Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4617

Appeal PA21-00599

Ministry of the Solicitor General

March 7, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Solicitor General for a police report related to a specified occurrence and any additional information about them in relation to the occurrence. The ministry disclosed to the individual some records. It withheld some information because its disclosure could reasonably be expected to interfere with a law enforcement matter (section 49(a), read with section 14(1)) and would result in an unjustified invasion of other individuals' personal privacy (section 49(b)).

In this order, the adjudicator orders the ministry to disclose additional information and otherwise upholds the ministry's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 2(3), 14(1)(c), 14(1)(l), 21(2)(a), 21(2)(f), 21(3)(b), 21(3)(d), 28(1), 49(a), and 49(b).

Orders and Investigation Reports Considered: Orders M-84, P-1340, PO-2034, PO-3742, PO-4535, PO-4426, PO-2560, PO-2265, MO-3622, MO-3815, MO-3977, and MO-4439.

OVERVIEW:

[1] This order determines whether the appellant has a right of access to the withheld information contained within Ontario Provincial Police (OPP) records about an occurrence involving them.

[2] 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 an initial police report related to a specified occurrence and any additional information about the appellant in relation to the occurrence. The request relates to an occurrence involving an arrest of a number of individuals, including the appellant, and seizure of several items.

[3] The ministry identified responsive records and granted partial access to them. The ministry withheld some information on the basis of section 49(a), read with the law enforcement exemptions at sections 14(1)(c) and 14(1)(l); and section 49(b) (personal privacy) of the *Act.* The ministry also withheld some information as non-responsive to the request.

[4] The appellant sought access to the withheld information and appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] The IPC attempted to resolve the appeal through mediation. At mediation, the appellant confirmed that they were not seeking access to the information the ministry determined to be non-responsive to the request. However, the appellant took the position that it was in the public interest that the balance of the withheld information be disclosed to them. Accordingly, section 23 (public interest override) of the *Act* was added as an issue in the appeal.

[6] The mediation did not resolve the appeal. As a result, the appeal was moved to the adjudication stage of the appeal process where an IPC adjudicator decided to conduct an inquiry under the *Act*. The IPC adjudicator sought, received, and shared the parties' representations in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. The appeal was then transferred to me to continue the inquiry. I reviewed the materials and determined that I did not require further representations before making my decision.

[7] For the following reasons, I partially uphold the ministry's decision. I find that some information withheld under sections 49(a) and (b) is not exempt, and I order the ministry to disclose it to the appellant. I uphold the decision of the ministry to withhold the remaining information.

PRELIMINARY ISSUES:

[8] The appellant's representations appear to raise the issues of reasonable search and scope of the request. The appellant says that they seek access to the entire case synopsis, including memorandum book notes containing information about the appellant. However, the responsive records identified by the ministry do not contain memorandum book notes. The issues of the reasonableness of the ministry's search or the responsiveness of the records are not before me. Therefore, I will not address this portion

of the appellant's representations. If the appellant continues to seek specific records, they may file a new request for access.

[9] The appellant submits that they are not seeking information that the ministry withheld as non-responsive as long as such information is not about them. Having reviewed the records, I confirm that the information withheld by the ministry as non-responsive does not relate to the occurrence or the information about the appellant in relation to the occurrence.

[10] The appellant requests that the IPC issue a declaration confirming that the appellant's access request be considered as if it were a request for disclosure made in a criminal proceeding. The appellant seeks such a declaration because they would have a broader right of access in a criminal proceeding than under the *Act*. The IPC cannot issue such a declaration. The IPC's jurisdiction is limited to deciding whether the appellant has a right of access to records responsive to their request under the *Act*.

[11] The appellant relies on two cases to submit that the withheld information ought to be provided to them.[1] I have reviewed the cases that the appellant cites and find that they are not relevant to the issues that I have to decide in this appeal. Both cases deal with the application of the solicitor-client privilege in certain circumstances in criminal proceedings. The ministry does not claim the solicitor-client privilege exemption over any withheld information. As stated above, my jurisdiction is limited to deciding whether the appellant has a right of access to responsive records under the *Act*.

RECORDS:

[12] At issue in this appeal are the withheld portions of OPP records, including an Occurrence Summary, a Supplementary Occurrence Report, and witness statements.

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 exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 14(1)(c) and/or 14(1)(l) law enforcement exemption(s), apply to the information at issue?

C. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

[1] The appellant relies on *R v. D.* (1982) CanLII 3324 (ONCA) and *R v. Gray*, 1992, CanLII 406 (SC BC).

D. Is there a compelling public interest in disclosure of the information that clearly outweighs the purpose of the section 49(b) exemption?

DISCUSSION:

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

[13] The ministry withheld information on the basis that it is exempt from disclosure under sections 49(a) and (b) of the *Act*. For sections 49(a) and (b) to apply, the records must contain "personal information" of the requester (in this case, the appellant). For section 49(b) to apply, the records must also contain "personal information" of other individuals. If the records contain the appellant's own personal information, the appellant's access rights are greater than if they do not.[2]

[14] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.[3] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the 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]

[15] Section 2(1) of the *Act* gives a list of examples of personal information. It states, in part:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

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[2] 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 the information even if the exemption applies.
[3] See the definition of "record" in section 2(1).
[4] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
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> […]
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[16] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information." [5]

[17] Sections 2(2), (2.1) and (2.2) of the *Act* exclude some information from the definition of personal information. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual,[6] unless it reveals something of a personal nature about the individual.[7]

Ministry's representations

[18] The ministry submits that the records contain personal information of individuals who were arrested together with the appellant, OPP officers, and other individuals (collectively "affected parties"). The records contain names of the individuals who were arrested together with the appellant, their addresses, the fact that they were charged or arrested, and the fact that they were involved in an investigation. The records also contain employment history and Workplace Identification Numbers (WIN) of OPP officers. Finally, the records contain small amount of personal information of other identifiable individuals.

[19] The ministry further submits that the information about the items that were seized at the scene of the arrest constitutes "personal information." The ministry relies on Order P-230 to submit that the IPC ought to adopt an expansive definition of "personal information." The ministry says that the disclosure of the information about the seized items would reveal information about the property that belonged to some affected parties and thereby details about the investigation with respect to them.

[20] The ministry submits that, given the circumstances of the arrest, the appellant likely knows the individuals who were arrested together with the appellant. Therefore, even if the ministry severed those individuals' names or addresses, the appellant likely would be able to identify them from the remaining information.[8]

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[5] Order 11.
[6] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[7] Orders P-1409, R-980015, PO-2225 and MO-2344.
[8] The ministry relies on Order PO-2995.

Appellant's representations

[21] The appellant did not provide representations on this issue.

Analysis and findings

[22] I find that the records contain personal information of the appellant. The records relate to an occurrence involving the appellant and contain information described in the definition of "personal information" of the *Act*.

[23] The records also contain personal information of other identifiable individuals. The "personal information" includes these individuals' names, ages, dates of birth, sex, addresses, phone numbers, criminal history, and identifying numbers in accordance with paragraphs (a), (b), (c), (d), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[24] I find that the fact that certain affected parties were arrested and charged, and the fact of some affected parties' involvement in an OPP investigation is something of a personal nature about them and therefore qualifies as "personal information" in accordance with the introductory wording of the definition of "personal information."

[25] I agree with the ministry that the information about the seized items qualifies as "personal information" of the owners of these items. The items were seized during an OPP investigation. The information about the items would reveal details about the investigation conducted with respect to the owners of the items. Therefore, the information about the items would reveal something of a personal nature about the owners of the items.

[26] I find that information about the OPP officers' employment history and their WIN numbers qualify as "personal information" in accordance with paragraphs (b) and (c) of the definition of "personal information" in section 2(1) of the *Act*.[9]

[27] The ministry withheld an OPP officer's name on page 22. I have considered if the OPP officer's name qualifies as "personal information" and find that it does not. According to section 2(3) of the *Act*, personal information does not include the name, title and contact information or a designation of an individual that identifies the individual in a professional capacity. The withheld name of the OPP officer does not reveal something of a personal nature about them. Moreover, the same OPP officer's name appears at the top of the page and identifies them as a witness who provided the witness statement. As this information does not qualify as personal information, I will order the ministry to disclose it to the appellant.

[28] The ministry withheld information on page 20 about an OPP officer. Having reviewed it, it is my view that this information is about the officer in their professional

[9] Orders PO-3742 and PO-4535.

capacity. Since information about an individual in their professional, official or business capacity is not considered to be "about" the individual, I find that the information on page 20 does not qualify as "personal information." This means that the information cannot be withheld under the section 49(b) personal privacy exemption; however, the ministry also claims the law enforcement exemption over the withheld information on page 20. I will consider the ministry's claim with respect to the withheld information at Issue B.

[29] Some withheld portions contain the appellant's personal information intermingled with that of other individuals. Given the nature of the information and the circumstances of the occurrence, I find that the appellant's personal information in those portions cannot be severed from the personal information of other individuals, but I will consider below the ministry's section 49(b) exemption claim in relation to this information.

[30] There are two withheld portions on pages 15 and 19 that contain only the appellant's personal information. The appellant's personal information cannot be withheld under the personal privacy exemption because its disclosure, by definition, cannot be an unjustified invasion of another individual's personal privacy.[10] However, given that the ministry claims the law enforcement exemption over the withheld information on pages 15 and 19, I will consider the ministry's claim with respect to this information at Issue B.

Issue B: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 14(1)(c) and/or 14(1)(l) law enforcement exemptions, apply to the information at issue?

[31] 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 general right of access to one's own personal information.

[32] In this case, the institution relies on section 49(a) read with sections 14(1)(c) and 14(1)(l).

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

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

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

[10] Orders PO-4426 and PO-2560.

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

[35] The term "law enforcement"[11] is defined in section 2(1):

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

[36] The exemptions at sections 14(c) and (l) apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. The parties resisting disclosure must show that the risk of harm is real and not just a possibility.[12] To do so, they must provide detailed evidence about the risk of harm if the record is disclosed. However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[13]

[37] The law enforcement exemption must be approached in a sensitive manner because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.[14]

[38] It is not disputed that the OPP is a law enforcement agency within the meaning of section 14 of the *Act*. It is also not disputed that the responsive records are records created in the course of law enforcement, namely an OPP investigation into a possible violation of the *Criminal Code.*[15]

Section 14(1)(c): investigative techniques and procedures

Ministry's representations

[39] The ministry submits that some records contain information about investigative techniques and procedures currently in use or likely to be used in law enforcement. In

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[11] The term "law enforcement" appears in many, but not all, parts of section 8.
[12] *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23.
[13] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.
[14] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[15] Orders M-202 and PO-2085.

confidential portions of its representations, the ministry provides details about the techniques and procedures described in the records, and harms that could reasonably be expected to occur if those techniques and procedures were disclosed.

Appellant's representations

[40] The appellant submits that the ministry did not establish that the disclosure of the records would reveal investigative techniques or procedures. In the alternative, the appellant submits that if the records contain information about techniques and procedures, this information is about certain tactical measures that violated rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*). Since the tactical measures violated *Charter* rights, the appellant says that they cannot be "currently in use or likely to be used" in similar circumstances.

Analysis and findings

[41] For section 14(1)(c) to apply, the ministry must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.[16] The technique or procedure must be "investigative"; that is, it must be related to investigations. The exemption will not apply to techniques or procedures related to "enforcing" the law.[17]

[42] I find that the exemption applies to one technique or procedure identified by the ministry. Having reviewed the records and considered the ministry's representations, I am satisfied that the technique or procedure is investigative in nature, is currently in use in law enforcement, and its disclosure could reasonably be expected to interfere with its effective use.

[43] I do not find that other techniques or procedures identified by the ministry at pages 1-3, 10 and 18 are exempt under section 14(1)(c). While the circumstances with respect to these techniques or procedures are unique, these techniques or procedures are generally known to the public.

[44] I understand the appellant to argue that if the use of a technique or a procedure in certain circumstances was in violation of an individual's *Charter* rights, the police cannot use the same technique or procedure in similar circumstances in the future. Following this logic, according to the appellant, if the police cannot use the technique or procedure, it cannot qualify for the exemption under section 14(1)(c) because the exemption requires that a technique or procedure be "currently in use or likely to be in use."

[45] I cannot describe the contents of the records in the order. However, I have reviewed the records and carefully considered the appellant's representations. I am not

[16] Orders P-170, P-1487, MO-2347-I and PO-2751.
[17] Orders PO-2034 and P-1340.

persuaded by the appellant's arguments. Even if a technique or procedure is found to have been used in violation of an individual's *Charter* right during an occurrence, it does not mean that the technique or procedure ceases to be used by law enforcement.

[46] Notations in the records indicate that the ministry relied on the section 14(1)(c) exemption with respect to the information at pages 4-8 and 11. However, the ministry did not provide specific representations with respect to the application of the exemption to these pages. Given the importance of approaching the law enforcement exemption in a sensitive manner, I have considered whether the exemption at section 14(1)(c) applies to these pages. I find that it does not.

[47] It is not apparent to me from the review of the withheld information at page 5 that it contains *investigative* techniques or procedures. With respect to pages 4, 6-8 and 11, even if I were to assume that these pages contain information about an investigative technique or procedure, I do not have evidence to determine, and it is not apparent from the records themselves, whether the disclosure of the information could reasonably be expected to interfere with the effective use of a technique or procedure described in the records. Given that the ministry also asserts that the exemption at section 14(1)(l) applies to these pages, I will consider below whether the information in these pages is exempt under section 14(1)(l).

Section 14(1)(l) exemption: facilitate commission of an unlawful act

Ministry's representations

[48] The ministry submits that the records contain three types of information the disclosure of which could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[49] The ministry says that the records contain police operational codes which OPP officers use to communicate important information with one another. The disclosure of these codes could jeopardize the security of law enforcement systems and the safety of OPP staff because individuals carrying out criminal activities would have knowledge of how OPP officers communicate with each other.

[50] The ministry provides confidential representations with regards to the second type of information it argues is subject to section 14(1)(l) exemption. The ministry submits that the disclosure of this information could either facilitate the commission of an unlawful act or hamper the control of crime.

[51] The ministry says that the records also contain communications between OPP and another investigating police service about law enforcement investigations. The ministry submits that the disclosure of the information that was shared between the OPP and another police service could reasonably be expected to harm the sharing of information between law enforcement agencies, impeding crime control.

[52] In addition, the ministry submits that given that there are no restrictions on the appellant's ability to share the records they receive through an access request, the disclosure of information about law enforcement activities could alert others who are subject of those activities to the existence of the activities, thereby undermining their effectiveness.

Appellant's representations

[53] The appellant submits that the police operational codes reveal important information about the occurrence. The appellant is seeking access to the codes to have an expert review them. The appellant says that the IPC does not have the necessary expertise.

[54] The appellant also submits that the ministry did not provide detailed evidence that the disclosure of the records could result in a reasonable risk of harm.

[55] Finally, the appellant says that if OPP officers communicated with a certain unit, those communications are relevant to the request.

Analysis and findings

[56] While notations in the records indicate that the ministry claims section 14(1)(l) exemption with respect to all records, I only uphold the application of the exemption to specific information that the ministry identified in its representations to fall within the exemption.

[57] The IPC has consistently upheld the application of the section 14(1)(l) exemption for police operational codes. Prior IPC orders held that the use of operational codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning, and that if the public were to learn these codes and their meanings, the effectiveness of the codes would be compromised. This could result in the risk of harm to police personnel and members of the public with whom the police engage, such as victims and witnesses.[18] I apply the same reasoning to uphold the ministry's decision to withhold the police codes in this matter.

[58] I have considered the appellant's reason for seeking access to the police codes. However, the access to records in possession of OPP is governed by the *Act*. If the ministry establishes that the exemption applies and it exercised its discretion, the IPC cannot order the disclosure of the withheld information.

[59] Considering the difficulty of predicting future events in law enforcement context, I am satisfied by the ministry's confidential representations that the disclosure of the second type of information that the ministry withheld under section 14(1)(l) and information that could reveal the second type of information could reasonably be

[18] Orders MO-3622, MO-3815, MO-3977 and MO-4439.

expected to facilitate the commission of an unlawful act or hamper the control of crime.

[60] I also find that, in the circumstances of this appeal, communications between OPP officers, and between OPP officers and other investigating police services about other investigations are exempt under section 14(1)(l). These communications are at pages 7, 8 and 9. Given the principle that disclosure of a record must be viewed as disclosure to the public, I considered the consequences of the withheld information at pages 7, 8 and 9 being disclosed to the public. I accept the ministry's submission that the disclosure of information about investigations could alert those who are subject to these investigations about the investigations, therefore hampering the control of crime.

[61] With regards to the appellant's assertion that the records from a certain unit are relevant, the issue of responsiveness of records is not before me. I therefore will not address the appellant's submission further.

Page 15 of the records

[62] One line at page 15 contains the appellant's personal information, which can be severed from the rest of the page.[19] The ministry has not provided evidence to establish that the disclosure of this information could reasonably be expected to result in harms described in sections 14(1)(c) and/or 14(1)(l). The procedure described in this line is known to the general public. The information about the appellant is known to the appellant.

Page 19 of the records

[63] Two lines at page 19 also only contain the appellant's personal information. [20]This information includes a description of the appellant's possessions. The ministry has not provided evidence to establish that the disclosure of this information could reasonably be expected to result in harms described in sections 14(1)(c) and/or 14(1)(l). Further, some of the same information was already disclosed to the appellant at page 21.

Page 20 of the records

[64] Two lines at page 20 only contain information that has already been disclosed to the appellant.[21] Therefore, its disclosure cannot result in harms set out in section 14(1)(c) or 14(1)(l).

Ministry's exercise of discretion

[65] Having found that section 49(a), read with the law enforcement exemptions, applies to some information, I will now turn to the issue of the ministry's exercise of

[19] I highlighted this line in green on the ministry's copy of the records provided to it with this Order.
[20] I highlighted these lines in green on the ministry's copy of the records provided to it with this Order.
[21] I highlighted these lines in green on the ministry's copy of the records provided to it with this Order.

discretion. The section 49(a) exemption is discretionary, which means that the institution can decide to disclose information even if the information qualifies for the exemption.

[66] I am satisfied that the ministry exercised its discretion properly. It is apparent from the ministry's representations that it considered the wording of the law enforcement exemptions, interests the exemptions seek to protect, the nature of the information at issue, and the ministry's historic practices of not disclosing police operational codes. These are all relevant considerations.

[67] The appellant appears to allege that the ministry exercised its discretion for improper purpose. The appellant submits that the ministry is in a conflict of interest with respect to the access request. The appellant says that the records point to a miscarriage of justice, and the ministry seeks to withhold them to preserve the reputation of the OPP.

[68] I have no reasonable basis to conclude that the ministry has exercised its discretion for improper purpose. I have found that, with the exception of limited information at pages 15, 19, 20 and 22, the ministry properly withheld certain information under the law enforcement exemptions. I have also found that the ministry properly exercised its discretion because it considered relevant factors in determining whether to disclose the information withheld under the law enforcement exemptions to the appellant.

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

[69] 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.

[70] 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.

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

[72] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b). Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.[22]

[73] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an

[22] Order PO-2560.

unjustified invasion of the other individual's personal privacy.

[74] If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 49(b). I find that none of the exceptions in sections 21(1)(a) to (e) apply.

[75] Sections 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply. I find that none of the situations in section 21(4) apply in this appeal.

[76] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker[23] must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[24]

Ministry's representations

[77] The ministry submits that the disclosure of personal information of the affected parties would constitute an unjustified invasion of their personal privacy. The ministry relies on two presumptions at section 21(3) and one factor at section 21(2) to support its position.

[78] The ministry submits that it withheld affected parties' personal information because it was compiled and is identifiable as part of an investigation into a possible violation of law (presumption at section 21(3)(b)). The ministry says that the records at issue were created during an OPP investigation of the appellant and other individuals. The investigation led to charges being laid under the *Criminal Code*.

[79] The ministry further submits that it withheld some personal information because it relates to employment histories of OPP officers (presumption at section 21(3)(d)).

[80] In addition, the ministry submits that it withheld affected parties' personal information because it is highly sensitive (factor at section 21(2)(f)). The ministry explains that the disclosure to the appellant of affected parties' personal information would be distressing to the affected parties and could be harmful to their personal safety because there are no restrictions on the use of information disclosed in an access request.

[81] The ministry relies on prior IPC orders which held that personal information of complainants, witnesses or suspects in the context of their contact with law enforcement

[23] The institution or, on appeal, the IPC.
[24] Order MO-2954.

is highly sensitive.[25] The ministry says that since a consent from affected parties was not obtained, their personal information is highly sensitive.

[82] With respect to WIN numbers, the ministry submits that their disclosure would be expected to be distressing to OPP officers to whom they belong. The ministry explains that it already released officers' names to the appellant. Someone who has both officers' names and WIN numbers might be able to obtain additional human resources information about the officers.[26]

[83] On the issue of the absurd result principle, explained in more detail below, the ministry submits that even if the appellant is aware of information in the records, the absurd result principle does not apply because the disclosure of affected parties' personal information would be inconsistent with the purpose of the exemption. The ministry emphasizes that the affected parties' personal information is of sensitive nature, is contained in law enforcement documents, and was withheld for law enforcement-related reasons. In addition, the appellant might not be aware of it.

Appellant's representations

[84] The appellant submits that he was not opposed to a consent being sought from anyone who could have an interest in the records. (The appellant did not provide any consents, nor do they assert that there is consent.)

[85] The appellant relies on a factor at section 21(2)(a) to submit that the withheld personal information must be disclosed. The appellant submits that there was a miscarriage of justice by the OPP, including violation of *Charter* rights, and the disclosure of personal information might trigger a public inquiry into the miscarriage of justice.

[86] In response to the ministry's claim that personal information is highly sensitive, the appellant focuses on one type of information and argues that this type of information cannot be highly sensitive. In addition, the appellant says that any distress to affected parties caused by the disclosure of personal information in the records does not compare to the appellant's own distress.

[87] The appellant submits that the absurd result principle applies because the appellant had access to the records during a certain legal proceeding. In addition, since the appellant was arrested together with some affected parties, the appellant knows those parties' identities.

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[25] The ministry relies on IPC Order P-1618.
[26] The ministry relies on Orders PO-3742 and PO-4336.

Analysis and findings

Consent

[88] Pursuant to section 28(1) of the *Act*, an institution must notify a person to whom the information relates about the request if the institution intends to grant access to the record, the information at issue is personal information, and there is a reason to believe that the disclosure of the information might constitute an unjustified invasion of personal privacy. The ministry decided to withhold other individuals' personal information, so it did not seek consent. There is no onus in the *Act* on the ministry or the IPC to seek consent. In addition, the appellant could have sought consents from affected parties.

Presumptions at section 21(3)

21(3)(b): investigation into a possible violation of law

[89] Regarding the personal information of the affected parties (other than OPP officers), I find that the presumption at section 21(3)(b) applies because the records were compiled and are identifiable as part of an investigation into a possible violation of law.

[90] Having reviewed the records, I am satisfied that there was an OPP investigation into offences under the *Criminal Code*, and that the records were created as part of that investigation. I am also satisfied that the personal information in the records of some affected parties was compiled during the OPP investigation. The presumption at section 14(3)(b) requires only that there be an investigation into a *possible* violation of law.[27] Even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[28]

[91] This presumption weighs against disclosure.

21(3)(d): employment history

[92] I agree with the ministry and find that the presumption at section 21(3)(d) applies to OPP officers' personal information in the records. This presumption weighs against disclosure.

Factors at section 21(2)

21(2)(a): public scrutiny of government activities

[93] I find that the appellant has not established that the disclosure of other individuals' personal information is desirable to subject OPP's activities to public scrutiny.

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

[28] The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

[94] Section 21(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[29] It promotes transparency of government actions. For section 21(2)(a) to apply, a requester must provide evidence demonstrating that the activities of an institution have been publicly called into question and that disclosure of personal information at issue is necessary to subject the institution's activities to public scrutiny.[30]

[95] Having considered the entirety of the appellant's representations, I find that the appellant's concerns about the OPP's conduct are private in nature and are not sufficient to establish that the factor at section 21(2)(a) applies.[31] Given my finding, section 21(2)(a) is not a relevant factor.

21(2)(f): highly sensitive information

[96] I find that withheld personal information of those involved with the occurrence is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed. [32]For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.[33]

[97] The withheld personal information was collected during an OPP investigation into possible criminal offences. Given the role of individuals whose personal information is in the records in the OPP investigation, the context in which the personal information was collected, and the substance of the specific information, I find that it is reasonable to expect that the disclosure of personal information of the individuals to whom it belongs could result in significant personal distress.

[98] I do not find that WIN numbers are highly sensitive. The adjudicator in Order PO-4535 found that WIN numbers are not more sensitive than other type of personal information, which, by definition, reveals something of a personal nature about the individual to whom it belongs. While the adjudicator did not find WIN numbers to be highly sensitive, she accepted the ministry's evidence about the risk associated with the disclosure of WIN numbers and viewed the risk as a non-listed factor weighing against the disclosure. I agree with this approach and adopt it in this appeal.

[99] Regarding the ministry's argument about lack of consent (in relation to the factor at section 21(2)(f)), I reject it because the affected parties neither objected nor consented; they were not contacted. Order PO-3712, cited by the ministry, dealt with a situation in which affected parties were contacted and did not consent to the disclosure

[29] Order P-1134.
[30] Order M-84.
[31] Order M-84.
[32] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[33] Order MO-2980.

of their personal information.

[100] The appellant submits that they experienced significant personal distress. The appellant describes their circumstances in representations. The factor at section 21(2)(f) considers the privacy impact on individuals other than the appellant, and therefore this argument is not a relevant consideration.[34] However, since the appellant has a greater right of access to records which contain their personal information, I will consider the appellant's interest in receiving access to the records, along with what they have already received, when balancing the interests of the parties.

[101] Given my finding that it is reasonable to expect that the disclosure of personal information of those involved with the occurrence would cause significant personal distress, I find that the factor at section 21(2)(f) weighs against the disclosure of these individuals' personal information.

Balancing of factors and presumptions

[102] I find that disclosure of the withheld information would constitute an unjustified invasion of personal privacy of affected parties and therefore qualifies for an exemption under section 49(b).

[103] To reach this conclusion, I balanced the interests of the appellant and affected parties, and considered and weighed the relevant presumptions and factors. I considered the appellant's interest in obtaining access to the information about the occurrence that relates to them. The appellant has received disclosure of information about them that could be severed from the records. What remains is, predominantly, the personal information of other individuals – those involved with the occurrence or OPP officers.

[104] Specifically with respect to the personal information of individuals involved in the occurrence, I considered that there are one presumption and one factor weighing against the disclosure of their personal information. There are no presumptions or factors that weigh in favour of disclosing other individuals' personal information to the appellant.

[105] With respect to the personal information of OPP officers, there are similarly one presumption and one factor weighing against the disclosure. There are no factors weighing in favour of the disclosure of any personal information.

Absurd result principle

[106] An institution might not be able to rely on section 49(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption. [35]However, if

[34] Order PO-2265.
[35] Orders M-444 and MO-1323.

disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[36]

[107] The appellant appears to raise the absurd result principle only with respect to the personal information of individuals involved in the occurrence. I will consider the application of absurd result with respect to that information only.

[108] I find that the absurd result principle does not apply to the personal information of individuals involved in the occurrence for two reasons. First, the appellant has not established that they are aware of all the personal information of these individuals contained in the records. I acknowledge that the appellant was involved in the occurrence. I accept the appellant's submission that they are aware of the identities of those individuals who were arrested with them. I also accept that the appellant might have had access to some or even all information of these individuals during a certain proceeding. However, there is no evidence before me about what specific information is within the appellant's knowledge. Therefore, I cannot conclude that the appellant is aware of all personal information of the individuals involved in the occurrence in the records.

[109] Second, even if the appellant is aware of some information, I find that its disclosure would be inconsistent with the purpose of the exemption. The personal information was collected during an OPP investigation into criminal offences. As I have found, it is reasonable to conclude that, given the context in which personal information was collected, its disclosure would cause significant personal distress to individuals to whom it belongs.

Conclusion with respect to section 49(b)

[110] Given my findings above, I find that the withheld personal information is exempt from the disclosure pursuant to the discretionary exemption at section 49(b) of the *Act*, subject to the ministry's exercise of discretion.

Ministry's exercise of discretion

[111] I find that the ministry properly exercised its discretion. From the ministry's representations it is apparent that it considered the wording of the exemption, interests the exemption seeks to protect, the nature of the information at issue, and relationship between the requester and the affected parties. All these factors are relevant considerations.

[112] I agree with the appellant that the ministry is obligated to consider alternatives to full disclosure in order to strike a balance between the need for disclosure and the right to privacy. I find that the ministry took into account the purposes of the *Act* and whether the appellant was seeking their personal information. As a result, the ministry disclosed to the appellant as much of the appellant's personal information as it was possible to

[36] Orders M-757, MO-1323 and MO-1378.

sever, with the exception of limited information at pages 15 and 19.

[113] My reasons with respect to the appellant's argument that the ministry exercised its discretion for improper purpose equally apply to the ministry's exercise of discretion under section 49(b).

Issue D: Is there a compelling public interest in disclosure of the information that clearly outweighs the purpose of the section 49(b) exemption?

[114] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*.

[115] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[116] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[117] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[37]

[118] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[38] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[39]

[119] A "public interest" does not exist where the interests being advanced are essentially private in nature.[40] However, if a private interest raises issues of more general

[37] Order P-244.
[38] Orders P-984 and PO-2607.
[39] Orders P-984 and PO-2556.
[40] Orders P-12, P-347 and P-1439.

application, the IPC may find that there is a public interest in disclosure. [41]

[120] The IPC has defined the word "compelling" as "rousing strong interest or attention".[42] The IPC must also consider any public interest in not disclosing the record.[43] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[44]

[121] The existence of a compelling public interest is not enough to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances. An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[45]

Ministry's representations

[122] The ministry submits that the public interest override cannot be applied to records and information withheld under the law enforcement exemption. The ministry says that it applied the law enforcement exemption to all the records.

[123] The ministry further submits that, if the law enforcement exemption is not found to apply to all the records, the appellant's interest in accessing the records is personal. Therefore, the public interest override is not triggered with respect to the information withheld under the personal privacy exemption.

Appellant's representations

[124] The appellant submits that there is a "cloud of impropriety and wrongdoing" with respect to the OPP activities in a particular instance and these circumstances justify the application of the public interest override. The appellant says that any criminal prosecution must be conducted in accordance with the *Charter*. The appellant further says that a court has found that the preservation of *Charter* rights extends beyond private interests of affected parties. The appellant does not cite the case he is relying on to support this statement.

Analysis and findings

[125] A plain reading of section 23 confirms that the public interest override does not apply to the records withheld under the law enforcement exemption. Therefore, the public interest override does not apply to any information I found exempt under sections 14(1)(c) and 14(1)(l).

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[41] Order MO-1564.
[42] Order P-984.
[43] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[44] Orders PO-2072-F, PO-2098-R and PO-3197.
[45] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.

[126] With respect to the information withheld under the personal privacy exemption, I find that the appellant did not establish that the public interest override applies to it. The appellant's interest in accessing the records is private in nature. The appellant makes a general statement that there is a compelling public interest in ensuring that any law enforcement activity is conducted in accordance with the *Charter*. However, the appellant seeks records to assist them with establishing a *Charter* violation in one specific set of circumstances involving their own circumstances. Therefore, their interest in accessing the records is a private one and not public.

[127] Even if I could find that the appellant established a compelling public interest in disclosure in this case, I am not satisfied that it would outweigh the purpose of the personal privacy exemption. The records contain highly sensitive personal information which was collected during an OPP investigation into criminal offences. In my view, the nature of the withheld information and the circumstances in which it was collected require that the personal privacy of individuals whose information is in the records be maintained.

ORDER:

1. I order the ministry to disclose to the appellant the information that I have highlighted in green on a copy of the pages of the records that I have provided to the ministry together with a copy of this order. The ministry is to send the information to the appellant by **April 7, 2025**.

2. In order to ensure compliance with paragraph 1, I reserve the right to require the ministry to send me a copy of the pages of the records as disclosed to the appellant.

3. In all other respects, I uphold the ministry's decision.

Original Signed by: March 7, 2025

Anna Kalinichenko
Adjudicator