

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-4498-I

Appeal PA23-00403

Ministry of the Solicitor General

March 15, 2024

**Summary:** The appellant made a request for records relating to OPP employees stationed at specified addresses during a specified time period, and the ministry denied access to the responsive information under sections 14(1) (law enforcement) and 21(1) (personal privacy) of the *Act*. The appellant appealed the ministry's decision to the IPC. The ministry refused to provide a copy of the records to the IPC. In this interim decision, the Assistant Commissioner orders the ministry to produce the records 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 56(2). Section 10.01 of the IPC's *Code of Procedure*.

### OVERVIEW:

[1] The appellant 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:

From the OPP, any and all details about the number of OPP employees, plus any and all details about the duties or other operational responsibilities of said employees during the time that they were assigned to, stationed at, called or sent to Etobicoke Weston Wood Road, 1500 Royal York Road, or anywhere between Brittany Court and Westmount Park Road, from anytime between 12:01am on August 11, 2022 to 8pm on August 12, 2022.

For all employees of the OPP whose records the previous search identifies, all of the emails and text messages they sent or received, along with records of phone calls made or received from August 10, 2022 to August 12, 2022.

[2] The ministry issued a decision denying access to responsive records based on the section 14(1) law enforcement exemption and the mandatory personal privacy exemption at section 21(1). In addition, the ministry has identified certain portions of the records as not responsive to the request.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC's Registrar contacted the ministry to request a copy of the records at issue for the purpose of resolving the appeal. In response, the ministry indicated that it would prefer if IPC staff members attend the ministry's office to review the records at issue in person.

[4] The Registrar wrote back to the ministry requesting that the records be provided to the IPC. While there were several exchanges between the Registrar and the ministry, the ministry did not provide the records at issue to the IPC.

[5] The appeal file was then forwarded to the adjudication stage of the appeals process to address this matter further. The adjudicator assigned to the matter sought and received the ministry's representations on its position not to provide the records to the IPC.

[6] In the circumstances, I order the ministry to provide the IPC with a copy of the records so that the IPC may properly review the ministry's decision and resolve the appeal.

## **DISCUSSION:**

[7] I have reviewed the circumstances of this appeal. Pursuant to section 56(2) of the *Act*, I have decided to order the ministry to produce the records at issue in the appeal to the IPC.

[8] 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.

[9] Section 56(2) sets out the exception to section 52(4) and requires that for records claimed exempt under sections 12 or 14, as the case here, the Commissioner cannot

delegate her power to require a record to be produced and examined to anyone except the Deputy or Assistant Commissioner.

[10] 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 to produce any records for the purposes of conducting an inquiry.

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

Where the IPC determines that copies of the 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, with 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.

[12] In accordance with the *Code*, the IPC requested the records from the ministry and the ministry has refused to provide those records. While not required by section 10.01 of the *Code*, the ministry was asked for an explanation as to why it has not produced the records to the IPC. The ministry stated the following in response:

...the ministry will produce records, if ordered to do so, and assuming that any production order is issued in accordance with the *Act* and the IPC *Code of Procedure*. It is our view based on section 52(4) – (6) of the *Act* and section 10 of the *Code of Procedure* that any production order requires the ministry to comply with the order and therefore to produce the records, but it does not entitle the IPC to “retain them”. Further, any order must be issued by the IPC Commissioner unless there has been a delegation of authority validly executed in accordance with section 56 of the *Act*. It is our position that both the *Act* and the *Code* support our long-standing approach of having staff at the IPC attend the ministry offices to examine highly sensitive records such as the ones at issue in this appeal, and this is fully compliant with a production order. We request that this approach be continued for the purpose of this appeal.

[13] As the ministry notes, the Commissioner can order production of the records and may examine any record at issue, but it is silent as to whether the records can be “retained” by the Commissioner for the purposes of conducting her inquiry. While the IPC retains a copy of the records at issue for the duration of the appeal, the records are either returned to the institution or disposed of in the manner as directed by the institution at the end of the retention period.

[14] I find that for the purposes of examining the records at issue, the IPC must be

able to retain a copy of the record until the resolution of the appeal and any reconsideration and judicial review period. This has been the long-standing approach of the IPC in meeting its mandate to independently review disclosure decisions of institutions under the *Act*.

[15] In the circumstances of the current appeal, the ministry has claimed that the records withheld under section 14(1) are “highly sensitive” and has not provided any further information as to why the records at issue cannot be provided to the IPC. The ministry asks that IPC staff members attend its office to review the records. The ministry’s lack of description about the type and number of the records renders it difficult to know how much time IPC staff members would be required to attend the ministry’s offices to review and properly examine the records at issue. Furthermore, it is difficult to determine how often IPC staff members will be required to view the records as the matter progresses through the appeal process, including mediation and any adjudication, if necessary.

[16] Accordingly, in the interests of an expeditious resolution to the appeal and in order for the IPC to efficiently and effectively carry out its mandate, I find that the ministry must provide a copy of the records to the IPC.

**ORDER:**

In accordance with sections 52(4) and 56(2) of the *Act*, I order the ministry to provide a copy of the records at issue in Appeal PA23-00403 to the IPC by **March 29, 2024**.

Original Signed by: \_\_\_\_\_  
Warren Mar  
Assistant Commissioner

\_\_\_\_\_ March 15, 2024