

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4426

Appeal PA22-00174

Ministry of the Solicitor General

August 14, 2023

**Summary:** The Ministry of the Solicitor General (the ministry) received a request for Ontario Provincial Police reports about the appellant. The ministry denied access to the responsive reports, claiming that certain information was subject to the law enforcement exemption in sections 49(a) with 14(1)(l) (facilitate commission of an unlawful act), or the personal privacy exemption in section 49(b). The ministry also denied access to certain information as being non-responsive to the request.

In this order, the adjudicator upholds the ministry's decision to deny access to the non-responsive information, the police operational codes, and the personal information of other individuals in the records. She orders the ministry to disclose the remaining information at issue in the records. The adjudicator also upholds the ministry's search for records.

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

**Orders Considered:** Order PO-3742.

### OVERVIEW:

[1] The appellant sought access to Ontario Provincial Police (OPP) reports regarding himself.

[2] Specifically, on behalf of the OPP the Ministry of the Solicitor General (the

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

[...] I would like to receive all details on an investigation if connected to my reports or complaints. I have made numerous reports and complains about intimidation and my cyber security being invaded [...]

I would like to obtain physical or digital copies of police reports that I have made in 2021 and 2022. Tracking numbers [specified numbers] badge number [badge number and named officer]. After submitting this report, the officer named [named officer] was not cooperating with me during our call. He dismissed me and disconnected the phone call. I was shocked. The phone call with the Canadian Anti-Fraud Centre was very similar. Again, I was shocked.

Also, I submitted a complaint to the Canadian Anti-Fraud Centre. Complaint reference [specified numbers]. I was told that the OPP (Ontario Provincial Police) must submit a request for my complaint in order for us to receive physical or digital copies. Which I would also like to obtain.

I would like to also receive everything pertaining to myself [name] since the day I was born [date]. This includes police reports, police complaints, investigations, everything and anything pertaining to me. I forgot to mention parking tickets. I have resided in Ontario for my entire life. I strongly believe this is absolutely necessary for my future. It seems like my personal and private life has been interfered with since February 2020 until now, April 2022. I strongly believe the OPP are not cooperating with me. It seems like individuals are taking things extremely personal. It seems like dealing with me is not a priority. So, please take your time while gather my personal information this is not a priority for me.

[3] The ministry issued a decision granting partial access to the records. Access to the withheld information was denied pursuant to sections 14(1)(l) (facilitate commission of an unlawful act) with 49(a) (discretion to refuse requester's own information), and 49(b) (personal privacy) of the *Act*. Some information was also withheld on the basis that it was non-responsive to the request.

[4] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of the appeal.

[5] During the course of mediation, the ministry indicated that it did not have any additional records responsive to the request, and it maintained its previous decision regarding the withheld portions of the records.

[6] The appellant advised the mediator that he was pursuing access to the withheld

information in the responsive records, including information marked as non-responsive to the request. Additionally, the appellant stated that he believes additional records exist.

[7] Further mediation was not possible. The appellant advised the mediator that he would like to pursue the appeal at adjudication where an adjudicator may conduct an inquiry. I sought the parties' representations, which were shared between them in accordance with the IPC's *Practice Direction 7*.

[8] In this order, I uphold the ministry's decision to deny access to the non-responsive information, the police operational codes, and the personal information of other individuals in the records. However, I order the ministry to disclose the remaining information at issue in the records to the appellant. I also uphold the ministry's search for records.

## **RECORDS:**

[9] Leaving aside the appellant's claim that additional records exist, there are 7 pages of records at issue in the appeal. Withheld is the information in portions of 6 of the 7 pages (pages 1 to 4 and 6 to 7). The records consist of OPP general reports and occurrence summary reports related to 4 separate incidents in which the appellant had interactions with the OPP. This information is withheld by the ministry under sections 49(a) with 14(1)(l), 49(b), or as being not responsive to the appellant's request.

## **ISSUES:**

- A. What is the scope of the request for records? Which information is responsive to the request?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- C. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 14(1)(l) law enforcement exemption, apply to portions of pages 1 to 4 and 6 to 7?
- D. Does the discretionary personal privacy exemption at section 49(b) apply to portions of pages 6 to 7?
- E. Did the institution exercise its discretion under sections 49(a) and 49(b)?
- F. Did the ministry conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: What is the scope of the request for records? Which information is responsive to the request?**

[10] The ministry withheld certain information on the basis that it is not responsive to the request.

[11] To be considered responsive to the request, records must “reasonably relate” to the request.<sup>1</sup> Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.<sup>2</sup>

#### ***Representations***

[12] The ministry states that the appellant’s request was sufficiently detailed to identify the responsive records, which are records about the appellant.

[13] The ministry states that some information in the records, such as computer-generated text associated with the printing of the report, is non-responsive as it pertains to other matters.

[14] The appellant did not address this issue in his representations.

#### ***Findings***

[15] Based on review of the records, some of the information that has been withheld as non-responsive to the request is, as the ministry says it is, computer-generated text associated with the printing of the report. I find that this printing information is not reasonably related to the request and therefore not responsive to the request.

[16] Similarly, the ministry has withheld the Workplace Identification Numbers (WIN) belonging to OPP Computer Assisted Dispatch Operators. I find that this information is also not responsive to the specific information sought in the appellant’s request as it is not information pertaining to the appellant and his interaction with the OPP as set out in his request.<sup>3</sup>

[17] In summary, I uphold the ministry’s decision to withhold certain information on the basis that it is not responsive to the request.

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<sup>1</sup> Orders P-880 and PO-2661.

<sup>2</sup> Orders P-134 and P-880.

<sup>3</sup> In the alternative, I would have withheld the OPP officers WIN numbers as being the CAD Operators’ personal information subject to the section 49(b) exemption. See Order PO-3742.

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

[18] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates.

[19] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[20] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>4</sup>

[21] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.<sup>5</sup>

[22] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>6</sup>

[23] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>7</sup>

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

“personal information” means recorded information about an identifiable individual, including,

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

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

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<sup>4</sup> See the definition of “record” in section 2(1).

<sup>5</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>6</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>7</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[25] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."<sup>8</sup>

[26] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.<sup>9</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>10</sup>

### ***Representations***

[27] The ministry states that the records contain the names, dates of birth, telephone numbers, home addresses and opinions of individuals other than the appellant. The ministry states that the records also contain statements provided by these individuals, which due to their detailed nature would be expected to likely reveal the identity of these individuals.

[28] The appellant did not address this issue in his representations.

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<sup>8</sup> Order 11.

<sup>9</sup> Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>10</sup> See sections 21(1) and 49(b).

## ***Findings***

[29] The appellant sought records about himself held by the OPP. The records are reports about the appellant's interaction with the OPP.

[30] At issue are portions of 7 pages of OPP general reports and occurrence summary reports related to 4 separate incidents where the appellant had interactions with the OPP. Three of the 4 incidents concern only the appellant, whereas the fourth incident concerns the appellant and other individuals. Pages 1 to 4 of the records pertain only to the appellant and contain only his personal information.

[31] The appellant's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.<sup>11</sup> I therefore find that the personal information of the appellant contained on pages 1 to 4 must be disclosed to the appellant. I will consider the ministry's claim that certain information on pages 1 to 4 should be withheld on the basis of the law enforcement exemption at section 49(a), read with section 14(1)(l) at Issue C, below.

[32] Pages 6 and 7 pertain to the fourth incident involving the appellant and other individuals. These pages contain the personal information of the appellant and other identifiable individuals. This personal information includes their dates of birth, home addresses and phone numbers, and their views or opinions.

[33] I will next consider the application of sections 49(a) with 14(1)(l) to all of the records and the application of section 49(b) to records concerning the fourth incident.

### **Issue C: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 14(1)(l) law enforcement exemption, apply to portions of pages 1 to 4 and 6 to 7?**

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

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

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

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

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<sup>11</sup> Order PO-2560.

[36] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.<sup>12</sup>

[37] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[38] In this case, the institution relies on section 49(a) read with section 14(1)(l), which reads:

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

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

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

[40] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.<sup>13</sup>

[41] However, the exemption does not apply just because a continuing law enforcement matter exists,<sup>14</sup> and parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. The harm can sometimes be inferred from the records themselves and/or the surrounding circumstances.<sup>15</sup>

[42] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>16</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the

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<sup>12</sup> Order M-352.

<sup>13</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>14</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>15</sup> Orders MO-2363 and PO-2435.

<sup>16</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.



information.<sup>17</sup>

[43] For section 14(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime.

### ***Representations***

[44] The ministry has applied section 14(1)(l) [together with section 49(a)] to police codes in the records, which includes area and patrol zone codes and other codes in the records that are used by the police to communicate with one another using terminology or coded language that would not normally be known to the public. The ministry submits that disclosure of these codes could make it easier for individuals carrying out criminal activities to have internal knowledge of how systems within the OPP operate.

[45] The ministry maintains that disclosure of police codes could jeopardize the security of law enforcement systems and the safety of the OPP staff identified by them. The ministry relies upon several past IPC orders, which has upheld these codes as being exempt pursuant to section 14(1)(1) based on the reasonable expectation of harm were they to be released.<sup>18</sup>

[46] The ministry also relies on section 14(1)(l) for the information at pages 6 and 7 of the records (concerning the fourth incident) as it is concerned that the disclosure of this information would discourage members of the public from cooperating with the OPP, if the public believed that the confidentiality of the information they provided or that was collected about them would not be safeguarded. The ministry submits this type of outcome could be expected to hamper the ability of the OPP to assist members of the public who come forward to request assistance and so forth, which in turn would either facilitate the commission of crime or hamper its control.

[47] The ministry states that the records include sensitive information that members of the OPP recorded for the purpose of communicating confidentially with each other to ensure that the appellant received appropriate support from members of the OPP if future interactions with the OPP occurred. The ministry is concerned that members of the OPP would be less likely to record information and to communicate candidly with one another, if the information they communicate is more likely to be disclosed in the manner contemplated by this appeal. The ministry submits that this outcome could have the subsequent result of facilitating crime or hampering its control, by preventing important information from being transmitted in police departments, hampering the support and services that are offered to vulnerable individuals.

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<sup>17</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

<sup>18</sup> The ministry cites Order PO-3742 in particular.

[48] The appellant did not address this issue in his representations.

### ***Findings***

[49] The ministry appears to have applied sections 49(a) with 14(1)(l) to all of the information at issue in the records.

[50] The ministry has divided this information into three categories: police codes, information received from members of the public, and information exchanged between OPP officers.

[51] I agree with the ministry that the police codes are subject to sections 49(a), read with 14(1)(l). The IPC has issued numerous orders regarding police codes and has consistently found that section 14(1)(l) applies to police code information,<sup>19</sup> as disclosure would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of police officers.

[52] The ministry also applied section 49(a), read with 14(1)(l), to information provided to the OPP by other individuals. Likewise, it applied section 49(a), read with 14(1)(l), to what appears to be the remaining information in the records that it describes as information the OPP recorded for the purpose of communicating confidentially with each other. Its position is that disclosure of this information would discourage members of the public or the OPP members themselves from providing information to the OPP, which in turn would either facilitate the commission of crime or hamper its control.

[53] I do not agree with the ministry's claim that disclosing the information other than police codes would facilitate the commission of an unlawful act or hamper the control of crime.

[54] In this regard, I find the analysis in Order PO-3742 to be of relevance. In that appeal, the adjudicator upheld the application of section 14(1)(l) to the police operational codes in the records. In that appeal, the ministry<sup>20</sup> made a similar argument to that in this appeal, namely, that information provided by both other individuals and OPP officers in OPP reports is subject to section 14(1)(l). In Order PO-3742, the adjudicator stated:

I do not agree with the ministry's assertion that releasing the balance of the withheld information would facilitate the commission of an unlawful act or hamper the control of crime in the manner contemplated by section

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<sup>19</sup> For example, Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339, PO-2409, and PO-3742.

<sup>20</sup> The Ministry of the Solicitor General was then known as the Ministry of Community Safety and Correctional Services.

14(1)(l) of the *Act*. The ministry's position casts the net far too widely and in my view the ministry fails to provide sufficient evidence to support its bald assertions that disclosing the other information that the ministry asserts is subject to section 14(1)(l), which is the type of information typically found in occurrence reports and police officer's notes, could reasonably be expected to result in the section 14(1)(l) harms alleged.

[55] I agree that in this appeal, the ministry's assertion that the remaining information in the records is subject to section 14(1)(l) casts the net far too widely. In this appeal, the ministry provided only general representations as to the application of section 14(1)(l), stating only that information from OPP officers or other individuals is subject to the section 14(1)(l) exemption. In my view, it did not connect the specific information at issue to the section 14(1)(l) harm, namely that disclosure of this information specifically could be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[56] Therefore, I find that in this appeal, as in the appeal in PO-3742, the ministry failed to provide sufficient evidence to support its bald assertions that disclosing information received from members of the public, and information exchanged between OPP officers, being the type of information typically found in police occurrence and general reports, could reasonably be expected to result in the harms contemplated by section 14(1)(l).

[57] Accordingly, I find that only the police operational codes qualify for exemption under section 49(a) with section 14(1)(l) of the *Act*.

[58] I will now consider whether the section 49(b) exemption applies to the remaining information at issue in pages 6 to 7 of the records.

**Issue D: Does the discretionary personal privacy exemption at section 49(b) apply to portions of pages 6 to 7?**

[59] Because I have found that the personal information at issue on pages 6 and 7 is both the appellant's and other individuals, it is necessary to consider the appellant's access right under section 47(1) of the *Act*.

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

[61] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[62] The section 49(b) exemption is discretionary. This means that the institution can

decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

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

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

[65] If any of the exceptions in paragraphs (a) to (e) of 21(1) or if any of the paragraphs in section 21(4)<sup>21</sup> of the Act apply, disclosure of personal information is not an unjustified invasion of personal privacy under section 49(b) and the information is not exempt from disclosure under section 49(b). These paragraphs do not apply in this appeal.

[66] Sections 21(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[67] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker<sup>22</sup> must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>23</sup>

[68] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[69] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.<sup>24</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[70] The list of factors under section 21(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 21(2).<sup>25</sup>

### ***Representations***

[71] The ministry relies on the presumption in section 21(3)(b) regarding an

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<sup>21</sup> Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply.

<sup>22</sup> The institution or, on appeal, the IPC.

<sup>23</sup> Order MO-2954.

<sup>24</sup> Order P-239.

<sup>25</sup> Order P-99.

investigation into a possible violation of law. This section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,  
  
was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[72] This presumption requires only that there be an investigation into a possible violation of law.<sup>26</sup> So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.<sup>27</sup>

[73] The ministry states that the records were created pursuant to law enforcement investigations conducted by the OPP, and they are clearly identifiable as such, in that they are labelled as occurrence summaries or general reports. It states that the records specifically document the OPP attending a location due to a complaint being reported, and the records contain the details of the OPP investigation.

[74] The ministry also claims the application of the factor favouring privacy protection in section 21(2)(f) in withholding access to the information at issue in the records. Section 21(2)(f) reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is highly sensitive.

[75] The ministry relies on Order P-1618, where the IPC found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the police is "highly sensitive" for the purpose of section 21(2)(f). The ministry submits that this reasoning should be applied to the records as they contain the names of affected third-party individuals identified in the same manner.

[76] The ministry also relies on Order PO-3301, where the IPC held that due to the "OPP's police investigation of highly sensitive issues relating to the appellant," the disclosure of personal information could be expected to cause affected parties' significant distress. The ministry submits that this reasoning applies to this appeal, because the OPP are also investigating highly sensitive issues.

[77] The appellant states that he believes it is his right to access his own personal

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<sup>26</sup> Orders P-242 and MO-2235.

<sup>27</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

information for the purpose of his own recordkeeping and research.

### ***Findings***

[78] Pages 6 and 7 consist of a one-page occurrence report and a one-page general report, both of which are about the same incident. For both of these reports, the OPP interacted with the appellant as a result of information received from another individual.

[79] I find that the presumption that weighs against disclosure at section 21(3)(b) applies to pages 6 and 7 of the records as the personal information of individuals other than the appellant was compiled and is it identifiable as part of an investigation into a possible violation of law.

[80] In this case, I also find that the personal information of the other individuals relates to a highly sensitive situation involving these other individuals and their interaction with the appellant and the OPP.

[81] Therefore, I find that the factor that weighs against disclosure in section 21(2)(f) applies as the personal information of other individuals is highly sensitive. Section 21(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>28</sup> For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.<sup>29</sup>

[82] Other considerations [besides the ones listed in sections 21(2)(a) to (i)] must be considered under section 21(2) if they are relevant. These may include:

- inherent fairness issues,<sup>30</sup>
- ensuring public confidence in an institution,<sup>31</sup>
- personal information about a person who has died,<sup>32</sup> or
- benefit to unknown heirs.<sup>33</sup>

[83] The appellant indicated he wants the information at issue for his own research and recordkeeping. In my view, these are not relevant considerations that weigh in favour or against disclosure of another person's personal information. However, in reaching my conclusion below I have taken into account the appellant's interest in

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<sup>28</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>29</sup> Order MO-2980.

<sup>30</sup> Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

<sup>31</sup> Orders M-129, P-237, P-1014 and PO-2657.

<sup>32</sup> Orders M-50, PO-1717, PO-1923, PO-1936 and PO-2012-R.

<sup>33</sup> Orders P-1493, PO-1717 and PO-2012-R.

accessing his own personal information.

[84] Overall, after balancing the interests of the appellant in receiving access to his own personal information and the interests of the other individuals listed in pages 6 and 7 of the records and after considering and weighing the factor in section 21(2)(f) and the presumption in 21(3)(b), both of which weigh against disclosure of the other individuals' personal information at issue, I find that disclosure of the other individual's personal information in pages 6 and 7 of the records would be an unjustified invasion of personal privacy under section 49(b). Therefore, I will order withheld the information in pages 6 and 7 of the records that concern individuals other than the appellant.

[85] It is also my view that some of the information that the police have withheld under section 49(b) consists only of the personal information of the appellant and it can be severed and disclosed to him. For instance, the information about the appellant's direct interaction with the OPP officers does not reveal the personal information of the other individuals in pages 6 and 7 of the records. Therefore, I will order disclosed the information in pages 6 and 7 of the records that concern the appellant's interaction with the OPP.

[86] I will now consider whether the ministry exercised its discretion regarding the responsive information that I have found exempt under sections 49(a) with 14(1)(l), and 49(b).

**Issue E: Did the ministry exercise its discretion under sections 49(a) and 49(b)?**

[87] As described above, I find that certain information is exempt from disclosure under section 49(a), read with section 14(1), or section 49(b).

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

[89] 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.

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

exercise of discretion based on proper considerations.<sup>34</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>35</sup>

[91] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:<sup>36</sup>

- 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***

[92] The ministry submits that it exercised its discretion in a proper manner. It states that:

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<sup>34</sup> Order MO-1573.

<sup>35</sup> Section 54(2).

<sup>36</sup> Orders P-344 and MO-1573.



- The public's expectation that their personal information will be protected when it forms part of a law enforcement investigation, especially as in this instance where affected third party individuals are not aware that their personal information is subject to disclosure pursuant to this appeal; and,
- The concerns that the disclosure of law enforcement records will harm the use of confidential police codes...

[93] The appellant did not address this ministry's exercise of discretion in his representations.

### ***Findings***

[94] I find that in denying access to the exempt information in the records, the ministry exercised its discretion under sections 49(a) and 49(b) in a proper manner taking into account proper considerations and not taking into account improper considerations.

[95] In denying access to the police codes under section 49(a), the ministry properly considered the purpose of the law enforcement exemption in section 14(1)(l) to facilitate the commission of an unlawful act or hamper the control of crime.

[96] In denying access to the personal information of other individuals in pages 6 and 7 of the records under section 49(b), the ministry properly considered the purpose of this to protect the sensitive information of individuals other than the appellant provided during a law enforcement investigation.

[97] Therefore, I am upholding the ministry's exercise of discretion under sections 49(a), read with 14(1)(l), and 49(b).

### **Issue F: Did the ministry conduct a reasonable search for records?**

[98] The appellant claims that additional records in response to his request exist. If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.<sup>37</sup> If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[99] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>38</sup>

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<sup>37</sup> Orders P-85, P-221 and PO-1954-I.

<sup>38</sup> Order MO-2246.

***Findings***

[100] While the appellant claimed that additional responsive records should exist, he did not provide the basis for his belief nor did he identify other records that should exist. Although invited, I note that the ministry did not submit representations on its search for responsive records.

[101] In these circumstances, I am not persuaded on the basis of the evidence before me that additional searches would yield further records and I, therefore, decline to order the ministry to conduct further searches.

**ORDER:**

1. I uphold the ministry's decision to deny access to the non-responsive information in the records.
2. I uphold the ministry's decision to deny access to the police operational codes and the personal information of other individuals in the records.
3. I order the ministry to disclose the remaining information at issue in the records to the appellant **by September 14, 2023**. For ease of reference, I am providing the ministry with a highlighted copy of the records highlighting the information at issue in the records to be disclosed to the appellant.
4. I uphold the ministry's search for records.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ August 14, 2023