

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-4450

Appeal PA21-00385

Ministry of the Solicitor General

October 13, 2023

**Summary:** The ministry received a request under the *Act* for records including occurrence reports, officer notes, emails and reports that involve the appellant for a specified time period. Ultimately, after receiving consent to disclose personal information from one affected party, the ministry issued a decision providing access to some information but withholding information pursuant to section 49(b) (personal privacy) and section 49(a) read with sections 14(1)(c) and 14(1)(l) (law enforcement). In this order, the adjudicator upholds the ministry's decision and dismisses the appeal.

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

**Orders and Investigation Reports Considered:** Order MO-1786, P-1618 and PO-3013.

### OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information involving the requester:

...any and all records of any kind (including drafts, deleted and double deleted records), including, but not limited to, occurrence reports and/or similar, notes of any police officers, emails, reports, texts, instant

messages, iMessages, internal communications of any kind and in any format, letters, faxes and/or other written communications to and/or from any police officers (Ontario Provincial Police (OPP) and/or other) and/or other public employees involving myself, [requester's name], for a specified period of time.

[2] The ministry issued a decision granting partial access to responsive records.

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

[4] The mediator communicated with the appellant and the ministry to discuss the issues in the appeal. The appellant informed the mediator that she is pursuing access to the withheld information pertaining to affected parties. The appellant asked the mediator to seek the affected parties' consent to disclose their information to her.

[5] The ministry informed the mediator that it would only reconsider its decision regarding the withheld information of one affected party, if that affected party provided consent. The mediator sought and obtained consent from that affected party and conveyed it to the ministry. The ministry issued a supplemental decision disclosing additional records with severances pursuant to section 49(a) read with sections 14(1)(c), 14(1)(l) (law enforcement) and 15(b) (relation with other governments), and 49(b) (personal privacy) of the *Act*.

[6] Upon receipt of the supplemental decision, the appellant informed the mediator that she would like to pursue the appeal at adjudication.

[7] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. As the adjudicator assigned to this appeal, I sought representations from the ministry and the appellant which were shared pursuant to the IPC's *Code of Procedure*.

[8] After a review of the ministry's representations, it is evident that it is no longer relying on the exemption at section 15(b) and therefore this exemption is removed from the scope of this appeal. The ministry also claimed certain records were not responsive to the request.<sup>1</sup>

[9] In this order, I uphold the ministry's decision and dismiss the appeal.

## **RECORDS:**

[10] The records at issue consist of audio files of 911 calls and 190 pages of occurrence reports, officers' notes and emails, of which 20 pages were partially

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<sup>1</sup> See preliminary issue below.

withheld and 170 pages were fully withheld.

## **ISSUES:**

- A. Does the record contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at 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)(c) and 14(1)(l) exemptions, apply to the information at issue?

## **DISCUSSION:**

### **Preliminary Issue**

[11] In my preliminary review of the records, I noted that they did not all contain the personal information of the appellant, although, the mediator’s report noted that the ministry claimed section 49(b) for all of the records (information containing the personal information of the appellant). As a result, I requested that the ministry provide a detailed index showing which records the ministry is claiming are exempt under section 49(b). In its representations, the ministry clarified that the records at pages 121-172 and one 911 call made by an affected party are not responsive to the request as the records did not contain personal information of the appellant.

[12] The Notice of Inquiry provided to the appellant set out the issue of scope of the request, and asked the appellant to respond if she continued to seek access to pages 121-172 and one 911 call made by an affected party. The appellant did not address this issue in her representations.

[13] Having reviewed the information the ministry claims is not responsive to the request, I confirm that this information does not contain the personal information of the appellant. As a result, I find that this information is not responsive to the request and remove it from the scope of this appeal.<sup>2</sup>

### **Issue A: Does the record contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[14] In order to decide which sections of the *Act* may apply to a specific case, the IPC

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<sup>2</sup> To be considered responsive to the request, records must “reasonably relate” to the request. (see Orders P-880 and PO-2661)

must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[15] 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,

(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.

[16] 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>3</sup>

[17] The ministry submits that the withheld information contains extensive amounts of personal information relating affected individuals including those identified as potential witnesses, a complainant, and a victim (based on the definition in the Victim's

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<sup>3</sup> Order 11.

Bill of Rights). It submits that the withheld personal information includes:

- names, dates of birth, telephone numbers and home addresses of affected parties, and the fact that these affected individuals are listed in the records as being witnesses, a complainant, or a victim or that they were otherwise involved in an OPP investigation, and
- statements provided by the complainant, which due to their detailed nature would be expected to reveal the identities of one or more affected individuals, and their opinions and actions, collected as part of the OPP investigation.

[18] The ministry submits that because the records relate to a law enforcement investigation, severing identifying information likely would not serve to remove the personal information from the records.

[19] The ministry submits that it also withheld a workplace identification number (WIN) belonging to an employee because it is an assigned number, which when linked to the name of the employee, which has been disclosed, would reveal something of a personal nature about the employee.<sup>4</sup>

[20] The appellant does not address whether the information contains personal information in her representations.

### ***Finding***

[21] Having reviewed the records at issue, I find that they contain the personal information of identifiable individuals and while much of the appellant's personal information has been disclosed, there are portions that are mixed with the personal information of other identifiable individuals which was withheld. I find that the records consist of the following:

- An occurrence summary and a general report where the appellant's personal information and that of an identified affected party (who gave consent) were disclosed. The withheld portions of this record contain the personal information of identifiable individuals and limited personal information of the appellant mixed with the personal information of other parties. The personal information of identifiable parties includes the names, addresses and other personal identifies, such as age and gender. The report also sets out the occurrence.
- Supplementary occurrence reports<sup>5</sup>: there are several occurrence reports of which, only one contains the personal information of the appellant, which was disclosed. The withheld information contains the personal information of identifiable individuals, including their names and statements made by individuals

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<sup>4</sup> The ministry relies on Orders PO-3742 and PO-4336 for this statement.

<sup>5</sup> This includes the Domestic Violence Supplementary report referenced in the ministry's representations.

the police spoke to. The ministry has also disclosed personal information of the affected party that provided consent, where it is not mixed with that of another affected party.

- The remaining records consist of email exchanges (pages 15 to 120 of the records) which contain the personal information of identifiable individuals including names, email addresses, correspondence of a private nature as well as personal information relating to the appellant. The information that qualifies as the appellant's personal information has already been disclosed to her.

[22] After my review, I find that the records contain information that qualifies as personal information of the appellant and other identifiable individuals, as defined in paragraphs (a), (b), (d), (e), (f), (g) and (h) of the definition of that term in section 2(1) of the *Act*. While most of the appellant's personal information has been provided to her, I will now consider if disclosure of the remaining information would be an unjustified invasion of personal privacy under section 49(b).

**Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?**

[23] 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.

[24] 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.

[25] 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 the other individual's personal privacy.<sup>6</sup>

[26] 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).

[27] Also, the requester'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>7</sup>

[28] Sections 21(1) to (4) provide guidance in deciding whether the information is exempt under section 21(1) or 49(b), as the case may be. In this appeal, the ministry

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<sup>6</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

<sup>7</sup> Order PO-2560.

has claimed that all of the records are exempt under section 49(b).

[29] If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b).

[30] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply. In this appeal, the parties did not argue that section 21(4) applies and from my review of the records, I find that it does not.

[31] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker<sup>8</sup> must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>9</sup>

[32] 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).

[33] 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>10</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[34] 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>11</sup>

### ***Representations***

[35] The ministry submits that it withheld the information containing personal information belonging to affected individuals (with the exception of the individual who already consented to their personal information being disclosed) because to disclose personal information would constitute an unjustified invasion of the privacy of affected individuals identified in the records.

[36] The ministry submits that the presumption at section 21(3)(b) is relevant in this appeal because the records were created pursuant to a law enforcement investigation

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<sup>8</sup> The institution or, on appeal, the IPC.

<sup>9</sup> Order MO-2954.

<sup>10</sup> Order P-239.

<sup>11</sup> Order P-99.

conducted by the OPP, and include discussions with another law enforcement agency. It submits that the records specifically document the OPP investigating an incident related to a domestic dispute, and the records contain the details of the OPP's investigation. The ministry notes that the fact that charges may have not been laid is not determinative as to whether this exemption applies.

[37] The ministry also submits that the factor at section 21(2)(f) (highly sensitive) applies in this appeal. It refers to Order P-1618 where the adjudicator 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). It also relies on Order PO-3301 where the adjudicator found that the disclosure of personal information from a police investigation of highly sensitive issues relating to the appellant could be expected to cause significant distress to affected parties. The ministry submits that this reasoning is relevant in this appeal because the OPP was investigating highly sensitive issues related to an affected individual in which the appellant was also involved. The ministry refers to Order MO-3649 where the adjudicator found that an affected party had a "reasonable expectation that their 9-1-1 call would 'only be shared with the appropriate services in order to provide assistance and not become a public record.'" The ministry submits that similar to the finding in MO-3649, it is reasonable to expect that significant distress would result if the personal information of affected third party individuals was disclosed.

[38] With respect to the withheld WIN number, the ministry submits that the disclosure of this identifier would be expected to be distressing because it would reveal something of a personal nature about the employee, given that the employee's name has also been released. It submits that someone who has both the name and WIN number of an employee might be able to obtain additional human resources information about the employee, without consent, which would be significantly distressing.

[39] In her representations, the appellant does not specifically address the issues and questions that were set out in the Notice of Inquiry sent to her. She submits that she believes that she should have the right to defend what people are saying about her, noting that "numerous people, including people that work for the police, keep stating that I am dangerous in some way." She submits that she cannot defend herself with so much information being withheld and would like to have access to the blocked information.

### ***Analysis and findings***

[40] For the following reasons, I find that the withheld personal information is exempt under section 49(b).

[41] The ministry claims that section 21(3)(b) applies to all of the withheld personal information. If this presumption applies to the information, then disclosure is presumed to be an unjustified invasion of personal privacy. This section states:



A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(b) 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;

[42] This presumption requires only that there be an investigation into a *possible* violation of law.<sup>12</sup> So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.<sup>13</sup>

[43] It is clear that the information at issue was compiled by the OPP in the course of its investigation of the matters involving the identifiable individuals. I am satisfied that the personal information at issue for which the section 49(b) exemption was claimed was compiled and is identifiable as part of the police investigation into a possible violation of law, and falls within the presumption in section 21(3)(b).

[44] In addition, I am satisfied that because of the nature of the investigation and the personal information contained in the withheld records, the personal information is highly sensitive (section 21(2)(f)). In making this finding, I adopt the reasoning in Order P-1618 where it was 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).

[45] Although the appellant did not comment specifically on the section 21(2) factors that might support disclosure of the withheld information, I have assessed the various enumerated considerations in section 21(2) and also considered any unlisted factors, including her right to know so that she can defend what people are saying about her. After reviewing the information in the withheld records, I give this factor little weight. The remaining personal information predominantly relates to affected parties and only little of the remaining personal information relates to the appellant. It is also apparent from reviewing the disclosed information that the appellant received a caution from the police and therefore would already be aware of the general nature of the allegation that is the subject matter of the records at issue. In my view, this factor is not significant enough to override the presumption of an unjustified disclosure of personal information at section 21(3)(b) supported by the factor at section 21(2)(f).

[46] Because the factor in section 21(2)(f) and the presumption in section 21(3)(b) apply to the withheld information, and I give the factor favouring disclosure little weight, I am satisfied that the disclosure of the withheld personal information would constitute an unjustified invasion of the personal privacy of the identifiable individuals and find that all of the withheld personal information qualifies for exemption under

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<sup>12</sup> Orders P-242 and MO-2235.

<sup>13</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).

section 49(b).

[47] I also find that based on the information I have found exempt under section 49(b), the ministry has properly exercised its discretion. I am satisfied the ministry properly considered the interests sought to be protected and the wording of the exemption claimed. I find the ministry also considered its historic practice with respect to similar information as well as the nature of the information and the extent to which it is sensitive. I find the ministry has not exercised its discretion in bad faith. Further, I find that the remaining withheld personal information of the appellant cannot be severed and disclosed from the records at issue as to do so would be disclosing meaningless snippets.<sup>14</sup> Accordingly, I uphold the ministry's exercise of discretion.

**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)(c) and 14(1)(l) exemptions, apply to the information at issue?**

[48] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement.

[49] Sections 14(1)(c) and (l) state:

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

...

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

...

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

[50] For section 14(1)(c) to apply, the institution must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.<sup>15</sup>

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

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<sup>14</sup> See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1997] OJ No 1465 (Div. Ct.)

<sup>15</sup> Orders P-170, P-1487, MO-2347-I and PO-2751.

"enforcing" the law.<sup>16</sup>

[52] 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***

[53] According to its index of records, the ministry withheld information in the records at pages 1, 2, 3, 5, 10, 12-17, 19 and 20, claiming it was exempt under section 14(1)(c) and 14(1)(l).

[54] In its representations, the ministry submits that the exemptions contained in section 14 authorize it to exempt records for various law enforcement related reasons. The ministry submits that the records that have been withheld in this appeal are "law enforcement records" because they were created or collected by the OPP for its investigation. It refers to previous orders such as Order PO-3013 to support that the OPP is an agency which has the function of enforcing and regulating compliance with the law.

[55] The ministry submits that in applying section 14(1), it relies on the principle articulated in *Ontario (Attorney General) v. Fineberg*,<sup>17</sup> and adopted in numerous IPC Orders, which is that the law enforcement exemption must "be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context".

[56] The ministry submits that the difficulty of predicting future events is augmented in this appeal by the following considerations:

- Where domestic discord has apparently occurred, as in this instance, the decision to disclose the type of records at issue may have significant consequences, which can be difficult to predict
- Once a record is disclosed, it is no longer protected under the *Act*, and may be disseminated widely, including on the internet, and without any restrictions. The ministry submits that there is concern that such disclosure would harm the effectiveness of the use of police codes and the domestic violence supplementary report, not only for the OPP but for other law enforcement agencies which may use similar codes or records.
- Disclosure of these kinds of records might harm the ability of law enforcement operations to collect sensitive personal information from the public and other law enforcement agencies, were the public and other agencies to become aware that

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<sup>16</sup> Orders PO-2034 and P-1340.

<sup>17</sup> (1994), 19 O.R. (3d) 197 (Div. Ct.).

the information they provide could be subject to disclosure without their consent or prior notification.

[57] The ministry specifically submits that section 14(1)(c) applies to parts of pages 12-14 which contains sensitive personal information of identifiable individuals and a detailed checklist that the OPP ask during law enforcement investigations to evaluate risk factors associated with domestic violence. The ministry submits that disclosure of this information could hinder or compromise its effective utilization. It submits that the information in the checklist is not generally well known to the public, enhancing the likelihood that its disclosure poses a risk.

[58] The ministry submits that it relies on section 14(1)(l) to withhold the police codes within the record. It refers to Order PO-2571, where it was found that "disclosure of the police codes would disclose specific information to others regarding OPP operations."

[59] The appellant did not address the law enforcement exemption in her representations.

### ***Analysis and finding***

[60] The ministry has applied section 14(1)(c) to the withheld information in the Domestic Violence Supplementary Report at pages 12-14. Since I have found above that the answers to the questions on the form consist of the personal information of an affected party, I will now determine if the form questions on the report, if disclosed, could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

[61] The ministry relies on Order PO-3013, where the IPC upheld the ministry's decision to withhold the checklist of risk factors, which were also contained in a Domestic Violence Supplementary Report on the basis that their disclosure "could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcements". It also relies on Order MO-1786, where the IPC upheld the police's decision to withhold investigative techniques and procedures that the police follow when attending a victim's residence to investigate an allegation of domestic assault.

[62] I have considered the findings in Order PO-3013, referred to by the ministry where the adjudicator found that:

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

[63] I also note that in Order MO-1786, the adjudicator found that this exemption applied to information about investigative techniques and procedures that the police are to follow when attending at a victim's residence to investigate an allegation of domestic assault. In that order, the adjudicator found that this information is clearly "investigative" in nature and the techniques and procedures described are not generally known to the public.

[64] I adopt these findings and find that the risk factors questions in each file are subject to section 14(1)(c) as disclosure could reasonably be expected to hinder or compromise the effective utilization of this investigative technique. Therefore, subject to my review of the ministry's exercise of discretion, the risk factors questions in the relevant pages are exempt under section 49(a) read with section 14(1)(c).

[65] With regard to the information the ministry claims exempt under section 14(1)(l), a number of previous orders have found that internal police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm which may result from their release.<sup>18</sup> In the circumstances of this appeal, I am satisfied that the ministry has provided sufficient evidence to establish that disclosure of the police codes, found in the withheld information could reasonably be expected to disclose specific information regarding OPP operations.

[66] As a result, I find that the internal police code information including other numerical information in the withheld information is exempt under section 49(a), read with section 14(1)(l).

[67] Based on my review of the information at issue, the parties' representations and the circumstances of the appeal, I find that the ministry did not err in exercising its discretion to withhold information under section 14(1)(c) and 14(1)(l) of the *Act*. After reviewing the factors the ministry considered when making its decision, I am satisfied that it did not exercise its discretion in bad faith or for an improper purpose. I am satisfied that it considered relevant factors and did not consider irrelevant factors in the exercise of its discretion. The ministry considered the purposes of the *Act* and has given due regard to the nature and sensitivity of the information in the specific circumstances of this appeal.

[68] Accordingly, I uphold the ministry's exercise of discretion.

**ORDER:**

The appeal is dismissed.

Original signed by: \_\_\_\_\_

October 13, 2023

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<sup>18</sup> see, for example, M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339

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Alec Fadel  
Adjudicator