

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER PO-4477-I

Appeal PA23-00308

Ministry of the Solicitor General

January 18, 2024

**Summary:** The appellant made a request for records relating to the Premier's OPP security detail and the ministry denied the appellant access to officers' notes under the discretionary law enforcement exemption in section 14(1) of the *Act*. The appellant appealed the ministry's decision to the IPC. The ministry refused to provide records to the IPC so that the adjudicator may conduct an inquiry. In this interim decision, the adjudicator orders the ministry to produce the records at issue to the IPC.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 52(4) and 61(1)(d). Section 10.01 of the IPC's *Code of Procedure*.

### OVERVIEW:

[1] The appellant, a member of the media, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for the following records:

Records from the Premier's Ontario Provincial Police (OPP) security/protective detail. Specifically, notes from drivers and officers assigned to the Premier's detail, risk assessments, meeting preparations or summary plans prepared by OPP staff in relation to any meetings held by the Premier at [a named restaurant]. Please include any responsive OPP records that would indicate who was present at any meetings.

[2] The ministry located responsive records and issued a decision to the appellant denying him access to them. The ministry withheld the records, which are eight pages of officers' notes, under the law enforcement exemptions in sections 14(1)(c) (investigative techniques and procedures), (e) (endanger life or physical safety), (i) (endanger security of a building), and (l) (facilitate commission of unlawful act or hamper the control of crime) and the personal privacy exemption in section 21(1) of the *Act*.

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

[4] During mediation, the ministry confirmed its exemption claims to withhold the officers' notes from disclosure. The appellant confirmed their interest in obtaining access to the records responsive to their request. The appellant also claimed additional responsive records, specifically risk assessments, should exist, thereby raising the reasonableness of the ministry's search as an issue.

[5] Mediation did not resolve the issues and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I began my inquiry by inviting the ministry to submit representations in response to a Notice of Inquiry. The ministry submitted representations. In its representations, the ministry withdrew its sections 14(1)(c) and 21(1) claims. Accordingly, these exemptions are no longer at issue. I then sought and received representations from the appellant in response to the Notice of Inquiry and the ministry's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure* (the *Code*).

[6] During mediation, the ministry advised the mediator it would not provide a copy of the records to the IPC. The ministry required the mediator to attend in person at its offices to view the records. In the Notice of Inquiry, I asked the ministry to provide a copy of the records. In response, the ministry stated,

The Ministry has been asked on page 2 of the Notice of Inquiry to provide a copy of the responsive records to the IPC. Due to the unusual sensitivity of these records, the Ministry requests that it be specifically required by order to produce records for examination purposes in accordance with sections 52(4) and (5) of the [*Act*], in accordance with section 10.01 of the [*Code*], and sections 5 and 7 of Practice Direction 1 made pursuant to the *Code*. We request that any examination by the Adjudicator of the records occur at OPP or Ministry premises.

[7] In this interim decision, I order the ministry to provide a copy of the records to the IPC so the IPC may conduct an inquiry into the appeal.

## **RECORDS:**

[8] There are eight pages of officers' notes at issue.

## **DISCUSSION:**

[9] I have decided to order the ministry to produce the records at issue in the appeal to the IPC for the purpose of conducting an inquiry under the *Act*.

[10] Under section 52(4) of the *Act*, the Commissioner may require the production of any record. This section states,

In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

[11] Under section 61(1)(d) of the *Act*, no person shall wilfully obstruct the Commissioner in the performance of her functions under the *Act*. This includes a demand for the production of any records for the purposes of conducting an inquiry.

[12] In addition, section 10.01 of the *Code* sets out the procedure for providing records to the IPC. Specifically, it states,

Where the IPC determines that copies of records are required to process an appeal, it may send a written request for the records to the institution, including the date by which the records are to be received. Where an institution fails to provide the records, or any of them, within the specified time, the IPC may issue an order requiring the institution to produce the records to the IPC, without inviting representations from any party on this issue.

[13] The IPC requested the records from the ministry in accordance with section 10.01 of the *Code*. As set out above, the ministry refused to provide the IPC with copies of the records, stating:

Due to the unusual sensitivity of these records, the Ministry requests that it be specifically required by order to produce records for examination purposes in accordance with sections 52(4) and (5) of the [*Act*], in accordance with section 10.01 of the [*Code*], and sections 5 and 7 of Practice Direction 1 made pursuant to the *Code*.

[14] The ministry takes the position that the information in the records is "unusually sensitive" in nature. The ministry provided no explanation as to what it meant by

“unusually sensitive” and as I do not have a copy of the records, I can not determine what that description means. Given that the ministry has not provided any further explanation as to why the records can not be provided, I find the ministry’s description of the records as “unusually sensitive” does not establish a reasonable explanation as to why the records can not be provided to the IPC.

[15] The ministry applied the exemptions in sections 14(1)(e) (endanger life or physical safety), (i) (endanger security of a building), and (l) (facilitate commission of unlawful act or hamper the control of crime) of the *Act* to deny the appellant access to the records.

[16] In its submissions, the ministry claims the exemption in section 14(1)(e) may be the most relevant because it specifically protects records where disclosure could be expected to endanger the safety of an individual. The ministry submits the disclosure of the records could reasonably be expected to reveal significant information about the Premier’s security detail, such as its size and the patterns of activity regarding the Premier’s attendance at a specific location on specific dates. The ministry is also concerned the disclosure of the records could result in a wide dissemination of information relating to the Premier’s security detail and activities. Given these circumstances, the ministry takes the position that the records are exempt from disclosure under section 14(1)(e) of the *Act*.

[17] I acknowledge the ministry’s position that the records are exempt under section 14(1) and that the harms contemplated in sections 14(1)(e), (i) and (l) could reasonably be expected to result if the records are disclosed. However, I am not determining whether the records are exempt from disclosure in this order. I cannot determine whether the records are exempt from disclosure without having first reviewed them and considered the representations of the parties and the specific circumstances of the appeal. I acknowledge the ministry’s position that the information in the records is “unusually sensitive.” I also acknowledge the ministry’s position that the disclosure of the information in the records could be expected to cause the harms contemplated in sections 14(1)(e), (i) and (l). However, I find neither of these two arguments form a basis to conclude that the records should not be provided to the IPC for the purpose of conducting an inquiry under the *Act*.

[18] The ministry asked that I view the records at the ministry’s office. However, I would prefer in the present circumstances to have the ministry produce a copy of the records to the IPC. Section 52(4) of the *Act* gives the Commissioner power to either require production of the records or to enter into an institution’s premises to view the records so I am not precluded from requiring production of the records.

[19] I find the ministry has not established that it should not be required to provide the records at issue to the IPC.

**ORDER:**

In accordance with section 52(4) of the *Act*, I order the ministry to provide a copy of the records at issue in Appeal PA23-00308 to the IPC by February 8, 2024.

Original signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ January 18, 2024