Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4356

Appeal MA19-00804

Peel Regional Police Services Board

March 29, 2023

Summary: The appellant, a media requester, requested access to various records related to a police investigation regarding the assault of an individual in custody by police officers. The Peel Regional Police Services Board (the Peel police) denied access to the responsive records pursuant to section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant asserted that the public interest override at section 16 of the *Act* applied and the records should be disclosed. In this order, the adjudicator finds that some of the records at issue do not contain personal information and she orders the Peel police to disclose them to the appellant. She finds that the remaining records consist of personal information and are exempt under section 14(1) of the *Act* and that section 16 of the *Act* does not apply. She upholds the Peel police's decision to deny access to the remaining records subject to section 14(1) of the *Act.*

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1) (definition of "personal information"), 14(1), 14(3)(b) and 16.

Orders Considered: Orders P-237, PO-1779, PO-1795, and PO-3544.

OVERVIEW:

[1] This appeal arises from a request made by a reporter for information relating to an investigation conducted by the Peel Regional Police (the Peel police) into the conduct of two York Regional Police officers (the officers).

[2] The investigation followed an Ontario Superior Court Justice's decision to stay criminal charges against an accused individual because she determined his rights under the *Canadian Charter of Rights and Freedoms* were breached when he was assaulted by the officers while in police custody.

[3] After the Justice's decision was released, the Chief of the York Regional Police asked the Peel police's internal affairs unit to conduct a criminal investigation into the circumstances surrounding the accused's arrest and the officers' conduct.

[4] The Peel police conducted an investigation during which they gathered evidence, interviewed the alleged victim of the assault, as well as the officers, and other witnesses and police officers assigned to the district where the assault was said to have occurred. Ultimately, the Peel police made no findings of misconduct or criminal activity on the part of the officers and they closed the investigation.

[5] The reporter then submitted an access to information request to the Peel police pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for various information related to their investigation including investigation notes, forensic testing, timelines, prisoner tracking information, interviews, reports, and other specific items which are listed in full at Appendix A to this decision.[1] The Peel police issued a decision denying access in full to the records pursuant to the mandatory personal privacy exemption in section 14(1), with reference to the presumption in section 14(3)(b) (investigation into a possible violation of law) of the *Act*.[2]

[6] The reporter, now the appellant, appealed the Peel police's decision to the Office of the Information and Privacy Commissioner/Ontario (the IPC). During mediation, the mediator had discussions with the Peel police and the appellant about the records and issues on appeal. The appellant advised the mediator that he believe there is a compelling public interest in the disclosure of the records, as described at section 16 of the *Act*. As such, the issue of the public interest override was added to the issues on appeal.

[7] The parties were unable to resolve the issues under appeal through the process of mediation and the matter was transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry pursuant to the *Act.* An adjudicator commenced this inquiry by inviting representations from the Peel police, initially.[3]

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[1] IPC records indicate the appellant submitted his request to the Peel police on September 27, 2019.
[2] I note that the Peel police originally relied on the labour relations exclusion at section 52(3)2 of the *Act* but later withdrew that claim. They also initially stated that they relied on section 38(b), a discretionary exemption that may apply when the records contain the requester's own personal information. However, they later clarified that they do not rely on section 38(b).
[3] The Peel police provided a supplementary set of representations and issued a new decision letter to the appellant reflecting their decision not to rely on sections 52(3)2 or 38(b).

[8] After receiving the Peel police's representations, the adjudicator notified and invited representations from other affected parties, including the accused individual, the officers whose conduct was investigated, other various witnesses, and the York Regional Police Services Board. The York police and a number of other affected parties provided representations. Some of the affected parties objected to the disclosure of their personal information on the basis that it would be a privacy infringement, while others did not respond to the notification or participate in the inquiry.

[9] The adjudicator provided the appellant with copies of the Peel and York police's representations and invited them to make representations, which he did. Reply representations were then sought from the other parties and received only from the Peel police. The Peel police's reply was shared with the appellant.[4] The appeal was then transferred to me to continue its adjudication. After reviewing all of the evidence before me, I wrote to the parties to determine whether some of the records at issue, which were publicly available court records, could be removed from the scope of the appeal. The police agreed to provide the appellant with additional information to assist in obtaining the court records and these items were removed from the scope of the appeal.

[10] I also wrote to York police to obtain a copy of an email they asserted they sent to the appellant in their representations that provided an overview of the outcome of the Peel police's investigation into the assault described in the Superior Court Justice's decision.[5] In summary, the email explains that during their investigation into the conduct of the officers, the Peel police conducted forensic testing, the outcome of which did not support the accused's assertion that he bled on his shirt after he was assaulted by the officers. The email also explained that the Peel police interviewed the officers, the accused, and other York police officers that were at the police station when the assault was said to have occurred, and created a timeline of events. The York police explained that the Peel police compared the information they gathered during their investigation (including the witness interviews and other physical and documentary evidence they collected) with the pre-trial evidence and the statements of the accused, and were unable to form reasonable grounds that the officers had assaulted the accused.

[11] After reviewing this information, and all of the evidence submitted in this inquiry, I determined that I did not require any additional information from any of the parties in order to make my decision and the inquiry stage was closed. In this order, I find that some of the records at issue do not contain personal information, as defined in paragraph 2(1) of the *Act,* and therefore cannot be exempt under the section 14(1)

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[4] A response was not requested by the former adjudicator and the appellant did not submit any additional information in sur-reply.

[5] During the inquiry process the IPC wrote to the appellant to determine whether he received this response. The appellant indicated that he believed he requested information from the York police and received a response, but was not able to locate either their request or the York police's response.

personal privacy exemption. On that basis, they must be disclosed to the appellant.[6] I uphold the Peel police's decision that the remaining records at issue are subject to the mandatory exemption for personal privacy in section 14(1) of the *Act.* Furthermore, I find that the public interest override at section 16 of the *Act* does not apply and I uphold the police's decision to withhold the records remaining at issue from the appellant.

RECORDS:

[12] The records are comprised of the police investigative file containing photographs, interviews (both transcripts and audio recordings), officer notes, various reports and other administrative documents. There are approximately 3,276 pages at issue and roughly nine hours of audio recordings. The records are identified and numbered in an Index provided to the Peel police and the appellant by the IPC during the course of this inquiry.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the mandatory exemption at section 14(1) apply to the personal information at issue?

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

[13] The police rely on the mandatory personal privacy exemption at section 14(1) of the *Act.* It is therefore necessary to decide whether the record contains "personal information" and, if so, to whom it relates. The relevant portions of the definition of "personal information" as set out in section 2(1) of the *Act* are as follows:

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

[6] Specifically, records 62, 140 to 147, and 149 to 151, as numbered in the Index provided to the Peel police and the appellant by the IPC during the inquiry process.

> (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,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual, …

[14] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[7]

[15] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

> (2.1) 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.

[16] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[8] However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[9] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[10]

[17] The Peel police say that the records at issue contain personal information pertaining to an accused person in the context of a criminal investigation by the York police. The Peel police say that although certain details surrounding the alleged offence were reported in the media, and became public through the criminal proceeding, much of the content of the records sought by the appellant remains personal to the accused.

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[7] Order 11.
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[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.).

[18] The Peel police say that the records also contain personal information pertaining to the officers identified in the Superior Court's decision as having assaulted the accused individual. The Peel police say this personal information was compiled as part of an investigation into a possible violation of law. The Peel police submit that IPC orders have held that where information involves an evaluation of an employee's performance or an investigation into his or her conduct, these evaluations are considered to be the individual's personal information.[11]

[19] Finally, the Peel police say that the records contain details of their investigators' interviews with numerous witnesses, and other identifiable individuals, which is their personal information under the *Act*. Collectively, the Peel police submit, the records contain recorded information about the identified subject officers, the accused person, and other identifiable individuals, all of which is their personal information.[12]

[20] The York police say that the personal information contained in the records includes names, appearing with dates of birth, addresses, telephone numbers, identifying numbers, personal opinions or views of individuals and views or opinions of another individual about the individuals. They also say that because the information contained in the records was used as part of a criminal investigation into the conduct of the suspect officers, it has taken on a different, more personal quality. As a result, the York police submit that the disclosure of the information at issue would reveal something personal about the suspect officers, specifically whether their conduct regarding the alleged victim was appropriate.

[21] Neither the appellant, nor the affected parties made any specific representations about whether the information at issue is personal information, as defined in section 2(1) of the *Act.*

[22] I have reviewed all of the information at issue and I find that all of the records, with the exception of records 62, 140 to 147, and 149 to 151, contain the personal information of multiple individuals, including the accused individual, and the accused officers.[13]

[23] I agree with the two police forces' submissions above that the remaining records, excluding those referred to in the paragraph above, are comprised of personal information, as set out in each of paragraphs (a), (b), (c), and (d) of section 2(1) of the *Act.*

[24] Furthermore, in a more general sense, the remaining records are comprised of the results of the Peel police's investigation into whether the officers assaulted an individual in police custody. As a result, a critical part of the investigation is the

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[11] The police rely on Order P-721.
[12] The police rely on Order PO-1795.
[13] The record numbers are set out in the Index provided to the Peel police and the appellant by the IPC during the inquiry process.

credibility of the allegations of the accused, and the conduct and credibility of the officers alleged to have committed the assault. All of the information gathered by the Peel police and contained in the remaining records at issue in this appeal relates to the investigator's information- gathering activities about these issues and their conclusions about whether or not the assault may have occurred. In my view, these issues are deeply personal for both the accused individual and the officers whose conduct was being investigated.

[25] I also agree with the Peel police that the circumstances of this appeal are similar to those described in Order PO-1795. In that case, an individual sought access to records related to a complaint that was made against Royal Canadian Mounted Police and Windsor Police officers and investigated by the Ontario Provincial Police. The adjudicator concluded that while information about an individual in their professional or employment capacity does not typically constitute their personal information, where the information involves an evaluation of the employee's performance or an investigation into their conduct, these references are considered to be their personal information. With regard to the investigation into the officers, the adjudicator concluded that the information not only extended beyond the normal employment responsibilities but also had the potential to seriously impact them personally. As a result, the adjudicator concluded that the information at issue qualified as personal information. I agree with and adopt this approach and apply it to the current circumstances. The remaining records at issue go directly to the issue of whether the officers committed an assault of an individual in custody. As such, this extends beyond the normal employment responsibilities of these individuals and qualifies as their personal information.

[26] Finally, I note that the remaining information at issue in the investigation file was gathered and complied for the specific purpose of assessing whether accused made a credible accusation about being assaulted by the officers. I find that the ultimate assessment of the information related to this issue, and the fact-finding exercise the investigator engaged in to arrive at that assessment, is all the personal information of the accused.

[27] However, as noted above, none of the information in records 62, 140 to 147, and 149 to 151 is personal information. These records are comprised of "Command Directives" and "Facilities" records. They do not contain any information of identifiable individuals and, therefore, they do not contain any personal information. The Peel police did not claim any other exemptions or exclusions over these records. As a result, they are not exempt from disclosure and I will order that the Peel police provide copies to the appellant.

[28] None of the information at issue is the appellant's personal information. Since the records contain the personal information of individuals other than the appellant, I must now consider the application of the personal privacy exemption in section 14(1)

applies to the remaining records at issue.[14]

Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[29] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The section 14(1)(a) to (e) exceptions are relatively straightforward. The parties do not argue that any of these exceptions apply and I find that none do.

[30] The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[31] Sections 14(2) to (4) provide guidance in determining if disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. None of the circumstances set out in section 14(4) applies here.

[32] If a presumption listed in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A presumption can only be overcome if the personal information is found to fall under section 14(4) of the *Act* (which does not apply here) or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption.[15]

[33] The Peel police rely on section 14(3)(b), which states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. They reiterate that the records at issue relate to a criminal investigation conducted in relation to an alleged assault of an individual in custody by police officers. They say that releasing the personal information of the affected parties to the appellant would be an unjustified invasion of personal privacy as that personal information was obtained as part of an investigation into a

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[14] From this point on I will refer to the remaining records at issue as simply the records. The analysis excludes records 62, 140 to 147, and 149 to 151, which I have concluded do not contain personal information and must be disclosed to the appellant.

[15] *John Doe v. Ontario (Information and Privacy IPC)* (1993), 1993 CanLII 3388 (ON SCDC), 13 O.R. (3d) 767.

possible violation of law.

[34] Specifically, the Peel police say that they were tasked with investigating allegations of criminality contrary to the *Criminal Code* of Canada by the accused officers and that the records at issue contain the "fruits of that investigation."

[35] The Peel police say that the records also contain information pertaining to a criminal investigation into the accused, who retains a privacy interest in the responsive records, as well as other witnesses who were interviewed as part of the investigative process. The Peel police submit that paragraph 14(3)(b) applies, and that the presumption should not be overridden.

[36] The York police make a similar argument. They say that section 14(3)(b) applies. They submit that the records at issue relate to an investigation conducted by Peel police in relation to an assault complaint. They assert that releasing the personal information of the affected parties to the appellant would be an unjustified invasion of personal privacy as the personal information of the affected parties was obtained as part of an investigation into a possible violation of law.

[37] The appellant acknowledges the Peel and York police's reliance on the presumption at section 14(3)(b) in their representations, but does not make any specific arguments about whether it applies.[16]

[38] The affected parties also made no specific representations on the application of 14(3)(b).

[39] Previous IPC orders held that the presumption in section 14(3)(b) may apply to the personal information of any person where it is compiled and is identifiable as part of an investigation into a possible violation of law.

[40] In this case, I am satisfied that the personal information in the records was compiled and is identifiable as part of an investigation conducted by the Peel police into the into the potentially criminal conduct on the part of the officers, as described by the Superior Court Justice in her decision. As a result, I find that disclosure of the personal information in this appeal would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b) of the *Act*. Although the Peel police closed the investigation and determined that no further action was required, the section 14(3)(b) presumption applies even if, as in the present case, no charges were laid.[17]

[41] Having found that a presumption applies to the information, I do not need to consider whether any of the factors favouring disclosure in section 14(2) apply. As I

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[16] The appellant's representations focus on his assertion that pubic interest in the disclosure of the information at issue outweighs the need to protect the individuals' personal information. I will address this issue later in this decision.

[17] Orders P-223, P-237 and P-1225.

noted above, under a section 14(1) analysis, a presumption cannot be rebutted by any of the section 14(2) factors. I also found above that none of the circumstances outlined in section 14(4) are present in this appeal and so the section 14(3)(b) presumption is not rebutted.

[42] As a result, I conclude that the section 14(1) personal privacy exemption applies to the personal information in the records.

[43] However, the appellant claims that section 16 of the *Act* applies because there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption and I will consider that issue next.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[44] Section 16 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

> An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[45] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[46] The *Act* does not state who bears the onus to show that section 16 applies. As such, the IPC's approach is to review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[18]

[47] In considering whether there is a "public interest" in disclosure of the records, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[19] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[20]

[48] The public interest must also be *compelling.* The IPC has defined the word

[18] Order P-244.
[19] Orders P-984 and PO-2607.
[20] Orders P-984 and PO-2556.

compelling as "rousing strong interest or attention".[21]

[49] Finally, as emphasized by previous IPC orders, the existence of a compelling public interest is not enough to trigger disclosure under section 16. This interest must also *clearly outweigh* the purpose of the exemption in the specific circumstances.

[50] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[22]

[51] Finally, I note that previous orders have also been clear that a public interest is not automatically established because a requester is a member of the media.[23]

Overview of the parties' positions

[52] The appellant, the Peel police and the York police submitted representations regarding the application of section 16 of the *Act.* The other affected parties did not address this issue.

The appellant

[53] The appellant submits that there is a clear and compelling public interest in access to the records at issue, and argues that they should be released in accordance with section 16 of the *Act.*

[54] The appellant says that the Superior Court Justice concluded the officers assaulted the accused and attempted to conceal their actions. He says the Peel police's investigation findings contradict the Justice's decision and argues that releasing the information at issue would reveal who was correct:

> A judge—disinterested and dispassionate, but possibly lacking all relevant information? Or the Peel and York police—armed with more information, but with their judgment perhaps influenced by loyalty to fellow officers?

[55] The appellant says that this appeal concerns the privacy interests of a small number of people weighed against the potential to increase scrutiny of two police services and the broader justice system. He says that ongoing public debate around the role of police highlights the need for fulsome, continued scrutiny of officers like the ones connected to the present appeal. The appellant submits that there are broader societal interests to consider, including interests in an equitable justice system, and police services that take allegations of excessive force seriously and that as a result, the records at issues should be released.

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[21] Order P-984.
[22] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.
[23] Orders M-773 and M-1074.

[56] The appellant refers me to various IPC orders, news articles, academic literature and public reports in support of his representations. I have reviewed all of the information included by the appellant in his representations, but will refer to only those items most relevant to my decision below. Specifically, I address Orders P-237 and PO-1779, and I provide a summary of my view of the applicability of the other sources relied on by the appellant (i.e. the articles, academic literature and public reports).

The Peel police

[57] The Peel police acknowledge that there is a public interest in the activities of police services, but they argue that this right is not absolute, particularly where the records relate to two separate criminal investigations. They say that the criminal case into the accused individual, and the Superior Court Justice's findings regarding the officers, were extensively reported on in the media over four years ago, and subject to the open court process. The Peel police say that it is not clear how disclosure of records containing personal information would further contribute to the debate surrounding this matter to a degree that would require the compromise of sensitive investigative information into an allegation of criminal wrongdoing.

[58] They argue that the *Act* protects an individual's right to privacy and that, disclosure of same constitutes as an unjustified invasion of their personal privacy, even in a case that may have some public interest.

The York police

[59] As noted above, the York police were invited to participate in this inquiry as an affected party. The York police submit that a significant amount of information has already been disclosed to the appellant and they say the disclosure to date is adequate to address any public interest considerations. Specifically, the York police say that the appellant emailed them seeking information about the matters at issue in this appeal and they responded by answering the appellant's questions and providing a summary of the outcome of the criminal investigation conducted by the Peel police into the conduct of the two officers.

[60] I requested a copy of the York police's response to the appellant. The response, which was sent by email, provided an overview of the outcome of the Peel police's investigation, as well as information about the evidence the investigators gathered and what they considered relevant to their ultimate findings.[24] The York police's email to the appellant also specifies that similar details were provided to the Superior Court Justice

[24] A brief overview of the some of the contents of the York police's email is included at paragraph 10 of this decision.

that issued the decision regarding the officers' conduct.[25]

Findings and analysis

[61] Below are reasons explaining why I find that there is no compelling public interest in disclosure, and that as a result, section 16 does not apply to the records that remain at issue.[26]

[62] The first part of the test in section 16 requires that I determine whether there is a compelling public interest in disclosure. As noted above, I must consider whether the information in the records would serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion.[27]

[63] The appellant asserts that there is a clear and compelling public interest in the information at issue because it involves police officers investigating fellow officers, amid allegations of police brutality. The appellant says that there is evidence demonstrating that the activities of the police have been publicly called into question by the Superior Court Justice's decision, which supports release of the records at issue. The appellant argues that "simply, someone is wrong" and that "the integrity of three institutions—the Superior Court of Justice and two police services—is in doubt." The appellant submits that this doubt supports the release of the records at issue.

Order PO-1779

[64] The appellant refers me to Order PO-1779, a case he says also involved a clear contradiction between the findings of a court and the views of an Ontario police service, as well as questions about the integrity of the justice system.[28] The appellant reproduces the following portion of former Assistant Commissioner Tom Mitchinson's analysis, where he refers to comments made by the Ontario Criminal Lawyers'

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[25] As noted earlier, I wrote to the appellant to determine whether he received the email referred to by the York police. The appellant indicated that he believed he requested information and received a response from the York police but did not currently have access to the emails.

[26] While I may not refer to all of the arguments or evidence provided by the parties, I considered the totality of all of the parties' representations prior to making my determination that section 16 of the *Act* does not apply to the records at issue.

[27] Orders P-984 and PO-2556.

[28] Order PO-1779; See also, *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815, Appeal from a judgment of the Ontario Court of Appeal (Juriansz, MacFarland and LaForme JJ.A.), 2007 ONCA 392, 86 O.R. (3d) 259, 224 O.A.C. 236, 280 D.L.R. (4th) 193, 60 Admin. L.R. (4th) 279, 220 C.C.C. (3d) 343, 58 C.P.R. (4th) 298, 156 C.R.R. (2d) 1, [2007] O.J. No. 2038 (QL); 2007 CarswellOnt 3218, setting aside a decision of Blair R.S.J. and Gravely and Epstein JJ. (2004), 2004 CanLII 18977 (ON SCDC), 70 O.R. (3d) 332, 237 D.L.R. (4th) 525, 184 O.A.C. 223, 13 Admin. L.R. (4th) 26, 30 C.P.R. (4th) 267, 116 C.R.R. (2d) 323, [2004] O.J. No. 1214 (QL), 2004 CarswellOnt 1172. Appeal allowed.; and Interim Orders PO-3231-I, PO-3322-I, and PO-3868-I, and Final Order PO-3402-F.

Association (the CLA) in an editorial printed in a newspaper:

> It is also significant that, as pointed out by two of the appellants, **the OPP's conclusions as a result of the investigation seem to be "diametrically opposed" to the Court's view that serious improprieties in the administration of the criminal justice system had occurred**, which were at the heart of the decision to stay the charges. I am of course not in a position to comment on the conclusions reached by the OPP, and I am constrained from revealing the contents of the records at issue in these appeals. However, from the public's perspective, **the juxtaposition of the Court's reasons and the OPP's terse press release would appear to demand a more informative explanation** [emphasis added by appellant].[29]

[65] I have reviewed Order PO-1779 and note that additional details of the CLA's editorial, which were also included in the former commissioner's decision, are relevant. The CLA said the following:

> The [OPP's] brief public report on its investigation, issued in the form of a press release, cited "no misconduct" on the part of state officials and "no evidence" that they systematically suppressed vital evidence in the Racco case. It was peremptory at best. The fact that the police force arrived at conclusions diametrically opposed to those of the court demands explanation.
>
> But none was offered; nothing but a bland assurance in the absence of any known facts. Now, far worse, a proper explanation is being actively denied.
>
> The denial was issued by the Attorney-General in response to a request from the Criminal Lawyers Association for the release of materials from the OPP investigation. The province refused to make public even the slightest detail of the information that led police to their provocative conclusion.[30]

[66] In my view, the current circumstances are not analogous to those in Order PO-1779. The evidence before me indicates that the police have provided information about the steps taken and conclusions drawn in the investigation. Furthermore, they have explained the different conclusions reached by the Superior Court Justice and the investigators.

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[29] The former commissioner explained that the above quotation was from a November 1, 1999 editorial written by the CLA and published in the Globe and Mail about its request for access to information about the OPP's investigation and the government's response.
[30] PO-1779 at pages 19-20.

[67] Specifically, the Peel police submit that the appellant has failed to consider the "different purposes of the two decisions, the different levels of information before the two decision-makers and the different burdens of proof involved in a criminal charge (reasonable and probable grounds), and a Charter breach allegation (balance of probabilities)." The Peel police assert that in light of the fundamental differences between these processes, it is not uncommon for a judicial finding against a witness (who was not given the benefit of notice or a right to respond) to differ from a subsequent finding on a detailed criminal investigation.

[68] The Peel police submit, and I accept, that this difference, in and of itself, does not obviate the clear privacy interests inherent in the investigation, which are afforded under the *Act*. While I cannot comment on the substance, quality, or result of the Peel police's investigation, I accept that, given the differences in the trial process and a police investigation, as described by the Peel police above, it is possible that the outcomes may differ. I accept that the fact that the investigators and the Justice arrived at different conclusions does not, on its own, compromise the integrity of either institution. As the Peel police explained, the investigators had the benefit of being able to review all aspects of the original incident, not just the evidence tendered in court.

[69] Furthermore, I note that evidence in the records at issue supports the Peel police's assertions that following the trial the investigators conducted interviews and gathered additional scientific evidence that was not available to the Superior Court Justice for her consideration during the trial. As such, I am not persuaded that, on its own, the difference in conclusions of the Superior Court Justice and the Peel police supports a finding that there is a compelling public interest in the records at issue in this case.

[70] Finally, unlike the situation described in PO-1779, where the CLA submitted that no details or information was provided about the investigation, the evidence before me suggests that the police provided information about the investigation in this case. The York police answered the appellant's email asking for information about the outcome of the investigation and they provided an overview of the evidence the Peel police gathered and considered before closing the investigation.[31] The information provided to the IPC by the York police also indicates that the police provided the information about the investigation to the Justice.

[71] While the appellant may not be satisfied with the details the police shared, it cannot be said that no information or explanation was provided, as in Order PO-1779. As such, I am not persuaded that the former commissioner's analysis in Order PO-1779 assists in the determination of this matter.

[31] See paragraph 10, above, for a brief summary of the response provided to the appellant by the York police.

Order P-237

[72] The appellant also refers me to Order P-237 and says that this order supports the principle that the disclosure of personal information may be desirable for ensuring public confidence in the integrity of an institution. I agree with the appellant about the general proposition that Order P-237 stands for. However, in my view, there are critical differences in the current appeal.

[73] In Order P-237 former Commissioner Wright considered an appeal arising from a request for a copy of an Ontario Provincial Police (OPP) investigation report. In that case, as in the current appeal, there was a conflict between a court's findings regarding the conduct of police officers and the results of a subsequent OPP investigation into the officers' conduct.

[74] Following the conclusion of their investigation, the OPP made a public statement that identified only the conclusion of the investigation. According to the former commissioner, the lack of details led to speculation about the manner in which the OPP's conclusion was reached and media reports commented on the discrepancy between the Judge's comments on the conduct of the police officers and the conclusion of the OPP that their actions did not warrant the laying of criminal charges. The adjudicator concluded that the matter was likely to continue to be reported in the press for some time and that there would continue to be speculation about the investigation, the OPP, the Judge who made the initial statements, and the affected parties.[32] He concluded that the disclosure of all of the facts could serve to dispel the speculation that surrounded the matter.

[75] I am not convinced that the current situation is the same. The appellant says:

> While [the Justice's] ruling was covered in the media, the subsequent Peel investigation has, to my knowledge, received little or no media coverage. I submit this is because of the issue at the centre of this appeal: the respondent's refusal to release any information related to the investigation. The sources I have cited demonstrate clear public interest in discussions about police accountability and the integrity of the justice system. But there could be no further media coverage—or attendant public debate—on the [Justice's] ruling in the absence of new, reliable information.

[76] I disagree with this reasoning. As noted in the former Commissioner's decision, the absence of information about the investigation drove the speculation on the discrepancy between the two outcomes. As such, I reject the appellant's assertion that media coverage is not possible absent new information. The articles provided by the appellant demonstrate that there was media attention regarding the Superior Court

[32] See pages 19 to 20 of IPC Order P-237.

Justice's decision. Additionally, one of the articles (published prior to the conclusion of the Peel police's investigation) suggested that the Peel police should consider releasing the investigation report.

[77] However, the evidence before me does not suggest that there was significant media attention to the outcome of the Peel police's investigation or that there is ongoing speculation into the discrepancy between its results and the findings of the Justice. As such, I find that Order P-237 is not helpful to the determination of the issues in this appeal.

News articles, public reports and academic literature

[78] The appellant submits that there is "overwhelming evidence" that the public and media continue to question and scrutinize police activities. He referred me to news articles from the US and Canada detailing incidents of police brutality and dishonesty over a span of more than a decade. He also attached various public reports from the Ontario Human Rights Commission, the Ontario Ombudsman, as well as an article by a Professor of Law that all call attention to issues with inadequate police oversight and problematic law enforcement behaviours such as police brutality and lying under oath. The reports were published between 2011 and 2020. They do not directly reference the Superior Court Justice's decision relevant to this appeal or the Peel police's investigation.

[79] With regard to the matters specific this appeal, the appellant referred me to an article from the Toronto Star in 2017 that reported on the decision of the Superior Court Justice to dismiss the charges against the accused after it was revealed in court that he had been assaulted by the officers, and that the officers had covered up the assault. He also directed me to another news article from 2019 that detailed various examples of cases where judges found police officers had given false or misleading testimony and stayed charges against accused individuals as a result, including the case at issue in this appeal.

[80] Based on my review of all of the information the appellant provided, I accept that there is an obvious public interest in issues regarding police conduct, particularly when it involves allegations of brutality or dishonesty and that the Justice's decision generated media attention. I also accept the appellant's assertions that there is a clear public interest in police oversight. That being said, I am not convinced that there is a compelling public interest in the specific records at issue in this appeal, which are comprised of the remaining items in the Peel police's investigation file. As detailed above, the Justice's decision to stay the charges against the accused appears to have attracted some media coverage. However, I am not convinced by the evidence before me that the outcome of the Peel police's investigation generated similar attention from the media or that it has resulted in significant public discourse.

[81] The appellant claims there is a public interest in determining how fulsome an

investigation the Peel police conducted, what tactics and tools they used, and how much time they spent investigating. However, absent specific evidence of public discussion and/or concern about the Peel police's investigation, I am not persuaded by the appellant's arguments that disclosing the investigation file, which I determined above contains various individuals' personal information, would serve the public interest.

[82] In making this determination I considered the Peel police's submission that just because charges were not laid in a police investigation, does not necessarily result in an entitlement by the public to review the entire file and determine whether appropriate steps were taken. The Peel police rely on Order PO-3544. The circumstances in that case were different because the requester was seeking information about a police investigation into the murder to two individuals and the death of another and it was not a case where police were investigating other police officers. However, I find the adjudicator's reasoning about the determination of whether there is a compelling public interest in the information at issue is relevant. The adjudicator specified the following:

> [55] … Police work, by its very nature, attracts considerable public interest, but that does not mean that all police files should be public. The particular circumstances of each case must be reviewed in order to determine whether the public interest in disclosure rises to the level of a "compelling" public interest, and if so, whether that interest outweighs the purpose of the exemption(s).[33]

[83] The adjudicator cited IPC Order PO-3025 where former Commissioner Beamish declined to apply the public interest override to interview and interrogation records:

> . . . although there may be widespread curiosity about the contents of the records, and their release would be newsworthy, that does not automatically lead to the application of the public interest override, which must assess whether the broader public interest would actually be served by disclosure. That is the purpose of weighing a compelling public interest, where one is found to exist, against the purpose of applicable exemptions.[34]

[84] Applying the reasoning above, and considering the particular circumstances before me, I am not satisfied that the disclosure of the information related to the Peel police's investigation would contribute to the broader matters of public interest identified by the appellant. To be clear, I find that the information at issue would not further contribute to a debate surrounding these matters to a degree that would require the compromise of investigative information into multiple allegations of criminal wrongdoing and the personal information of the accused, the officers and various

[33] Order PO-3544.
[34] Order PO-3025.

witnesses and other affected parties.

[85] As I have not found that there is a compelling public interest in the disclosure of the personal information which would clearly outweigh the purpose of the section 16 exemption, which is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified, I find that section 16 does not apply.

[86] I uphold the Peel police's decision to apply section 14(1) to all of the information in the records at issue, except for the information I concluded was not personal information in records 62, 140 to 147, and 149 to 151.

ORDER:

1. I order the Peel police to disclose records 62, 140 to 147, and 149 to 151, which do not contain personal information as defined by the *Act*, to the appellant by **May 5, 2023** but not before **May 1, 2023**.

2. I uphold the police's decision to withhold the remaining records in full.

3. I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant in Order Provision 1.

Original Signed by: March 29, 2023

Meganne Cameron
Adjudicator

APPENDIX A

The appellant requested the following information from the police:

> …material related to, and referenced in, Justice [named justice]'s decision in [named court case and citation]. I am aware of an investigation ("the investigation"), conducted by members of the Peel Regional Police Professional Standards Bureau, launched after Justice [named justice]'s [date] finding that one or more York Regional Police officers assaulted [named person].
>
> Please release the following material:
>
> - all notes created by any investigating officers that mention or are related to the investigation
>
> - any records that describe, discuss, or are related to any forensic testing of [named person]'s clothing conducted as part of the investigation
>
> - any timeline created by Peel Regional Police staff related to [named person]'s time in custody
>
> - any records reviewed as part of the investigation and obtained from York Regional Police's Building Services Unit, including, but not limited to, any records related to door entries and prisoner tracking
>
> - any recordings of any interviews conducted as part of the investigation
>
> - any "information to obtain" records to the investigation
>
> - any "return to justice" records related to the investigation
>
> - any report, created by Peel Regional Police staff, related to the investigation