

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER PO-4628-I

Appeal PA23-00370

Ministry of the Solicitor General

March 28, 2025

**Summary:** The appellant made a request under the *Freedom of Information and Protection of Privacy Act* for information about her missing husband. The Ministry of the Solicitor General denied access to the records relying on section 49(a) (discretion to refuse requester's own information) read with the law enforcement exemption at section 14(1), or section 14(1) on its own, and the personal privacy exemptions in sections 21(1) or 49(b).

In this interim order, the adjudicator finds that because of an ongoing law enforcement investigation, the records are exempt under the law enforcement exemptions at section 49(a) read with section 14(1), or section 14(1) on its own. However, she does not uphold the ministry's exercise of discretion under section 49(a) with section 14(1), or under section 14(1) on its own, and orders it to re-exercise its discretion to consider disclosing certain responsive information in the records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information), 14(1)(a), and 49(a); *Missing Persons Act, 2018*, S.O. 2018, c. 3, Sched. 7, sections 1(2), and 7; *Declarations of Death Act, 2002*, S.O. 2002, chapter 14, section 2.

### OVERVIEW:

[1] The appellant sought access to records from the Ontario Provincial Police (the OPP) about her missing husband who disappeared while geese hunting in 2018.

[2] The Ministry of the Solicitor General (the ministry) received a request under the

*Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for the OPP<sup>1</sup> reports related to a specified occurrence number for the time period of November 4, 2018, until May 18, 2023 (the date of the request).

[3] The ministry denied access, in full, to the records pursuant to sections 49(a) (discretion to refuse a requester's own information, read with section 14(1) (law enforcement) and 49(b) (personal privacy) of the *Act*. The ministry stated:

...access to Ontario Provincial Police [OPP] reports for incident [specified number] is denied as the records concern a matter that is currently under investigation.

[4] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to explore a resolution between the parties.

[5] During mediation, the appellant explained that she seeks access to the records in order to obtain the certain information that she believes would assist her in having her husband declared deceased by a court which would enable her to obtain a divorce.<sup>2</sup>

[6] The appellant advised the mediator that she is not seeking the personal information of anyone other than her husband. She later clarified that she seeks access to her own personal information in addition to that of her husband but that she does not seek the personal information of any other individuals.<sup>3</sup> Accordingly, the personal information of individuals other than the appellant and her husband is not at issue in this appeal.

[7] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. The adjudicator formerly assigned to this appeal sought the parties' representations, which were exchanged between them in accordance with the IPC's *Practice Direction 7*.

[8] The appeal was then assigned to me to continue the inquiry. I sought and received confirmation from the ministry that the missing person's investigation into the appellant's

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<sup>1</sup> The OPP is part of the ministry.

<sup>2</sup> The specific information sought by the appellant is set out in the records section below.

<sup>3</sup> The appellant advised the mediator that she was of the view that the request should be considered by the ministry under compassionate grounds, and that section 21(4)(d) of the *Act* should apply. In response, the ministry advised that the compassionate grounds exception does not apply as the appellant's husband has not been declared deceased, therefore section 21(4)(d) cannot apply. Section 21(4)(d) reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

husband was still ongoing.

[9] I also asked the ministry to provide me with a copy of the records. It replied that:

... [I]t is the practice of the ministry not to share all records that relate to an ongoing law enforcement investigation. Typically, a voluminous number of records are created and/or collected during the course of a lengthy investigation, and we are concerned about the operational challenges in providing them to the IPC. What we could do is provide [the IPC] with an OPP occurrence summary, which shows that the investigation is ongoing.

[10] The ministry provided the IPC with two Occurrence Summary reports related to the incident.

[11] After clarifying the parties' positions, I decided that I did not require further representations from the parties in order to make a decision in this appeal.

[12] In this interim order, I find that the section 49(a), read with the law enforcement exemption at section 14(1)(a), or section 14(1)(a) on its own, applies to the information sought by the appellant. However, I do not uphold the ministry's exercise of discretion under these sections, and I order it to re-exercise its discretion to consider disclosing the responsive information in the records.

## **RECORDS:**

[13] The appellant seeks access to the OPP reports related to her husband's disappearance dated between November 4, 2018 and May 18, 2023. The ministry has not provided the responsive records to the IPC, other than two Occurrence Summary reports.

[14] Specifically, the appellant wants the following responsive information from the records:

- a. The date of the accident;
- b. The attempts to locate her husband or his body;
- c. When her husband was last seen; and
- d. Confirmation from the OPP that their investigation has shown that no one has had contact with her husband since the date of the accident.

## 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), read with the law enforcement exemptions at sections 14(1)(a), (b) or (l) apply to the information at issue? Do any of the law enforcement exemptions at sections 14(1)(a), (b) or (l) apply, on their own, to the information at issue?
- C. Did the ministry exercise its discretion under section 49(a) read with section 14(1)(a), or section 14(1)(a) on its own? If so, should the IPC uphold the exercise of discretion?

## DISCUSSION:

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

[15] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the records contain “personal information,” and if so, to whom the personal information relates.

[16] It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>4</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>5</sup>

[17] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[18] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>6</sup>

[19] 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.

[20] 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

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<sup>4</sup> 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.

<sup>5</sup> See sections 21(1) and 49(b).

<sup>6</sup> See the definition of “record” in section 2(1).

information.<sup>7</sup>

[21] Section 2(1) of the *Act* gives a list of examples of personal information. The relevant portions of the definition include:

“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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

...

(g) the views or opinions of another individual about the individual, and

(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.

[22] 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.”<sup>8</sup>

[23] Section 2(2) states that personal information does not include information about an individual who has been dead for more than thirty years.

### ***Representations***

[24] The ministry submits that the records contain the personal information of the appellant's husband, who is missing, and whose disappearance is subject to an ongoing

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<sup>7</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>8</sup> Order 11.

law enforcement investigation. It does not provide further detail about what type of personal information is contained in the records.

[25] The ministry also does not provide any representations on whether the records contain the personal information of individuals other than the appellant's husband because it submits that the appellant has confirmed that she is not seeking the personal information of others. Additionally, the ministry did not make any submissions on whether the records contain the appellant's personal information.

[26] The appellant agrees that the records would contain personal information but does not specify whose personal information they would contain.

### ***Findings***

[27] The ministry provided the IPC with two almost identical OPP Occurrence Summary reports from November 4, 2018. Besides including the appellant's husband name, address, and date of birth, these reports list the information about the person who reported the appellant's husband missing (the complainant), the husband's next of kin (which includes the appellant), and other individuals. It also indicates that the OPP spoke to the appellant and one other individual.

[28] Taking into account these two reports, as well as the parties' representations, I find that the records responsive to the appellant's request would contain the appellant's husband's personal information, including information about his disappearance, his address, phone number, sex, family status, employment history, financial transactions, views or opinions about him, and his name where it appears with other personal information about him. These types of information fall within the definition of personal information at paragraphs (a), (b), (d), (e), (g) and (h).

[29] I also find that, as the wife of the person whose disappearance is being investigated, the records would contain the appellant's personal information. Not only is she a next of kin, but as is evident from the occurrence report, she spoke to the OPP about her husband's disappearance.

[30] I accept that the appellant's personal information would include personal information about her including her address, phone number, sex, family status, employment history, her view or opinions, and views or opinions about her. These types of information fall within the definition of personal information at paragraphs (a), (b), (d), (e), (g) and (h).

[31] I find the records would also contain similar types of personal information of any other individuals who would have been contacted by the OPP concerning the missing person's investigation.

[32] Therefore, as some records would contain the personal information of the appellant, as well as that of her husband, in accordance the definition of personal

information in section 2(1) of the *Act*, I will consider the application of section 49(a) (discretion to refuse requester's own information) with the section 14(1) claimed exemptions to these records.

[33] Furthermore, as other records would contain similar types of personal information of the appellant's husband and other individuals, but not that of the appellant, I will consider the application of the section 14(1) claimed exemptions to these records.

**Issue B: Does the discretionary exemption at section 49(a), read with the law enforcement exemptions at sections 14(1)(a), (b) or (l) apply to the information at issue? Do any of the law enforcement exemptions at sections 14(1)(a), (b) or (l) apply, on their own, to the information at issue?**

[34] 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.

[35] Section 49(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[36] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.<sup>9</sup>

[37] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[38] As indicated above, although I have not been provided with the records, in this appeal among the responsive records will be records that contain the personal information of the appellant and records that do not contain the personal information of the appellant. I must consider the appellant's right of access records that contain her personal information under section 49(a), read with the law enforcement exemptions claimed by the ministry.

[39] In contrast, for the records that do not contain the personal information of the appellant, I must consider whether any of the law enforcement exemptions claimed by

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<sup>9</sup> Order M-352.

the ministry apply, on their own.

[40] The ministry has claimed that the law enforcement exemptions at sections 14(1)(a), 14(1)(b) and 14(1)(l) are relevant in this appeal. Those sections read:

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

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

...

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

[41] 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.<sup>10</sup>

[42] However, the exemption does not apply just because a continuing law enforcement matter exists,<sup>11</sup> and parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>12</sup>

[43] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>13</sup> 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.<sup>14</sup>

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<sup>10</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>11</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>12</sup> Orders MO-2363 and PO-2435.

<sup>13</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>14</sup> *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.

## ***The Parties' Representations***

### *The ministry's representations*

[44] The ministry maintains that the OPP continues to investigate why the appellant's husband went missing, and what happened to him. It also submits that the investigation is being undertaken with a view to a future law enforcement proceeding if a violation of law is ultimately identified as a factor in the missing individual's disappearance. The ministry relies upon Order PO-2644 to support its position that the responsive records should not be disclosed to the appellant. The ministry submits that in the course of the inquiry into the appeal that resulted in Order PO-2644, it provided similar non-record specific representations as it did in this appeal.

[45] The ministry states that the OPP does not know whether the missing person's disappearance was voluntary or not. It submits that disclosure of the requested records to the appellant has the potential to reveal detailed operational information relating to the investigation that could frustrate the ability of the OPP to continue their investigation and resolve the matter of the individual's disappearance. It states that disclosing OPP investigative records would move them into the public domain.

[46] The ministry submits that prior IPC orders have consistently upheld the application of section 14(1)(a) and (b) to records that are subject to an ongoing law enforcement investigation.<sup>15</sup> The ministry submits that it is concerned that disclosure of a missing person's investigation records would reveal the specific strategies and methodologies employed by the OPP during the course of missing persons investigations.

[47] The ministry further submits that if the records are released, OPP investigators will have no way of knowing when an individual comes forward with information whether that individual learned of the information through the release of records or because of what they learned firsthand.

[48] The ministry submits that as the records requested by the appellant are part of an ongoing missing person's investigation and their disclosure would interfere with, and potentially harm, this investigation. As a result, it submits that the exemptions at sections 14(1)(a) and 14(1)(b) apply.

### *The appellant's representations*

[49] The appellant states that in November 2018, she learned that her husband had gone missing and was suspected dead following an accident while hunting on a river. His body has never been recovered. At the time of the accident, emergency medical services were called. The OPP attended as well, and they commenced an investigation.

[50] The appellant submits that there was a full OPP underwater recovery unit launched

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<sup>15</sup> The ministry references Orders PO-2644, PO-2949-F, PO-3117, and PO-3999.

for several days after the incident in an attempt to locate the appellant's husband's body. She submits that during the first two weeks of the investigation, the OPP were in contact with the appellant with daily verbal updates on the ongoings of the investigation.

[51] The appellant states that neither she, nor any of her husband's other family members, have been provided with an update from the OPP on the status of the investigation since August 2019 and she has never been given any indication that a law enforcement proceeding is likely to result.

[52] The appellant also states that she has never been given any indication that something criminal or nefarious is suspected. Nor does she understand how disclosure of the information at issue to her could reasonably be expected to either facilitate crime or hamper the control of crime. She submits that both she and her husband's other family members believe that her husband passed away on the date of the accident.

[53] The appellant submits that it is unreasonable for the ministry to suggest that a law enforcement proceeding is likely to result or that the information she is requesting will facilitate an unlawful act or hamper the control of crime. She sees no reason to believe that a crime was committed, or that any foul play was suspected.

#### *The ministry's reply representations*

[54] In reply, the ministry states that it has denied access to all of the records as they are being used as part of an open and active law enforcement investigation. It states:

Past IPC orders (e.g., PO-2644) have acknowledged and affirmed the importance of preserving the confidentiality of investigative records collected and compiled as part of an OPP investigation involving a missing person, even after a significant period of time has passed...

[55] The ministry submits that in Order PO-2644, the adjudicator upheld their decision not to disclose the responsive records which contained information about the appellant, his missing son, and other individuals involved in the investigation, on the basis of the application of the law enforcement exemption at section 14(1)(a). In that appeal, the adjudicator found, in the circumstances of this appeal and based on her review of the records, that disclosure could reasonably be expected to interfere with a law enforcement matter.

#### ***Findings***

[56] Based on my review of the parties' representations, I accept the ministry's submission that release of the requested records to the appellant could reasonably be expected to reveal detailed operational information relating to the investigation that could frustrate the ability of the OPP to continue their investigation and resolve the matter of the appellant's husband's disappearance. As well, disclosing OPP investigative records would move them into the public domain.

[57] I also accept the ministry's submission that disclosure of a missing person's investigation records may reveal the specific strategies and methodologies employed by the OPP during the course of the missing person investigation. By such disclosure, OPP investigators may have no way of knowing when an individual comes forward with information whether that individual learned of the information through the release of records or because of what they learned firsthand.

[58] In making this finding that disclosure of the missing person records at issue could reasonably be expected to reveal the specific strategies and methodologies employed by the OPP during the course of missing persons investigations, I rely on the findings in Order PO-2644. In that order, the appellant was the father of a missing person, who was requesting investigative records about his missing son. The adjudicator in that order held the following:

Keeping in mind the difficulty of predicting future events in a law enforcement context, I am satisfied that disclosure of the records at issue in this appeal could reasonably be expected to undermine the efforts of the OPP to either locate the missing person, or to investigate the circumstances surrounding his disappearance and would, therefore, interfere with an ongoing law enforcement matter.

[59] For section 14(1)(a) to apply, the law enforcement matter must still exist or be ongoing.<sup>16</sup> This exemption does not apply once the matter is completed, nor where the alleged interference is with "potential" law enforcement matters.<sup>17</sup>

[60] "Matter" has a broader meaning than "investigation" and does not always have to mean a specific investigation or proceeding.<sup>18</sup>

[61] Based on my review of the circumstances of the appellant's husband's disappearance and the parties' representations, I am satisfied that the records at issue are being used as part of an ongoing law enforcement matter in relation to the disappearance of the appellant's husband. Therefore, I am satisfied that disclosure of the information sought by the appellant could reasonably be expected to interfere with a law enforcement matter.

[62] In making this determination, I have considered that there have been no updates provided on the investigation since August 2019, the circumstances as to how the appellant's husband may have disappeared and the ministry's position that as long as someone is not located, they will be considered a missing person, and their investigative file will remain open.

[63] For the foregoing reasons, I accept that disclosure of the records could reasonably

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<sup>16</sup> Order PO-2657.

<sup>17</sup> Orders PO-2085 and MO-1578.

<sup>18</sup> *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC)

be expected to interfere with an ongoing law enforcement matter, the investigation into the appellant's husband's disappearance. Therefore, I find that section 49(a), read with the law enforcement exemption at 14(1)(a) applies to the records that contain the appellant's personal information, and that section 14(1)(a) applies, on its own, to the records that do not contain the appellant's personal information.

[64] As I have found that the law enforcement exemption at section 14(1)(a) (on its own or in conjunction with section 49(a)) applies, it is unnecessary for me to also consider whether the law enforcement exemptions at sections 14(1)(b) or 14(1)(l) also apply alone or read with section 49(a).

[65] As well, as I have found that the exemptions at section 14(1)(a), or section 49(a) read with section 14(1), apply to all of the responsive records, I do not need to consider whether the personal privacy exemptions at sections 21(1) or 49(b) also apply.

**Issue D: Did the ministry exercise its discretion under section 49(a) read with section 14(1)(a), or section 14(1)(a) on its own? If so, should the IPC uphold the exercise of discretion?**

[66] The exemptions at section 14(1)(a) and section 49(a) are discretionary (the institution 'may' refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[67] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

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

[68] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>19</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>20</sup>

***Representations***

[69] The ministry submits that in exercising its discretion not to disclose the requested records to the appellant it considered section 1(2) of the *Missing Persons Act, 2018* (the *MPA*) which states:

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<sup>19</sup> Order MO-1573.

<sup>20</sup> Section 54(2).

A person is a missing person for the purposes of this Act if both of the following circumstances exist with respect to the person:

1. The person's whereabouts are unknown and,
  - a. the person has not been in contact with people who would likely be in contact with the person, or
    - ii. it is reasonable in the circumstances to fear for the person's safety because of the circumstances surrounding the person's absence or because of any other prescribed considerations.
2. A member of a police service is unable to locate the person after making reasonable efforts to do so.

[70] The ministry submits that as an individual whose vessel allegedly capsized, and who has not been located by OPP despite a search and rescue operation, the appellant's husband fits within the definition of being a "missing person" for the purpose of the *MPA*.

[71] The ministry further submits that section 7 of the *MPA*, prevents the police from disclosing information, including personal information, about a missing person, except if the police "has reasonable grounds to believe that it will assist in locating the missing person."

[72] The ministry states that the OPP does not believe that disclosing the entire investigative file to the appellant, in response to the appellant's request, will assist in locating the missing person. As such, it submits the *MPA* does not authorize it to disclose the information the appellant is seeking and that it has protected the privacy of the records in accordance with the requirements of the *MPA*.

[73] The ministry submits it has exercised its discretion correctly under *FIPPA* in not releasing any of the records that are the subject of this appeal. It states that it exercised its discretion in accordance with its usual practices, and in consideration of the strong public policy interest in protecting the integrity of records created as part of an ongoing investigation, to ensure that the evidence in the records can be used in the future should it be necessary for the purpose of laying charges.

[74] The appellant submits that she has not received an update from the OPP or otherwise, of any steps taken in the course of the investigation since August of 2019. She submits that due to the inability of the OPP to locate the body, a death certificate has not been issued, which has left her in legal limbo with an inability to properly resolve her husband's estate and an inability to dissolve the marriage and move forward with her life. The appellant states that she would like to get married again but cannot do so without obtaining a divorce.

[75] The appellant submits that were she to apply for a divorce, she anticipates that

the court will want information to show that her husband himself or his body has not been located, and that the OPP has no evidence that the appellant's husband has been in contact with anyone since the date of the accident.

[76] The appellant, therefore, submits that disclosing the information that she seeks access to will increase public confidence in the OPP's investigation processes and will show that the aim of such investigative processes is to help, and not to impede the lives of those affected. She also submits that disclosure of her personal information as well as that of her husband will not expose her husband to harm.

[77] In response to a number of questions I posed to it, the ministry responded that it was advised by a Sergeant with the OPP's Investigation and Support Bureau of the Ontario Centre for Missing Persons and Unidentified Remains (ONCMPUR) that:

- Missing persons investigations are not closed until the whereabouts of the missing person are discovered. Missing persons investigations can therefore last significantly longer than the time this one has lasted, which is approximately 6 years.
- The police do not make presumptions about what happened to a missing person. The police rely upon evidence. In this instance, there is insufficient evidence to determine what happened to the missing person who is the subject matter of the [freedom of information] appeal.
- The OPP has continued to receive new evidence about this investigation, which it has added to its file. This means that the file into the missing person is ongoing and active.
- New technology, such as DNA, is making it increasingly possible to solve historic cold case investigations.<sup>21</sup> Therefore, the fact that an investigation has not been resolved does not mean it won't be, specifically and in part as a result of new and emerging technology.
- The missing person [the appellant's husband] is listed as being a "current case" on the website [National Centre for Missing Persons and Unidentified Remains (NCMPUR)] which is administered by the RCMP. We offer this as yet further evidence that this investigation is open and active. If it weren't, it wouldn't be listed here.

[78] The ministry also states that it provided the IPC with two OPP Occurrence Summary reports that list the status of the missing persons investigation as "Open/still under investigation."

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<sup>21</sup> The ministry referred me to the following link regarding Canada cold cases: <https://www.ctvnews.ca/canada/these-canadian-cold-cases-saw-breakthroughs-in-2023-1.6697414>

[79] The appellant states that the OPP has never given her or her husband's family any hope that he was missing and could be still alive. The appellant states that she has sympathetic and compelling reasons as to why she requires the information. She states that the lack of progress in the OPP's investigation has hamstrung her ability to seek closure and marry again.

[80] The appellant further submits that disclosure of the information she is seeking of herself and her husband:

- would not cause reputational harm to her husband or anyone else, and
- is relevant to the fair determination of her rights to seek a divorce.

[81] In reply, the ministry states that the fact that the appellant is seeking her own personal information does not change its position as all the records, regardless of whose personal information they contain, are being used as part of an open and active law enforcement investigation.

### ***Findings***

[82] In denying access to all of the responsive records under section 14(1)(a), or section 49(a) read with section 14(1)(a), I find that the ministry did not exercise its discretion in a proper manner. I find that it did not take into account a number of relevant considerations. Instead, in my view, the ministry applied a blanket denial of all records, including those that contain the appellant's personal information without considering:

- the purposes of the *Act*, including the principles that:
  - information should be available to the public,
  - individuals should have a right of access to their own personal information, and
  - exemptions from the right of access should be limited and specific.
- that the appellant is seeking her own personal information in the case of records where section 49(a) applies,
- that the appellant has a sympathetic or compelling need to receive the information in order to move on with her life after her husband has been missing from a boating accident for over six years,
- the relationship between the appellant and any affected persons, including her husband, whose personal information may be contained in the records,
- that disclosure will increase public confidence in the operation of the ministry as it comes to the investigation of missing persons' cases, especially those where the

person has not been located for many years and disappeared in what appears to be an accidental drowning,

- the nature of the information that it relates to a boating accident many years ago and the extent to which the actual information sought by the appellant from the records is significant the appellant or any affected person, and
- the age of the information, being over six years old.

[83] In my view, in exercising its discretion, the ministry did not consider the actual circumstances of the appellant's husband's disappearance, particularly that he went missing after his boat capsized in a geese hunting trip, and that after an extensive underwater search his body was not located. As well, it did not consider that no updates have been provided on the search since August 2019, and that there has been no indication that any are forthcoming.

[84] I also find that the ministry has also improperly delegated its decision-making power under *FIPPA* to a chief of police under the provisions of section 7(1) of the *MPA*. It has determined that since missing persons investigations are not closed until the whereabouts of the missing person are discovered, it cannot disclose any information unless the chief of police has reasonable grounds to believe that such disclosure would assist in locating the missing person.

[85] I note that *FIPPA* (subject to certain exceptions that do not apply here) provides in section 67 that it prevails over a confidentiality provision in any other Act. The *MPA* does not prevent disclosure of personal information under *FIPPA* to the appellant of her still missing husband.

[86] Specifically, section 7(1) of the *MPA* does not prevent disclosure by a head under *FIPPA*. It only provides what a chief of police (or their designate) may disclose, as follows:

Before a missing person is located, a chief of police or person designated by the chief of police may disclose any information to the public, including personal information, by any means that the chief or designated person considers appropriate if,

- (a) the chief or designated person has reasonable grounds to believe that it will assist in locating the missing person; or
- (b) the disclosure is for a prescribed purpose.

[87] In fact, section 7(8) of the *MPA* provides that nothing in section 7 limits the circumstances in which a member of a police service may disclose a missing person's personal information if the disclosure is otherwise permitted or required by law. Therefore, the ministry, and by extension the OPP, is not prohibited from disclosing information under *FIPPA*

[88] The appellant has indicated that she requires the information at issue to either obtain a divorce from her missing husband or to obtain his death certificate. The ministry has not indicated that in exercising its discretion not to disclose the requested information to the appellant it considered whether it could disclose any information that may assist the appellant under the *Declarations of Death Act, 2002* (the *DODA*).<sup>22</sup>

[89] The *DODA* allows an interested person, after seven years, to apply to the Superior Court of Justice, with notice to any other interested persons of whom the applicant is aware, for an order declaring that an individual has died if the court is satisfied that:

- a. the individual has disappeared in circumstances of peril;
- b. the applicant has not heard of or from the individual since the disappearance;
- c. to the applicant's knowledge, after making reasonable inquiries, no other person has heard of or from the individual since the disappearance;
- d. the applicant has no reason to believe that the individual is alive; and
- e. there is sufficient evidence to find that the individual is dead.

[90] In this case, the appellant's husband has been missing for over 6 years. If she is able to present the court with information about her husband's disappearance, some of which may be contained in the records, she might be in a position to get a declaration of death for her husband under the *DODA*.

[91] The ministry determined that a missing person investigation is never closed and therefore, it cannot disclose information about a missing person as long as that person has not been located. In exercising its discretion not to disclose any of the responsive records, the ministry did not consider whether they contain any information that might assist the appellant in petitioning the court under the *DODA*, to issue a declaration of death based on that information.

[92] Furthermore, in exercising its discretion under sections 14(1)(a), or section 49(a) with 14(1)(a), the ministry did not consider that *FIPPA* allows it the discretion to disclose another individual's personal information to a requester whose personal information is also contained in a record. The ministry has not made any representations on the considerations it took into account when exercising its discretion not to disclose any of the appellant's personal information to her.

[93] Accordingly, I will order the ministry to re-exercise its discretion under section 14(1)(a), and section 49(a), read with section 14(1)(a), regarding the disclosure of the responsive information from the records having regard to the considerations set out above, and also taking into account that the appellant is only interested in obtaining

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<sup>22</sup> See section 2 of the *Declarations of Death Act, 2002*, S.O. 2002, chapter 14.

access to her own personal information as well as the personal information of her husband and not the personal information of other individuals.

**ORDER:**

1. I uphold the ministry's decision that the records are exempt under sections 14(1)(a), or 49(a) with 14(1)(a).
2. I order the ministry to re-exercise its discretion under sections 14(1)(a), or 49(a) with 14(1)(a), taking into account the considerations listed above and to advise the appellant and the IPC of the result of this re-exercise of discretion, in writing by **April 30, 2025**.
3. If, after re-exercising its discretion, the ministry continues to withhold the responsive information in the records under sections 14(1)(a), or 49(a) with 14(1)(a), I order it to provide the IPC and the appellant with representations about its re-exercise of discretion under sections 14(1)(a), or 49(a) with 14(1)(a), by **April 30, 2025**.
4. If the appellant wishes to respond to the ministry's re-exercise of discretion and/or its explanation for re-exercising its discretion to withhold information, she must do so within 15 days of the date of the ministry's correspondence by providing me with written representations.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ March 28, 2025