.

[7] The adjudicator originally assigned to this appeal conducted an inquiry in which she sought and received representations from the parties. The ministry submitted its representations, which were shared in accordance with the IPC's *Practice Direction 7*. The appellant then submitted her representations in response.

[8] The file was assigned to me to continue the adjudication of the appeal.

[9] After reviewing the records, and the representations of the ministry and the appellant, I decided to notify six additional individuals whose interests might be affected by disclosure of the information at issue that relates to them (the affected parties). One

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[1] In its decision, the ministry noted that it had withheld information such as computer-generated text associated with the printing of reports, on the basis of non-responsiveness.

[2] The supplementary decision indicated that the ministry also relied on section 14(1)(c) of the *Act*. It subsequently confirmed with the mediator that it does not rely on section 14(1)(c) to deny access to any of the records from the supplementary decision. The ministry also confirmed that it is applying section 49(b) to pages 214 and 215 of OPP officers' notebook entries.

[3] In its supplementary decision, the ministry noted that some information, such as references to other law enforcement matters and computer-generated text associated with the printing of the reports, had been removed from the records as it is not responsive to the request.

of the affected parties responded and advised that they do not consent to the disclosure of their information to the appellant. The remaining affected parties did not respond.

[10] In this order, I uphold the ministry's decisions in part. I order the ministry to disclose to the appellant the personal information that relates only to her, and other information that is not exempt under section 49(b). Further, I order the ministry to disclose information that is not exempt under section 49(a). I otherwise uphold the ministry's severances under section 49(a) and 49(b), and on the basis of their non-responsiveness to the request.

RECORDS:

[11] The information at issue consists of the undisclosed portions of 89 pages of OPP occurrence summaries and general reports,[4] and 129 pages of officers' notebook entries.

ISSUES:

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

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

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

D. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information), read with sections 14(1)(a) (law enforcement matter), 14(1)(c) (reveal investigative techniques and procedures) or 14(1)(l) (facilitate commission of an unlawful act) of the *Act,* apply to the information at issue?

E. Did the ministry exercise its discretion under sections 49(a) and 49(b)? If so, should I uphold the exercise of discretion?

DISCUSSION:

[12] I have reviewed and considered all of the parties' representations, and I summarize below the portions that are most relevant to the issues before me.

[4] I refer to the OPP occurrence summaries and general reports as "reports" throughout the order.

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

[13] The ministry withheld some information in the records on the basis that it is not responsive to the request. For the following reasons, I agree that this information is not responsive.

[14] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
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> > (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
> >
> > (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) 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).

[15] To be considered responsive to the request, records must "reasonably relate" to the request.[5] 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.[6]

Representations

[16] The ministry submits that the appellant provided enough detail in her request to identify responsive records. The ministry notes that the appellant provided her name, address and date of birth, along with her request for OPP records relating to herself dating back to December 22, 2016. The ministry submits that the request was clear and did not require clarification, and therefore, it responded to the request literally.

[17] The ministry notes that it explained how it was responding to the request in its decision letters. In its decision letters, the ministry stated that it removed some information from the records on the basis that it is non-responsive, referring to

[5] Orders P-880 and PO-2661.
[6] Orders P-134 and P-880.

"computer generated text associated with the printing of the reports," and "references to other law enforcement matters."

[18] While the appellant did not address this issue in her representations, as noted above she seeks access to the portions of the records that were withheld as non-responsive to the request.

Analysis and findings

[19] I agree with the ministry that the scope of the request was sufficiently clear, and that the ministry properly interpreted it. Based on my review of the records and the ministry's representations, I find that the ministry appropriately withheld portions of the records on the basis that they are not responsive to the request. Many of the police officers' notes include references to other police matters entirely unrelated to the appellant's request, and the reports feature computer-generated information related to the printing of those reports. I agree that neither type of information reasonably relates to the request. Accordingly, I uphold the ministry's severances of this non-responsive information from the records at issue.

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

[20] As noted above, the ministry withheld information on the basis that it is exempt from disclosure under section 49(b) or under section 49(a), read with the law enforcement exemptions in section 14(1)(a), (c) and (l). In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information," and if so, whose. As I explain below, I find that all the records contain the personal information of both the appellant and other individuals.

[21] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Recorded information is information recorded in any format, such as paper records and electronic records.[7]

[22] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[8] See also sections 2(3) and 2(4), which state:

> (3) 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.

[7] See the definition of "record" in section 2(1).
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[23] 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.[9]

[24] 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 with other information.[10]

[25] Section 2(1) of the *Act* gives a list of examples of personal information:

> "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,
>
> (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,
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> (c) any identifying number, symbol or other particular assigned to the individual,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (e) the personal opinions or views of the individual except if they relate to another individual,
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> (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

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[9] Orders P-1409, R-980015, PO-2225 and MO-2344.
[10] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (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.

[26] 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."[11]

Representations

[27] The ministry says that it withheld the names, dates of birth, telephone numbers and home addresses of a number of individuals, as well as the fact that these individuals are listed in the records as being witnesses, complainants, victims or otherwise involved in OPP investigations. The ministry's position is that all of this is personal information of individuals other than the appellant.

[28] The ministry adds that it also withheld statements provided by these individuals, which, due to their detailed nature would likely reveal their identities, opinions and actions, collected as part of OPP investigations, and as such are personal information

[29] The ministry submits that as this information appears in records related to law enforcement investigations, severing certain identifying information may not serve to remove personal information from the records.[12] The ministry argues in favour of an expansive definition of personal information, citing Order P-230, in which former Commissioner Tom Wright wrote:

> I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

[30] The ministry also notes that it withheld the Work Identification Numbers (WIN) of OPP employees known as Computer Assisted Dispatch Operators. The ministry relies on Order PO-3742, which found that WIN numbers, when disclosed along with the corresponding employee's name, would reveal something of a personal nature about the employee.

[31] The appellant submits that the ministry has protected the privacy of other individuals, while inappropriately withholding her own personal information from her. She submits that it is unacceptable to withhold many pages of information about herself.

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[11] Order 11.
[12] The ministry cites Order PO-2955.

Analysis and findings

[32] Based on my review of the records, I find that all of them contain the personal information of the appellant and of other identifiable individuals. In particular, I find that the records contain information about the appellant that fits under paragraphs (a) through (e), (g) and (h) of the definition of that term in section 2(1) and information about other identifiable individuals that fits under paragraphs (a), (c), (d), (e), (g) and (h). I find that the records also contain the professional information of certain individuals as defined under section 2(3), including the six affected parties notified during the appeal process. I further find, however, that some of this information, if disclosed, would reveal something of a personal nature about some of those individuals; as such, it is their personal information.

The appellant

[33] I find that some of the information withheld in the records relates only to the appellant, in particular her identifying information, such as her name, along with her date of birth, address, and similar information. I find this constitutes her personal information under paragraphs (a), (c), (d) and (h) of section 2(1) of the *Act*.

[34] In addition, I find that the appellant's identifying information in the general report on pages 51 and 52, together with descriptions of her interactions with the police contained in this general report are her personal information. I note as well that similar information relating to this incident was already disclosed to the appellant in the accompanying police officers' notes.

[35] The personal privacy exemption in section 49(b) can only apply to personal information of someone other than the requester. As the information described above only relates to the appellant, I find that it cannot be withheld from her under section 49(b).

[36] As the ministry also relies on the section 49(a) exemption for this information, I will consider whether the information that is only the appellant's personal information, is exempt under 49(a) (see Issue D below).

[37] I note that in the general report found at pages 51 and 52, the appellant is referred to by a last name different from her own. I have reviewed this report and the accompanying occurrence summary at page 50, and it is evident that the last name of the other involved person was entered in error in several places. Since the appearance of this person's name reveals that they were involved in the matter, it is their personal information.

Individuals acting in a professional capacity

[38] The ministry has withheld the information of a number of individuals who I find were acting in their professional capacity. These include police officers, as well as the

six affected individuals refered to above. This also includes information contained in a report documenting an incident involving the appellant, the OPP and another police force.

[39] The ministry severed the names of certain police officers involved in various incidents relating to the appellant. This is also the case with the names, titles and contact information of a number of affected parties who I find were acting in a professional capacity. In addition, the ministry severed some of the information contained in the narrative portions of the records that relates to the appellant, as well as to the police officers and affected parties in question.

[40] According to section 2(3) of the *Act*, personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a professional capacity. As noted above, previous IPC orders have established that professional information may still qualify as personal information if it reveals something of a personal nature about the individual. I find that, with some exceptions, the information described above is professional, and not personal. This includes the police officers and professional affected parties' views or opinions about the appellant, including her mental health, which is her personal information under paragraph (g), and descriptions of them fulfilling their professional duties. I note however, that some of this professional information is so intertwined with the personal information of other identifiable individuals not acting in a professional capacity, that it cannot reasonably be severed. In addition, I find that the personal address information relating to an affected party constitutes that individual's personal information, rather than their professional information.

[41] As the personal privacy exemption at section 49(b) does not apply to information that is not personal information, I will consider the ministry's section 49(a) exemption claim for this information (see Issue D below).

[42] After a careful review of the records, however, I find that there is other professional information, the disclosure of which would reveal something of a personal nature about the individuals to whom it relates. This is due to the sensitive and personal aspect of the information, which appears in the context of records documenting interactions with the police. Accordingly, I find that this information is personal information within the definition found in section 2(1).

[43] Finally, I agree with the ministry that the WIN numbers of employees whose names have already been disclosed to the appellant, would reveal something of a personal nature about them. As the ministry notes, this matter is addressed by Adjudicator Steve Faughnan in Order PO-3742, in which he stated:

> I recognize that the information was recorded in the course of the execution of the police employee's professional, rather than their personal, responsibilities. However, I find that disclosure of the WIN

> number, particularly when taken with the employee's name (which has already been disclosed to the appellant) reveals something of a personal nature about the employee. I find that the undisclosed information represents an identifying number that has been assigned to the employee, who is also identified in the record by name. I also note that the number provides a link to other personal information of the employee, i.e., human resources information. Accordingly, I find that the employee number qualifies as the employee's personal information within the meaning of paragraph (c) of the definition.

[44] I agree with and adopt the reasoning of Adjudicator Faughnan in Order PO-3742. I find that disclosure of the WIN numbers in the records would reveal something of a personal nature about the employees in question, and that these are their personal information under paragraph (c) of the definition of personal information in section 2(1).

Other identifiable individuals

[45] I find that the remaining severances are of personal information belonging to identifiable individuals who were not acting in a professional capacity. These include the individuals' names alongside other identifying information as well as their views and opinions of the events in question. Some of this information is so intertwined with the personal information of the appellant that it is not severable. I agree with the ministry that these individuals' information qualifies as their personal information.

[46] As I have found that the records contain the personal information of the appellant mixed with the information of other individuals, I will consider whether the latter is exempt under the personal privacy exemption at section 49(b) under Issue C below.

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

[47] The ministry claims that the section 49(b) personal privacy exemption applies to information in each of the records at issue. 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.

[48] 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 that individual's personal privacy. 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).

[49] 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.[13]

[50] I found above that the records contain the personal information of other individuals, both on its own and intertwined with the appellant's information. I will now address whether section 49(b) applies to this information.

[51] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[52] 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). Based on my review of the records and the parties' representations, I find these exceptions do not apply in the circumstances.

[53] 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 also find that none of the situations described in section 21(4) apply in the circumstances.

[54] 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), I must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[14]

[55] The ministry claims section 49(b) over information in each of the records at issue. It submits that the presumption at section 21(3)(b) and the factor at section 21(2)(f) are applicable in the circumstances. I consider these arguments and the parties' other arguments below.

Section 21(3) - is disclosure presumed to be an unjustified invasion of personal privacy?

[56] 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 submits that the presumption at section 21(3)(b) is applicable in this appeal.

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

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[13] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 49(b).
[14] Order MO-2954.

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

[58] This presumption requires only that there be an investigation into a possible violation of law.[15] So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.[16]

[59] The presumption can apply to different types of investigations, including those relating to by-law enforcement,[17] and enforcement of environmental laws,[18] occupational health and safety laws,[19] or the Ontario *Human Rights Code*.[20]

[60] The presumption does not apply if the records were created after the completion of an investigation into a possible violation of law.[21]

Representations

[61] The ministry submits that it withheld information in the records on the basis that its disclosure would presumptively constitute an unjustified invasion of personal privacy under section 21(3)(b). The ministry's position is that the records in question were created pursuant to law enforcement investigations, and that they document OPP attendance in response to complaints or reported incidents.[22] The ministry submits that the section 21(3)(b) presumption applies regardless of whether charges were laid or not.

[62] The ministry further submits that the presumption at section 21(3)(b) may only be overcome if section 21(4) is applicable or if a finding is made under section 23 that there is a compelling public interest in the disclosure of the personal information. Citing Order PO-3273, the ministry argues that neither of these provisions is applicable to the records at issue.

Analysis and findings

[63] Firstly, I find that Order PO-3273 is not applicable here. I note that the

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[15] Orders P-242 and MO-2235.
[16] The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).
[17] Order MO-2147.
[18] Order PO-1706.
[19] Order PO-2716.
[20] Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.
[21] Orders M-734, M-841, M-1086, PO-1819 and MO-2019.
[22] The ministry cites Orders PO-3273 and PO-3301.

circumstances in that case were different than those in the present appeal, as were the relevant sections and analysis. The appellant in Order PO-3273 had requested records related to his son's death. As he had not requested records related to himself, the mandatory personal privacy exemption at section 21(1) was considered, rather than the discretionary section 49(b) exemption that is being considered here.

[64] In the present circumstances, the records relate to the appellant and the appropriate exemption to consider is section 49(b). The presence of a presumption under section 21(3) is not determinative and I must still consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[23]

[65] Based on my review of the records at issue, the withheld personal information in the majority of the reports and officers' notes at issue was compiled and is identifiable as part of investigations into possible violations of the law. As the ministry notes, section 21(3)(b) applies regardless of whether criminal proceedings or charges followed the investigations in question. I find the presumption applies to the personal information contained in these records and weighs against its disclosure.

[66] I note however, that several records document incidents that led to the appellant's apprehension under the *Mental Health Act*, or during which officers assessed the appellant's well being. Previous IPC decisions have found that the requirements of section 21(3)(b) are not met when the police exercise their authority under the *Mental Health Act.*[24] Based on the information in the records and the documented interactions with the appellant, including her apprehension, I find that section 21(3)(b) does not apply to the withheld personal information in these records.

Section 21(2): Do any factors in section 21(2) help in deciding if disclosure would be an unjustified invasion of personal privacy?

[67] 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.[25] Some of the factors, if established, weigh in favour of disclosure, while others, if established, weigh against disclosure.

[68] 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).[26]

[69] The ministry submits that section 21(2)(f) applies to the records at issue. The appellant's representations do not cite any of the factors listed at section 21(2)(a) to (d)

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[23] Order MO-2954.
[24] Section 14(3)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* is the municipal equivalent of section 21(3)(b) of the *Act*. Orders MO-1384, MO-1428, MO-3063, MO-3465 and MO-3594.
[25] Order P-239.
[26] Order P-99.

that would support disclosure of the personal information in question. I find that the appellant raises an unlisted factor, which is addressed below.

Section 21(2)(f) – highly sensitive

[70] This section 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.[27] For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.[28]

[71] The ministry submits that the disclosure of other individuals' personal information contained in the records could be expected to cause them significant distress, in particular "[i]n the circumstances of the OPP's police investigation of highly sensitive issues relating to the appellant."[29]

[72] The ministry relies on Order P-1618, in which former Assistant Commissioner Tom Mitchinson found that the personal information of "complainants, witnesses or suspects" as part of their contact with the police is "highly sensitive." The ministry submits that the individuals in question were identified as complainants, witnesses or suspects, and that their personal information appears in the context of OPP investigations of highly sensitive issues related to the appellant. The ministry submits that these individuals have a reasonable expectation that their personal information would only be shared in a manner consistent with law enforcement purposes.[30]

[73] I agree with the ministry that the personal information of these individuals could reasonably cause them significant distress based on the context in which their information was collected. Based on the context in which this information was gathered, and based on the fact that some of the individuals in question interacted with the OPP as complainants, witnesses or suspects, I find that section 21(2)(f) applies and assign it significant weight in favour of non-disclosure.

Unlisted factor: inherent fairness

[74] Based on my reading of the appellant's representations, I find that she raises an inherent fairness argument. The appellant submits that her privacy was violated and that a great deal of information about her, including medical information, was shared with others without her permission. She submits that she requested her information for her own safety as well as her child's, after being mistreated by the OPP, the Children's Aid Society (CAS) and situation table members.

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[27] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[28] Order MO-2980.
[29] The ministry cites Order PO-3301.
[30] The ministry cites Order MO-3649.

[75] The ministry explains that a situation table is a "group of front-line service providers, including the police, who meet on an ongoing basis to discuss situations where individuals in a community may be in crisis." As the ministry notes below, most of a record documenting this situation table was withheld from her. I note that this includes the accompanying officers' notes.

[76] Having reviewed the records at issue and considered the circumstances of the appeal, I find there are inherent fairness issues weighing in favour of disclosure of records relating to a situation table. In making this finding, I have considered that the appellant was the subject of this situation table, which led to her apprehension under the *Mental Health Act*.

Weighing the presumption and factors

[77] I have found that inherent fairness, an unlisted factor, favours disclosure of information related to the situation table. On the other hand, I have found that the factor at section 21(2)(f) weighs significantly in favour of non-disclosure, as does the presumption at section 21(3)(b). Weighing the factors and presumption, and balancing the interests of the parties, I find that disclosure of the information at issue would amount to an unjustified invasion of privacy of the affected parties and other identifiable individuals. Although the records relate to the appellant, she has received considerable information and the withheld information is highly sensitive personal information of others. Accordingly, I find that the personal information of identifiable individuals, either intertwined with the appellant's own personal information or on its own, is exempt under section 49(b). This finding is subject to the applicability of the absurd result principle, which I address next.

Absurd result

[78] An institution might not be able to rely on the section 49(b) exemption in cases where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[31]

[79] For example, the "absurd result" principle has been applied when the requester was present when the information was provided to the institution[32] and the information was or is clearly within the requester's knowledge.[33] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[34]

[80] The ministry acknowledges that the appellant may be aware of some of the

[31] Orders M-444 and MO-1323.
[32] Orders M-444 and P-1414.
[33] Orders MO-1196, PO-1679 and MO-1755.
[34] Orders M-757, MO-1323 and MO-1378.

contents of the withheld information, but submits that the absurd result principle does not apply in the circumstances as disclosure would be inconsistent with the purpose of the 49(b) exemption, that is, the protection of other individuals' personal information collected as part of law enforcement investigations. The ministry also notes that it is unclear how much knowledge the appellant has of the contents of the records. The ministry relies on Order PO-2291. The appellant does not address this issue in her representations.

[81] In the present case, I am considering whether the absurd result principle applies to the names of individuals that appear in the appellant's own statements to the OPP. I see no basis for finding that the appellant is already aware of any withheld information other than this information in her own statement.

[82] The information and circumstances in the present appeal are distinct from the witness statements at issue in Order PO-2291, which the ministry relies on. In Order PO- 2291, Adjudicator Frank Devries rejected the application of the absurd result principle in the context of an appeal for access to OPP witness statements relating to the appellant in that case, finding that there was a "particular sensitivity inherent in the records remaining at issue . . .and that disclosure would not be consistent with the fundamental purpose of the *Act*. . .the protection of privacy of individuals."

[83] The appellant in Order PO-2291 argued he had had access to certain witness statements through the Crown disclosure process in criminal proceedings. By contrast, the appellant in the present case provided the information in question herself. Although the records in general are highly sensitive, this is not a case where disclosing the appellant's own statements to her would be inconsistent with the purpose of the section 49(b) exemption. In the circumstances, I find that it would be absurd to withhold the appellant's references to other individuals in her own statements to police, as this is information she provided during the course of her interactions with the OPP. I therefore find that this information is not exempt under section 49(b). I will consider under Issue D below whether it is exempt under section 49(a) as the ministry claims.

Issue D. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information), read with sections 14(1)(a) (law enforcement matter), 14(1)(c) (reveal investigative techniques and procedures) or 14(1)(l) (facilitate commission of an unlawful act) of the *Act,* apply to the information at issue?

[84] I found above that the personal information of identifiable individuals, either intertwined with the appellant's own personal information or on its own, is exempt under 49(b) and need not consider whether it is also exempt under section 49(a). Under Issue E below, I will address whether the ministry properly exercised its discretion in withholding this information.

[85] I will now assess whether the information I found not to be exempt under

section 49(b), is exempt under section 49(a). This includes the appellant's own personal information, information that appears in a professional capacity, and information to which the absurd result principle applies.

[86] As I noted above, section 49 provides some exemptions from the general right of access to one's own personal information.

[87] The ministry has claimed section 49(a) of the *Act* which 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.

[88] 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.[35]

[89] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information. The ministry's exercise of discretion is addressed under Issue E below.

[90] In this case, the ministry relies on section 49(a) read with sections 14(1)(a), 14(1)(c) and 14(1)(l) of the *Act* which read:

> 14 (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (a) interfere with a law enforcement matter;
> >
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[91] The term "law enforcement,"[36] which appears in section 14(1), is defined in section 2(1):

> "law enforcement" means,

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[35] Order M-352.

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

> (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)

[92] The IPC has found that "law enforcement" can include a police investigation into a possible violation of the *Criminal Code,*[37] a children's aid society investigation under the *Child and Family Services Act*;[38] and Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[39]

[93] 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.[40]

[94] However, the exemption does not apply just because a continuing law enforcement matter exists,[41] 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.*[42]

[95] The above exemptions listed in section 14 apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[43] However, they do not have to prove that disclosure will in fact result in harm.

[96] 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.[44]

[97] The ministry submits that it applied section 49(a) read with sections 14(1)(a), (c) and (l) of the *Act*, to protect the integrity of its law enforcement investigations and out

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[37] Orders M-202 and PO-2085.
[38] Order MO-1416.
[39] Order MO-1337-I.
[40] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[41] Order PO-2040 and *Ontario* (*Attorney General*) *v. Fineberg*, cited above.
[42] Orders MO-2363 and PO-2435.
[43] *Merck Frosst Canada Ltd.* v. *Canada* (*Health*), [2012] 1 S.C.R. 23.
[44] *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.

of concern for the safety of the appellant and affected parties. It submits that the records at issue are operational records created during the course of law enforcement investigations or policing activities. The ministry specifies that it is difficult to predict future events in the present case, for example due to the appellant's numerous past interactions with police, including those involving ongoing disputes with affected parties.

[98] The appellant's brief representations on this issue are summarized below.

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

[99] 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.

[100] The ministry applied section 14(1)(l) to various types of information in the majority of the records. The representations, analysis and findings relating to each are set out under the headings blow.

Operational police codes

[101] The ministry submits that the disclosure of codes routinely used by police to communicate between themselves could jeopardize the security of law enforcement systems and the safety of OPP staff identified by them. The ministry argues that the disclosure of these codes could facilitate criminal activity by making available internal knowledge of OPP systems. The ministry relies on a body of a past IPC orders that has upheld the exemption of police codes under section 14(1)(l).

[102] The police cite Order PO-3742 which summarizes the IPC's jurisprudence on this matter: "A long line of orders has found that police operational codes qualify for exemption under section 14(1)(1), because of the reasonable expectation of harm from their release."

[103] I agree with and adopt the reasoning in Order PO-3742, and in the many other orders addressing the IPC's approach to police codes.[45] I have reviewed the records and find that police codes appear throughout. In line with previous IPC orders, I accept that disclosure of operational police codes could be reasonably be expected to facilitate the commission of unlawful acts or hamper the control of crime. As a result, I find that this information qualifies for exemption under section 49(a) in conjunction with 14(1)(l). I will address the ministry's exercise of discretion under Issue E.

[45] See also Orders MO-3640, MO-3682, MO-3773, MO-4073 and PO-4017 which also found police codes are exempt under section 8(1)(l) or its municipal equivalent.

Public cooperation and assistance

[104] The ministry submits that disclosure of the information provided by certain individuals could facilitate the commission of an unlawful act or hamper the control of crime. The ministry is concerned that disclosure would create concerns about the confidentiality of information provided to or collected by the OPP and result in discouraging public cooperation with police.

[105] Under Issue C above, I found some of this information is not exempt under section 49(b). I will now consider whether section 14(1)(l) applies to this information.

[106] Some of the information relates only to the appellant, or that was provided by the appellant herself. The ministry has not provided detailed evidence to establish that disclosure of this limited information would dissuade public cooperation with the OPP, or otherwise facilitate the commission of unlawful acts or hamper the control of crime.

[107] Some of the information relates to individuals acting in a professional capacity. To the extent that the ministry's argument applies to this information, I am not persuaded that it is exempt under section 14(1)(l). The affected parties' information in the records relates to their professional roles and includes their names, alongside other professional information, including views or opinions of the appellant shared in a professional context. The ministry has not explained how disclosure of this information could reasonably be expected to facilitate the commission of unlawful acts or hamper the control of crime, and it is not evident from the records themselves. As a result, this information is not exempt under section 49(a) read with section 14(1)(l) and I will order the ministry to disclose it.

"Confidential internal records about the appellant's well-being"

[108] The ministry submits that the records include sensitive information that OPP staff recorded for the purpose of communicating confidentially with each other about the health of the appellant, to ensure she receives appropriate support in the event of future interactions. The ministry argues that if this information is disclosed, OPP staff would be less likely to communicate candidly with one another. The ministry submits that such an outcome could facilitate crime or hamper its control, by thwarting the provision of services offered to vulnerable individuals.

[109] I have found above that police officers' views and opinions of the appellant, including her mental health, are her personal information under paragraph (g), which the officers have provided in their professional capacity. Based on my review of the records and the ministry's representations, this is what I understand the ministry to mean when it refers to information about the appellant's health or well-being.

[110] I do not accept that disclosure of this information could reasonably be expected to bring about the harms contemplated in section 14(1)(l). The ministry's representations on this matter are not sufficient to establish the harm in section

14(1)(l), and the connections it draws are speculative. In the absence of more detailed evidence, I cannot agree that disclosure in this case is reasonably expected to result in deleterious effects on crime due to police reluctance to document their interactions with vulnerable individuals, and its effect on services provided to those individuals. Accordingly, I do not find that this information qualifies for exemption under section 49(a) in conjunction with 14(1)(l). As a result, I will order the ministry to disclose it.

[111] I find, however, that certain limited information is exempt under section 14(1)(l). I am unable to describe the nature of this information without revealing its contents. However, having carefully reviewed the information, I am satisfied that its disclosure could reasonably be expected to hamper the control of crime. I will address the ministry's exercise of discretion under Issue E.

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

Representations

[112] The ministry applied section 14(1)(a) to a number of records documenting communications between the OPP, the CAS, and others. It submits that the OPP and CAS exchange sensitive information in the context of their work on child protection, and that this relationship constitutes a "matter" under section 14(1)(a). The ministry is concerned that should information recorded in OPP records about the CAS be disclosed, their collaborative relationship would be irrevocably harmed. The ministry submits that the CAS would be reluctant to share information with the OPP in the future and that this could in turn harm children in need of protection. The ministry cites a booklet co-authored by the IPC and the Ontario Child Advocate[46] in support of its position on the importance of information sharing between the police and CAS for the purpose of child welfare.

[113] The ministry notes that it has withheld most of a record documenting a meeting among members of a situation table. As noted above, it describes a situation table as a "group of front-line service providers, including the police, who meet on an ongoing basis to discuss situations where individuals in a community may be in crisis" and to connect such individuals to services. The ministry submits that the substance of the members' discussions must remain confidential due to their heightened sensitivity, otherwise the ability of the situation table to function would be jeopardized.

[114] The appellant submits that she has been told by the OPP that there are no active investigations relating to her, and since all investigations have been closed, information relating to these investigations must be disclosed to her.

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[46] Information and Privacy Commissioner of Ontario & Ontario Child Advocate, *Yes, You Can. Dispelling the Myths about Sharing Information with Children's Aid Societies* (20 January 2016), online: Information and Privacy Commissioner of Ontario < https://www.ipc.on.ca/resource/yes-you-can-dispelling-the-myths-about-sharing-information-with-childrens-aid-societies > (Information and Privacy Commissioner of Ontario)

Analysis and findings

[115] Under section 14(1)(a), an institution may refuse to disclose a record if the disclosure could reasonably be expected to interfere with a law enforcement matter. "Law enforcement" is described in section 2(1) as policing, or 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. "Matter" has a broader meaning than "investigation" and does not always have to mean a specific investigation or proceeding.[47]

[116] In my view, section 14(1)(a) is not applicable in the circumstances. While police and CAS collaborations may constitute law enforcement matters, this alone is not enough. For section 14(1)(a) to apply, the law enforcement matter must still exist or be ongoing.[48] This exemption does not apply once the matter is completed, nor where the alleged interference is with "potential" law enforcement matters.[49]

[117] The appellant submits that she was told by OPP that matters involving her are no longer active. Based on my review of the records in question, I agree that they document matters that have been concluded. Some of the records contain notes confirming the matter in question has been completed. In other cases, this can be gleaned from the substance of the record, and from the context provided by the records that precede and follow. Further, as the ministry did not address whether the matters in these records are ongoing, I have no additional information to rely on.

[118] Furthermore, I do not accept that disclosure of this information could jeopardize the working relationship between the OPP and CAS, or undermine efforts to protect child welfare. I find that the ministry has not provided the requisite detailed evidence to establish a reasonable expectation that disclosure of this information could result in interference with a law enforcement matter.

[119] I conclude, therefore, that the information that the ministry withheld under section 14(1)(a) is not exempt. This includes some of the information contained in records relating to the situation table. I will therefore order it disclosed.

Section 14(1)(c): reveal investigative techniques and procedures

Representations

[120] The ministry applied section 14(1)(c) to a checklist of questions at page 26 of the records, used by the OPP to screen for suspected domestic violence, which it submits is not in the public domain. The ministry argues that if the questions, or the corresponding answers, were to be publicized, individuals could prepare themselves

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[47] *Ontario* (*Community Safety and Correctional Services*), 2007 CanLII 46174 (ON SCDC)
[48] Order PO-2657.
[49] Orders PO-2085 and MO-1578.

before questioning by the OPP, which could interfere with their answers and the integrity of an investigation. The ministry relies on Orders MO-1786 and PO-3013.

[121] I have already found above that the answers to the questions are exempt under section 49(b). What remains is the checklist of the questions themselves.

Analysis and findings

[122] For section 14(1)(c) to apply, the institution must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.[50]

[123] The technique or procedure must be "investigative"; that is, it must be related to investigations. The exemption will not apply to techniques or procedures related to "enforcing" the law.[51]

[124] Having considered the ministry's representations and the orders it relies on, I accept that the checklist should be withheld pursuant to sections 49(a) and 14(1)(c) of the *Act*. As the ministry points out, past IPC orders have found that checklists of this nature are exempt from disclosure. In Order PO-3013, Adjudicator Frank Devries stated the following:

> …the disclosure of the checklist of risk factors used to assess the threat posed by domestic violence could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. (see Order MO-1786). As a result, I find that this information qualifies for exemption under section 49(a) in conjunction with 14(1)(c)…

[125] In Order MO-1786, Adjudicator Bernard Morrow found that this exemption applied to information about investigative techniques and procedures that the police are to follow when attending at a victim's residence to investigate an allegation of domestic assault. In that order, the adjudicator found that this information is clearly "investigative" in nature and the techniques and procedures described are not generally known to the public. I agree with and adopt the analyses in Orders PO-3013 and MO-1786.[52]

[126] In Order MO-3932, Adjudicator Daphne Loukidelis also considered the application of section 14(1)(c) to a police questionnaire. In that case, the questionnaire at issue was administered by police as part of responding to concerns about an individual's mental health. Adjudicator Loukidelis determined that the questionnaire was not

[50] Orders P-170, P-1487, MO-2347-I and PO-2751.
[51] Orders PO-2034 and P-1340.
[52] See also Orders PO-3650 and PO-3851.

exempt under section 14(1)(c) in part due to the fact that it was publicly available. Order MO-3932 is distinguishable from the present appeal, as the checklist at issue is not publicly available.

[127] I reviewed the checklist at page 26 of the records and determine that it is similar to the checklists addressed in Orders PO-3013 and MO-1786. I accept that disclosure of the checklist could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

[128] Therefore, I find that the checklist qualifies for exemption under section 49(a) in conjunction with 14(1)(c). I will address the ministry's exercise of discretion under Issue E.

[129] In making my determinations under Issues C and D, I considered the ministry's obligation under section 10(2) to disclose as much of the records as can reasonably be severed without disclosing information that is exempt. The ministry is not required to disclose portions of records that would only reveal meaningless or disconnected snippets.[53] In my view, aside from the information I have found should be disclosed, the appellant's remaining personal information is so intertwined with exempt information, that any possible disclosure would amount to meaningless or disconnected snippets.

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

[130] I have found above that some of the withheld information is exempt under sections 49(a) and (b). I will order the ministry to disclose the non-exempt information. In this section, I will consider whether the ministry exercised its discretion properly when it decided to withhold the information that I have found to be exempt under sections 49(a) and (b), which includes the personal information of other identifiable individuals, police codes, a checklist of questions and limited information that I found is exempt under section 14(1)(a).

[131] The section 49(a) and 49(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, the IPC may determine whether the institution failed to do so.

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

[133] In either case, the IPC may send the matter back to the institution for an

[53] Order PO-1663 & *Ontario* (*Minister of Finance*) *v. Ontario* (*Information and Privacy Commissioner*) (1997), 102 O.A.C. 71 (Div. Ct.)

exercise of discretion based on proper considerations.[54] The IPC cannot, however, substitute its own discretion for that of the institution.[55]

[134] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:[56]

- 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, analysis and findings

[135] The ministry submits that in denying access to the information at issue, it considered the public's expectation that personal information will be protected when it forms part of a law enforcement investigation. The ministry raised the concern that disclosure may subject affected individuals who are victims, complainants or witnesses

[54] Order MO-1573.
[55] Section 54(2).
[56] Orders P-344 and MO-1573.

to unwanted contact from the appellant. The ministry submits that it also considered how disclosure will harm the use of confidential police codes, screening measures and communications that police rely on in the performances of their statutory mandate.

[136] The appellant does not explicitly address this issue in her representations. However, she suggests that she has a sympathetic or compelling need for the information, noting that authorities breached her privacy, and that she made the request for her and her child's safety, further to mistreatment by the OPP, the Children's Aid Society (CAS) and situation table members.

[137] As outlined above, I have upheld the ministry's severances in part under section 49(a), and in part under section 49(b).

[138] I find that in making its decision to withhold this information, the ministry exercised its discretion in good faith, and took into account relevant considerations. In granting partial access to the appellant, the ministry weighed her right to access her own personal information, alongside other individuals' right to privacy, the nature and sensitivity of the information to all of the involved parties, and the maintenance of public confidence in the law enforcement process. In addition, it considered the effect of disclosure on police operations.

[139] There is no evidence before me to suggest that the ministry took into account any irrelevant considerations or that it exercised its discretion in bad faith. Accordingly, I uphold the ministry's exercise of discretion in the circumstances.

ORDER:

1. I order the ministry to disclose to the appellant the information highlighted in the copy of the records included with the ministry's copy of this order by **February 23, 2023** but not before **February 17, 2023**.

2. I otherwise uphold the ministry's 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 to the appellant.

Original Signed by: January 18, 2023
Hannah Wizman-Cartier
Adjudicator