Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4687

Appeal PA22-00307

Ministry of the Solicitor General

July 25, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Solicitor General for access to correctional centre records. The ministry denied access in full to the responsive records under section 49(a), read with various law enforcement exemptions in section 14(1), the discretionary personal privacy exemption at section 49(b), and the exemption for confidential correctional records at section 49(e) of the *Act*.

In this order, the adjudicator partially upholds the ministry's decision. She finds the exemption for correctional records at section 49(e) applies to the written records, and that the discretionary personal privacy exemption in section 49(b) applies to some of the video footage. However, she orders the ministry to disclose a redacted copy of the video footage to the appellant, which she finds is not exempt under section 49(b).

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

Orders Considered: Order PO-2911.

OVERVIEW:

[1] The appellant visited the Central East Correctional Centre (CECC) to pick up property for an inmate and an incident occurred between him and various CECC staff, including security staff. After the incident, the Ministry of the Solicitor General (the ministry) received the following request under the *Freedom of Information and Protection*

of Privacy Act (the *Act*):

> Event date: 2022/03/29 @ 14:55 HRS – 15:30 HRS
>
> Event location: Central East Correctional Centre Front Reception Area
>
> I am requesting CCTV footage from the front lobby reception area of the institution for the time specified above
>
> Also requesting all the officers badge numbers that were involved in the incident (4 [sergeants] and female behind reception window)
>
> Officer #[specified number] notes from the incident
>
> All officer notes that were involved in the event
>
> All notes from Deputy [named person] regarding the incident

[2] The ministry issued a decision denying access in full to the records. Access was withheld under section 49(a), read with sections 14(1)(i) (security), 14(1)(j) (facilitate escape from custody), 14(1)(k) (security), 14(1)(l) (facilitate commission of an unlawful act), and 14(2)(d)[1] (correctional record); section 49(b) (personal privacy); and section 49(e) (confidential correctional record) of the *Act*.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.

[4] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.

[5] In this order, I partially uphold the ministry's decision. I find that section 49(e) applies to exempt the written records from disclosure, and the discretionary personal privacy exemption in section 49(b) applies to exempt some of the video footage. However, I order the ministry to disclose a redacted copy of the video footage to the appellant, which I find is not exempt under section 49(b).

RECORDS:

[6] The records at issue in this appeal consists of 8 pages of occurrence reports, and approximately 35 minutes of video footage.

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[1] During the inquiry, the ministry withdrew its section 14(2)(d) claim.

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(e) apply to the occurrence reports?

C. 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 video footage?

D. Does the discretionary personal privacy exemption at section 49(b) apply to the video footage?

DISCUSSION:

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

[7] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[8] The ministry claims that the discretionary exemptions at sections 49(a), 49(b), and 49(e) apply to the withheld information. For these sections to apply, the IPC must first determine that the record contains "personal information," and if so, to whom the personal information relates. 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.[2] Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.[3]

[9] Section 2(1) of the *Act* gives a list of examples of personal information.[4] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[5]

[10] 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.

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[2] Under sections 47(1) and 49 of the *Act,* a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.
[3] Sections 21(1) and 49(b), as discussed below.
[4] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."
[5] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[6] See also sections 2(3) and 2(4), which state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[11] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.[7]

[12] The parties do not dispute, and I find, that the records contain the personal information of the appellant and other identifiable individuals, including the CECC staff.

[13] The occurrence reports mainly contain the views and opinions of the CECC staff, and their views and opinions about the appellant. The video footage contains the personal information of the appellant and the other identifiable individuals, specifically their images and movements, which were captured by the video cameras. The other identifiable individuals are largely unrelated to the appellant, and they simply happened to be in the entrance/reception area of the CECC when the incident occurred.

[14] While the CECC staff appear in the video footage in their professional capacity, I find that the video footage also contains their personal information because disclosure of the video footage would reveal something of a personal nature about them.

[15] Accordingly, as the records contain the personal information of the appellant and other individuals, I will consider the appellant's access to the withheld information under Part III of the *Act*.

Issue B: Does the discretionary exemption at section 49(e) apply to the occurrence reports?

[16] The ministry submits that section 49(e) applies to the occurrence reports in this appeal, while the appellant argues that the occurrence reports should be disclosed.

[17] 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. Under section 49(e), the

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[6] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[7] Orders P-1409, R-980015, PO-2225 and MO-2344.

institution may refuse to disclose a correctional record in certain circumstances. 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[.]

Representations of the parties

[18] The ministry submits that the occurrence reports are correctional records for the purposes of section 49(e) for the following reasons:

- The occurrence reports were prepared by the CECC staff in relation to an incident that happened in the correctional institution. The occurrence reports were completed by staff in the course of discharging their employment duties;

- The occurrence reports are contained on prescribed forms that the ministry collects for the purpose "of documenting facts concerning a particular event," as stated on the form. The form is used for the purpose of achieving the statutory mandate of the ministry as set out in section 5 of the *Ministry of Correctional Services Act* (to supervise the detention of inmates); and,

- The incident that led to the occurrence reports being created concerned a visit by the appellant to an inmate at the CECC. The ministry submits that while the records may not be directly about an inmate, there is a sufficient connection between the records and the inmate to bring them within the scope of section 49(e).

[19] The ministry submits that disclosure of the occurrence reports could be expected to reveal information that was "supplied in confidence" for the following reasons:

- The occurrence reports are correctional records that contain information about the incident involving the appellant supplied in confidence to the superintendent of the CECC by staff. The ministry submits that the superintendent has a statutory responsibility for administering correctional institutions, and the candid and complete communication of sensitive information from the CECC staff to the superintendent is critical to discharging that responsibility;

- Disclosure of the occurrence reports could reveal personal information, including the personal opinions or views of the CECC staff who submitted their recollections of the incident involving the appellant to the superintendent in confidence;

- The occurrence reports were prepared exclusively for the superintendent and are identified in this manner. There is no indication they were meant to be provided to anyone else; and,

- The contents of the occurrence reports contain sensitive information about the incident. In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, the Ontario Court of Appeal found that sensitive records are an indicator that the information contained in them is "supplied in confidence" in accordance with section 49(e).[8]

[20] The appellant's representations do not specifically address whether the occurrence reports are "correctional records." The appellant submits that he was attending the CECC to pick up property for an inmate and that the occurrence reports should be disclosed to the public to hold the ministry accountable.

Analysis and findings

[21] Based on my review of the occurrence reports and the representations of the parties, I find that section 49(e) applies to exempt them from disclosure. I accept the ministry's position that despite the information not being about a particular inmate, there is enough of a connection to bring the occurrence reports under section 49(e).

[22] To qualify for exemption under section 49(e), the ministry need only 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 go further and demonstrate, on detailed and convincing evidence, that a particular harm would result if the information were to be disclosed.[9]

[23] The term "correctional record" is not defined in the *Act*. In Order PO-2456, the adjudicator explored the scope of the definition of "correctional record" as it applies in the section 49(e) exemption. He states:

> The origin and purpose of a record must be considered in determining whether it is a "correctional record". To treat every record in a correctional authority's files as a "correctional record" regardless of source or purpose would broaden the section 49(e) exemption unacceptably and would not be consistent with the purposes of the *Act*.
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> In summary, "correctional records" may include records created and maintained by institutions with correctional functions in the course of and for the purpose of these functions, but will not generally include purely administrative records. Correctional functions include the punishment and rehabilitation of offenders after a finding of wrong-doing, through programs such as imprisonment, parole and probation, but not matters such as investigation, prosecution, court proceedings, and pre-trial and pre-

[8] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2011 ONCA 32 (C.A.) at paragraph 54.
[9] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2011 ONCA 32 (C.A.).

> sentence detention. Nor do "correctional records" include standard documents routinely created and maintained by other organizations just because those documents have been supplied to an institution with correctional functions and have been placed in a file relating to these functions. [Emphasis added].

[24] I acknowledge that the incident involving the appellant is not a typical occurrence at the CECC and it is not directly about an inmate. However, based on the circumstances of this appeal, I find that there is a sufficient connection between the records, the inmate, and the CECC to bring them within the scope of section 49(e).

[25] Previous IPC orders have found that occurrence reports containing information reported by correctional personnel to the superintendent of the detention centre are correctional records under section 49(e).[10]

[26] The occurrence reports were created by the CECC, which is a ministry operated correctional institution, as that term is defined in the *Ministry of Correctional Services Act* (*MCSA*). The occurrence reports are on forms that state the "information is collected under the authority of the *MCSA* for the purpose of documenting facts concerning a particular event." The information in the occurrence reports relates to the appellant's attendance at a correctional centre to pick up property for a particular inmate who is incarcerated at the CECC. The occurrence reports were created as part of the duties of the correctional institution and its staff. The occurrence reports document the incident that occurred between the CECC staff and the appellant at the CECC.

[27] Given all this, I find that the occurrence reports constitute "correctional records" as contemplated by section 49(e) of the *Act*. After making that finding, I must now determine whether disclosure of the occurrence reports could reasonably be expected to reveal information supplied in confidence.

[28] I find that disclosure of the occurrence reports could reasonably be expected to reveal information that was "supplied in confidence." Previous IPC orders have 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).[11]

[29] The occurrence reports are contained in forms that indicate the only intended recipient is the superintendent. The occurrence reports consist of statements made by the CECC staff about the incident involving the appellant and how they handled the incident. They contain detailed descriptions about what happened from a variety of perspectives and the actions taken by the CECC staff. Considering the sources, the detailed and candid nature of the statements, and the context of the incident itself, I find that the CECC staff who gave these statements had a reasonable expectation that they

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[10] Order PO-3281-I.
[11] Orders PO-3080 and PO-3281-I.

would be kept confidential, particularly from the appellant. The content and the nature of the information contained in the occurrence reports support the conclusion that the CECC staff did not intend for anyone other than the superintendent to view them.

Exercise of discretion

[30] The section 49(e) exemption is discretionary, meaning that the ministry can decide to disclose information even if the information qualifies for exemption. The ministry must exercise its discretion. On appeal, I may determine whether the ministry failed to do so.

[31] The ministry submits it exercised its discretion appropriately to withhold the occurrence reports because their disclosure would be contrary to public expectations and the public interest by revealing highly sensitive personal information. The ministry also submits that its historic practice is not to disclose correctional records of this nature.

[32] The appellant submits that he disagrees with the ministry's historic practice to not disclose correctional records. He submits that the occurrence reports should be disclosed to hold the ministry accountable.

[33] After considering the parties' representations and the circumstances of this appeal, I find that the ministry did not err in its exercise of discretion with respect to its decision to deny access to the occurrence reports under section 49(e) of the *Act*. I am satisfied that the ministry considered relevant factors and did not consider irrelevant factors in its exercise of discretion.

[34] Accordingly, I find that the ministry exercised its discretion in an appropriate manner in this appeal, and I uphold it. Therefore, I find that section 49(e) applies to exempt the occurrence reports from disclosure.

[35] Since I have found that section 49(e) applies to the occurrence reports at issue, I will not consider whether the other exemptions claimed by the ministry also apply. The only record remaining at issue in this appeal is the video footage.

Issue C: 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 video footage?

[36] The ministry claims that section 49(a), read with the sections 14(1)(i), (j), and (k) exemptions, applies to the video footage at issue, while the appellant claims that it does not.

[37] 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.

[38] 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.[12]

[39] In this case, the ministry relies on section 49(a), read with sections 14(1)(i), (j), and (k). These sections apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Sections 14(1)(i), (j), and (k) state:

> A head may refuse to disclose a record where 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;
> >
> > (k) jeopardize the security of a centre for lawful detention; or

[40] 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.[13]

[41] However, the exemption does not apply just because a continuing law enforcement matter exists,[14] 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.*[15]

[42] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[16] 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

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[12] Order M-352.
[13] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[14] Order PO-2040 and *Ontario* (*Attorney General*) *v. Fineberg*, cited above.
[15] Orders MO-2363 and PO-2435.
[16] *Merck Frosst Canada Ltd.* v. *Canada* (*Health*), [2012] 1 S.C.R. 23.

information.[17]

Representations, analysis and findings

[43] The ministry submits that section 49(a), read with the sections 14(1)(i), (j), and (k) exemptions, apply to the video footage at issue. The ministry submits that in the context of this appeal, the exemptions claimed are similar and it has grouped its representations together. The ministry states that the exemptions relate to "the security of a correctional institution" or "endanger the safety of a building as well as the systems and procedures related to it."

[44] The ministry notes that the video footage captures an interior entrance at the CECC used by anyone accessing the main entrance. The ministry submits that the disclosure of the video footage could be reasonably expected to harm the security of the CECC because it would reveal the configuration and layout of the CECC's entrance area, including the front desk and the precise location of security cameras. In support of its position, the ministry cited Order PO-2911, in which the IPC made a similar finding about video capturing the interior of a correctional institution.

[45] The appellant submits that the video footage is of an area that is publicly accessible, and anyone can walk in and take a photograph with their smartphone and have a copy of the layout. The appellant submits that he only wants the video footage because he alleges that he was bullied, intimidated, and threatened during this interaction with ministry staff, and he is not interested in gaining sensitive information. His representations did not specifically address the ministry's claim that certain law enforcement exemptions apply.

[46] As noted above, the ministry grouped its submissions for each law enforcement provision it relies upon with section 49(a). Accordingly, I have decided to group my findings in a similar manner.

[47] For section 14(1)(i) (endanger security of a building, vehicle, system or procedure) to apply in this appeal, 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 of a system or procedure established for the protection of items, for which protection is reasonably required.

[48] For section 14(1)(j) (facilitate escape from lawful custody) 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.

[49] For section 14(1)(k) (jeopardize the security of a centre for lawful detention) to

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[17] *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.

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.

[50] Based on my review of the video footage and the representations of the parties, I find that section 49(a), read with the various section 14(1) law enforcement exemptions, does not apply to exempt the video footage from disclosure.

[51] In support of its position, the ministry argued that Order PO-2911 is applicable in the circumstances of this appeal. I am not persuaded that it is applicable. In Order PO-2911, the video was shot at a maximum security institution showing the exact layout of the day space area that is occupied by inmates. The adjudicator in that order found that disclosure of the video footage could pose a security risk if it were released to the public because "the video could suggest potential security vulnerabilities by revealing the manner in which the day space is recorded by the video camera."

[52] In this appeal, the video footage shows what appears to be the main public entrance of the CECC leading to a small, enclosed vestibule, followed by a second set of doors that lead to the front-desk reception area, then the inside of the front-desk reception area itself. These areas are all open to the public and are not occupied by any inmates. As the appellant submits, any member of the public could enter and ascertain the layout of this area unlike a day area that is occupied by incarcerated inmates as in Order PO-2911. Therefore, I am not persuaded that disclosure of the video footage would jeopardize "the security of a correctional institution" or "endanger the safety of a building as well as the systems and procedures related to it."

[53] Furthermore, inside the vestibule before entering the front-desk reception area, there is a large sign that states: "These premises are monitored by closed circuit television cameras & video recording equipment for your safety & security." Therefore, anyone entering the CECC would be aware that there are video cameras capturing their image and movements and likely be able to visually confirm their positions.

[54] For the reasons above, I find that the ministry has not established any of the harms in sections 14(1)(i), (j), and (k), and I find that section 49(a), read with these exemptions, does not apply to exempt the video footage from disclosure. I must now determine whether the section 49(b) exemption applies to exempt the video footage from disclosure.

Issue D: Does the discretionary personal privacy exemption at section 49(b) apply to the video footage?

[55] The ministry submits that section 49(b) applies to the video footage because its disclosure would be an unjustified invasion of personal privacy of the individuals whose image and movements are captured by the video footage.

[56] The appellant concedes that the video footage contains the images of other identifiable individuals, but he suggests that their images and any sensitive information can be severed from the footage.

[57] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[58] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.[18]

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

[60] Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.[19]

[61] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 21(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 49(b). Similarly, if any of the situations in section 21(4) apply, disclosure would not be an unjustified invasion of personal privacy under 49(b). If any of sections 21(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[62] Sections 21(2) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[20] The list of factors is not exhaustive. The institution must also consider circumstances that are relevant, even if they are not listed under section 21(2).[21]

[63] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker[22] must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[23]

[64] The parties did not argue, and from my review, I am satisfied that sections 21(1), 21(3), and 21(4) do not apply in the circumstances before me and will not discuss them

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[18] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 49(b).
[19] Order PO-2560.
[20] Order P-239.
[21] Order P-99.
[22] The institution or, on appeal, the IPC.
[23] Order MO-2954.

further in this order. I will consider below whether any of the factors in section 21(2) or any unlisted factors are relevant.

Section 21(2) factors

[65] The appellant did not specifically argue that any of the section 21(2) factors weighing in favour of disclosure apply to the withheld video footage. However, he states that he wants the video footage to review what happened and "possibly take legal action." This may be interpreted as the appellant raising the factor at section 21(2)(d) (fair determination of rights). However, the appellant's representations did not elaborate on this claim, and he has not met the four-part test for section 21(2)(d) to apply. Therefore, I find that section 21(2)(d), which weighs in favour of disclosure, does not apply in the circumstances of this appeal.

[66] As noted above, the appellant did not specifically argue that any of the other listed factors in section 21(2) weighing in favour of disclosure apply to the withheld video footage. From my review of the circumstances of this appeal, I find that none apply. I also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply, and I find that none apply in the circumstances of this appeal.

[67] The ministry submits that the highly sensitive factor at section 21(2)(f) applies weighing against disclosure of the video footage because it contains the images and movements of the other identifiable individuals. The ministry states that most of these individuals were captured by the cameras near the CECC entrance because they were there at the same time as the incident involving the appellant. The ministry argues that the video footage would reveal that these individuals were at a correctional institution, which could be stigmatizing enough to cause distress envisioned by section 21(2)(f). The ministry further argues that this is magnified by the reality that any record disclosed to the appellant could be subsequently widely disseminated without restrictions. The ministry submits that these individuals have a heightened expectation of privacy due to the CECC being a correctional institution.

[68] Section 21(2)(f) 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.[24] For example, personal information about witnesses, complainants, or suspects in a police investigation may be considered highly sensitive.[25] Based on the circumstances of this appeal, I am satisfied that the information in the video footage can be considered to be "highly sensitive," given that it captures the images of identifiable individuals present at the CECC during the incident involving the appellant.

[24] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[25] Order MO-2980.

Summary

[69] As noted above, I am satisfied that none of the situations in section 21(1) and 21(4), or the presumptions at section 21(3), apply in the circumstances of this appeal. As I found that no listed or unlisted factors weighing in favour of disclosure apply and that section 21(2)(f) applies to weigh against disclosure, I find that disclosure of the video footage to the appellant would constitute an unjustified invasion of personal privacy under section 49(b). Accordingly, I find the personal information in the video footage is exempt from disclosure under section 49(b).

Exercise of discretion

[70] The section 49(b) exemption is discretionary, meaning that the ministry can decide to disclose information even if the information qualifies for exemption. The ministry must exercise its discretion. On appeal, I may determine whether the ministry failed to do so.

[71] The ministry submits it exercised its discretion appropriately considering its concern that disclosure of the video footage would put the security of the CECC at risk. The ministry further submits that disclosure would be contrary to public expectations and the public interest by revealing highly sensitive personal information. Finally, the ministry notes that its historic practice is not to disclose records of this nature.

[72] After considering the parties' representations and the circumstances of this appeal, I find that the ministry did not err in its exercise of discretion with respect to its decision to deny access to the video footage under section 49(b) of the *Act*. I am satisfied that the ministry considered relevant factors and did not consider irrelevant factors in its exercise of discretion. In particular, it is evident that the ministry considered the fact that the video footage contains the appellant's own personal information and balanced it against the privacy rights of the other identifiable individuals whose personal information also appears in the footage.

[73] Accordingly, I find that the ministry exercised its discretion to withhold the video footage in an appropriate manner, and I uphold it.

Severance

[74] While I have found that the section 49(b) exemption applies to the video footage, I must determine whether any information found exempt can be reasonably severed from non-exempt information, such as the appellant's own image.

[75] Section 10(2) provides that the ministry "… shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions."

[76] As noted above, the video footage captures the images of the appellant, the CECC staff, and other identifiable individuals in the entrance/reception area of the CECC. In my

view, the exempt information (the images of the other identifiable individuals and the CECC staff) from non-exempt information (the images of the appellant) in the video footage can be reasonably severed. The video footage follows the appellant in and out of the entrance/reception area of the CECC while various individuals and the CECC staff walk in and out of frame. Most of the uniformed CECC staff appear during the latter part of the video when they interact with the appellant.

[77] I find that it is sufficient to blur the faces of the uniformed CECC staff because they are wearing the same uniform and it is unlikely that they can be identified from their uniform. However, I find that the images of the other individuals and the CECC staff should be severed using a fully-body redaction tool or obscuring technology because they may still be identified from the clothing they are wearing. Given the proximity of the individuals to the appellant, the obscuring method used by the ministry may overlap with the appellant's image. However, severing the video footage in this manner is in keeping with section 10(2) which directs the ministry to disclose as much of the record as can reasonably be severed without disclosing exempt information.

Conclusion

[78] I find that most of the video footage qualifies for exemption under section 49(b) and uphold the ministry's decision to withhold this information. However, I find that the exempt portions in the video footage can be reasonably severed from non-exempt portions and order the ministry to use a redaction tool or obscuring technology to disclose the non-exempt portions to the appellant.

ORDER:

1. I order the ministry to sever the images of the CECC staff and other identifiable individuals in the video footage, leaving only the appellant. I order the ministry to disclose the severed video footage to the appellant by **August 29, 2025**, but not before **August 24, 2025**.

2. I otherwise uphold the ministry's access decision.

3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the video footage disclosed to the appellant in accordance with provision 1.

Original Signed by: July 25, 2025

Anna Truong
Adjudicator