

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4491

Appeal PA20-00244

Ministry of the Attorney General

February 28, 2024

Summary: A requester asked the Ministry of the Attorney General (the ministry) for copies of blueprints for the New Toronto Courthouse. The ministry located 16 responsive records and denied the requester access pursuant to the discretionary exemptions at sections 14(1) (law enforcement) and 20 (health and safety) of the *Act*. In this order, the adjudicator upholds the ministry's decision to apply section 14(1) to 13 of the 16 records. The adjudicator finds that neither section 14(1), nor section 20 of the *Act* apply to the remaining three records and orders them to be disclosed to the requester.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 10(2), 14(1), and 20.

Orders Considered: Orders PO-2762 and PO-3095.

OVERVIEW:

[1] The Ministry of the Attorney General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for blueprints related to security for the New Toronto Courthouse (the NTC) and the proposed "Bail Centre of Excellence" (the BCE).¹

[2] The requester is the Ontario Crown Attorneys' Association, a professional

¹ The text of the request is reproduced at Appendix I to this decision.

association that represents Crown prosecutors employed by the Criminal Law Division of the ministry, including over 200 Crown prosecutors who, at the time of the request, conducted criminal prosecutions at six courthouses located in the Greater Toronto Area.

[3] The ministry issued a decision denying access to the responsive records, in full, pursuant to the discretionary exemptions in sections 13(1) (advice or recommendations), 14(1) (law enforcement), and 20 (danger to safety or health) of the *Act*.²

[4] The requester (now the appellant) appealed the ministry's access decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant took the position that there was a public interest in the records. As a result, the mediator added section 23 (public interest override) of the *Act* as an issue to this appeal. Mediation did not resolve the issues and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[5] I sought and received representations from the parties. Representations were shared in accordance with Practice Direction 7 of the IPC's *Code of Procedure*.

[6] In this order I uphold the ministry's decision to apply section 14(1) to records 1 to 7, 10 to 13, 15 and 16. However, I find that none of the exemptions claimed by the ministry apply to records 8, 9 or 14 and I order the ministry to disclose those records to the appellant. Given my findings regarding section 14(1), it was not necessary for me to consider whether section 13 also applies to record 16. Furthermore, because the public interest override at section 23 does not apply to the discretionary law enforcement exemptions at section 14(1), it was not necessary for me to consider whether that section applies to any of the withheld information.

RECORDS:

[7] The records at issue can be described as follows:

Record	Pages	Description	Exemptions Claimed
1	1-21	Architectural blueprints of each level of the NTC	14(1)(a), (e), (g), (i), (j), (k) 20
2	22-26	Public space diagrams with layouts of common areas and interior spaces, such as mechanical rooms,	14(1)(a), (e), (g), (k), (j) 20

² In the decision the ministry sent to the appellant, it relied on the discretionary exemptions at sections 14(1)(c) (investigative techniques), and 14(2)(a) (law enforcement report). However, in its initial representations, the ministry indicated that it is no longer relying on these sections. As a result, I will not consider whether they apply to the records at issue.

		building services and prisoner corridors	
3	27-28	Diagrams of entrances located throughout NTC	14(1)(a), (e), (g), (i), (k), (j) 20
4	29	Vehicular access diagrams	14(1)(a), (e), (g), (i), (k), (j) 20
5	30-31	Complete diagrams	14(1)(a), (e), (g), (i), (k), (j) 20
6	32-33	Diagrams by section	14(1)(a), (e), (g), (i), (k), (j) 20
7	34-35	Diagrams by section	14(1)(a), (e), (g), (i), (k), (j) 20
8	36-37	Entrance and lobby diagrams	14(1)(a), (e), (g), (k), (j) 20
9	38-39	Circulation diagrams	14(1)(a), (g), (j) 20
10	40-43	Public corridors, elevators, and lobbies	14(1)(a), (e), (g), (k), (j) 20
11	44-45	Diagrams by section	14(1)(a), (e), (g), (j) 20
12	46	Security screening, ceiling plan	14(1)(a), (e), (g), (j) 20
13	47-48	Parking, movement and circulation	14(1)(a), (g), (j) 20
14	49	Feature stairs, lobby and elevation	14(1)(a), (g), (j) 20
15	50-51	Gross up circulation	14(1)(a), (g), (i), (j) 20
16	52-64	BCE illustrative scheme	13(1) 14(1)(a), (g), (i), (j), (k), 20

ISSUES:

- A. Does section 14(1) apply to the records at issue?
- B. Does section 20 exemption apply to the records at issue?
- C. Can any portions of the exempt records be severed in accordance with section 10(2)?
- D. Did the ministry exercise its discretion to apply section 14(1)?

DISCUSSION:

Issue A: Does section 14(1) apply to the records at issue?

[8] Section 14(1) contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. In this case, the ministry asserts that sections 14(1)(a), (e), (g), (i), (j) and (k) apply. The relevant portions of those sections

specify the following:

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

(a) interfere with a law enforcement matter; ...

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

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons; ...

(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;

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention;

...

[9] Previous orders IPC orders have emphasized that the law enforcement exemption must be approached in a sensitive manner because it is hard to predict future events in the law enforcement context.

[10] The exemptions listed in section 14(1) apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure of a record cannot simply assert that the harms under section 14(1) are obvious based on the record and must provide detailed evidence about the risk of harm if the record is disclosed. A party resisting disclosure must show that the risk of harm is real and not just a possibility.³ However, they do not have to prove that disclosure will in fact result in harm.

[11] As noted above, the ministry asserts that sections 14(1)(a), (e), (g), (i), (j) and (k) apply to the records at issue. Below, I address each of these sections in the order raised by the ministry. I begin with section 14(1)(e) because the ministry relies on its arguments for section 14(1)(e) in its representations for sections (i), (j), and (k). It then refers to all of those arguments in its representations regarding the application of sections 14(1)(a) and (g).⁴

³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

⁴ I note that I have considered all the parties' representations, even if I do not refer to them specifically in this decision. I have set out the most relevant portions of the appellant's representations, where

Section 14(1)(e) – endanger life or physical safety

[12] For section 14(1)(e) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger someone's life or physical safety. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own establish this exemption. The term "person" is not necessarily limited to a specific individual. It can include the members of an identifiable group or organization.

The parties' representations

[13] The ministry asserts that, pursuant to subsection 14(1)(e), it has the discretion to withhold records 1 to 8, and 10 to 12 in their entirety as their disclosure may endanger the life or physical safety of law enforcement officers and other persons at the NTC and the BCE.

[14] The ministry refers me to IPC Order PO-2762, where the requester sought various documents related to a courthouse project in the Kitchener-Waterloo region. It says that in that matter, Adjudicator Corban concluded that the ministry's reason for resisting disclosure of the information at issue was not "not frivolous or exaggerated."⁵ Specifically, the ministry highlights the following from Adjudicator Corban's finding that courthouse floorplans were exempt from disclosure under section 14(1)(e):

[d]isclosure of all of the detailed floor plans of the existing courthouses would reveal details about the secure areas of them, including prisoner handling facilities that, were they disclosed, could [reasonably] be expected to endanger the life or physical safety of law enforcement officers charged with the handling of prisoners and hinder their ability to ensure the security of the building for staff and the public. I also accept that the disclosure of the detailed plans of other areas of the existing courthouses that are not generally accessible to the public, such as judges' chambers and staff offices, could reasonably be expected to facilitate the commission of breaches of security thereby endangering the life or physical safety of the individuals who use those areas.⁶

[15] Relying on Adjudicator Corban's finding, the ministry says that subsection 14(1)(e) applies to records 1 to 8, 10 and 11 as they are architectural blueprints that contain detailed layouts of the public and non-public points of ingress and egress, sallyports, and secured areas. The ministry says these records also reveal the location of mechanical, electrical, control and security rooms and that they contain information on the means to

appropriate, and have considered them for each point raised by the ministry, even if I do not repeat them when dealing with each section.

⁵ Order PO-2762.

⁶ *Ontario (Attorney General (Re))*, 2009 CanLII 7944 (On IPC – Order PO-2762).

access and sabotage safety-sensitive areas.

[16] The ministry says that record 12 is a layout of the security screening area that contains details of the staff and public entry and egress points.

[17] According to the ministry, these records reveal the location of interior spaces that are not generally accessible to the public such as offices for Judges, Justices of the Peace, Crown Attorneys, Probation and Parole Court Liaison Officers, RCMP and OPP Court Liaison Officers, Toronto Police Services, and other ministry staff in the NTC and the BCE. Furthermore, the ministry says the records reveal designated washrooms and lunchrooms for various staff and personnel as well as the location of holding cells, prisoner corridors and jury rooms.

[18] The ministry argues that disclosure of the information detailed above could reasonably facilitate the execution of a planned breach of the facility and result in attacks on the identified people in the areas where they are believed to be safe and secure. Specifically, it says that:

- the architectural blueprints contain sensitive information regarding private and secure circulation, security and technology systems, building support systems (mechanical and electrical) and prisoner handling areas and police areas, and that
- this information may be material to circumventing the inherent building security and compromising building life safety (fire alarms, ventilation, duress alarms, surveillance systems) and power supply systems.

[19] Accordingly, the ministry says that the disclosure of the above information would compromise the security of the facility and hinder its ability to ensure the security of potentially impacted persons.

[20] In summary, the ministry asserts that disclosure would present a real risk to law enforcement personnel, the Judiciary, Crown Attorneys and other counsel, court staff, witnesses, prisoners, and members of the public in attendance at these buildings. As a result, the ministry submits that disclosing records 1 to 8 and 10 to 12 could reasonably be expected to endanger the life or physical safety of the members of the public and the law enforcement officers who will attend these facilities and are therefore covered by the subsection 14(1)(e) exemption.

[21] The appellant denies that section 14(1)(e) applies to the records at issue. They assert that, to the extent that records 1, 2 and 12 contain plans or layouts relating to publicly accessible areas of the courthouse, these records, or severed parts thereof, are not exempt from disclosure.

[22] In response to the ministry's reliance on Order PO-2762, the appellant says that although the adjudicator determined some portions of the records at issue were exempt, she ordered other portions pertaining to the proposed courthouse be disclosed, including

“abstract plans or diagrams and descriptions of different components of the courthouse and the suggested spatial relationship between the different elements.”⁷ As a result, the appellant denies that Order PO-2762 stands for the proposition that any courtroom floorplan is exempt pursuant to section 14(1) of the *Act*.

[23] The appellant asserts that Order PO-2762 stands for the narrower proposition that existing and operational courtroom floorplans may be exempt from disclosure where they show the secured areas of the courthouse in sufficient detail to be reasonably expected to engender the harms contemplated at section 14(1)(e). Accordingly, the appellant argues that section 14(1) of the *Act* does not bar floorplans and/or layouts of public areas of a proposed courthouse from disclosure where these can be reasonably severed from the record, nor does it bar floorplans, layouts, or diagrams of secured areas of a proposed courthouse from disclosure where these are “not specific enough in nature to reasonably be expected to” engender harm.

[24] The appellant notes that, according to the ministry, records 3 to 8, 10 and 11 contain “layouts of the various public and vehicular entrances” that are located in and around the NTC. The appellant notes that these are areas of the proposed courthouse that will be open and accessible to the public, subject to the open court principle. As a result, the appellant says that they do not fall within the exemptions at section 14(1)(e).

[25] Further, the appellant submits that the records at issue, or severed parts thereof, are not exempt from disclosure to the extent that they show either:

- a. parts of the proposed courthouse that will be open to the public, including layouts of the circulation movement of the public, staff, and parking, and the configuration of the escalator and stairs, and/or
- b. secured areas of the proposed courthouse that are not specific enough in nature to reasonably be expected to engender the harms contemplated in sections 14(1)(e) of the *Act*.

[26] In its reply representations, the ministry asserts the records that were ordered for disclosure in Order PO-2762 were different in nature from those at issue in this appeal. Specifically, the ministry submits that the records at issue in PO-2762 were designed to act as a business case for the proposed consolidated courthouse in Kitchener-Waterloo region and contained factual or analytical information that outlined the needs and requirements for the facility.⁵ The ministry asserts that this was the information that Adjudicator Corban ordered disclosed, and not the floor plans of the courthouses withheld under section 14(1)(e).

[27] The ministry reiterates that Adjudicator Corban found that the floor plans of the existing courthouses would reveal details about the secure areas of the facilities that are not generally accessible to the public, and that if these details were disclosed, they could

⁷ *Ontario (Attorney General (Re))*, 2009 CanLII 7944 (On IPC – Order PO-2762) at page 13.

reasonably be expected to facilitate the commission of breaches of security of these facilities and thereby endanger the life or physical safety of the individuals who use those areas.⁶ The ministry argues that this is also the case with the records in this appeal.

[28] Furthermore, the ministry states that although records 1 to 8, 10, 11, and 13 to 15 contain layouts of public areas, the floor plans and diagrams in these records also contain areas that are secure and private, such as the private spaces for the Crown Attorneys, RCMP and OPP Court Liaison Officers, Toronto Police Services, Judges and other ministry staff.⁸ Furthermore, the ministry says that the records contain detailed information concerning the NTC including various measurements and other sensitive details that would not be readily apparent from a physical visit to the building.

[29] Moreover, the ministry reiterates that the blueprints contain details about private and secure circulation, security and technology systems, building support systems (mechanical and electrical) and prisoner handling areas and police areas, and that this information could be used to subvert the building security and compromise the safety systems in the building (fire alarms, ventilation, duress alarms and surveillance systems) and power supply systems which are designed to protect the building and its occupants. As a result, the ministry says that disclosure of this information could aid in the execution of a planned breach of the facility and compromise the safety and security of law enforcement officers and court staff members.

[30] Although the appellant submitted sur-reply representations, the application of sections 14(1)(e) are not addressed. The sur-reply focuses instead on underlying reasons for the appellant's request and other matters that are not relevant to the determination of whether section 14(1)(e) applies to record 1 to 8 and 10 to 12.

Findings and analysis

[31] For the reasons that follow, I agree with the ministry that section 14(1)(e) applies to records 1 to 7, and 10 to 12, but I find that it does not apply to record 8.

[32] In general, I agree the disclosure of records 1 to 7 and 10 to 12 could reasonably be expected to endanger the life or physical safety of law enforcement officers and/or other persons at the NTC. Based on the ministry's representations and my review of the records, I accept that the circumstances of this appeal are similar to those in Order PO-2762 where Adjudicator Corban concluded that section 14(1)(e) applied to certain courthouse floorplans. As in Order PO-2762, I find that the content of records 1 to 7 and 10 to 12 provide a reader with a detailed understanding of the layout and logistics of the building that would not be available through public maps or directories, or by attending the NTC.

⁸ Although the ministry did not claim that section 14(1)(e) applies to records 13 or 15, I have included its reference to these records here for completeness because the ministry relies on its representations for section 14(1)(e) in its representations in support of its claims that sections 14(1)(a), (i), and (j) also apply.

[33] Based on my review of records 1 to 7 and 10 to 12, I agree that they contain sensitive information about security and mechanical areas, private areas, secure traffic and human circulation, and prisoner handling areas and police areas. I accept that disclosing this information could compromise the security of the facility and hinder the ministry's ability to ensure the safety of those in the building and I find that section 14(1)(e) applies. Later in this decision I will consider whether the ministry has exercised its discretion to apply section 14(1)(e) in an appropriate manner.

[34] Prior to making the decision above, I considered the appellant's assertion that section 14(1)(e) of the *Act* does not bar floorplans and/or layouts of public areas from disclosure where the plans are "not specific enough in nature to reasonably be expected to engender harm."⁹ I agree with this assertion, and I find that record 8 falls into this category. Having reviewed record 8, I find that the information is of a general nature and lacks the detail that records 1 to 7 and 10 to 12 include. Record 8 contains high-level diagrams of the lobby of the NTC, and photorealistic rendered images of public areas. These diagrams and images lack the specificity and detail that the others contain. I am not satisfied that the harms described in section 14(1)(e) could be reasonably expected to occur if this record was disclosed. I will, however, consider whether any of the other exemptions claimed by the ministry apply to record 8.

Section 14(1)(k) – security of a centre for lawful detention

[35] For section 14(1)(k) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to jeopardize the security of a centre for lawful detention. The ministry says that pursuant to section 14(1)(k), it has the discretion to withhold records 1 to 8, 10, 11 and 16 in their entirety as disclosing them would jeopardize the security of a centre for lawful detention. I have already found that section 14(1)(e) applies to records 1 to 7, 10 and 11. As such, I will not consider those records again and will assess only whether section 14(1)(k) applies to records 8 and 16.

The parties' representations

[36] In support of its assertion that section 14(1)(k) applies to records 8 and 16, the ministry refers me to IPC Order PO-3905, where a former inmate requested access to records of personal information from a correction facility, including video footage of himself as an inmate there and the institution denied access. On appeal, the ministry says that an Adjudicator Sami concluded that the videos showed the correctional facility's layout, and that the disclosure could reasonably be expected to jeopardize the security of the facility, its staff, and inmates, and specifically, that

... although much of the information within the videos are matters of "common sense" (e.g., doors and cameras are in certain places), it can reasonably be expected that both routine and non-routine information can

⁹ I note the appellant's arguments about severing and disclosing information pursuant to section 10(2) of the *Act*. This issue will be considered and addressed later in this decision.

be exploited by a knowledgeable person in a way that can reasonably be expected to jeopardize the security of the correctional facility. Someone who knows enough about a correctional facility (having been to it), or about security measures, could also identify what is not observable in a correctional facility as a deficiency in correctional facility security that can be exploited (e.g., where cameras are not placed). Inferences that can be drawn about possible security weaknesses at the correctional facility could reasonably be expected to jeopardize the security of that correctional facility. This could be achieved by assisting “the planning or execution of an escape attempt, a hostage-taking incident, or another disturbance with the correctional facility.”¹⁰

[37] In finding that section 14(1)(k) applied, the adjudicator continued, stating that “[t]hese reasonably expected uses of the information about the correctional facility could be made by anyone because disclosure under the *Act* is effectively disclosure to the world”, and that “even “minimal” impact (as suggested by the appellant) on security within this facility would be sufficient to find that section 14(1)(k) applies because it is a maximum security institution, housing inmates that pose a high-risk to the community, other inmates, and correctional facility staff.”

[38] The ministry submits that the NTC and the BCE function as centres for lawful detention as these facilities maintain, or are expected to maintain, prisoner security. Specifically, it says that record 16 contains information about where the prisoner holding cells could be located in the BCE.¹¹

[39] The ministry says that for the reasons outlined above in its representations regarding section 14(1)(e), the disclosure of the detailed layouts of the public and non-public points of the NTC and the BCE could reasonably support the facilitation of a planned breach of the facility and thereby compromise the security of the facility as a centre for lawful detention.

[40] The ministry submits that the information in records 8 and 16 could be exploited by a knowledgeable person capable of inferring potential security vulnerabilities. It says that the specific layouts and configurations of the facilities contained in records 8 and 16 provide detailed information about the common areas and other interior spaces within the parts of the facilities that serve as centres for lawful detention. It reiterates that these details reveal public and non-public points of ingress and egress, sallyports, secured areas and the location of prisoner holding cells. The ministry argues that while such information may appear innocuous, it could allow one to observe potential security deficiencies in

¹⁰ (*Community Safety and Correctional Services*) (*Re*), 2018 CanLII 116675 (On IPC – Order PO-3905) at para 31 [citations omitted].

¹¹ The ministry’s reply, which will be discussed later in this decision, indicates that at the time the reply was submitted, the drawings were finalized and construction had commenced. The ministry specified that the content of records at issue relating the BCE significantly overlap with the content of the finalized architectural drawings.

each floor of the NTC and the BCE that could be exploited and to draw inferences about the possible security weaknesses at these facilities. According to the ministry, these details, if disclosed, could reasonably be inferred as information that could assist prisoners escape lawful custody.

[41] As noted above, the appellant says that record 8 contains a layout of public spaces in and around the NTC and that these are areas that will be (or are now) open and accessible to the public and do not fall within the exemption at section 14(1)(k).

[42] With regard to record 16, the appellant asserts that it is not specific enough in nature to reasonably be expected to engender the harms contemplated at section 14(1)(k). The appellant notes that the ministry has characterized record 16 as a preliminary draft of the BCE, which is still in the initial stages of planning. As a result, the appellant argues that this record is akin to the ones ordered disclosed by Adjudicator Corban in Order PO-2762 and should not be exempt from disclosure.

[43] In its reply representations, the ministry explains that in the time since it made its initial representations, the drawings for the BCE were finalized and construction commenced. The ministry submits that section 14(1)(k) applies to record 16 because it significantly overlaps with the content of the finalized architectural drawings of the BCE.

Findings and analysis

[44] As noted above, for section 14(1)(k) to apply, there must be a basis for concluding that disclosure of the information at issue could reasonably be expected to jeopardize the security of a centre for lawful detention.

[45] Record 8, as noted above, contains diagrams of the lobby of the NTC with photorealistic rendered images of the public areas. As I stated earlier, the diagrams and images do not contain detailed information about these public areas. I do not accept that disclosing this information could reasonably be expected to cause the types of harms referred to in section 14(1)(k). I also do not accept that the information in record 8 could reveal potential security deficiencies in the NTC that could be exploited or used to draw inferences about the possible security weaknesses at these facilities, nor do I accept that this information could assist prisoners escape lawful custody. There is simply insufficient detail in record 8 for this to be a reasonable outcome of its disclosure.

[46] However, I accept that section 14(1)(k) applies to record 16. Record 16 is described by the ministry as a draft illustrative scheme of the BCE prepared by an architectural firm retained by Infrastructure Ontario. In its reply representations, the ministry explained that while Record 16 is a draft scheme, the drawings were finalized and construction had commenced. I accept the ministry's assertion that the content of the record at issue relating the BCE significantly overlaps with the content of the finalized architectural drawings.

[47] Record 16 is thirteen pages long and contains detailed drawings of the BCE. I

accept the ministry's submission that the finalized drawings are substantially similar to those before me in this appeal. I also accept that:

- the BCE is a centre for lawful detention and must maintain prisoner security,
- the records displays where prisoner holding cells may be located in the BCE as well as other public and non-public points of ingress and egress, sallyports, and secured areas,
- could be exploited by a knowledgeable person capable of inferring potential security vulnerabilities or assist in prisoners escape and compromise the security of the facility.

[48] Based on my review of Record 16, I accept the ministry's submission that the disclosure of the detailed layouts of the public and non-public points of the BCE could reasonably support the facilitation of a planned breach of the facility and thereby compromise the security of the facility as a centre for lawful detention.

[49] In my view, Order PO-3095, while not dealing with identical information, supports this finding. In that appeal, a requester sought access to video footage of a correctional facility. The adjudicator concluded that section 14(1)(k) applied to the information because inferences that could be drawn about possible security weaknesses at the correctional facility could reasonably be expected to jeopardize the security. The adjudicator concluded that even "minimal" impact on security would be sufficient to find that section 14(1)(k) applies because of the risk it could pose to the community, other inmates, and correctional facility staff.

[50] I make a similar finding here. A security impact, even if it were minimal, poses a risk to the community, the staff, and the prisoners, and as a result, section 14(1)(k) applies to Record 16.

Section 14(1)(i) – security of a building, vehicles, and systems

[51] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to 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. This exemption is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.¹²

The parties' representations

[52] The ministry says that section 14(1)(i) applies to records 1, 3, 5, 6, 7, 15 and 16

¹² Orders P-900 and PO-2461.

because their disclosure would reasonably be expected to endanger the security of the NTC and the BCE, the security systems and procedures planned for those two buildings, and vehicles transporting prisoners and court documents and exhibits to and from these facilities. I have already concluded that section 14(1)(e) applies to records 1, 3, 5, 6, and 7 and that section 14(1)(k) applies to record 16. As such, I will not consider those records again and will consider only whether section 14(1)(i) applies to record 15.

[53] The ministry refers me to IPC Order P-900, where the requester sought floor plans or charts of the storage area for mediation, arbitration and appeals files at the Ontario Insurance Commission ("OIC") building.¹³ It says that Adjudicator Cropley upheld the OIC's decision to deny access to the records in their entirety under the subsection 14(1)(i) exemption, concluding that although section 14(1)(i) is contained within the law enforcement section, it applies broadly to "any building, vehicle or system for which such protection is reasonably required". The ministry says the adjudicator accepted the OIC's arguments that the files contained sensitive personal information about identifiable individuals, that it had instituted security measures to protect these records and limit access to them, and that the requested information would effectively provide a 'roadmap' to where this sensitive information was stored, thereby seriously compromising the OIC's security measures.

[54] The Ministry submits that, like the situation in Order P-900, disclosure of the blueprints in record 15 would risk the security of sensitive court documents and evidence stored at, and transported to and from, the NTC. The ministry says these materials may include court records, confidential files, exhibits, evidence, and internal memorandum provided to judges by law clerks as well as sensitive information that may not be disclosed in public records such as identity of victims, witnesses and information relating to sealed proceedings which warrant protection of privacy.

[55] The ministry asserts that any tampering or improper handling of sensitive court materials and documents could affect ongoing judicial matters and criminal prosecutions as well as the administration of justice. As a result, the ministry says that it is imperative that the transport and storage of these materials and documents be securely maintained and protected.

[56] The ministry argues that record 15 contains floorplans explicitly revealing the location of judicial chambers and crown attorney offices where sensitive court documents and exhibits may be stored. It says record 15 suggests travel routes to and from these storage areas and that its disclosure would hinder the ministry's ability to ensure the security of these documents, and risk facilitating security breaches.

[57] The ministry relies on its representations for sections 14(1)(e) and 14(1)(k), in support of its assertion that the disclosure of record 15 could reasonably be expected to jeopardize or threaten the security of the NTC. Furthermore, the ministry says that

¹³ Order P-900.

criminal proceedings at the NTC will involve persons in the ministry's lawful custody and the ministry will need to transport some of these people between institutions by vehicle. The ministry says that record 15 reveals the location of sallyports and holding cells and disclosing it could reasonably be expected to impede the ministry's efforts to ensure the safety of persons in its lawful custody and facilitate security breaches.

[58] In summary, the ministry submits that record 15 is covered by the section 14(1)(i) exemption in several distinct ways: security of the building, vehicles transporting prisoners and documents, and security systems and procedures.

[59] The appellant did not make specific representations regarding the application of section 14(1)(i). I have taken into account all of the representations it submitted, though I will not restate them here.

Findings and analysis

[60] I find that disclosure of the information in record 15 could reasonably be expected to 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, and that as a result, section 14(1)(i) applies to this record.

[61] In short, I confirm that record 15 contains the type of information described by the ministry, notably, it contains detailed floorplans for each level of the NTC. It includes measurements, security and mechanical details, public and private foot and vehicle traffic patterns and information regarding entrances and exits. I accept that disclosing this information could reasonably be expected to endanger the security of the building, of vehicles transporting prisoners and documents, and security systems and procedures.

[62] Similar to Adjudicator Cropley's conclusion in Order P-900, I find that the information in record 15 would provide a 'roadmap' of the private areas and security of the NTC in a manner that could reasonably be expected to compromise the ministry's security measures. As a result, section 14(1)(i) applies to record 15.

Section 14(1)(j) – Escape from lawful custody

[63] For section 14(1)(j) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the escape from custody of a person who is under lawful detention.

The parties' representations

[64] The ministry submits that, pursuant to subsection 14(1)(j), it has the discretion to withhold records 1 to 16 in their entirety to prevent facilitating the escape from custody of persons under lawful detention. The only records remaining that I have not determined are subject to sections 14(1)(e), (k), or (i) are records 8, 9, 13 and 14. I will consider those now.

[65] The ministry refers me to IPC Order 187, where a requester sought access to construction plans for a maximum-security facility's new windows and a general description of the facility's grounds and surrounding area. The ministry says that former Assistant Commissioner Wright concluded that even though the records did not constitute detailed plans of the facility, disclosure could reasonably be expected to result in the harms contemplated by subsection 14(1)(j) based on the definition of "facilitate" from Black's Law Dictionary, "to make easier or less difficult." As a result, the ministry says the former Assistant Commissioner concluded that section 14(1)(j) exemption applied to the records.¹⁴

[66] The ministry submits that records 8, 9, 13 and 14 are detailed blueprints of the NTC. The ministry says that the NTC and the BCE together are expected to hold persons under lawful detention for the purposes of criminal and bail proceedings. It argues that the blueprints at issue in this matter contain more detailed information than the information at issue in Order 187. Specifically, the ministry says:

- Record 9 contains a detailed layout of the public, staff and general circulation on Level 1, 2 and 3 of the NTC,
- Record 13 contains a detailed layout of the parking circulation and movement on B1 and B2 of the NTC, and
- Record 14 contains information about the configuration of the escalator and stairs that will connect different levels of floor and circulation within certain components in the NTC and within the overall building.

[67] The ministry submits that, for the reasons it outlined above for sections 14(1)(e), 14(1)(k) and 14(1)(i), the disclosure of the detailed layouts of the public and non-public points and circulation flow of the NTC could reasonably support the facilitation of an escape from custody of a person under lawful detention. The ministry says these records contain information that would allow for an assessment of the buildings' security to find weaknesses and vulnerabilities, to understand the movement of staff and the public within the building, and to devise a detailed prisoner escape plan.

[68] The ministry says that records 9 and 13 provide information about the circulation and traffic routes of staff and the public within the NTC, as well as information about the various access and exit points within the buildings, and the flow of traffic and circulation within these buildings. The ministry says these features are inherently tied to the security of the buildings. It argues that disclosing this information "could potentially make it incrementally easier for one to potentially facilitate an escape from custody of persons under lawful detention" at the NTC.

[69] In summary, the ministry submits that disclosure of records 8, 9, 13 and/or 14 would seriously compromise the ministry's capacity to retain custody of persons under

¹⁴ The ministry also refers to *Ontario (Solicitor General) (Re)*, 1993 CanLII 4920 (On IPC – Order P-597).

lawful detention. As a result, the ministry submits that these records are covered by the subsection 14(1)(j) exemption.

[70] The appellant did not make specific representations regarding the application of section 14(1)(j). I have taken into account all of the representations it submitted, though I will not restate them here.

Findings and analysis

[71] For the reasons that follow, I find that section 14(1)(j) applies to record 13, but not to records 8, 9 or 14.

[72] I confirm that record 13 contains diagrams of the parking circulation and movement on the parking levels of the NTC. As with many of the other records at issue in this appeal, the diagrams are detailed in nature and include measurements, information about the types of vehicles that may or may not be able to access certain areas, and the location of other additional spaces not known or accessible to the public.

[73] I confirm the ministry's submission that that record 13 provides information about the circulation and traffic routes of staff within the NTC and the public, as well as information about the various access and exit points within the buildings, and the flow of traffic within these buildings. I agree with the ministry that these features are inherently tied to the security of the building and that disclosing this information could potentially make it easier for individuals to facilitate an escape from custody. I accept that the disclosure of record 13 could reasonably be expected to compromise the ministry's capacity to retain custody of persons under lawful detention. As a result, I find that record 13 is covered by the subsection 14(1)(j) exemption.

[74] However, I find that records 8, 9 and 14 do not contain the same level of detail about either the private or public spaces and that the risk associated with disclosing record 13 does not exist for these remaining records.

[75] As noted above, record 8 contains diagrams of the lobby of the NTC with photorealistic rendered images of the public areas. The diagrams and images do not contain the same level of detailed information as the other records at issue in this appeal. Records 9 and 14 are diagrams of Levels 1, 2 and 3 of the NTC. As with record 8, they do not contain the same level of detail as the others at issue. The ministry says these records contain information about circulation, flow and traffic routes of NTC staff and the public. However, I am satisfied that that the records contain only general diagrams showing predominantly public areas and do not reveal information about any areas that could assist a person in lawful custody escape.

[76] In summary, I do not accept that disclosure of the information in records 8, 9 or 14 could reasonably be expected to facilitate the escape from custody of a person who is under lawful detention. Each of these records is a high-level diagram of predominantly public areas of the NTC and does not contain specifics in regard to labelling private

spaces, measurements or detailed information that would be helpful in facilitating an escape. These records do not contain information about fire alarms, ventilation, duress alarms and surveillance systems) and/or power supply systems. They are basic diagrams that depict elevators, escalators, the coffee area, court rooms and some generic staff offices. While the main security entrance is identified, I do not accept that any of the information about this area could reasonably be expected to facilitate an escape from custody. As a result, I find that section 14(1)(j) does not apply to records 8, 9 or 14.

Section 14(1)(a) – interfere with a law enforcement matter

[77] The ministry asserts that section 14(1)(a) applies to the remaining records at issue, specifically, records 8, 9 and 14. For section 14(1)(a) to apply, a law enforcement matter must be ongoing.¹⁵ This exemption does not apply once the matter is completed, nor where the alleged interference is with “potential” law enforcement matters.¹⁶

The parties’ representations

[78] The ministry says that all of the records at issue are subject to section 14(1)(a) and that, for the reasons it outlined in its representations for sections 14(1)(e), 14(1)(k), 14(1)(i) and 14(1)(j), as set out above, the disclosure of these remaining records could also reasonably be expected to interfere with the ongoing law enforcement matters at the NTC.

[79] The ministry submits that there are many ways in which criminal proceedings could be interfered with if the information were disclosed. For example, the ministry says that it could allow one to devise detailed plans for threatening judges or counsel, hostage-taking, prisoner escape, evidence destruction, witness tampering, and other interferences with the law enforcement matters conducted at the NTC and BCE.

[80] The appellant denies that section 14(1)(a) applies. It says that the records at issue do not relate to an existing law enforcement matter. The appellant submits that even though the NTC will, at a future date, contain courtrooms in which proceedings in relation to law enforcement matters will be conducted, the architectural plans and layouts at issue “cannot be said themselves to ‘relate’ to those proceedings, in the sense of being in any way relevant or pertinent to the substance of their conduct, nor can such proceedings be said to yet ‘exist’.”

Findings and analysis

[81] I agree with the appellant and find that section 14(1)(a) does not apply to the

¹⁵ Order PO-2657; I note that the term “law enforcement matter” has been defined many times in previous IPC orders. I have not repeated that definition here because it is not relevant to my decision in relation to the information at issue.

¹⁶ Orders PO-2085 and MO-1578.

remaining records.

[82] To begin, it is not clear to me that the ministry has established that there is a “ongoing law enforcement matter,” as contemplated by section 14(1)(a). However, even if I were to find that there was an ongoing law enforcement matter, I am unable to see how any of the information in records 8, 9, and/or 14 could reasonably be expected to interfere with that matter. I have already concluded that none of sections 14(1)(e), (i), (j), or (k) apply to records 8, 9, or 14, primarily because these records contain high level descriptions of public areas of the NTC that would, for the most part, be visible to anyone visiting the NTC.

[83] I see no basis in the ministry’s representations upon which I could make a finding that the disclosure of any of the information in records 8, 9 or 14 could reasonably be expected to interfere with an ongoing law enforcement matter and as a result, I find that section 14(1)(a) does not apply to records 8, 9 or 14.

Section 14(1)(g) –reveal law enforcement intelligence information

[84] For section 14(1)(g) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to interfere with the gathering of or reveal law enforcement intelligence information.

[85] The term “intelligence information” has been defined in the caselaw as:

Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.¹⁷

The parties’ representations

[86] The ministry submits that the information in the remaining records could reasonably be expected to facilitate interference with intelligence gathering efforts at the NTC. Specifically, the ministry says that these efforts are “crucial for ensuring the safety and security of persons and documents at these facilities.” The ministry argues that the information at issue is highly sensitive and confidential security information that is covered by the section 14(1)(g) exemption and should not be disclosed or made publicly available.

[87] In support of its assertion that section 14(1)(g) applies, the ministry argues that the records contain information about “the Toronto Police Service’s covert gathering of intelligence information through the use of surveillance and security personnel.” It says

¹⁷ Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC).

that the security and surveillance systems that will be used by the Toronto Police Service within the NTC and the BCE “will be part of their policing techniques to prevent potential crime within these facilities.” The ministry submits that this “is a form of intelligence gathering that is aligned with preventive policing, an aspect of law enforcement that is intended to act as a deterrent to the commission of crime.”

[88] The appellant denies that section 14(1)(g) applies and says that ministry has failed to provide sufficient evidence to demonstrate in what way disclosure of the records at issue could reasonably be expected to interfere “with the gathering of or reveal law enforcement intelligence information respecting organizations or persons” pursuant to section 14(1)(g). As such, the appellant says the remaining records are not exempt pursuant to that provision.

Findings and analysis

[89] The ministry’s representations address all of records 1 through 16 and, in my view, are of less relevance to records 8, 9, and 14.

[90] I agree with the appellant and find that section 14(1)(g) does not apply to records 8, 9 or 14. As I described above, these three records contain high-level diagrams of predominantly public areas of the NTC, lacking in specificity or detail. I am unable to identify any information in these records that could be considered “confidential security information” or that could reasonably be expected to interfere with intelligence gathering efforts. In my view, the information in records 8, 9, and 14 would be, for the most part, on display for anyone entering the NTC to view as the diagrams depict the general layout of the first three floors.

[91] In summary, I find that section 14(1)(g) does not apply to records 8, 9 or 14.

Issue B: Does the section 20 exemption apply to the remaining records?

[92] The ministry also says that it has the discretion to withhold the remaining records pursuant to section 20 of the *Act* to prevent serious threats to the safety and/or health of individuals working, detained, or attending the NTC.¹⁸

[93] As set out in the Notice of Inquiry sent to the parties at the beginning of this inquiry, section 20 is meant to protect individuals from serious threats to their health or safety resulting from disclosure of a record. It states:

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

[94] Parties resisting disclosure of a record cannot simply assert that the harms under

¹⁸ I have already concluded that section 14(1) applies to records 1 to 7, 10 to 13, 15 and 16. Therefore it is only necessary for me to consider whether section 20 applies to records 8, 9 and 14.

section 20 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 20 are self-evident and can be proven simply by repeating the description of harms in the *Act*.¹⁹ Parties resisting disclosure must show that the risk of harm is real and not just a possibility.²⁰ However, they do not have to prove that disclosure will in fact result in harm.

[95] For section 20 to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to seriously threaten someone's safety or health. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own to establish this exemption.²¹

[96] The term "individual" is not necessarily confined to a particular identified individual and may include any member of an identifiable group or organization.²²

The parties' representations

[97] The ministry submits that disclosing the remaining records could reasonably be expected to seriously threaten safety of the individuals in attendance at the NTC or the BCE. The ministry says that potentially affected persons include Judges, Justices of the Peace, Crown Attorneys, other counsel, Probation and Parole Court Liaison Officers, RCMP and OPP Court Liaison Officers, Toronto Police Services staff, other court staff, witnesses, prisoners under lawful detention, and members of the public attending these buildings.

[98] The ministry argues that these peoples' safety would be seriously threatened in the event of an attack or armed assault, hostage-taking, prisoner escape, incursion to destroy evidence, or other serious disturbance at the NTC or the BCE and that disclosure of the request blueprints would hinder the ministry's ability to ensure the security of potentially impacted persons. The ministry takes the position that this highly sensitive and confidential security information should not be disclosed or made publicly available.

[99] Finally, the ministry says it relies on the representations it made in support of its assertion that various law enforcement exemptions in section 14(1) of the *Act* apply.

[100] The appellant denies that section 20 of the *Act* applies. The appellant submits that the contrary to the ministry's claims that disclosure of the records at issue would reasonably be expected to threaten the safety of individuals attending the NTC, its failure to disclose the records at issue jeopardizes the appellant's ability to assess the health and

¹⁹ Orders MO-2363 and PO-2435.

²⁰ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

²¹ Order PO-2003.

²² Order PO-1817-R.

safety hazards of the proposed workplace.²³ The appellant says that these health and safety hazards include not only those posed by the threat of workplace violence but also by the increased likelihood of exposure to COVID-19 and other emerging viruses due to issues of building density and space allocation.

[101] The appellant says that the ministry has denied unions and professional associations the ability to have the NTC project evaluated by independent experts from a health and safety-specific point of view.

[102] In summary, the appellant submits that there is no merit to the ministry's claim that the records are exempt on the basis of "health and safety." To the contrary, the appellant submits that the withholding of the records negatively impacts worker health and safety by denying it and other worker associations the information required to appropriately advocate for the health and safety of their members.

Findings and analysis

[103] I find that section 20 does not apply to records 8, 9, or 14 for similar reasons that I determined that the section 14(1) exemptions noted above do not apply to these records.

[104] To begin, I am unable to identify any specific information in the three remaining records that, if revealed, could reasonably be expected to threaten any individual's health or safety. As I explained above, these three records are general in nature, the majority of the information shows public spaces, and they do not contain any significant details about security, mechanical, or other specific details that would otherwise be appropriate to keep confidential.

[105] I am not satisfied that there is any reasonable basis for concluding that disclosure of the information in records 8, 9, or 14 could be expected to seriously threaten someone's safety or health and I find that section 20 does not apply.

Issue C: Can any portions of the exempt records be severed in accordance with section 10(2)

[106] Section 10(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. The key question raised by section 10(2) of the *Act* is one of reasonableness. An institution will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets," or "worthless," "meaningless" or "misleading"

²³ As noted at paragraph 2 of this decision, the appellant in this matter is the Ontario Crown Attorneys' Association, a professional association that represents Crown prosecutors employed by the Criminal Law Division of the Ontario Ministry of the Attorney General, including over 200 Crown prosecutors who conduct criminal prosecutions in the Toronto area.

information.²⁴ Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed.²⁵

The parties' representations

[107] The appellant asserts that records, or portions of records, that contain plans or layouts relating to publicly accessible areas of the courthouses should be severed and disclosed pursuant to section 10(2) of the *Act*. The appellant argues that section 14(1) of the *Act* does not bar floorplans and/or layouts of public areas of a proposed courthouse from disclosure where these can be reasonably severed from the record, nor does it bar floorplans, layouts, or diagrams of secured areas of a proposed courthouse where they are "not specific enough in nature to reasonably be expected to" result in harm.

[108] Further, the appellant submits that records that show either parts of the proposed courthouse that will be open to the public (including "layouts of the circulation movement of the public, staff, and parking" and "a configuration of the escalator and stairs") or secured areas of the proposed courthouse that are "not specific enough in nature to reasonably be expected to" engender the harms contemplated in section 14(1) of the *Act* should be carefully examined to determine which parts can be severed and disclosed.²⁶

[109] In reply, the ministry denies that any information can be severed and disclosed. The ministry argues that each record relates to one specific floor and/or section of the NTC and that because each floor and/or section is fairly small in size, disclosure of any portion of the record could reasonably be expected to result in the harms it set out above in support of its assertions that section 14(1) applies to the information at issue. The ministry also asserts that severing the floor plans would be extremely challenging and that it would be impossible to infer what the severed information was without the rest of the floor plan. As such, the ministry says that the records cannot be severed, and section 10(2) does not apply.

Findings and analysis

[110] I agree with the ministry that none of the information in records 1 to 7, 10 to 13, 15 and/or 16 can be severed and disclosed in accordance with section 10(2) of the *Act*.

[111] Before I explain my reasons for this finding, it is necessary to provide some further details about the nature of the records at issue. At the beginning of this inquiry, the ministry provided the IPC with a copy of the records that were scaled to fit on a single page. Due to the scaling, it was impossible to decipher what was depicted in each page. As a result, I asked the ministry to provide legible, full-scale copies.

²⁴ Order PO-3809; see also, Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

²⁵ Order PO-3809.

²⁶ The ministry refers me to IPC Order PO-2762 at p. 15.

[112] The new copies the ministry provided are pdf files that must be enlarged significantly to see the description and detail of each image. Due to the amount of information in each of the pdfs, it is necessary to zoom in and then navigate around the page to look at each portion. For the majority of the records at issue, it is not possible to view the entire image at once.

[113] In my view, the descriptions of the records provided by the ministry, for example, “general floor plans that contain detailed layouts of the common areas such as courtrooms, public washrooms and public corridors and other interior spaces such as mechanical rooms, building services and prisoner corridors” (records 1 and 2) do not fully convey the amount of detail in these records. For example, record 1, is labelled an “architectural blueprint of each level of the NTC.” A blueprint is a general term. It could be a design plan, a model, or other technical drawing. The level of detail in a blueprint can vary significantly.

[114] In the case of the records that I have concluded section 14(1)(e), (i), (j), and/or (k) apply to, the level of detail is extensive, including descriptions for each part of the buildings depicted as well as other intricate details such as measurements and labels for each space and/or room, colour-coded legends identifying public and private access areas, anticipated traffic patterns, entrances and exits to rooms, windows, mechanical details and other information about the building, its unique characteristics and security.

[115] In other words, the blueprints at issue in this appeal are not simply outlines, or rough overviews, of the NTC or the BCE. I agree with the ministry that severing and disclosing “the public areas” of the NTC or the BCE is not appropriate. Based on my consideration of the records, the amount of severing required to ensure that information subject to the law enforcement exemptions was not revealed would leave a disjointed diagram that would be unusable for any purpose. As held in previous orders, an institution is not required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless” or “meaningless” information, which severance would result in here.²⁷ For these reasons, I am satisfied that the ministry has adhered to section 10(2) of the *Act*.

Issue D: Did the ministry exercise its discretion pursuant to section 14(1)?

[116] The section 14(1) exemption is discretionary, meaning that the ministry may decide to disclose information even if it qualifies for exemption under that section. The ministry must demonstrate that it exercised its discretion. On appeal, I may determine that it failed to do so. Additionally, I may find that the ministry erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;

²⁷ See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 2004 CanLII 39011 (ON CA), 192 O.A.C. 71 (Div. Ct.).

- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[117] In either case, I may send the matter back to the ministry and order it to exercise its discretion based on proper considerations.²⁸ I cannot, however, substitute my own discretion for that of the institution.²⁹

The parties' representations

[118] The ministry submits that it exercised its discretion appropriately by considering several relevant factors, including IPC adjudicators' previous findings that "disclosure under the *Act* is effectively disclosure to the world." The ministry submits that a disclosure order by the IPC may make the information contained in these records broadly available and potentially expose the ministry to the security and safety risk identified above.

[119] The ministry says it is concerned with security and safety risks associated with disclosing the requested records. It argues that these risks affect the life and physical safety of law enforcement personnel, the Judiciary, Crown Attorneys and other counsel, court staff, witnesses, prisoners, and members of the public in attendance at the NTC and the BCE. It also asserts that the security of the buildings, transport vehicles, and their security systems and procedures would be affected by the disclosure of the withheld information, as would the prospects of escape for persons under lawful detention.

[120] The ministry submits that disclosure of the withheld records would be not only contrary to the public interest, but also contrary to the public's expectations for security and safety at the NTC and the BCE, where the ministry fulfils its mission to deliver criminal justice services to the public. The ministry submits that these considerations were all proper and relevant and that it exercised its discretion in good faith.

[121] The appellant did not make any specific representations about whether the ministry exercised its discretion in an appropriate manner.³⁰ However, I note that a significant portion of the appellant's representations relate to its reasons for making the request and its assertion that the disclosure of the records would be in the public interest. The public interest override at section 23 of the *Act* is not applicable to information exempt pursuant to section 14(1) and so I have not set out the appellant's representations in detail. Nonetheless, I confirm that I considered all of the appellant's representations prior to making my findings on each of the issues before me in this appeal.

²⁸ Order MO-1573.

²⁹ Section 54(2).

³⁰ As I noted earlier, a large portion of the appellant's representations relate to why it seeks access or the records or why the disclosure would be in the public interest. I confirm that I considered these portions of the appellant's representations prior to making my findings on each of the issues before me in this appeal. However, given that the public interest override is not at issue, I have not set them out in detail.

Findings and analysis

[122] I find that the ministry has explained the factors it took into account when considering whether to exercise its discretion to apply the section 14(1)(e), (i), (j) and (k) exemptions and, in my view, those factors are appropriate.

[123] The ministry and the appellant have different opinions on whether the disclosure of the records is in the public interest. However, because I determined that section 14(1)(e), (i), (j) or (k) apply to records 1 to 7, 10 to 13, 15 and 16, the public interest override at section 23 of the *Act* is not applicable and I do not need to consider it. I accept the ministry's explanation for why it exercised its discretion to withhold the records 1 to 7, 10 to 13, 15 and 16. I see no evidence that the ministry has exercised its discretion in bad faith, or that it has taken into account any irrelevant factors. As such, I uphold the ministry's exercise of discretion.

ORDER:

1. I uphold the ministry's decision to withhold access to records 1 to 7, 10 to 13, 15 and 16.
2. I order the ministry to disclose records 8, 9, and 14 to the appellant by **April 3, 2024**.
3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed pursuant to order provision 2, above.

Original signed by: _____
Meganne Cameron
Adjudicator

February 28, 2024 _____

APPENDIX I

1. Blueprints for the New Toronto Courthouse (NTC) Armoury/Chestnut/Centre streets set to open 2022 which will house all the Ontario Court of Justice criminal courts in the Toronto Region. Specifically, blueprints related to security, including but not limited to: i. access points (entrance and exit) for members of the public, employees and Toronto Police Service employees ii. location of public elevators/escalators and secure elevators/escalators and bathrooms for Assistant Crown Attorneys.

2. Blueprints for the proposed Bail Centre of Excellence (BCE) at 2201 Finch Avenue West, Toronto, Ontario. Specifically, blueprints related to security, including but not limited to: i. access points (entrance and exit) for members of the public, employees and Toronto Police Service employees ii. location of public elevators/escalators and secure elevators/escalators and bathrooms for Assistant Crown Attorneys.