Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4619

Appeal PA20-00465

Ministry of the Solicitor General

March 10, 2025

Summary: An individual asked the OPP for the information that it has about him.

The ministry, for the OPP, provided the individual with copies of a significant amount of OPP records, but refused access to some for a variety of reasons (exemptions) in the *Freedom of Information and Protection of Privacy Act.* The ministry also claimed that some of the records (use of force occurrence reports) are unable to be obtained through the access provisions of the *Act* because of the labour relations and employment exclusion (section 65(6)).

The adjudicator does not accept the ministry's claim that the use of force occurrence reports are excluded from the *Act*. However, she finds that they are exempt from disclosure to the appellant under section 49(e) (correctional records).

Regarding the remaining records, the adjudicator orders the ministry to provide the appellant with personal information that is his own or of others who have consented to its disclosure. But, she upholds the ministry's claim that the remaining information is exempt from disclosure because it is subject to the solicitor-client privilege (section 19), law enforcement (section 14(1)(l)) or personal privacy (section 49(b)) exemptions.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2 (definition of "personal information"), 14(1), 19, 49(a), 49(e), 49(b), 21(3)(d), 21(2)(f), 65(6).

OVERVIEW:

[1] Under the *Freedom of Information and Protection of Privacy Act* (the *Act*), the requester sought access to information about himself contained in Ontario Provincial Police (the OPP) files. The Ministry of the Solicitor General (the ministry) responded to the request.

[2] The ministry granted the requester partial access to responsive records withholding access to several portions relying on the law enforcement exemptions at section 14(1) and the legal privilege exemption at section 19 (both in conjunction with section 49(a), the exemption that permits an institution to refuse access to the requester's own information), as well as the personal privacy exemption at section 49(b). The ministry also relied on the labour relations and employment exclusion at 65(6) of the *Act* to refuse access to some of the records. Lastly, the ministry withheld certain information on the basis that it was not responsive the request. (The ministry initially relied on the section 65(5.2) exclusion for prosecutions, but it ceased relying on this claim during the appeal.)

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

[4] During the mediation stage of the appeal process, the appellant indicated that he does not seek access to: the information that is not responsive, police dispatch codes, and names and addresses of affected parties contained within the records.

[5] The appeal transferred to the adjudication stage and I conducted a written inquiry. I sought and received representations from the ministry and the appellant. I notified certain individuals whose interests may be impacted by the appeal, including correctional officers and family members of the appellant, as well as another police force. The police force provided representations, which I agreed could reveal the content of the records and so I agreed not to share these representations or to describe them in greater detail than I have in this order in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] Later in the inquiry, I invited the ministry's supplementary representations about the relevance of two IPC orders of possible relevance to the ministry's claims about the labour relations exclusion to certain of the records – orders that had not been issued at the time the ministry made its representations. The ministry's representations were shared with the appellant.

[7] In this order, I:

- dismiss the ministry's claim that the section 65(6) labour relations and employment exclusion applies to some of the records (use of force occurrence reports);
- determine that some of the withheld information contains only the appellant's personal information so it can be disclosed to him;

- determine that some of the personal information for which there is consent can be disclosed to the appellant; and,
- otherwise uphold the ministry's claims.

RECORDS:

[8] There are 204 pages of responsive records, comprised of OPP occurrence reports and officer notes, use of force occurrence reports from a correctional facility, and show cause hearing reports.

ISSUES:

A. Does section 65(6), the exclusion for employment or labour relations, exclude the use of force reports from the *Act*?

B. Do the records contain "personal information" and, if so, whose?

C. Does the discretionary exemption at section 49(e) for correctional records apply to the use of force occurrence reports?

D. Does the discretionary exemption at section 49(a), read with the section 19 exemption for solicitor-client privilege, apply to the show cause hearing reports?

E. Does the discretionary exemption at section 49(a), read with the section 14(1) law enforcement exemption, apply to the information at issue?

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

DISCUSSION:

Issue A: Does section 65(6), the exclusion for employment or labour relations, exclude the use of force occurrence reports from the *Act*?

[9] The ministry submits that the sections 65(6)1 and 65(6)3 exclusions for employment or labour relations applies to the use of force occurrence reports (use of force reports) found on pages 63-101. As explained below, I disagree and find that the exclusion does not apply.

[10] The relevant parts of section 65(6) state:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
>
> …
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[11] If section 65(6) applies and none of the exceptions found in section 65(7) apply, the use of force reports are excluded from the scope of the *Act*. None of the exceptions in section 65(7) are relevant to the circumstances of this appeal.

[12] The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[1] Section 65(6) does not exclude all records concerning the actions or inactions of an employee of an institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions.[2]

[13] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[3] The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context. For example, the relationship between labour relations and accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations is not enough to meet the "some connection" standard.[4]

[14] For section 65(6)1 to apply, the ministry must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

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[1] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). (*Ministry of Correctional Services*).
[2] *Ministry of Correctional Services*, cited above.
[3] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[4] Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).

2. this collection, preparation, maintenance or use was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; and

3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

[15] For section 65(6)3 to apply, the ministry must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[16] Some brief background about the use of force reports will assist. The appellant was incarcerated at a correctional facility. During his incarceration he was injured in an incident. The OPP conducted investigation into possible *Criminal Code* violations by some of the staff of the facility involved in the incident. The staff of the correctional facility are employees of the Correctional Services Division (CSD) of the ministry.

[17] The ministry explains that the use of force reports were "collected, prepared, maintained or used" by the CSD employees involved in the incident and that they were so prepared as a result of the obligations in section 7(3) of Regulation 778[5] made under the *Ministry of Correctional Services Act.*[6] Section 7(3) states:

> (3) Where an employee uses force against an inmate, the employee shall file a written report with the Superintendent indicating the nature of the threat posed by the inmate and all other circumstances of the case. R.R.O. 1990, Reg. 778, s. 7 (3).

[18] The ministry elaborates that the purpose of the use of force reports is to "confirm employees' compliance" with section 7 of Regulation 778. The ministry says that, therefore, it has an interest in the use of force reports as an employer of the CSD employees.

[19] Although the OPP and CSD operate independently of each other, the ministry is the only "institution" at issue in this appeal. The ministry employs individuals to carry out the work of the OPP and of the CSD.

[20] As explained by the ministry in its representations and as is clear from the request,

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[5] R.R.O. 1990, Reg. 778.
[6] R.S.O. 1990, c. M.22.

the copies of use of force reports at issue in this appeal are taken from the OPP files, not CSD files.

[21] The ministry claims that because of its role as the employer of CSD employees, the exclusion should apply because it has a requisite interest as an employer. I reject this claim. It is well established that the application of section 65(6) is record and fact specific. This means that it is necessary to examine the purpose for which the records at issue – in this case the copies of the use of force reports in the OPP file – were "collected, …, maintained or used." That there may be other copies of the use of force reports that were "collected, prepared, maintained or used" by the ministry for employment-related purposes does not impact my finding.[7]

[22] Records collected by the OPP during an investigation into alleged criminal misconduct are not possibly records collected in relation to "proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution" (paragraph 1), nor in relation to "meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest" (paragraph 3).

[23] The reason the use of force reports are contained in the OPP file is because the OPP conducted an investigation into alleged criminal misconduct. The OPP, and therefore the ministry, was not acting as an employer when it collected the copies of the use of force reports at issue in this appeal. The reports at issue were collected and used *by the OPP for the purposes* of conducting a criminal investigation and not for any purpose for which the ministry was acting as an employer. I therefore find that section 65(6) does not apply.

[24] If I am wrong about this and because the ministry is also the employer of CSD employees, I considered whether the use of force reports that were collected, prepared, maintained and used by CSD employees (and which would be found in the CSD regular record-holdings) "in relation to" the purposes in section 65(6)1 or 3, as claimed by the ministry. For the following reasons, I find that they are not.

[25] Regarding section 65(6)1, the ministry submits that the use of force reports are "employment-related" because "they relate 'to the relationship between an employer and an employee,' deriving from the employees['] use of force." Further, the ministry submits that because the appellant indicated that he intended to pursue criminal charges against CSD employees, the use of force reports would therefore be used in such external investigations (the ministry referring here to the OPP investigation, among others) and that therefore there was a possibility the use of force reports were prepared for "anticipated proceedings." Finally, the ministry says that these anticipated proceedings "relate to employment relations matters" because if any correctional officer had been

[7] See discussion in Order PO-4428 at paras 56-73; 110-124; see Order PO-2494 and *Ontario (Attorney General) v. Ontario (IPC),* 2009 CanLII 9740.

convicted, this would have impacted their employment and given rise to possible labour and employment tribunal proceedings.

[26] Regarding section 65(6)3, the ministry relies mainly on its arguments under section 65(6)1. It also submits that the use of force reports are used for internal ministry communications to management and that therefore they are communications about labour relations or employment-related matters in which the ministry has a strong interest as an employer.

[27] An IPC adjudicator addressed similar arguments about use of force occurrence reports made by the ministry in Order PO-4428. The adjudicator rejected the ministry's claim, finding that these reports were operational records that were created by the ministry in connection with its core mandate and that would be expected to be maintained in CSD's record holdings. The adjudicator in Order PO-4428 drew a distinction between copies of reports that might later be collected into a discipline file and the records that were at issue before him – the records within CSD's regular record holdings. The adjudicator found that a possible or actual later use of the reports for an employment-related purpose did not impact on his finding that the use of force reports in the ministry's records holdings was the correct point of analysis and that they were operational records.

[28] I asked the ministry for its views about the relevance of Order PO-4428 to my findings. It asks that I draw a distinction in consideration of the role of the appellant in the incidents described in the records. Essentially, it argues that the public policy objectives served by the interpretation of the adjudicator in Order PO-4428 (as far as it referred to *Ontario (Ministry of Community and Social Services) v. Doe*[8]) are not present in the current appeal. It says that an application of the labour relations exclusion in the present appeal would not shield government official from public accountability. This argument requires that there be some assessment of the blameworthiness of the appellant's actions. In my view, this is not an appropriate consideration when determining whether the exclusion applies; the focus is on the reasons why the record was created.

[29] I find that the original use of force reports maintained within CSD's record-holdings are operational records prepared by CSD employees to document their actions as required by section 7 of the Regulation (as described in more detail above). That these use of force reports might later be provided to other investigating authorities does not override their original, operational purpose. In any event, there is no argument or suggestion before me that the use of force reports at issue were derived from any disciplinary file – or even if any discipline flowed from this incident.

[30] In summary, even when I consider the role of the ministry as employer of the CSD employees, I do not accept the ministry's claims that the labour relations or employment exclusion applies to exclude the use of force reports from the *Act.* As the ministry has claimed in the alternative that the use of force occurrence reports are exempt under

[8] 2014 ONSC 239 (CanLII).

section 49(e), I will consider the appellant's right of access to them at Issue C, below.

Issue B: Do the records contain "personal information" and, if so, whose?

[31] To assess the ministry's exemption claims, it is necessary to determine whether the records contain personal information and if so, whose. As is clear from the request, the appellant is seeking his own information. There is no dispute between the parties, and having reviewed the records, I find that they contain the "personal information" of the appellant as defined in section 2(1) of the *Act*.

[32] Importantly, the appellant does not seek the names or addresses of any individuals contained in the records. I have taken this into account in the analysis below.

Pages 1-59 and 130-204

[33] Pages 1-59 and 130-204 consist of a variety of records created by OPP officers, such as occurrence reports and officer notes. The ministry argues that these pages contain personal information of many individuals other than the appellant, including witnesses, victims, and offenders. The ministry also argues that the Workplace Identification Numbers (WIN) assigned to certain OPP employees is personal information, relying on several IPC Orders (PO-3742, PO-3993).

[34] Having reviewed the withheld information on pages 1-59 and 130-204, I find:

- On a handful of pages, the remaining withheld information consists of the appellant's personal information only. I will order this information to be disclosed to the appellant.

- The information is the personal information about many other individuals. It consists of these individuals' interactions with the OPP and would reveal something of a personal nature about them. Even when other individuals' names and addresses are removed, the information on these pages continues to consist of their personal information. This is because sufficient information has already been disclosed to the appellant, or is reasonably within his knowledge, that these individuals would be identifiable to the appellant even with their names and addresses removed.

- I accept the ministry's argument that the WIN identifiers for ministry employees involved in dispatch are their personal information.

Pages 60-101

[35] Pages 63-101 are the use of force occurrence reports discussed at Issue A, above. Pages 60-62 are OPP records involving the incident at the correctional facility (as further described in the use of force occurrence reports).

[36] The ministry argues that the information about the correctional officers involved in the incident consists of their personal information when it appears: in the OPP occurrence reports (pages 60-62) because they are witnesses or involved in the incident; and, in the use of force occurrence reports (pages 63-101) because it would reveal their involvement with the incident, which the ministry says was "highly charged," not within the usual scope of their duties, and ultimately investigated by the OPP.

[37] At Issue C, below, I find that the use of force occurrence reports are exempt under section 49(e). Section 49(e) is a discretionary exemption which applies to records containing the appellant's own personal information. Because I find that section 49(e) applies, it is not necessary for me to decide whether the information on these pages contains the personal information of other individuals.

[38] Regarding pages 60-62, I agree with the ministry that some of the withheld information consists of the correctional officers' personal information as it would reveal something of a personal nature about them. I have reached this conclusion even though the correctional officers' names will not be disclosed because the details are of a sufficiently specific nature that I find that the appellant could, with other information available to him, connect this information to the particular correctional officers.

[39] In summary, I find that the records all contain the appellant's personal information and that many of them also contain the personal information of other individuals.

Issue C: Does the discretionary exemption at section 49(e) for correctional records apply to the use of force occurrence reports?

[40] Because the records contain the appellant's personal information, the request must be viewed in the context of section 47(1) of the *Act.* Section 47(1) gives individuals a general right of access to their own personal information held by an institution.

[41] Section 49 provides a number of exemptions from this right. The ministry relies on section 49(e) to withhold the use of force reports (pages 63-101).

[42] Section 49(e) reads:

> A head may refuse to disclose to the individual to whom the personal information relates personal information,
>
> > that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence

[43] To qualify for exemption under section 49(e), the ministry must show that the records it seeks to protect are "correctional" records, the disclosure of which "could reasonably be expected to reveal information supplied in confidence." It does not have to demonstrate that a particular harm would result if the information were to be

disclosed.[9]

[44] The ministry submits that the use of force reports are correctional records created for correctional purposes, which I understand to mean the incarceration of the appellant. In further support of this point, the ministry points to its statutory duty to maintain use of force reports (as discussed in more detail above). I accept that use of force reports are correctional records as they relate to the appellant's incarceration and an incident that he was involved in during his incarceration.

[45] The ministry submits that information in the use of force reports was supplied by CSD employees in confidence pointing to the reports themselves, which indicate that they have a restricted distribution and that they are not distributed externally. The ministry also submits that the CSD employees provided the reports to the OPP *in confidence* at its request because the OPP was conducting an investigation to determine if one ore more criminal offences had been committed against the appellant.

[46] The IPC has previously found that the disclosure of information relating to internal correctional facility practices provided by correctional officers could reasonably be expected to reveal information supplied in confidence for the purposes of section 49(e).[10]

[47] Within the context of section 49(e) the focus is not whether the provision of the reports *to the OPP* was done so in confidence but whether the information in the reports was supplied by the individuals who wrote the statements in confidence.

[48] In this case, the reports consist of written statements made by CSD staff and others about the incident involving the appellant. The reports contain detailed descriptions about what happened from a variety of perspectives. Considering the sources, the detailed and candid nature of the statements and the context of the incident itself, I find that those who gave these statements had a reasonable expectation that their statements would be confidential, particularly from the appellant. I agree with the ministry that the section 49(e) exemption applies in this case.

[49] The section 49(e) exemption is discretionary. The ministry says that it acted properly in exercising its discretion and it points to the amount of information that it decided to disclose. I understand that the appellant is skeptical of the actions of the OPP, but he has made no arguments about the actions of correctional employees or correctional records. Considering the information that has already been disclosed to the appellant and the ministry's consistent and methodical approach to disclosure in this appeal, I find that the ministry exercised its discretion to apply section 49(e) and that it has done so in good faith. I uphold the ministry's decision to withhold the use of force

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[9] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2011 ONCA 32 (C.A.) (*CSCS 2011*), Orders PO-3281-I and PO-3080.
[10] See Orders PO-3281-I and PO-3080.

reports under section 49(e).

Issue D: Does the discretionary exemption at section 49(a), read with the section 19 exemption for solicitor-client privilege, apply to the show cause hearing reports?

[50] The institution relies on section 49(a) in conjunction with section 19(b) to withhold information in pages 161-166, 175-181, which are show cause hearing reports (hearing reports).

[51] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege;
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation[.]

[52] Section 19(a) is a common law privilege and section 19(b) is a statutory privilege.

[53] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter. [11]This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice. [12]Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.[13] The privilege does not cover communications between a lawyer and a party on the other side of a transaction.[14]

[54] Section 19(b) is a statutory privilege that applies where the records were "prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation." The statutory and common law privileges, although not identical, exist for similar reasons. Like the common law solicitor-client communication privilege, this privilege covers records prepared for use in giving legal advice. This privilege also applies to records prepared by or for Crown counsel "in contemplation of or for use in litigation."

[55] The ministry submits that it is clear from the hearing reports themselves that they were prepared by the OPP for Crown Counsel to be used to prepare for a bail hearing. The ministry says that the hearing reports were, therefore, prepared in contemplation of

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[11] Orders PO-2441, MO-2166 and MO-1925.
[12] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[13] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[14] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)

litigation. The ministry relies on Order PO-3880, where the adjudicator found that section 19(b) applied to similar records.

[56] The appellant did not make any arguments about the possible application of section 19(b).

[57] I agree with the ministry and find that the hearing reports were created by an OPP officer for Crown Counsel to use to prepare for bail hearings. These reports were prepared for Crown Counsel in contemplation of litigation, and therefore falls within the scope of the statutory litigation privilege in section 19(b).

[58] The section 49(a), read with section 19(b) exemption is discretionary. The ministry says that it properly exercised its discretion in relation to its claim of section 19(b) privilege. As noted above, the appellant is skeptical of the actions of the OPP. I have considered that the appellant has concerns that the OPP is not acting in good faith toward him.

[59] I have no reasonable basis to conclude that the ministry is acting in bad faith or for any improper purpose. When I consider the information contained in the hearing reports and the ministry's consistent approach in response to the request, I am satisfied that it has exercised its discretion properly to withhold the show cause hearing reports.

Issue E: Does the discretionary exemption at section 49(a), read with the section 14(1) law enforcement exemption, apply to the information at issue?

[60] The ministry relies on the law enforcement exemption to withhold much of the remaining information at issue. The ministry argues and I agree that the law enforcement exemption must be approached in a sensitive manner because it is hard to predict future events in the law enforcement context.[15]

[61] To establish its claims under section 49(a)/14(1), the ministry must provide detailed evidence about the risk of harm to show that the risk of harm is real and not just a possibility.[16] The risk of harm can sometimes be inferred from the records themselves or the surrounding circumstances.[17]

[62] The ministry claims that section 49(a), read with section 14(1)(l) (facilitate commission of an unlawful act), applies to several portions of information on almost every page at issue in the appeal. Section 14(1)(l) states that the ministry may refuse to disclose a record if its disclosure could reasonably be expected to "facilitate the commission of an unlawful act or hamper the control of crime."

[63] The ministry submits that section 49(a)/14(1)(l) applies to "operational police

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[15] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[16] *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] 1 S.C.R. 23.
[17] Orders MO-2363 and PO-2435.

codes." The ministry relies on Order PO-3742, which describes a long standing and consistent of line of IPC decisions that have upheld similar claims.

[64] The ministry also argues that disclosure of the information at issue would negatively impact public cooperation with the police and negatively impact the OPP's ability to engage in law enforcement or hamper the control of crime. The other police force made similar arguments about why disclosure of the particular information at issue could give rise to these concerns, in this case.

[65] The appellant does not address the substance of the section 49(a)/14(1)(l) exemption. However, as noted in the Overview, the appellant does not seek access to "police dispatch codes." The ministry makes this claim over wide variety of information that is broader than police dispatch codes, so I have reviewed all of the information for which this claim is made.

Discussion

[66] As is clear, the ministry has already disclosed to the appellant a large portion of the information. In my view, it has taken a narrow and limited approach to the application of section 14(1)(l) that is focused on preserving the ability of the OPP and other police forces to continue to carry out law enforcement activities. Having reviewed the information withheld on the basis of section 49(a)/14(1)(l) on pages 1-62 and 102-204, I find that its disclosure could reasonably be expected to hamper the control of crime. This includes information that the IPC has consistently agreed are police operational police codes and other information describing communications between OPP officers and other police forces.

[67] The section 49(a) exemption, read with section 14(1)(l), is discretionary. The ministry says that it exercised its discretion properly, that it acted in accordance with long standing practices when it decided to apply the law enforcement exemption and that provided as much information to the appellant as it could. The appellant did not make specific representations about the ministry's exercise of discretion, but I understand that he is skeptical of the actions of the OPP and that he has concerns that the OPP is not acting in good faith toward him.

[68] The ministry has disclosed to the appellant a significant amount of information. There is no basis to conclude that the ministry is acting for any improper purpose or to further its own interests and I therefore uphold its exercise of discretion and uphold its decision to withhold information on the basis of section 49(a), read with section 14(1)(l).

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

[69] The ministry claims that the section 49(b) personal privacy exemption applies to withhold information on a number of pages. Under section 49(b), if a record contains the personal information of both the requester (the appellant in this case) 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. The section 49(b) exemption is discretionary.

[70] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. Section 21(4) is not relevant to the issues in this appeal.

Prior written consent obtained for some information

[71] 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). Of these exceptions, only section 21(1)(a) is relevant to the circumstances of this appeal.

[72] Section 21(1)(a), prior written consent of the individual, is relevant in the circumstances of this appeal. For this exception to apply, the individual whose personal information is contained in the record must have consented to the release of their personal information.

[73] As explained above, I notified certain of the appellant's family members of the appeal. Two family members provided written consent to disclose their information in the records and accordingly, this information should be disclosed to the appellant. I will indicate this information in in the copy of the records provided to the ministry with the copy of this order.

Unjustified invasion of personal privacy

[74] What remains to be considered is the personal information of other individuals. Sections 21(2) and (3) help in deciding whether disclosure would be an unjustified invasion of personal privacy under section 49(b). In this appeal, to decide whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[18]

[75] The ministry refers and relies on section 21(3)(b), the presumption that applies and weighs against disclosure if the information was compiled and is identifiable as part of an investigation into a possible violation of law. This presumption requires only that there be an investigation into a possible violation of law.[19] So, even if criminal proceedings

[18] Order MO-2954.
[19] Orders P-242 and MO-2235.

were never started against the individual, section 21(3)(b) may still apply.[20]

[76] The ministry also refers and relies on section 21(2)(f), the factor that applies and weighs against disclosure if the information is highly sensitive. This section is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed. [21]For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.[22]

[77] The appellant does not point to any presumptions or factors set out in the *Act.* Rather, he argues that he is entitled to be aware of the information about him held by the OPP so that he may correct the information.

Discussion

The appellant's personal information alone

[78] As explained above, some of the withheld information consists of the appellant's personal information only that can be reasonably severed and is therefore its disclosure is not an unjustified invasion of any other individual's personal privacy. This information is found on several pages of records and is indicated in the copy of the records provided to the ministry with this order.

Personal information of other individuals

[79] I agree with the ministry that disclosure of other individuals' personal information in the records would be an unjustified invasion of their personal privacy and I uphold the ministry's claim.

[80] I agree that the information in the records was compiled and is identifiable as part of an investigation into a possible violation of law (establishing the presumption at section 21(3)(b)) and that the personal information of other individuals is highly sensitive (establishing the factor at section 21(2)(f)).

[81] Although the appellant has not established any of the factors that might weigh in favour of disclosure, I understand that he is seeking his own information even when it is intertwined with other individuals, although he does not seek the names and address of affected parties.

[82] Considering the information itself and the fact that the relevant presumption and factor weigh against disclosure, I find that the balance tips in favour of the privacy rights

[20] 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).
[21] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[22] Order MO-2980.

of the other individuals. I accordingly find that the personal information of other individuals is exempt from disclosure under section 49(b).

[83] The section 49(b) exemption is discretionary. The ministry says that it exercised its discretion properly, that it acted in accordance with its long-standing practices and in a way that protects the personal information of other individuals, while also granting access to a significant amount of information.

[84] As stated above, the appellant did not make specific representations about the ministry's exercise of discretion, but I understand that he is skeptical of the actions of the OPP and that he has concerns that the OPP is not acting in good faith toward him.

[85] In my view, the ministry has exercised its discretion properly to apply section 49(b). As I stated above, the ministry has worked to disclose to the appellant a significant amount of information and there is no basis to conclude that the ministry is acting for any improper purpose or to further its own interests and I therefore uphold its exercise of discretion and its decision to withhold information on the basis of section 49(b).

ORDER:

1. On **April 14, 2025** and not before **April 9, 2025**, I order the ministry to disclose to the appellant the information marked on the pages enclosed with the ministry's copy of this order.

2. I otherwise uphold the ministry's claim that certain information is exempt under sections 49(e), 49(a), read with sections 14(1) and 19, and section 49(b) as applicable.

3. In order to verify compliance with Order provision 1, I reserve the right to require the ministry to provide me with a copy of the information disclosed to the appellant.

Original Signed by: March 10, 2025

Valerie Jepson
Adjudicator