

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4393

Appeal PA20-00836

Ministry of Agriculture, Food and Rural Affairs

May 17, 2023

Summary: The Ministry of Agriculture, Food and Rural Affairs (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* for information in forms about the types and numbers of animals used in 2017 in research by certain public and private research facilities. The ministry denied access to this information, relying on the discretionary law enforcement exemption in section 14. It also relied on the research exclusion in section 65(8.1) to deny access to the information in some forms.

In this order, the adjudicator does not uphold the application of the section 65(8.1) exclusion. She also partly upholds the ministry's decision that the information at issue in the records is exempt under section 14 when the information in the form could be used to identify the research facility. She orders the remaining information to be disclosed to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. sections 14(1)(e), 14(1)(i), 65(8.1)(a), and 65(8.1)(c).

Orders Considered: Orders PO-3626, PO-4073, and PO-4328.

OVERVIEW:

[1] The Ministry of Agriculture, Food and Rural Affairs (the ministry) collects information about the types and numbers of animals used in research by certain public and private research facilities. This information is collected on a specified form. This appeal deals with a request for these forms for a specified year.

[2] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for:

All records that research institutions submit to Ministry of Agriculture, Food and Rural Affairs for the document titled, Total Animals Used for Research/Teaching/Testing in a Research Facility during 2017.

[3] The request at issue was subsequently clarified as a request for specific Animal Use Data Forms (AUDF or the form).¹

[4] Following third party notification, the ministry issued a final access decision granting partial access to the records. Access to the withheld information was denied pursuant to the law enforcement exemptions at sections 14(1)(e) (endanger life or safety) and 14(1)(i) (security), as well as section 20 (danger to safety or health). The ministry also claimed the application of the exemption at section 17(1) (third party information), as well as the exclusion at section 65(8.1) (research exclusion) of the *Act* for certain records.

[5] The appellant appealed the decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore the possibility of resolving the issues.

[6] The appellant advised the mediator that it was not seeking the following information in the records: the names of the research facilities, the research facilities certificate numbers, or the names or signatures of the principals of the research facilities.

[7] The appellant contended that there was a compelling public interest in the disclosure of the records as described at section 23 of the *Act*. Section 23 was, therefore, added to the issues under appeal.

[8] The parties were unable to resolve the issues under appeal through the process of mediation. Accordingly, the appeal file was referred to adjudication, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the ministry's and the appellant's representations, as well as those of the affected parties whose information is contained in records 11 (and 13) and 12 and for which the ministry had claimed the application of section 17(1) in addition to the other claimed exemptions.²

¹ The appellant also sought two additional records, but during mediation, the appellant confirmed that two records were not at issue in this appeal. Portions of one record were subject to a third party appeal which resulted in Order PO-4328. In Order PO-4328, I ordered disclosure of the information subject to the third party appeal. The other record was disclosed in full by the ministry.

² I note that there is one email at record 13, which is an email providing information that was supposed to be provided with the Animal Use Data Form comprising record 11. This email contains the name and contact information of the facility that supplied animals for the facility at record 11. As this information is

[9] The ministry's representations were shared with the appellant in accordance with the IPC's *Practice Direction 7* on the sharing of representations. The ministry provided both confidential and non-confidential representations.³

[10] The appellant provided representations in response, which were followed by reply representations from the ministry and sur-reply representations from the appellant.

[11] Because the appellant did not seek the names of the research facilities, the research facilities' certificate numbers, or the names or signatures of the principals of the research facilities, I sought representations from all of the 12 affected parties as to their identifiability if this information was removed from the records. This would include the abbreviations of the facilities' names contained in the records, as well as the names, addresses, email addresses, and phone numbers of facilities where animals were sourced. I also sought representations on the claimed exemptions from them if their identity could be ascertained from disclosure of the information at issue in the records.

[12] Of the 12 affected parties, two consented to disclosure of the information remaining at issue in their Animal Use Data Forms (records 4 and 14), and the ministry disclosed this information to the appellant; therefore, the information at issue in these forms is no longer at issue in this appeal.

[13] I received representations from nine of the remaining 10 affected parties. One affected party did not provide representations on the information at issue in their record (record 2). Another affected party, who had previously provided representations, did not provide representations on their identifiability as requested (record 11).⁴

[14] In this order, I partly uphold the ministry's decision. I do not uphold the application of the section 65(8.1) exclusion to the records for which it was claimed, and partially uphold its decision that the information at issue in the records is exempt under sections 14(1)(e) and 14(1)(i). I order disclosure of the non-exempt information at issue in 2 of the 10 records.

not at issue in this appeal, record 13, therefore, is not at issue in this appeal and it should not be disclosed to the appellant. The ministry had applied section 17(1) to record 13 but, in its representations, it advised that it would no longer be relying on section 17(1) for record 13, just for record 12. The affected party whose information is contained in record 13 did not provide representations on the application of section 17(1) to that record.

³ In making my determinations in this order, I will rely on the entirety of the ministry's representations, however I will only refer to its non-confidential representations in this order.

⁴ Certain affected parties also provided both non-confidential and confidential representations. I will rely on the entirety of the parties' representations in making my determinations in this order; however, I will only refer to their non-confidential representations in this order.

RECORDS:

[15] The records are 10 Animal Use Data Forms for 2017 for certain hospitals, educational institutions, and other facilities that perform animal research. The records are identified as records 1 to 3, 7 to 12, and 15. As I noted above, the appellant is not seeking certain identifying information in the records.⁵

[16] Each AUDF is divided into two parts. Part A is titled, "Total Numbers of Animals (excluding dogs and cats) used in 'Research' in 2017" and Part B is titled, "Total Numbers of Dogs and Cats used in Research in 2017."

[17] Part A lists various categories and subcategories of animals and requires the facilities to list the numbers used of each subcategory of animal in 2017 and also to specify the species of these animals. Part B asks for the total number of cats and dogs used in Non-recovery Procedures⁶ and whether the dogs and cats were sourced from sources in or outside of Ontario.

[18] The form requires each facility to list the numbers of each category or subcategory of animals used in research in 2017, and with respect to certain types of animals, the species used. The form also requires the research facility to list the numbers of dogs and cats sourced in Ontario or elsewhere.

[19] The exemptions/exclusion applied to the records are more particularly described in the following chart from the ministry:

Record #	Record Name	Exemptions/exclusion claimed by the ministry
1	Animal Use Data Form	Denied in full under section 14(1)(e),(i) (Law Enforcement) and section 20 (Danger to Safety or Health)
2	Animal Use Data Form	Denied in full under section 14(1)(e),(i) (Law Enforcement) and section 20 (Danger to Safety or Health)
3	Animal Use Data Form ⁷	Part access, parts denied; excluded under section 65(8.1)(a) and exempt under section 14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health).
7	Animal Use Data Form	Excluded under section 65(8.1)(a). In the alternate, section 14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health) apply.
8	Animal Use	Excluded under section 65(8.1)(a). In the alternate, section

⁵ The appellant is not interested in receiving access to the names of the facilities, the facilities certificate numbers, the facilities' principals' names and signatures. This would include the abbreviations of the facilities' names contained in the records, as well as the names, addresses, email addresses, and phone numbers of facilities where animals were sourced.

⁶ Non-recovery procedures occur when an animal is anesthetized before a procedure and is humanely killed without ever regaining consciousness.

⁷ The cover letter to the Animal Use Data Form in record 3 is not at issue in this appeal.

	Data Form	14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health) apply.
9	Animal Use Data Form	Excluded under section 65(8.1)(a). In the alternate, section 14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health) apply.
10	Animal Use Data Form	Excluded under section 65(8.1)(a). In the alternate, section 14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health) apply.
11	Animal Use Data Form	Denied in full under s. 14(1)(e),(i) (Law Enforcement) and s. 20 (Danger to Safety or Health)
12	Animal Use Data Form	Denied in full under section 17(1) (Third Party Information); section 14(1)(e),(i) (Law Enforcement) and section 20 (Danger to Safety or Health)
15	Animal Use Data Form	Excluded under section 65(8.1)(a). In the alternate, section 14(1)(e), (i) (Law Enforcement) and section 20 (Danger to Safety or Health) apply.

ISSUES:

- A. Do sections 65(8.1)(a) or 65(8.1)(c) (records respecting or associated with research) exclude the information at issue in the Animal Use Data Forms at records 3, 7 to 10, and 15 from the *Act*?
- B. Is the identity of an affected party ascertainable from the information remaining at issue in their record?
- C. Do the discretionary exemptions at sections 14(1)(e), 14(1)(i) (law enforcement) or section 20 (threat to safety or health) apply to records 1, 3, 7 to 10, 12, and 15?
- D. Did the ministry exercise its discretion under section 14(1)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Do sections 65(8.1)(a) or 65(8.1)(c) (records respecting or associated with research) exclude the information at issue in the Animal Use Data Forms at records 3, 7 to 10, and 15 from the *Act*?

[20] The records in question relate to educational institutions, hospitals and other facilities. The ministry argues that the research exclusion found in section 65(8.1)(a) applies to records relating to educational institutions and that the research exclusion in section 65(8.1)(c) applies to records that pertain to hospitals. These sections read:

This Act does not apply,

(a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; ...or

(b) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital;

Representations

[21] The ministry states that the records were submitted to it by research facilities as defined in section 1 of the *Animals for Research Act* (the *ARA*):⁸

“research facility” means premises on which animals are used in research and includes premises used for the collecting, assembling or maintaining of animals in connection with a research facility, but does not include a farm on which pregnant mares are kept for the collection of urine.

[22] And that “research” is defined under the *ARA* as:

“research” means the use of animals in connection with studies, investigation and teaching in any field of knowledge, and, without limiting the generality of the foregoing, includes the use of animals for the performance of tests, and diagnosis of disease and the production and testing of preparations intended for use in the diagnosis, prevention and treatment of any disease or condition; ...

[23] The ministry states that submitting these records annually is a requirement under section 4(1) of the regulations under the *ARA* for the research facilities to operate or be registered:⁹

4(1) The operator of every research facility shall, prior to the first day of March in every year, submit to the Director an annual report in respect of the preceding calendar year and the report shall contain,

a) the total number of every species of animal used for research in the research facility in the year;

b) the total number of dogs and the total number of cats purchased or otherwise acquired from,

(i) other research facilities,

⁸ *Animals for Research Act* R.S.O. 1990, Chapter A.22.

⁹ R.R.O. 1990, Reg. 22: GENERAL of the *ARA* (Reg 22).

- (ii) pounds,
- (iii) supply facilities, and
- (iv) other sources; and

c) the total number of dogs and the total number of cats that in any experiment or surgical procedure did not recover from anaesthesia.

(2) The operator of every research facility shall submit to the Director a report setting out,

a) the names of members of the animal care committee forthwith after the committee is established; and

b) particulars of every change in membership of the animal care committee, including the name of any new member, forthwith after the change is made.

[24] The ministry states that the records reflect those research facilities' reports of the animals they used in 2017 for research (including teaching and testing) within the meaning of the *ARA* set out above. It further states that the records indicate that the research facilities should, "Please refer to Appendices B, C, and D of 'The Instructions for Reporting the Numbers of Animals Used for Research' in order to complete the reports for 2017," and these instructions refer to a definition of 'research' that mirrors the definition in the *ARA*.

[25] In light of the above, the ministry submits that the records at issue are "associated with research" within the meaning of the *Personal Health Information Protection Act, 2004 (PHIPA)*,¹⁰ definition accepted by the Ontario Divisional Court, namely "... a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research."

[26] It further submits that the records reflect "research conducted or proposed by an employee of, or person associated with" the research institution as section 17 of the *ARA* requires that, in order to conduct animal research in Ontario, the facilities must have oversight of the research through their own animal care committee (and must report this to the ministry under section 4(2) of Regulation 22).

[27] Thus, the ministry submits that even if a given facility might have researchers conducting animal research who may not be in an employee/employer relationship with the research facility, they must still be 'associated with' the research facility by virtue of the research facility committee's strict oversight of the research, including of the

¹⁰ This appeal does not concern a request for information under *PHIPA*.

research proposal, as well as their coordinating, reviewing and enforcement role.¹¹

[28] It states that in the ministry research facility inspection reports (such as the de-identified reports that this appellant has received through previous access requests), there is a section in the reports on the research facilities' animal care committee, a listing of the standards of care in place and the animal use protocols for each approved research project, and a notation for the same species of animals that are listed on the Animal Use Data Forms that are the subject of this appeal.

[29] The ministry, therefore, submits that all of its records, including reports required by the ministry, are by default respecting or associated with research. It states that it is reasonable to conclude that "some connection" exists between the records and identifiable "research conducted or proposed by an employee of or by a person associated with the institution."¹²

[30] The appellant submits that the ministry provides very little actual evidence that the release of the records at issue will show the purpose of animal use, be it research, teaching and testing.

[31] Further, it states that the ministry now separates the inspection reports from the inspection notes and that the records provided to the appellant did not attach the right inspection note to the right inspection report, making it impossible for the appellant to match the correct documents.

[32] In reply, the ministry states that where the fields in animal research facilities' Animal Use Data Forms contained only types and numbers of animal species that were common (not unique), the de-identified Animal Use Data Forms were disclosed to the appellant.

[33] As well, the ministry states that, unlike the records at issue in this appeal, the Animal Use Data Forms that were disclosed are those in which an animal research facility consented to the release of their information and where the release of that information would not serve to identify or to allow accurate inferences regarding the identity of another animal research facility or a small set of animal research facilities that did not consent. Similarly, it states that where the Animal Use Data Form pertained to a research facility of the Ontario government, the ministry disclosed the form to the appellant.

¹¹ The ministry relies on section 17 of the *ARA* regarding the role and responsibilities of an animal care committee of a registered research facility.

¹² The ministry relies on the Ontario Divisional Court decision in *Ontario (Attorney General) v. Toronto Star* 2010 ONSC 991 re 'in relation to' in section 65(5.2), followed by IPC orders including Order PO-3084 re section 65(8 1).

Findings

[34] Section 65(8.1)(a) applies where there is “some connection” between the record and the specific, identifiable research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution. The ministry claims this exclusion for the records pertaining to educational institutions.

[35] Section 65(8.1)(c) applies where there is “some connection” between the record and the specific, identifiable research conducted or proposed by an employee of a hospital or by a person associated with a hospital.¹³ The ministry claims this exclusion for the records pertaining to hospitals.

[36] Research is “... a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.” The research must be referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution.¹⁴

[37] Legislative intent must be kept in mind when interpreting the meaning of the word “research” in section 65(8.1). In my view, the requirement that the research must relate to specific, identifiable research projects respects the intent of the exclusions (protecting hospital and educational institutions’ research)¹⁵ while also respecting the accountability purpose of the *Act*.

[38] The ministry has claimed the application of the exclusion in section 65(8.1)(a) or (c), as applicable, to the record 3 form and all of records 7 to 10 and 15.¹⁶

[39] This record 3 form, and records 7 to 10 and 15, are all Animal Use Data Forms of the animals used in 2017 for research for each facility. Each record is for a different facility. About half of these facilities are hospitals and the other half are educational institutions.

[40] The appellant does not seek access to the names of the research facilities, their certificate numbers, or the principals’ names or signatures. Despite this, the ministry argues that the exclusions apply, taking the position that the research facilities and the kind of animal research that the facility does could be identified by the remaining information in the forms.

¹³ Order PO-2942; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

¹⁴ Order PO-2693.

¹⁵ The legislative intent of section 65(8.1)(a) has been found in past IPC orders to protect academic freedom and competitiveness while creating a general right of access to information held by universities (see Orders PO-2693, PO-2825, PO-2942, and PO-2946 for example). Concerning section 65(8.1)(c), the same can be inferred with respect to the legislature’s intent to protect the academic freedom and competitiveness of hospital-based research (see for example, Order PO-3365).

¹⁶ Record 3 consists of a letter and a two-page attachment. The letter is not at issue in this appeal; only the attachment in record 3 is at issue.

[41] The records contain the types and numbers of animal species/sub-categories of species and the combination of species/sub-categories of species housed at each of the research facilities. These forms are divided into different sections, section A (for animals that are not dogs/cats) and section B (only for dogs and/or cats).

[42] Where dogs and/or cats were used, section B requires additional details including the numbers and sources acquired from different sources (whether sources in Ontario are pounds, research facilities, donated by owner or miscellaneous and whether sources outside of Ontario are commercial supply and research facilities, donated by owner or miscellaneous).

[43] Each form at issue is about a hospital or an educational institution's animal holdings. I agree with the ministry that each of these institutions contain a research facility. As described above, a research facility means premises on which animals are used in research and includes premises used for the collecting, assembling or maintaining of animals in connection with a research facility. It is evident from the records, which list the inventory of animals at each institution, that each institution's premises are used for the maintaining of animals used in research.

[44] The issue then for me to decide is whether the records are records respecting or associated with research referable to specific, identifiable research projects conducted or proposed by an employee of an educational institution or hospital or by a person associated with an educational institution or hospital. That is, whether there is some connection between the records and identifiable research conducted or proposed by an employee of or by a person associated with the institution.

[45] Based on my review of the records, I find that they are not referable to specific, identifiable research projects that have been conceived by a specific faculty member, employee or associate of an educational institution or a hospital. Instead, I find that the records are merely an inventory of animals housed at each hospital or educational institution, as they just contain listings related to the types and numbers of animal species housed at each facility in 2017. I find that disclosure of the records would in no way indicate the purpose of the research being conducted at each facility. For clarity, I add that the issue of whether the institutions can be identified (after redacting the information not sought by the appellant) is not relevant to this question. Whether in their complete or redacted state, the records do not relate to specific identifiable research projects.

[46] Accordingly, I find that the Animal Use Data Forms, comprising part of the attachment (contained within record 3) and all of records 7 to 10 and 15, are not excluded from the application of the *Act*. As the ministry has claimed, in the alternative, the application of the exemptions in sections 14 and 20 to this information, I will consider whether this information is exempt below.

Issue B: Is the identity of an affected party ascertainable from the information remaining at issue in their record?

[47] At Issue C below I consider whether either of the section 14(1) or 20 exemptions applies to the records. In my view, and as will be seen from my discussion, a threshold issue is whether a facility could be identified from disclosure of the records with certain identifying information severed. The appellant is not interested in receiving access to the names of the research facilities, the research facilities certificate numbers, or the research facilities' principals' names or signatures. This would include the abbreviations of the facilities' names contained in the records, as well as the names, addresses and phone numbers of the facilities where animals were sourced from.

[48] The ministry states that in an earlier request it used the above severances to release significant portions of 74 forms, as it determined, unlike in this case, that these facilities could not be identified once the information was severed.

[49] I sent a Notice of Inquiry to each of the affected parties asking them to explain how their facility is identifiable from disclosure of the record even if the information not sought by the appellant is severed.

[50] I asked the affected parties to provide representations as to what particular information remaining in the record can be used to identify their facility and how this information can be used to identify them.

[51] In providing representations on the identifiability of their research facility, I asked each affected party to include a response to the following questions:

1. Does your facility have information on its website or in published papers or by other public means that it uses animals in its research? Does this publicly available information include the species of animals used and/or the numbers of animals used?
2. Does the publicly available information about your research facility include the location of your research facility and/or the names of its administrators or other staff?
3. Do you provide tours of your research facility? Do these tours reveal that animals are used for research?
4. If the answer is no to the questions in # 1 to 3 and your animal research facility is not publicly known, how then can the information remaining at issue in the record be used to identify your research facility as a facility that uses animals for research? If your facility is so identifiable, then how could disclosure of the information remaining at issue in your record reasonably be expected to result in the harms set out in the following issues?

5. If the answer is yes to any of questions in # 1 to 3, and your facility is already publicly known as a facility that uses animals in its research, how could disclosure of the information remaining at issue in your record reasonably be expected to result in the harms set out in the following issues?

Representations re identity of facilities

[52] The ministry points out that it has previously disclosed to the appellant information from approximately 74 other Animal Use Data Forms as the portions released would not identify or narrow down the identities of research facilities to a small pool of possible choices.

[53] The ministry submits that it is reasonable to expect that if the remainder of the withheld information was disclosed in the records at issue in this case, the research facilities in the records would still be identifiable to the appellant (and to other astute observers) or that the pool of possible choices to identify the particular research facilities becomes so small that it would be possible for the appellant (and other astute observers) to narrow down their identities to a "small cell count" (presumably the ministry means a pool that is so small that it becomes possible to guess what the individual facility might be).

[54] The ministry submits that the records contain the following detailed information that, taken collectively, could be used to narrow down or in some cases, specifically pinpoint the identity of research facilities, including the kind of animal research that the facility does:

- The types of animal species/sub-categories of species and the combination of species/ sub-categories of species used for research by the research facilities.
- Where no animals have been reported under specific headings/rows (i.e. these animals have not been used for research by the research facilities).
- Whether or not dogs and/or cats were used for research by the research facilities, their source(s) and the numbers used¹⁷ as this requires additional details including the numbers and sources acquired from different sources (whether sources in Ontario are pounds, research facilities, donated by owner or miscellaneous sources).
- The number of animals, by species/sub-category of species, used for research by the research facilities.
- The Index required under Part A of the Animal Use Data Form contains significant detail regarding the animal used by the research facility, in addition to

¹⁷ The Animal Use Data Form is divided into different sections, A (for animals that are not dogs/cats) and B (only for dogs and/or cats).

the animal species/sub-categories of species, including a detailed listing of types of animals, together with quantities of these types of animals that make up the sub-categories listed under 'Other'.

- Information already in the public domain when combined with any of the above, including published research, and other information in the appellant's possession such as information obtained pursuant to access requests. Information that could end up in the public domain, such as where a given research facility does not object to release of its information.

[55] The ministry provided confidential representations about how specific information in each of the records at issue alone and considered with information contained in other forms or publicly available information could possibly be used to identify the research facility it pertains to or could result in it being ascertained that a specific research facility is only one of a handful of possible research facilities that the record pertains to. The ministry's confidential representations included representations from each of the facilities listed in the records at issue.

[56] The appellant submits that it is impossible for a specific research facility to be identified by disclosure of the information at issue in the records. It also points out that several research facilities have an online presence that reveal information about the animals it uses in research and the type of research it performs.

[57] Individual affected parties provided representations on identifiability relevant to their record, much of which was confidential. I have summarized these representations generally. The submissions on identifiability include that certain affected parties:

- already publish data on their website about their use of animals in research; however, this data does not show the number of individual species. Rather, species are grouped into larger categories.
- never share publicly the location of certain animal research services, such as those which house large mammals, for example dogs and non-human primates.
- do not provides tours to the public of their animal research facilities, and their animal research facilities have extra security including CCTV, controlled access at each entry point and after-hours alarms.
- could potentially be identified through published studies and grant applications that contain the same certain unique species that are contained in their record.
- use animals in certain numbers that, in conjunction with data from other research facilities, could be used to identify them.
- do not include information about animal research, including facility names and locations, on its public website and does not conduct tours of these facilities, nor

publicize its participation in animal research. Despite this, it may be possible for individuals familiar with animal research to determine the name of the facility from the types and/or numbers of animals listed in the record.

- are one of a limited number of facilities in Ontario with the research focus to use the combination of species set out in the record, or the space to house such animals.
- use a large number of animals considered to be pets and do not use animals in non-recovery studies create an Animal Use Data Form which looks much different than most research facilities
- have a handwritten form that can identify the facility through forensic document examiners.

Findings re identity of facilities

[58] As noted above, the appellant does not seek access to the names of the research facilities, the research facilities certificate numbers, or the principals' names or signatures of the research facilities in the records. This would include the abbreviations of the facilities' names contained in the records, as well as the names, addresses and phone numbers of the facilities where animals were sourced from. I must decide whether any or all of the facilities would nonetheless be identifiable from disclosure of the remaining information.

[59] In this appeal, at issue are the types and numbers of certain types of animals used in research in 2017 in each of the 10 Animal Use Data Forms at issue (records 1 to 3, 7 to 12, and 15).

[60] As noted above, I received representations on identifiability directly from all of the affected parties except two (the information of these two affected parties is contained in the form at records 2 and 11).

[61] Taking into consideration the ministry's representations and the information at issue in the Animal Use Data Forms comprising records 2 and 11, I find that once the information the appellant does not seek is removed as noted above, the facility cannot be identified from the remaining information in these two records. This information consists only of a listing of the animals that each of these facilities uses for research and the numbers used.¹⁸

¹⁸ The record 11 facility also did not provide representations on the application of the mandatory section 17(1) exemption, although asked to do so. The ministry did not claim section 17(1) for records 2 and 11. Based on my review of both records 2 and 11, I find that section 17(1) does not apply to exempt the information at issue in records 2 and 11. Section 17(1) reads:

[62] I will now consider whether the information at issue (that is, all the information except the information the appellant does not seek) in each of the remaining records, records 1, 3, 7 to 10, 12, and 15, can be used to identify the affected party to which each record pertains.

[63] Record 1 – I agree with this facility that it would take minimal effort to match the species and their numbers identified in this record to the facility as this record contains a unique combination of species and species of a specific size. There are limited number of facilities in Ontario with the research focus that use the combination of species set out in this record, or the type of space to house such animals. In summary, I agree that this facility could be identified even if the information the appellant does not seek is severed.

[64] Record 3 – I agree that this facility could be identified as it is one of the few facilities that conducts research on a specific category of unique animal species. As well, other unique species listed in the record could lead to an assiduous researcher, who spent time looking up published studies and grant applications, identifying this facility.

[65] Record 7 – this facility does not have publicly available information that it conducts animal research; however, it maintains that it may be possible for individuals familiar with animal research to determine the name of the facility from the types and numbers of animals listed on the record. The ministry provided record-specific confidential representations about this record that have satisfied me that this facility's use of certain species, when compared with publicly available information regarding the use of these species, could result in this facility being identified. Therefore, I find that disclosure of the information at issue in this record could be used to identify this facility.

[66] Record 8 – I agree that this record contains a unique combination of information such as the volume and type of species, and includes unique animals. This facility is known to have animal research facilities. I find that the data in this record used in combination with the publicly available information could be used to identify this facility.

[67] Record 9 – This record is the two-page form and a one-page attachment (page 3) that lists different subspecies of animals. This facility refers to a decision issued by

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

the ministry in an earlier request for an inspection report where the ministry withheld under sections 14 and 20 certain of the same unique species information as that contained in the two-page form in this record. This information was withheld by the ministry as being potentially identifying of this affected party. I agree that this information in record 9 is identifying of the facility whose information is in record 9.

[68] As well, I note that page 3 of record 9 (an attachment to this record) contains a detailed list of subspecies that this affected party refers to as unique species that could result in identifying this affected party. I agree with the affected party that the species listed on page 3 of this record are very specific such that this affected party could be identified if this information was disclosed. I also agree with the affected party that there is certain information in the remainder of the form that, in combination with the unique species in the attachment, could lead to it being identified.

[69] Record 10 – This affected party is concerned that the subcategory of animals housed by it would be used to identify it as these are not animals native to the location of this affected party. It is also concerned that the handwriting on the record could be used by forensic document examiners to identify it.¹⁹ This affected party does not publish on its website or in published papers or by other public means that it uses animals in its research, nor does it provide details on which species of animals used and/or the numbers of animals used. It also does not identify publicly precise locations of any of its research facilities.

[70] I disagree with this affected party that the handwriting on the form could result in the affected party being identified. Besides the numbers, there are only five handwritten words on this form at issue, being three subspecies of animals, and the month the form was signed. I find the affected party's statement that this is identifying information through the use of a forensic examiner to be speculative.

[71] However, the ministry provided record-specific confidential representations about this record that have demonstrated to me that this facility's use of certain subspecies, when compared with publicly available information regarding the use of these subspecies could result in this facility being identified. Therefore, I find that disclosure of the information at issue in this record could be used to identify this facility.

[72] Record 12 – There is a very limited number of certain species in this form. These species are in large numbers, such that it could be ascertained which facility uses these very few types of animals in such large quantities. I agree with this affected party that it could be identifiable from the information at issue in this form.

[73] Record 15 – In this form there is a large number of one unique species of animals that, as set out in this affected party's representations, could result in this affected party being identifiable. This type of animal is well-known to be used by this

¹⁹ The affected party is concerned about the name and contact information of its supplier in the attachment to the form could identify it, however, this information is not at issue in this appeal.

facility. As well, another species in this form is used in such large quantities that it could result in this facility's identification. I agree with this affected party that it could be identifiable from the information at issue in this form.

Conclusion re identifiability

[74] I have found that the research facilities to which records 2 and 11 pertain to could not be identified from disclosure of the information at issue in these two records.

[75] As explained above, the identifiability of the research facilities is a threshold issue because the risks of harm that may arise in sections 14(1) may only arise if the facilities are identifiable. Because I find that the facilities at issue in records 2 and 11 are not identifiable, it is not necessary to consider the possible application of sections 14(1)(e), 14(1)(i), and 20.²⁰

[76] As no mandatory exemptions have been claimed or appear to me to apply to records 2 and 11, I will order the information at issue in these records disclosed with the redactions noted above.

[77] Regarding the remainder, I am satisfied that the research facilities are identifiable even if the information the appellant does not seek is severed.

[78] I will now determine whether the sections 14(1)(e), 14(1)(i), or 20 discretionary exemptions apply to the remaining records.

Issue C: Do the discretionary exemptions at sections 14(1)(e), 14(1)(i) (law enforcement) or section 20 (threat to safety or health) apply to the records?

[79] At issue is the information about animal numbers required to be included in a 2017 AUDF, as noted above.

[80] The records at issue are records for which I have found the facility to be identifiable: records 1, 3, 7 to 10, 12, and 15, being Animal Use Data Forms from 2017 for certain hospitals and educational institutions, and private facilities that perform animal research. The information at issue in the records does not contain the names of the research facilities or other facilities listed in the forms or these facilities contact information, the research facilities certificate numbers, or the research facilities' principals' names or signatures. The facilities are nonetheless identifiable.

[81] The parties for the most part provided the same representations on each of the sections 14(1)(e), 14(1)(i) and 20 exemptions. Therefore, I will consider the application of these exemptions together.

²⁰ See Order PO-4328, where I determined that there was no reasonable prospect that the discretionary sections 14(1)(e), and (i) [and (l)], and 20 exemptions could apply to the information at issue in an AUDF, as I found that the identity of the facility could not be ascertained from disclosure of the names and numbers of certain species of animals listed in this AUDF.

[82] Sections 14(1)(e) and (i) state:

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

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[83] Section 20 states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[84] For these exemptions to apply, the institution and/or other party resisting disclosure must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.²¹

[85] For section 20 to apply, an individual's subjective fear, while relevant, may not be enough to justify the exemption.²²

Representations

[86] The ministry's position is that the disclosure of the withheld information could reasonably be expected to endanger the life or the physical safety of persons who are associated with the research facilities (including their personnel) under section 14(1)(e) and to endanger the security of the research facilities under section 14(1)(i).

[87] The ministry's reasoning for the application of sections 14(1)(e) and 14(1)(i) is that the individuals/persons and facilities that have been the targets of physical violence, harassment and threats of physical harm demonstrate that the risk of harm is not merely speculative.

[88] The ministry provided representations taking into account submissions it received from the facilities. It states:

²¹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²² Order PO-2003.

Even where a particular research facility has not expressly disclosed to the ministry that their facility, or persons/individuals associated with the research facility have been the direct target of physical violence, harassment and threats of physical harm in the recent past, there have been assertions of endangerment to their own facilities and persons/individuals associated with their research facilities based on their awareness of the pattern of behaviour exhibited by animal extremists against research facilities and those associated with research facilities. A number of research facilities have referred to the following in their representations to the ministry. [The ministry provided examples of these incidents].

[89] The ministry submits that the IPC has previously accepted information regarding violence and harassment to animal research facilities and those associated with the facilities, including researchers and other personnel, as detailed and convincing evidence even where those incidents may not have been directed specifically to the research facilities in question or those associated with them, including where those incidents took place abroad.²³

[90] The research facilities at issue themselves provided representations, some of which were confidential. These representations echo those of the ministry and provide examples of violent incidents against animal research facilities and staff at these facilities undertaken by certain animal rights activist groups.

[91] Some of these representations refer to past IPC decisions (P-169, P-252, P-557, P-1537, PO-3626),²⁴ which they submit have consistently held that when adjudicating a matter relating to animal research records it is necessary to acknowledge that disclosure to a requestor is, in effect, disclosure to the public generally and that, as a result, the potential for acts of violence by groups opposed to the use of animals in research must be considered in determining whether there is a risk of harm.

[92] In response to the ministry's non-confidential representations, the appellant submits that the assertion of threats alleged by the facilities and the ministry cannot be used to deny the appellant information if any of them have a web presence. The appellant refers to a facility's website, that it submits is the same information as in the forms. However, from my review of this information, it is not the same information as in the forms. The website referred to by the appellant does not show the number of individual species. Rather, the species are grouped into larger categories, with data

²³ The ministry relies on Order PO-3626 at paragraphs 31 through 37.

²⁴ P-169: number of every species of animal used in research;

P-252: number and type of animals used by individual colleges, universities, and hospitals;

P-557: numbers and species of animals used for every research facility in Ontario;

P-1537: type of species and/or number of animals;

PO-3626: tables listing the number of animals (by species) subjected to experiments at Queen's University.

published on the numbers of animals in each grouping. As well, the facilities' websites do not contain the information in the records about the actual numbers and species of animals used.

[93] The appellant states that it is not making the request for the purpose to identify specific research facilities but to acquire sufficient information to determine whether claims made by research facilities, the ministry and the Canadian Council on Animal Care (the CCAC) are accurate. The CCAC is a voluntary body that produces suggestions and guidelines as to the care of research animals.

[94] The appellant is seeking information about whether facilities' Animal Care Committees are functioning properly and what actions are taken where ACCs are not adhering to their responsibilities. The appellant is also seeking information about how animals are treated before, during and after being subjected to research procedures.

[95] The appellant submits that it is not appropriate to deny information about what happens in research facilities in Ontario on the unproven chance that someone might be able to identify a particular facility. It also points out that many facilities have websites that identify that they do research on animals.

[96] It states that the submissions from the ministry does not raise examples of direct threats to the security of buildings, vehicles, systems or procedures under sections 14(1)(e), 14(1)(i) or 20.

[97] The appellant asserts that the ministry has not demonstrated risk of harm except in a speculative manner and has not provided evidence that disclosure of said information would have serious consequences. It submits that the ministry has ignored those research facilities who have provided public access to such information apparently without fear of harm and has failed to address the public web presence of many research facilities. It has not demonstrated a risk of harm that is beyond the merely possible or speculative.

[98] I received extensive reply and sur-reply representations from both the ministry and the appellant repeating much of the same representations as initially provided and each disputing the others claim about the application of sections 14(1)(e), 14(1)(i), and 20.

Findings

[99] The IPC has previously accepted information regarding the risk of violence and harassment to animal research facilities and those associated with the facilities, including researchers and other personnel, as detailed and convincing evidence even where those incidents may not have been directed specifically to the research facilities in question or those associated with them, including where those incidents took place

abroad.²⁵

[100] I accept the ministry's evidence that certain animal research facilities have been the target of animal rights extremists, some of which whose staff or facilities have been subject to violence.

[101] I will now determine whether the information at issue of the identifiable facilities in records 1, 3, 7 to 10, 12, and 15 is subject to the sections 14(1)(e), 14(1)(i) and 20 exemptions. Specifically, I will now turn to consider the information that if disclosed, would reveal the identity of the research facility.

[102] The ministry relies on Order PO-3626. In that order, Queens University denied access to 6 pages of Animal Use Data Forms for the years 2009 to 2013, relying on sections 14(1)(e) and 14(1)(i) and 20. These forms included information about protocol numbers; project description or keywords; Purpose of Animal Use (PAU); the Category of Invasiveness (COI); species; and the total number of animals used in the calendar year.

[103] According to Order PO-3626, COI is described as the level of intrusion to which the animals are subjected. COI is classified from research on animals that causes no pain to the animals up till procedures that cause severe pain near, at or above the pain tolerance threshold of unanesthetized conscious animals. The forms at issue in this appeal contain the similar information as the COI with respect to dogs and cats, as they contain information about numbers of dogs and cats used in non-recovery procedures.

[104] In Order PO-3626, the adjudicator determined that:

...with respect to requests for information concerning animal experiments taking place in registered research facilities where information was withheld²⁶, the records at issue in those cases can generally be described as statistical reports identifying the numbers and species of animals used by each identified facility. In those cases, the Ministry of Agriculture and Food²⁷ (and, in some cases, affected persons) claimed that sections 14(1)(e) and (i) applied, based on serious concerns that disclosure of the records could reasonably be expected to result in employees and facilities being targeted for threats and acts of violence by extremists in the animal rights movement. In each case, this office upheld the application of one or both of sections 14(1)(e) or 14(1)(i)...

[105] The adjudicator in Order PO-3626 found that disclosure of the records could reasonably be expected to endanger the life or physical safety of individuals associated with animal testing at Queens University as well as the security of that university's

²⁵ The ministry relies on Order PO-3625 at paragraphs 31 to 37.

²⁶ See Orders 169, P-252, P-557, P-1537.

²⁷ Now the Ministry of Agriculture, Food and Rural Affairs, the institution in this appeal.

facilities. The adjudicator's decision was not based on the identity of the appellant or the advocacy group of which she was a member or its activities, but rather on the principle that disclosure of the record must be viewed as disclosure to the public generally.

[106] The adjudicator found that the evidence before him indicated that the concerns of potential violent action being taken by extremist groups have not diminished in the last several years. He said:

If disclosed, the information in the records would be potentially available to all individuals and groups involved in the animal rights movement, including those who may elect to use acts of harassment and violence to promote their cause. I also accept Queens' position that the more of this type of information that is made available, such as the type of species, numbers and category of invasiveness associated with animal research conducted at Queens, the more likely specific individuals and facilities will be targeted for harassment, violence and harm.

[107] The adjudicator found that disclosure of the information in the records at issue could reasonably be expected to endanger the life or physical safety of an individual and threaten the security of a building and qualifies for exemption under sections 14(1)(e) and 14(1)(i) of the *Act*. I agree with and adopt the analysis of the adjudicator in Order PO-3626 regarding the application of sections 14(1)(e) and 14(1)(i) to the forms.

[108] Order PO-3626 was considered in Order PO-4073. In that order, the records were five annual reports from 2014 to 2018 (totalling 15 pages) containing information about the use of dogs or cats for any purpose, and whether they are purpose-bred or randomly sourced at Unity Health Toronto (UHT).

[109] In Order PO-4073, an order referred to by the appellant in its representations, the adjudicator distinguished Order PO-3626 on the basis that the request in Order PO-4073 did not ask for the category of invasiveness to which the dogs and/or cats are subjected. In other words, that request did not seek disclosure of details as to the way in which the dogs and/or cats are used. The adjudicator in Order PO-4073 in finding that sections 14(1)(e) or 14(1)(i) did not apply, stated:

... as noted in Order PO-3626, the issue is not whether harms have materialized in the past, but rather, there is a reasonable expectation of harms in the future...

Although UHT argues that the information about the numbers and species of animals used by each facility is new information, information about the numbers and species of animals used in research/teaching/testing in Ontario is publicly available upon request. As the appellant points out, the

Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) compiles numbers of animals used in research, including the use of both purpose-bred and random sourced dogs and cats.

As the appellant argues, it is publicly known that St. Michael's Hospital [part of UHT] used pound-sourced dogs and cats in 1987...

Finally, I note that information about UHT's animal research facility, its staff and its researchers is publicly available. UHT publicizes much of this information itself...

[110] However, unlike in the records before me, in the case of Order PO-4073 the records concerned only the use of dogs and cats and much of the information related to its use of these animals was already publicly known.

[111] Considering the ministry and the affected parties' representations on the claimed discretionary exemptions, in particular their confidential representations on the threats to their facilities and staff based on the type of animal research they do, I find that the harms set out in 14(1)(e) and 14(1)(i) could reasonably be expected to occur. For ease of reference, these harms include violence and harassment of animal research facilities and those associated with the facilities, including researchers and other personnel who work at these facilities.

[112] The following are some examples described by the affected parties about the harms that could reasonably be expected to occur:

- Academic and other articles that contain examples of harassment of animal researchers, including recent articles;²⁸
- Several violent activities of animal rights activists in Canada, two 2014 incidents where butyric acid was injected into the offices of the Canadian Association for Laboratory Animal Science in Toronto and where tires of vehicles were slashed and the vehicles spray painted at the Royal Winter Fair in Toronto;

²⁸ <https://www.science.org/content/article/overwhelmed-hate-covid-19-scientists-face-avalanche-abuse-survey-shows>
<https://www.the-scientist.com/news-opinion/opinion-time-to-take-animal-rights-harassment-more-seriously-70140>
<https://www.science.org/content/article/animal-rights-extremists-increasingly-targeting-individuals>
<https://www.science.org/content/article/animal-care-panel-sues-own-university-fearing-harassment-animal-rights-activists>
<https://www.directactioneverywhere.com/news#press-releases>
https://www.blogto.com/fashion_style/2020/10/animal-rights-saks-store-toronto-protest
<https://www.blogto.com/city/2019/08/chickens-maple-leaf-foods-slaughterhouse-toronto>
<https://www.cbc.ca/news/canada/hamilton/ag-gag-1.5942400>
<https://www.theguardian.com/science/2010/mar/15/animal-rights-freedom-information-universities>

- Several other incidents of violent attacks on facilities and/or researchers and their homes and vehicles in the United States, South America and Europe.
- An October 2022 warning from the ministry of a credible threat on a research facility that read:

Yesterday, OMAFRA was alerted to a death threat directed to a staff member of a registered research facility at a university in Ontario. We understand the threat was provided in writing and delivered by post, addressed specifically to the staff member at their place of employment. The threat was unambiguous and included a 'poster' like document that named the staff member, included a picture of them and their contact information and also provided detailed directions to the animal holding locations at the facility.

- Threatening calls at homes of facility staff because they conduct animal research.
- An explosive device was purposely detonated outside an animal research facility.

[113] While the appellant in this appeal may not be involved in such behaviour, nor even hold such views, the IPC has recognized the principle that disclosure to one is disclosure to all. Assistant Commissioner Mitchinson wrote in order P-1537 that "the expectation that harm would result is not based on the identity of the appellant, but rather on the fact that the records, if disclosed, would be in the public domain." In other words, once it was known that a research facility was using animals for research, and particularly what types of animals in what quantities, individuals or groups that choose violent means to express their views could potentially use the information to do just that.

[114] In making this finding, I have taken into account the ministry's submission that there are serious concerns that disclosure of the records could reasonably be expected to result in animal research facilities and those associated with the facilities being targeted (or continuing to be targeted) by violence, threats of violence and harassment by extremists in the animal rights movement, and that these concerns should not be dismissed as merely speculative.²⁹

[115] I have also taken into account the appellant's arguments that similar information to that in the records may also be available publicly on websites or publications. However, I have not been provided with evidence that any of the facilities at issue in this appeal disclose the same type of information as that is at issue in this appeal.

[116] In summary, based on my review of the information at issue in the records and the parties' representations, I find that because the research facilities in records 1, 3, 7

²⁹ The ministry relies on Order PO-3626 and the orders referred to in therein, Orders P-169, P-252, P-557, and P-1537.

to 10, 12, and 15 are identifiable, disclosure of the information at issue in the records could reasonably be expected to endanger the life or physical safety of a person associated with a facility under section 14(1)(e) or to endanger the security of a building or a facility under section 14(1)(i) as claimed by the ministry. I, therefore, find that this information is exempt from disclosure.

[117] I will next review the ministry's exercise of discretion; however, there is no need for me to also consider whether they are also exempt under sections 17(1) or 20.

[118] For records 2 and 11, as noted above, as they are not identifiable from the information at issue in the records, none of section 14(1)(e), 14(1)(i), or 20 exemptions apply to the information at issue in these two records since I am unable to conclude that disclosure could reasonably be expected to identify the facilities to which these records pertain.

[119] Finally, as the public interest override in section 23³⁰ does not apply to records exempt under section 14, I am unable to consider the possible application of section 23 to the records that I have found exempt under section 14.

Issue D: Did the ministry exercise its discretion under section 14 for the information at issue in records 1, 3, 7 to 10, 12, and 15? If so, should this office uphold the exercise of discretion?

[120] The section 14 exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[121] 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.

[122] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³¹ The IPC cannot, however, substitute its own discretion for that of the institution.³²

³⁰ Section 23 reads:

An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

³¹ Order MO-1573.

³² Section 54(2).

[123] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:³³

- 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

[124] The ministry submits that when it decided to apply the discretionary law enforcement exemption to the records, it considered:

- a. The highly sensitive nature of the withheld information at issue, the fear expressed by research facilities in their submissions, the evidence of violence against research facilities and those associated with the same, and the risk of placing research facilities in a vulnerable position by releasing information that

³³ Orders P-344 and MO-1573.

could have the effect of exposing individual research facilities and those associated with them to physical harm or further physical harm.

- b. The negative impact disclosure of the withheld information might have on the field of animal research itself. This includes the need to preserve the ability of the research facilities to continue to engage researchers to work towards the scientific and medical breakthroughs that such research has and continues to yield without the fear of interference. The CCAC, in setting out its confidentiality policy also referred to the need to "...foster frank and open discussions of all animal ethics and care issues..."³⁴
- c. Ministry program staff advised that ministry policy and practice historically has been to not publicize and to seek to withhold the information in question in this appeal as it sets out details regarding each individual animal research facility's unique types/numbers of animal species, and recognizing that there are publicly available sources for aggregate information regarding the research facilities. This is consistent with its access decisions including the decisions that were the subject of appeals.
- d. The ministry has been as transparent as possible vis a vis the appellant. The appellant already has access to sufficient information for 2017, the year that is the focus of the appellant's appeal regarding animals used by research facilities for the purposes of research, teaching, and testing that the ministry licenses and inspects under the *ARA*. The ministry provided non-identifying, province-wide statistical information to the appellant informally for 2017 as it did since 2000 and continues to do, with no requirement for the appellant to go through the FOI [freedom of information] process. This included an annual breakdown of the total number of animals used by Ontario research facilities, by species along with a breakdown of the sources (pounds, research facility, donated by owner, non-recovery, other sources) from which cats were obtained and from which dogs were obtained.³⁵
- e. The ministry, through its Animal Health and Welfare Branch, has also provided additional information/clarification to the appellant regarding the 2017 breakdown referred to above.³⁶
- f. The ministry is aware of the fact that the appellant already has access to other relevant public sources of information for 2017 including the annual report that

³⁴ See CCAC Confidentiality of Assessment Information policy at: https://ccac.ca/Documents/Standards/Policies/Confidentiality_of_assessment_information.pdf

³⁵ The ministry provided a document entitled *Total Animals Used for Research/Teaching/Testing in a Research Facility During 2017* which contains a detailed aggregated and anonymized summary of the information in the records (Animal Use Data Forms) submitted to the ministry by the research facilities registered under the *ARA*.

³⁶ The ministry provided an example of an email exchange with the appellant related to the 2017 data.

the CCAC published containing aggregate information such as the overall number of animals used in Canadian science, all the animal types used, the animal types most often used broken down by percentage, the number of animals used broken down by type...

- g. Further, the ministry in an attempt to balance the interests of transparency and applying limited and specific exemptions against the need to help guard the safety and security of the research institutions, has in previous FOI requests from this appellant released information as part of 10 access requests. In the course of preparing these submissions, it was noted that the ministry has received a total of 12 access requests from this appellant for animal research related information. The requests that have been processed to date and the information that has been released was taken into consideration in revisiting the exercise of discretion...
- h. Additional details as contained in the records that are the subject of this appeal could only be used to narrow down/make accurate inferences as to the specific or small set of research facilities. This information could then be used to potentially target the facilities.

[125] The appellant's submission on this issue is that it:

... recommends that the IPC not uphold the exercise of discretion as it is being used to increasingly deny the applicant information.

Findings

[126] Based on my review of the ministry's detailed representations on the exercise of its discretion and the information at issue, I find that in denying access to the records, the ministry exercised its discretion under sections 14(1)(e) and 14(1)(i) in a proper manner taking into account relevant considerations listed above.

[127] The ministry considered that information should be available to the public and balanced that, in particular, with the following considerations:

- the wording of the law enforcement exemption and the interests it seeks to protect;
- the need of the appellant to receive the information (oversight of animal research protocols) and the appellant's ability to meet these needs through the disclosure the appellant has already received;
- 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 animal research facilities at issue in the records;
- the historic practice of the ministry with respect to disclosing similar information.

[128] Accordingly, I am upholding the ministry's exercise of discretion under section 14 and find that the information at issue in records 1, 3, 7 to 10, 12, and 15 is exempt under sections 14(1)(e) and 14(1)(i).

ORDER:

1. I order the ministry to disclose records 2 and 11 to the appellant by **June 23, 2023** but not before **June 19, 2023**, less the names and addresses of the facilities, the facilities certificate numbers, the facilities' principals' names and signatures, the abbreviations of the facilities' names, as well as the names, addresses, email addresses, and phone numbers of any facility where animals were sourced from.
2. I uphold the ministry's decision to deny access to records 1, 3, 7 to 10, 12, 13, and 15.

Original Signed By: _____
Diane Smith
Adjudicator

_____ May 17, 2023