Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4682

Appeal PA22-00049

Ministry of the Solicitor General

July 23, 2025

Summary: A former inmate asked the Ministry of the Solicitor General for records relating to his detention at the Maplehurst Correctional Complex. The ministry located prison records and video footage. It provided partial access, withholding records under section 49(a) (discretion to refuse requester's own information), read with certain law enforcement exemptions related to facilitating escape from custody (sections 14(1)(i), (j), (k), and (l)). The former inmate sought access to these records and claimed that additional responsive records exist.

In this order, the adjudicator upholds the ministry's decision and search and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 sections 14(1), 24, and 49(a).

Order Considered: Orders PO-2332, PO-3905, PO-3405, and PO-3248.

OVERVIEW:

[1] A former inmate made a request to the Ministry of the Solicitor General (the ministry) for records relating to his detention at the Maplehurst Correctional Complex. In the request, he specified that he seeks his prison records, medical records, a synopsis of his stay at the prison, and specified video footage.

[2] The ministry located and granted partial access to responsive records. It denied access to responsive video recordings. To deny access to the withheld information and

records, the ministry relied on section 49(a), read with the law enforcement exemptions in sections 14(1)(i) (endanger security of building, vehicle or system), 14(1)(j) (facilitate escape from custody), 14(1)(k) (jeopardize security of detention centre), 14(1)(l) (facilitate commission of unlawful act or hamper control of crime) and section 14(2)(d) (correctional record). The ministry also claimed that some information was exempt under sections 49(b) (personal privacy) and 49(e) (confidential correctional record).

[3] The former inmate (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant stated that additional records exist. The ministry conducted an additional search, locating and granting partial access to additional records and claiming the same exemptions. The appellant maintained that additional records exist. The appellant stated that the ministry's disclosure resolved all of the issues except for the following:

- access to information withheld from pages 135 and 159 over which the ministry claims the exemptions in sections 49(a) read with 14(1)(i), 14(1)(k), 14(1)(l), 14(2)(d), and 49(e);

- access to the video footage that was denied in full and over which the ministry claims the exemptions in sections 49(a) read with 14(1)(i), 14(1)(j), 14(1)(k), 14(1)(l), 14(2)(d), and 49(b) with reference to the factor in 21(2)(f), and section 49(e); and,

- the ministry's search efforts.

[4] The appellant also raised the application of the section 23 public interest override, which was added as an issue in the appeal.

[5] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process.[1] The adjudicator initially assigned to the appeal conducted an inquiry and received representations from the ministry and the appellant.[2] The file was then assigned to me to complete the inquiry. I reviewed the representations and sought additional representations on the ministry's search efforts.

[6] For the reasons that follow, I uphold the ministry's decision and dismiss the appeal.

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[1] During mediation, the mediator raised the possible application of the *Personal Health Information Protection Act, 2004* (*PHIPA*) to the information at issue, but neither party claimed that it applied at adjudication. In any case, section 52(1)(f)(ii)(A) of *PHIPA* permits health information custodians that are also institutions under the *Act*, which is the case here, to claim the application of section 49(a) of the *Act* as a "flow-through" claim, meaning that the law-enforcement issue and analysis are the same whether considered under the *Act* or *PHIPA*. See, for example, Order PO-4299 and PHIPA Decision 216.

[2] The appellant's representations address issues that are not a part of this appeal. While I have reviewed the entirety of his representations, I only address those that are relevant to the appeal in this order.

RECORDS:

[7] The records consist of the following:

- A "Health Care Record – Part D Progress Notes," numbered page 135 by the ministry.
- A checklist ("Brief Jail Mental Health Screen") numbered page 159 by the ministry.
- Video footage, consisting of 34 video files ranging in length from a few seconds to several minutes.

ISSUES:

A. 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) exemption, apply to the information at issue?

B. Did the ministry conduct a reasonable search for records?

DISCUSSION:

Issue A: 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) exemption, apply to the information at issue?

The records contain the personal information of the appellant and other individuals

[8] For section 49(a) to apply, the records must contain the "personal information" of the individual requesting them. 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, or videos.[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] Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[5]

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[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.).
[5] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[9] Neither party disputes, and I find, that all of the records at issue contain the personal information of the appellant. In some of the videos other inmates are visible, while in others only the appellant and correctional officers are visible. The paper records that the appellant is seeking only contain his personal information. Accordingly, I will assess the ministry's exemption claims under section 49(a).

Sections 49(a) and 14(1)

[10] 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.

[11] 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.

[12] 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.[6]

[13] 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.

[14] In this case, the ministry relies on section 49(a) read with sections 14(1)(i), (j), (k), and (l). Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. Sections 14(1)(i), (j), (k), and (l) state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
> >
> > (j) facilitate the escape from custody of a person who is under lawful detention;

[6] Order M-352.

> (k) jeopardize the security of a centre for lawful detention; or
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[15] The above exemptions apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. 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.[7]

[16] However, parties resisting disclosure of a record cannot simply assert that the harms under these sections 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 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.*[8]

[17] The ministry must show that the risk of harm is real and not just a possibility.[9] However it does 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.[10]

[18] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required. Similarly, for section 14(1)(k) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to jeopardize the security of a centre for lawful detention.

[19] For section 14(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime. Likewise, for section 14(1)(j) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the escape from custody of a person who is under lawful detention.

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[7] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[8] Orders MO-2363 and PO-2435.
[9] *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] 1 S.C.R. 23.
[10] *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.

Representations

Ministry representations

[20] The ministry provides joint representations for all of the law enforcement exemptions. It submits that sections 14(1)(j) and (k) are exemptions expressly related to the security of a correctional institution, while section 14(1)(i) is a broader exemption that allows the ministry to exempt records that would endanger building security, systems, and procedures if disclosed. It also submits that the failure to protect these correctional records would have the effect of facilitating unlawful acts or hampering the control of crime, in accordance with section 14(1)(l).

[21] The ministry refers to Order PO-2332, where the adjudicator found that "even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security." It states that the adjudicator's statement calls for a careful and cautious approach to the disclosure of correctional records. It states that this approach is complemented by the ruling in *Ontario (Attorney General) v. Fineberg* (1994),[11] where the court stated that the "law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context."

[22] For the video records, the ministry submits that they are recordings of common areas of the prison, including day rooms used by inmates. It notes that in some videos adjoining rooms are also visible. It submits that the records capture the exact layout of these interior spaces and where the cameras are mounted. It states that in some cases the names of the records would reveal where in the prison the video footage came from. The ministry also references Order PO-2911, where the adjudicator found that releasing video footage that reveals the layout of a correctional centre's day space area to the general public could pose a security risk by suggesting potential security vulnerabilities.

[23] For the paper records, the ministry submits that it withheld them because they contain an assessment prepared by ministry healthcare staff regarding the appellant's behaviour. It states that the records were prepared to alert staff about potential behavioural risk. The ministry submits that if staff knew that this type of information was subject to disclosure, they may be less willing to communicate it. The ministry adds that disclosure of this information may prevent open and candid communications that mitigate risk.

Appellant representations

[24] The appellant generally asserts that he has a right to access the information at issue. He does not refute the ministry's submissions on the need for a careful and cautious approach regarding law enforcement exemptions, but he does reference several IPC orders where non-exempt portions of records were disclosed, despite law enforcement

[11] 19 O.R.(3d) 197 (Div. Ct.)

exemptions being claimed: Orders PO-3905, PO-3405, and PO-3248. He states that Order PO-3905 specifically deals with video footage being severed, with the adjudicator finding that it was possible to do so without the harms specified by section 14(1)(k) being reasonably expected to occur. He asserts that a similar finding was made in Order PO-3405 with respect to briefing notes about a correctional centre, where non-exempt information was ordered disclosed. He notes that Order PO-3248 addresses the severing of records in the context of a university. The appellant submits that the same finding should be made in this appeal.

Analysis and finding

[25] I have considered the representations of the parties and reviewed the records at issue. For the reasons that follow, I find that the records are exempt from disclosure under section 49(a), read with section 14(1)(k), subject to my consideration of the ministry's exercise of discretion, below.

[26] I agree with the appellant's submission that there are situations where video footage can be severed in such a manner that the risks contemplated by the law enforcement exemptions are mitigated. However, in the present appeal, I find that none of the withheld videos can be severed in this way while still providing meaningful disclosure.[12]

[27] All of the recordings, at minimum, reveal the location of the camera that recorded the footage. While the location may be obvious to the inmates in the correctional centre, I agree with the ministry's submission that even information that appears innocuous could reasonably be expected to be subject to use by some people in a manner that would jeopardize security. As was found in Order PO-2332, although much of the information within the recordings, such as the locations of the cameras, is obvious, it can reasonably be expected that this information can be exploited by a knowledgeable person in a way that can reasonably be expected to jeopardize the security of the prison. This is particularly true considering the number of video recordings: disclosing the records at issue would provide the precise location of over 30 cameras in the correctional centre.

[28] Additionally, even if the locations of the cameras are generally known to inmates in the correctional centre, what specific areas they record – and do not record – is not generally known. Someone who knows enough about a correctional facility (by, for example, having been to it), or about security measures, could identify what is not captured by the cameras as a deficiency that can be exploited. As the ministry submits, the recordings also show the layouts of several areas of the correctional centre, as well as some of the adjoining areas. Disclosing the footage could provide an individual with a

[12] Section 10(2) of the *Act* requires that institutions disclose as much of a record as "can reasonably be severed without disclosing the information that falls under one of the exemptions." However, the IPC has found that the duty to sever does not apply where non-exempt information is so intertwined with exempt information that any disclosure would result in the release of only "disconnected snippets," or of information that is "worthless," "meaningless," or "misleading." See Order PO-1663, followed in numerous IPC orders.

significant amount of insight into the layout of the correctional centre, and could reasonably be expected to jeopardize its security. Having reviewed the footage, I am satisfied that it is not possible to sever it to mitigate these risks.

[29] With respect to the withheld paper records, I accept the ministry's submission that the records are prepared to alert staff to potential behavioural risks. I am persuaded by the ministry's submissions that disclosing them would impede the ability of prison staff to communicate with each other regarding these risks, as they would be less likely to be candid and open if they knew that the records could later be released to the public under the *Act*. This would have the effect of jeopardizing the security of the prison, satisfying section 14(1)(k).

[30] Having found that the records are exempt from disclosure under section 49(a), read with section 14(1)(k), I do not need to consider if they are also exempt under the remaining exemptions claimed by the ministry. I also do not need to consider the appellant's claim that section 23 of the *Act* applies in this appeal. This is because section 23, the public interest override, does not apply to the section 14 exemption. Section 23 states that a compelling public interest can only override the exemptions in sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1. I consider the ministry's exercise of discretion below.

Exercise of discretion

[31] The section 49(a) exemption is 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. 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.

[32] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[13] The IPC cannot, however, substitute its own discretion for that of the institution.[14]

[33] The ministry submits that it properly exercised its discretion in accordance with the *Act*. It states that it did so in light of the particularly sensitive nature of the records in question, and its specific concerns regarding the harmful effects of disclosure. The appellant does not provide specific representations on the ministry's exercise of discretion.

[34] I have reviewed the considerations relied upon by the ministry and I find that it properly exercised its discretion in response to the access request. Based on its representations, it is clear that it considered the purposes of the *Act* and sought to

[13] Order MO-1573.
[14] Section 54(2).

balance the appellant's interest in accessing the records with the importance of ensuring the security of the prison. There is no evidence that the ministry exercised its discretion to withhold the records for any improper purpose or in bad faith, or that it considered irrelevant factors or failed to take relevant factors into account. Accordingly, I uphold the ministry's exercise of discretion.

Issue B: Did the ministry conduct a reasonable search for records?

[35] The appellant claims that additional records responsive to his request exist. If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.[15] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[36] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[16]

[37] The *Act* does not require the institution to prove with certainty that further records do not exist.[17] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[18] that is, records that are "reasonably related" to the request.[19]

[38] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[20] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[21]

Representations, analysis, and finding

[39] The ministry provides affidavits from two employees responsible for the searches. One employee, a healthcare manager at the prison, was responsible for searching for the appellant's medical records. The other employee, a records clerk, was responsible for providing the other records in the appellant's file. The ministry states that it was unable to provide an affidavit documenting its search for video records as the employee who conducted the search was no longer employed by the Ontario Public Service at the time

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[15] Orders P-85, P-221 and PO-1954-I.
[16] Order MO-2246.
[17] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[18] Orders P-624 and PO-2559.
[19] Order PO-2554.
[20] Orders M-909, PO-2469 and PO-2592.
[21] Order MO-2185.

of the inquiry.

[40] In the two affidavits, the employees affirm that they searched where the responsive records would be expected to be located, and that no additional records exist. They further affirm that they are not aware of any other location that would have responsive records, and state that they have no reason to believe that responsive records would have been destroyed. With respect to the video records, the ministry states that, although it did not provide an affidavit, the volume of video records that it identified as responsive is strong evidence of its search efforts.

[41] The appellant generally submits that the records he received are incomplete. He submits that while the second search that the ministry conducted only produced 92 pages of records, only six of these pages were new, with the rest being duplicates. The appellant provides a 27-page appendix outlining all of the records that he states he should have received.

[42] In response to receiving the appellant's appendix, the ministry reiterates that its search efforts were reasonable. It also explains that the missing pages that the appellant outlined in the appendix are within the disclosure package, but are merely out of order.

[43] Reviewing the appendix the appellant provides, I note that he is generally seeking additional information about his time at the prison, much of which would not be captured by his original request. For example, the appellant states that he is seeking body camera footage from a specified date, as well as a complete list of all of his visitors, the license numbers for all physicians, psychiatrists, and nurses involved in his care, and copies of all of his outgoing mail. In my view, these records would be outside the scope of the appellant's original request.

[44] For the records that the appellant submits are missing in the package that he received, I agree that this is generally explained by the records being out of order. In any case, even if pages appear to be missing, the *Act* does not require the ministry to prove with certainty that further records do not exist, only that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.

[45] Reviewing the ministry's affidavits and explanations of its search efforts, I find that it has met this threshold: the appellant asked for records about his stay at the correctional centre, and the ministry searched the only places these records would reasonably be expected to be located, and provided him with the records. The remedy in cases where an institution has not demonstrated that a reasonable search was conducted is to order another search. In the circumstances, where the ministry has already conducted multiple searches in the only places that records would reasonably be expected to be located, I do not find that ordering another search of the same locations is appropriate.

[46] Accordingly, I uphold the ministry's search efforts.

ORDER:

I dismiss the appeal.

Original Signed by:	July 23, 2025
Chris Anzenberger Adjudicator	