Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4542

Appeal PA21-00478

Ministry of the Solicitor General

August 8, 2024

Summary: An individual sought access under the *Act* to police records relating to incidents involving her and her spouse. The ministry granted partial access to police reports and officers' notes, and withheld audio recordings of 911 calls. The ministry withheld information on the basis that disclosure would be an unjustified invasion of another individual's personal privacy (section 49(b)). In this order, the adjudicator finds that the withheld information is exempt under section 49(b). She 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(2)(a), 21(2)(b), 21(2)(d), 21(2)(f), 21(2)(h), 21(3)(b), and 49(b).

Orders Considered: Orders MO-4516, MO-4165, MO-3681, PO-3458.

OVERVIEW:

[1] This order determines whether the disclosure of personal information contained in police reports, officers' notes, and audio recordings of 911 calls would constitute an unjustified invasion of personal privacy under section 49(b) of the *Freedom of Information and Protection of Privacy Act*.

[2] The Ministry of the Solicitor General (the ministry) received an access request pursuant to the *Act* for all records, reports, and/or phone calls made by or to Ontario Provincial Police (OPP or the police) Cobourg Detachment related to the requester, the

requester's spouse, and/or the requester and her spouse's address by specified individuals or from the specified individuals' address.

[3] The ministry granted partial access to the responsive records, citing section 49(a) (discretion to refuse requester's own information) of the *Act*, read with the law enforcement exemptions at sections 14(1)(j) (facilitate escape from custody) and 14(1)(l) (facilitate commission of an unlawful act), as well as section 49(b) (personal privacy) to deny access to the remaining information. The ministry also stated that some information was removed from the records as it was deemed non-responsive to the request.

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

[5] During mediation, the ministry confirmed that section 14(1)(j) was cited in error. The appellant advised that she is not seeking access to any information withheld pursuant to section 49(a), read with 14(1)(l), or information deemed non-responsive to the request. As a result, the only information remaining at issue in this appeal is the information withheld pursuant to the discretionary exemption at section 49(b) of the *Act*.

[6] At the appellant's request, the mediator sought the affected parties' consent to the disclosure of the information relating to them. The affected parties did not consent to the disclosure of their information. As mediation did not resolve the appeal, the file was transferred to the adjudication stage of the appeal process, where the adjudicator may conduct an inquiry under the *Act*.

[7] The adjudicator originally assigned to the appeal sought and received representations from the ministry and the appellant. The appeal was subsequently transferred to me to continue with the inquiry. After reviewing the parties' representations, I determined that I did not need to hear from the parties further before issuing this decision.

[8] For the reasons that follow, I uphold the ministry's decision to withhold portions of the records under section 49(b) and dismiss the appeal.

RECORDS:

[9] The records remaining at issue consist of police reports and officers' notes (denied in part), as well as eight audio calls (denied in full).

ISSUES:

A. Do the records 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. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

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

[10] Before I consider whether section 49(b) applies, I must first determine whether the records contain "personal information". If it does, I must determine whether the personal information belongs to the appellant, the affected parties, or both.

[11] It is important to know whose personal information is in the records. If the records contain the requester's own personal information, their access rights are greater than if it does not.[1] Additionally, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.[2]

[12] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual". Recorded information is information recorded in any form, including paper and electronic records.[3]

[13] Information is "about" an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about that individual. Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[4] Section 2(1) of the *Act* contains some examples of personal information, though this list is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

[14] The ministry submits that the withheld information consists of extensive personal information belonging to third party individuals (the affected parties), including names, dates of birth, telephone numbers, addresses, and information provided to the OPP, as well as Workplace Information Numbers (WIN identifiers) belonging to OPP employees. The ministry also submits that it has provided the appellant with access to her own personal information. Taken together, these statements appear to suggest that the

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[1] Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose that information even if the exemption applies.
[2] See sections 21(1) and 49(b).
[3] See the definition of "record" in section 2(1) of the *Act*.
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

ministry submits that the records as a whole contain the personal information of both the appellant and affected parties. The ministry also argues that in the circumstances, it is reasonable to expect that the affected parties could be identified if the information is disclosed.

[15] The appellant also appears to accept that the records contain her own personal information, as well as the personal information of affected parties. However, the appellant submits that some of the information that the ministry withheld as the affected parties' personal information is in fact the appellant's own personal information. Specifically, the appellant argues that the personal opinions or views of affected parties, where they relate to the appellant, constitute the appellant's personal information, not the affected parties' personal information, and therefore this information should be disclosed to her. The appellant cites section 2(1)(e) of the *Act*, which states:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (e) the personal opinions or views of the individual except where they relate to another individual [emphasis added].

[16] The appellant states that she is only seeking access to opinions or views about her, and that she is not interested in the affected parties' personal information, including their WIN identifiers.

[17] I have reviewed the records and find that they contain both the appellant's and the affected parties' personal information as defined by section 2(1) of the *Act*, including names, dates of birth, addresses, telephone numbers, other demographic information, and statements made to police officers. This information qualifies as personal information as defined at paragraphs (a), (d), (e), (g), and (h) of section 2(1) of the *Act*. The affected parties are identifiable from the information in the report, and this information is personal in nature.

[18] Given the appellant's statement that she is only seeking access to opinions or views about her, I find that the affected parties' names, dates of birth, addresses, telephone numbers, and other demographic information are not at issue in this appeal. Given the appellant's explicit statement that she is not interested in WIN identifiers, I find that it is not necessary for me to determine whether WIN identifiers constitute personal information as they are similarly not at issue in this appeal.

[19] The appellant cites paragraph (e) of the section 2(1) definition to argue that the personal opinions or views of the affected parties, where they relate to her, constitute her own personal information and therefore should be disclosed to her. As previously indicated, paragraph (e) states that an individual's personal information includes their personal opinions or views, except where they relate to another individual. Paragraph (g) provides additional clarification and states that an individual's personal information

includes "the views or opinions of another individual about the individual". Taken together, these paragraphs suggest that the affected parties' personal opinions or views about the appellant constitute the appellant's personal information.

[20] In light of the above, I have considered whether the ministry has improperly withheld any of the appellant's personal information. I conclude that it has not. The withheld information contains the affected parties' personal opinions and views. While some portions of the affected parties' opinions and views relate to the appellant, other portions do not. Previous IPC orders have recognized that an individual's personal information, in the form of views or opinions expressed about them, may also contain the mixed personal information of the individual(s) expressing those views or opinions.[5] I agree with this reasoning and adopt it for the purposes of this appeal, finding that the opinions and views that relate to the appellant are intertwined with the affected parties' personal information such that additional severances are not feasible.

[21] Having found that the records contain the personal information of both the appellant and the affected parties, I will consider the application of the personal privacy exemption at section 49(b) to the information remaining at issue, the views and opinions of the affected parties.

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

[22] 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.

[23] 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.

[24] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose the other individual's personal information to the requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

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

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

[5] See Orders MO-4516, MO-4165, MO-3681, PO-3458.

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

- Section 21(2) contains a non-exhaustive list of factors that may be relevant in determining whether the disclosure of personal information would be an unjustified invasion of personal privacy. Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

- Section 21(3) lists circumstances where disclosure of personal information is presumed to be an unjustified invasion of personal privacy.

- Section 21(4) lists circumstances where disclosure of personal information is not an unjustified invasion of personal privacy, even if one of the section 21(3) presumptions exists.

[27] The parties do not rely on any of the section 21(1)(a) to (e) exceptions or on any of the circumstances in section 21(4) and I find that they do not apply in this appeal.

[28] To determine whether disclosure of the withheld information in the record would be an unjustified invasion of personal privacy under section 49(b), I must therefore consider and weigh the relevant factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[6]

Representations

The ministry's representations

[29] The ministry submits that the information in the records was compiled as part of an investigation into a possible violation of law, engaging the presumption against disclosure in section 21(3)(b). The ministry states that the records were prepared by the OPP after the OPP were requested to attend a location, which led to an investigation into whether an offence had occurred. The ministry submits that the presumption applies even if no charges were laid, as it only requires an investigation into a possible violation of law. The ministry relies upon previous IPC orders, including Order PO-3766 and PO-4020, which the ministry identifies as cases where its decision to withhold comparable OPP records was upheld pursuant to section 21(3)(b).

[30] The ministry also submits that the factor at section 21(2)(f) (highly sensitive) applies and weighs against disclosure of the withheld information. The ministry submits that when individuals request police assistance, there is a reasonable expectation that the police records that are created will only be used for law enforcement purposes. The ministry submits that these expectations, combined with the circumstances in which the records were created, means that the personal information in the records is inherently

[6] Order MO-2954.

"highly sensitive". The ministry submits that there would be a reasonable expectation of significant personal distress if the affected parties' personal information were disclosed, and cites Orders P-1618, PO-3766, and MO-3649 to support its position.

[31] Finally, the ministry submits that it is important to safeguard the privacy of individuals who seek the assistance of the OPP, and that not doing so could jeopardize the public policy goal of encouraging members of the public to seek police assistance when necessary.

The appellant's representations

[32] The appellant submits that the factor at section 21(2)(a) (public scrutiny) applies and weighs in favour of disclosure of the withheld information. Specifically, the appellant argues that disclosure of the withheld information would promote transparency of government actions. The appellant indicates that she has observed a difference in police response and treatment, when comparing her interactions with the police and the interactions of the affected parties with the police. The appellant suggests that the police and the municipality may be biased and argues that the absence of transparency may lead to undesirable outcomes, such as the OPP being used against members of the public.

[33] The appellant also submits that the factor at section 21(2)(b) (public health and safety) applies and weighs in favour of disclosure of the withheld information. The appellant states that following one of the incidents, her spouse received a telephone call from an officer regarding mental health concerns. The appellant states that she does not know what led to this call and compares the experience to a "Form 1"[7], which gives any person the right to take the subject of the form to a psychiatric facility for assessment. The appellant argues that disclosure of the affected parties' views and opinions could protect members of the public from the severe consequences of being put on a Form 1 unnecessarily. The appellant also submits that if she agrees with the expressed views and opinions, it could affect her decision to seek professional medical attention.

[34] Finally, the appellant submits that the factor at section 21(2)(d) (fair determination of rights) applies and weighs in favour of disclosure. In her representations, the appellant references a complaint that she filed with the Association of Ontario Land Surveyors (AOLS). The appellant states that during the complaint process, AOLS was informed that there were various OPP occurrence numbers associated with her, and that without context, this caused AOLS to make negative inferences against her character which hindered her case against the surveyor. The appellant also states that she contemplated a defamation lawsuit, but that the statute of limitations has passed.

Analysis and findings

[35] For the reasons below, I find that disclosure of the information that has been withheld from the report would constitute an unjustified invasion of the affected parties'

[7] Also known as an "Application by Physician for Psychiatric Assessment" under the *Mental Health Act*.

personal privacy and therefore, this information is exempt under section 49(b).

Do any of the presumptions listed in 21(3) apply?

[36] As stated above, the ministry claims that the section 21(3)(b) presumption against disclosure applies to the information at issue. Section 21(3)(b) states:

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

[37] Even if no criminal proceedings were commenced against an individual, as is the case in this appeal, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[8]

[38] I have reviewed the records and find that the withheld personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The records consist of 911 audio calls, in which callers requested police assistance, as well as police reports and officers' notes that were compiled as part of the police's subsequent investigation into whether an offence had occurred. The OPP's investigation into this incident gave rise to the possibility of criminal charges being laid. As the presumption only requires that there be an investigation into a possible violation of law, the fact that no criminal proceedings were initiated does not alter my finding.

[39] As a result, I am satisfied that section 21(3)(b) applies and that disclosure of the personal information at issue is presumed to be an unjustified invasion of the affected parties' personal privacy.

[40] Under section 49(b), the section 21(3)(b) presumption must be weighed and balanced with any other factors in 21(2) that apply in the circumstances.

Do any of the factors listed in section 21(2) apply?

[41] Section 21(2) lists factors that may be relevant in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. The ministry relies on the factor at section 21(2)(f) (highly sensitive), while the appellant relies on the factors at sections 21(2)(a) (public scrutiny), 21(2)(b) (public health and safety), and 21(2)(d) (fair determination of rights).

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[8] Orders P-242 and MO-2235.

Section 21(2)(a): Public scrutiny

[42] The appellant submits that the factor at section 21(2)(a) applies to the withheld information. This factor supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[9] It promotes transparency of government actions.

[43] An institution should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.[10]

[44] Based on the evidence before me, I am not convinced that section 21(2)(a) applies in the circumstances of this appeal. The records concern incidents of a personal nature that involve the appellant and affected parties, which the OPP responded to. The withheld information contains the personal information of affected parties, in some instances mixed with the personal information of the appellant, and are about the affected parties' individual experiences.

[45] I understand that the appellant believes that having access to the withheld information will help her determine whether there is a reason for a perceived unfairness in the police and the municipality's response. However, it is unclear how the affected parties' personal information would assist in this determination. I find I have insufficient evidence to establish a connection between the affected parties' views and opinions about the appellant, which are the views and opinions of private individuals and which the appellant identifies as being of particular interest to her in this appeal, and the type of disclosure that would subject the activities of government to public scrutiny.

[46] As a result, I find that disclosure of the withheld information would not subject the activities of the government to public scrutiny, and therefore the factor at section 21(2)(a) does not apply.

Section 21(2)(b): Public health and safety

[47] The appellant submits that section 21(2)(b) applies to the withheld information. This section is intended to weigh in favour of disclosure where disclosure of the information would promote public health and safety.

[48] In her representations, the appellant draws a comparison between the telephone call that her spouse received from an officer about mental health concerns and a "Form 1", which the appellant characterizes as a mechanism by which individuals may have "their rights taken away from them". The appellant argues that disclosure of the views and opinions that led to this call could protect members of the public from being put on a Form 1 unnecessarily, for instance through developing procedures and improving

[9] Order P-1134.
[10] Order P-256

accountability. The appellant also suggests that disclosure of the information she seeks could ultimately have an ameliorative effect on her mental health.

[49] I am not convinced that a discussion between the police and the appellant's spouse about mental health is analogous to a "Form 1", which is a formal application under the *Mental Health Act*. Without additional information, I cannot conclude that this call is comparable to being placed on a Form 1, which requires specific criteria to be met, nor am I convinced that an individual's rights are engaged in the same way. Consequently, while I understand that the appellant has concerns about the possible misuse of the Form 1 process, I do not find these arguments relevant to the circumstances of this appeal.

[50] Furthermore, as I explained above, it is my view that the records are about incidents that affect the appellant and the affected parties. The withheld information contains the personal information of the affected parties, either alone or intertwined with that of the appellant. In my view, the withheld information does not relate to the health and safety of the public and its disclosure would not serve to promote it.

[51] As a result, I find that the factor at section 21(2)(b) is not relevant and does not favour disclosure in the circumstances of this appeal.

Section 21(2)(d): Fair determination of rights

[52] The appellant submits that the factor at section 21(2)(d) applies to the withheld information. This section requires an institution to consider whether "the personal information is relevant to a fair determination of rights affecting the person who made the request".[11] This factor weighs in favour of disclosure, if it is found to apply.

[53] In order for the section 21(2)(d) factor to apply, the appellant must establish all four parts of the following test:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

[11] Section 21(2)(d) of the *Act*.

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[12]

[54] The appellant did not address the four-part test in her representations. However, it is clear that the appellant is referencing this section in relation to a complaint that she filed with AOLS (against a surveyor), as well as a possible defamation lawsuit. In her representations, the appellant indicates that she is hoping to provide the occurrence reports to AOLS as context for why there are OPP occurrence numbers associated with her, while also noting that "it may be too late". The appellant also notes that the statute of limitations has passed for a defamation lawsuit.

[55] I have reviewed the evidence from the appellant, which establishes that her complaint to AOLS was referred by the AOLS Complaints Committee to the Council of the Association of Ontario Land Surveyors (Council). Subsequently, the appellant appears to have received correspondence from Council, in which Council confirmed that it had considered the matter, commented on the surveyor's practices, and discussed remedial measures that would be taken.

[56] I am not persuaded that all four parts of the section 21(2)(d) test have been met. While I accept that the appellant filed a complaint with AOLS and has considered a defamation lawsuit, the evidence before me suggests that the AOLS proceeding is complete, rather than existing or contemplated. Furthermore, if I accept the appellant's comments that the statute of limitations for a defamation lawsuit has expired, this seems to run contrary to a finding that such a proceeding is existing or can be contemplated. As a result, I find that the second part of the test has not been met.

[57] Additionally, even if I were prepared to accept that there is a proceeding that is existing or contemplated, there is insufficient evidence for me to conclude that the personal information at issue is required in order to prepare for the proceeding or to ensure an impartial hearing. For example, the appellant claims that her inability to produce more complete versions of the occurrence reports had a negative impact on her complaint against the surveyor. However, I note from the evidence provided by the appellant that the AOLS Complaints Committee declined to grant additional time for the surveyor to try and obtain the same OPP reports, stating that it was unclear how the additional information is relevant to the issues raised by the appellant, and more explicitly that these materials may not have any bearing on their decision. Similarly, there is no evidence before me to suggest that the affected parties' personal information, including their views and opinions, would have been required to prepare for a proceeding for defamation or to ensure an impartial hearing.

[58] As a result, I find that the factor at section 21(2)(d) is not relevant and does not

[12] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

favour disclosure in the circumstances of this appeal.

Section 21(2)(f): The personal information is highly sensitive

[59] The ministry submits that section 21(2)(f) applies to the withheld information. This section is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be "highly sensitive", there must be a reasonable expectation of significant personal distress if the information is disclosed.[13]

[60] In its representations, the ministry submits that there would be a reasonable expectation of significant personal distress if the withheld information were to be disclosed. The ministry states that although the mediator contacted affected parties at the mediation stage, the affected parties may not be presently aware that their personal information is subject to disclosure. The ministry submits that disclosure in these circumstances would be significantly distressing, as the affected parties would not be expecting it to occur. The ministry also notes that if the affected parties' personal information were disclosed, it would cease to be protected by the privacy provisions of the *Act*. The ministry argues that this would also cause the affected parties significant personal distress, as they would permanently lose control of their personal information contained in the records.

[61] Considering the nature of the records, the nature of the information at issue, and the circumstances that the OPP were called to investigate, I find that disclosure of the withheld information could reasonably be expected to cause the affected parties significant personal distress. As a result, I find that the information at issue is highly sensitive and the factor at section 21(2)(f) applies to the withheld information and weighs against disclosure.

Other factors

[62] Although the ministry does not explicitly cite this section, I find that its discussion raises the possible application of section 21(2)(h) (information supplied in confidence).

[63] Section 21(2)(h) requires an institution to consider whether "the personal information has been supplied by the individual to whom the information relates in confidence". This factor weighs against disclosure, if it is found to apply.

[64] For this factor to apply, I must be satisfied that both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that this expectation is reasonable in the circumstances. Section 21(2)(h) requires an objective assessment of "reasonableness".

[65] In the circumstances, I find that it was reasonable for the affected parties to expect that they provided their personal information to the police in confidence. I accept the

[13] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

ministry's argument that affected parties, in requesting police assistance, have an expectation that the records that are created will only be used for law enforcement purposes. I also accept that the affected parties' expectation of confidentiality was shared by the recipient of that information (i.e. the attending officer). Relevant to this finding is the fact that the affected parties did not consent to the disclosure of their information when contacted during the mediation stage.

[66] As a result, I find that the factor at section 21(2)(h) applies to the withheld information and weighs against disclosure.

[67] Finally, I have considered whether unlisted factors apply to weigh in favour of disclosure and find that none do.

Balancing the relevant presumption and factors

[68] I have found that disclosure of the affected parties' information would result in a presumed unjustified invasion of their personal privacy under section 21(3)(b). I have also found that the section 21(2)(f) and 21(2)(h) factors weigh against the disclosure of the affected parties' personal information.

[69] Overall, I find that the balance weighs in favour of protecting the affected parties' personal privacy, rather than the appellant's access rights. As a result, I find that the information at issue is exempt from disclosure under section 49(b) of the *Act*.

Absurd result

[70] An institution may not be able to rely on the section 49(b) exemption where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In these cases, withholding the information might be absurd and inconsistent with the purpose of the exemption.[14] This is referred to as the absurd result principle.

[71] The ministry submits that while it is unclear how much the appellant knows about the contents of the records, the absurd result principle does not apply because disclosure would be inconsistent with the purpose of the exemption (i.e. to protect the privacy of affected parties whose personal information is collected in OPP investigative records). The ministry relies upon Order PO-3013 in support of its position. The appellant submits that it would be absurd to withhold the identity of the affected parties, as they are already aware of this information.

[72] Based on my review of the record, I find that the absurd result principle does not apply. Previous IPC orders have found that the absurd result principle may not apply if disclosure is inconsistent with the purpose of the exemption, even if the information is

[14] Orders M-444 and MO-1323.

otherwise known to the requester.[15]

[73] In this case, while the appellant claims to know the identity of the affected parties, this is only a small portion of the withheld information. While I accept that the record contains some information that the appellant may have knowledge of, it also includes information provided by the affected parties that the appellant likely does not know. Given my earlier finding that disclosure would be an unjustified invasion of personal privacy, I find that to apply the absurd result principle would be inconsistent with the purpose of the section 49(b) exemption.

[74] As a result, I find that it would not be absurd to withhold the personal information of the affected parties in the circumstances of this appeal.

Issue C: Did the ministry properly exercise its discretion in withholding the information in the record?

[75] The section 49(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. Having found that portions of the record are exempt from disclosure under section 49(b), I must next determine if the ministry properly exercised its discretion in withholding the information. An institution must exercise its discretion. On appeal, the IPC may determine whether an institution has failed to do so.

[76] The IPC may find that an institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[77] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[16] The IPC may not, however, substitute its own discretion for that of the institution.[17]

Representations, analysis and finding

[78] The ministry submits that it has appropriately exercised its discretion. The ministry submits that in withholding highly sensitive personal information collected during law enforcement investigations, it has acted in accordance with long-standing practice. The ministry also notes that it provided the appellant with a broad right of access to her own personal information and has therefore struck an appropriate balance with the principles

[15] Orders M-757, MO-1323 and MO-1378.
[16] Order MO-1573.
[17] Section 54(2) of the *Act*.

of the *Act*.

[79] In response, the appellant asks that I consider that "individuals should have a right of access to their own personal information". The appellant states that she is only seeking access to her own personal information, and that she has a sympathetic or compelling need to receive the requested information. Finally, the appellant argues that disclosure will increase public confidence in the operation of the institution.

[80] I have reviewed the parties' representations and find that the ministry properly exercised its discretion in withholding portions of the responsive records under section 49(b). Based on the ministry's representations, it is clear that it considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the entire record with the protection of the affected parties' privacy when making its decision.

[81] I find that the ministry did not exercise its discretion to withhold portions of the records in bad faith or for any improper purpose, and that there is no evidence that it failed to take relevant factors into account or considered irrelevant factors. While the appellant makes arguments for why she believes the ministry should have exercised its discretion differently, there is no evidence before me to suggest that the ministry's exercise of discretion was improper. Accordingly, I uphold the ministry's exercise of discretion in denying access to the information at issue.

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original signed by: August 8, 2024

Anda Wang
Adjudicator