Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3466

Appeal MA13-375

London Police Services Board

July 10, 2017

Summary: The appellant made a request to the London Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the complete investigation file relating to a specific incident involving him. The police located voluminous records and granted the appellant access, in part, claiming a number of exemptions as well as one exclusion. During the mediation of the appeal, the appellant raised the issue of reasonable search. In this order, the adjudicator upholds the police's decision, in part. She finds that the majority of the records are either excluded from the *Act* under section 52(3) (employment or labour relations) or exempt from disclosure under sections 38(b) (personal privacy) and 38(a) (discretion to refuse requester's own information) in conjunction with sections 7(1) (advice or recommendations), 8(1) (law enforcement), 8(2)(a) (law enforcement report), 9(1)(d) (relations with other governments), 12 (solicitor-client privilege) and 15(a) (information published or available to the public) the *Act*. She also upholds the police's exercise of discretion and its search for records responsive to the request. The police are ordered to disclose one record to the appellant that is not exempt.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 7(1), 8(1)(c), 8(1)(d), 8(1)(e), 8(1)(g), 8(1)(h), 8(2)(a), 9(1)(d), 12, 15(a), 38(a), 38(b) and 52(3).

Orders and Investigation Reports Considered: MO-1913, MO-1972-R, MO-2422 and MO-2534.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access

decision made by the London Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for the complete police investigation file regarding an incident involving the requester, which led to a conviction on the charge of attempted murder.

[2] The police claimed a time extension and then issued an initial access decision granting access in part to the 2116 pages that had been identified as responsive to the request. The police withheld records, or portions thereof, claiming the discretionary exemptions in section 38(a) (discretion to refuse access to requester's personal information) in conjunction with sections 7(1) (advice or recommendations), 8(1)(c) (reveal investigative techniques and procedures), 8(1)(d) (confidential source of information), 8(1)(g) (intelligence information), 8(1)(h) (security), 8(1)(l) (facilitate commission of an unlawful act), 8(2)(a) (law enforcement report), 8(2)(b) (disclosure would constitute an offence), 9(1)(d) (relations with other governments), 12 (solicitor-client privilege), 13 (danger to safety or health) and 15(a) (publicly available), as well as the discretionary exemption in section 38(b) (personal privacy).

[3] The requester (now the appellant) appealed the police's decision to this office.

[4] During the mediation of the appeal, the police issued a revised access decision to the appellant, granting access to publicly available newspaper articles that formed part of the records at issue.[1] The following day, the police issued a second revised access decision, adding the discretionary exemption in section 8(1)(e) (endanger life or safety) to some of the records. The police then issued another revised decision to the appellant, partially disclosing an audio recording of the appellant's interview that the police conducted during the investigation. The police denied access to the remainder of the tape, claiming the application of the exemptions in section 38(a) in conjunction with sections 8(1)(e) and 13, as well as section 38(b). The police then issued a further revised decision, granting the appellant access to an additional publicly-available record.[2] As a result, publicly available newspaper articles (which formed part of the records at issue) are no longer at issue in this appeal.

[5] The appellant then advised the mediator that he was no longer pursuing access to the withheld police codes, duplicate records (of which there are many), information that was identified as non-responsive to the request, or the birthdates, phone numbers and addresses of other individuals. Consequently, this information (and section 8(1)(l)) is no longer at issue in this appeal. The appellant also advised the mediator that he believed further records should exist, including forensic evidence, such as DNA and fingerprint records. As a result, reasonable search was added as an issue in the appeal.

[6] Also during mediation, the police advised the mediator that they were now claiming the application of the exclusion in section 52(3) (employment and labour relations) to page 246 of the records.

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[1] Pages 317, 735 and 1069-1082 were disclosed in their entirety.
[2] Page 1289.

[7] The appeal was then transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to the file sought and received representations from the police and the appellant. The police's representations were shared with the appellant. Portions of the police's representations were not shared with the appellant because they met this office's confidentiality criteria set out in *Practice Direction 7*. While I will not be re-producing the confidential representations in this order, I have taken them into consideration in making my findings.

[8] The appellant's representations, while extensive and encompassing a range of topics, do not address the issues raised as a result of this appeal, with the exception of Issue J (reasonable search).

[9] The appeal was then transferred to me for final disposition. For the reasons that follow, I uphold the police's decision, in part. I find that the majority of the records are either excluded from the *Act* or exempt from disclosure under the *Act*. I uphold the police's exercise of discretion and its search for records responsive to the request. I order the police to disclose one record to the appellant that is not exempt from disclosure.

RECORDS:

[10] The records consist of occurrence reports, witness statements, officers' notes, letters, memoranda, forensic evidence reports, records provided from third parties, and an audio tape. There is extensive duplication of some of the records.

ISSUES:

A. Does section 52(3) exclude page 246 from the scope of the *Act*?

B. Do the records contain personal information as defined in section 2(1) and, if so, to whom does it relate?

C. Does the discretionary exemption in section 38(b) apply to the information?

D. Does the discretionary exemption in section 38(a) in conjunction with section 7(1) apply to the records?

E. Does the discretionary exemption in section 38(a) in conjunction with sections 8(1) and 8(2)(a) apply to the records?

F. Does the discretionary exemption in section 38(a) in conjunction with section 9(1)(d) apply to the records?

G. Does the discretionary exemption in section 38(a) in conjunction with section 12 apply to the records?

H. Does the discretionary exemption in section 38(a) in conjunction with section 15(a) apply to the records?

I. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

J. Did the police conduct a reasonable search for records?

DISCUSSION:

Issue A. Does section 52(3) exclude page 246 from the scope of the *Act*?

[11] The police are claiming the application of the labour relations and employment exclusion in section 52(3) to page 246. The relevant part of section 52(3) states:

> Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[12] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[13] For the collection, preparation, maintenance or use of a record to be in relation to the subjects mentioned in paragraph 3, above, it must be reasonable to conclude that there is some connection between them.[3]

[14] The term labour relations refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of labour relations is not restricted to employer-employee relationships.[4] The term employment of a person refers to the relationship between an employer and an employee. The term employment-related matters refers to human resources or staff relations issues arising from the relationship between an employer and employers that do not arise out of a collective bargaining relationship.[5]

[15] If section 52(3) applied at the time the record was collected, prepared,

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[3] Order Mo-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

[4] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

[5] Order PO-2157.

maintained or used, it does not cease to apply at a later date.[6]

[16] The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[7]

[17] For section 52(3)3 to apply, the police must establish that:

> 1. the records were collected, prepared, maintained or used by an institution or on its behalf;
>
> 2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
>
> 3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[18] The phrase *labour relations or employment-related matters* has been found to apply in the context of an employee's dismissal,[8] a grievance under a collective agreement,[9] and disciplinary proceedings under the *Police Services Act*.[10] The phrase has been found not to apply in the context of an organizational or operational review,[11] or litigation in which the institution may be found vicariously liable for the actions of its employee.[12]

[19] The phrase *in which the institution has an interest* means more than a mere curiosity or concern, and refers to matters involving its own workforce.[13] The records collected, prepared, maintained or used by the institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions.[14]

[20] The police state that an investigating officer submitted their report for approval by the police's auditing unit. The auditors then identified a correction to the report that was required. The police submit that in these circumstances, the reports are directed back to the officer by way of critique. They go on to state that this is a procedure used by the police to correct deficiencies in reports and as a means of monitoring the

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[6] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[7] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457 (Div. Ct.).
[8] Order MO-1654-I.
[9] Orders M-832 and PO-1769.
[10] Order MO-1433-F.
[11] Orders M-941 and P-1369.
[12] Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.
[13] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.
[14] *Ministry of Correctional Services*, cited above.

performance of officers. These critiques, the police state, are then sent to the investigating officer as well as their Supervisor/Sergeant. The Sergeants are required to monitor the performance of their officers and provide corrective measures in the event of re-occurring critiques. These critiques could result in entries onto the officer's performance management occurrence report. These same reports are viewed by the Sergeants when completing the officer's annual performance appraisal.

[21] The police go on to state:

> The information contained in these Performance Appraisal Reports has [a] direct impact on an officer's standard *reclassification* schedule. As well, these reports have a direct impact on any internal job competition the officer may choose to compete for.
>
> . . .
>
> It is respectfully submitted that such proceedings are clearly relating to the employment of a person by the institution, since the performance of the police officer is carefully monitored by the institution and a culmination of such critiques could affect job competitions, or have disciplinary consequences.[15]

[22] In Order MO-1913, former Adjudicator Bernard Morrow considered the application of section 52(3)3 to one page of a record, which was the same type of record as the one before me, that is, a document that critiques the manner in which an investigating officer completed an occurrence report. Adjudicator Morrow was satisfied that this critique was prepared for the purpose of monitoring and evaluating the investigating officer's job performance. He accepted the police's explanation that this critique could be taken into account in the completion of an officer's annual performance appraisal and also that this information could result in disciplinary proceedings or have a direct effect on the officer's future employment prospects. He was also satisfied that the preparation and proposed use of the critique for job evaluation purposes had clear implications for both the investigating officer and the police in regard to their employment relationship. He concluded that a communication relating to the officer's employment performance would be a matter in which the police had an interest that was more than mere curiosity or concern.

[23] Having found that the three-part test in section 52(3)3 was met, Adjudicator Morrow concluded that the record was subject to the exclusion and that none of the exceptions in section 52(4) applied. I agree with and adopt the approach taken by Adjudicator Morrow and, on this basis, I find that section 52(3)3 applies to page 246. Consequently, this page is excluded from the scope of the *Act*.

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[15] The police rely on Order MO-1913 in support of their position that this record is excluded from the scope of the *Act* by section 52(3)3 of the *Act*. The institution in Order MO-1913 was the same police service board as in the current appeal.

Issue B. Do the records contain personal information as defined in section 2(1) and, if so, to whom does it relate?

[24] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.[16] Where the records contain the requester's own personal information, either alone or together with the personal information of other individuals, access to the records is addressed under Part III of the *Act*. Where the records contain only personal information belonging to individuals other than the appellant, access to the records is addressed under Part II of the *Act*. Therefore, in order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains personal information and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> 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,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (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,
>
> (f) correspondence sent to an institution that is implicitly or explicitly of a private and confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where 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.

[25] Section 2(3) also relates to the definition of personal information and states:

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[16] Orders PO-2113 and PO-2331.

> 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.

[26] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be about the individual.[17] Even if the information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[18]

[27] The police submit that the records contain the personal information of the appellant and a number of other individuals. In particular, the police state that they conducted an investigation regarding an incident involving the appellant. Part of the investigation included conducting a search for the appellant following the incident. As part of that investigation, officers spoke with several individuals and, eventually, the appellant. The police submit that the personal information contained in the records includes these individuals' names, addresses, telephone numbers, dates of birth, gender, places of employment and the statements the police collected. The police also submit that the records contain the appellant's personal information.

[28] In addition, the police state that during the investigation and search for the appellant, a number of individuals who were interviewed were professionals, but were being spoken to as potential victims and witnesses. Given the nature of the investigation, the information provided by these individuals should be viewed as personal information.

[29] I have reviewed the records at issue and I am find that they contain the personal information of the appellant and several other individuals. In particular, regarding the appellant, the records contain the following personal information:

- Information relating to his national origin, age, sex and marital or family status, falling under paragraph (a) of the definition of personal information in section 2(1);
- Information relating to his psychiatric and criminal history, which falls within paragraph (b);
- Any identifying number assigned to the appellant, falling within paragraph (c) of the definition;
- The address of the appellant, which falls within paragraph (d) of the definition;
- The views or opinions of another individual about the appellant, falling within paragraph (g) of the definition; and

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

- The appellant's name, where it appears with other personal information relating to him, which falls within paragraph (h) of the definition.

[30] The records also contain a significant amount of personal information about other individuals, including:

- Information relating to their age, sex and family status (paragraph (a));
- Information relating to their employment history (paragraph (b));
- Information relating to one individual's medical history (paragraph (b));
- Correspondence that was sent to the police by individuals that is explicitly of a confidential nature (paragraph (f));
- The views or opinions of another individual about certain individuals (paragraph (g)); and
- The individuals' names where it appears with other personal information (paragraph (h)).

[31] In addition, while some of the individuals were contacted in their professional capacity, I find that the information about them in the records would reveal something of a personal nature about them, thereby qualifying as their personal information for the purposes of the *Act*.

[32] I will now determine whether the personal information at issue is exempt from disclosure under sections 38(a) and 38(b).

Issue C. Does the discretionary exemption in section 38(b) apply to the information?

[33] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. The police are claiming the application of the exemption in section 38(b) to numerous records.

[34] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an unjustified invasion of the other individual's personal privacy, the police may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the police may also decide to disclose the information to the requester.

[35] Section 38(b) states:

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

> If the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[36] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[37] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.[19] If any of the paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[38] Section 14(2) lists various factors that may be relevant in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy.[20] The list of factors is not exhaustive. The police must consider any circumstances that are relevant, even if they are not listed under section 14(2).[21]

[39] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b) because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[22]

[40] The police submit that the disclosure of other individuals' personal information to the appellant would constitute an unjustified invasion of these individuals' personal privacy. The police submit that two of the presumptions in section 14(3) apply to this personal information, as well as three of the factors, which do not favour disclosure, in section 14(2).

[41] In particular, the police submit that section 14(3) states that the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information: (a) relates to a medical, psychiatric, or psychological history, diagnosis, condition, treatment or evaluation; and (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[42] With respect to the presumption in section 14(3)(a), the police state that their investigation led to charging the appellant with attempted murder.[23] Some of the records at issue are the medical records of the victim of the attack, which the police argue should be treated with the utmost level of privacy protection.

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[19] Order MO-2954.
[20] Order P-239.
[21] Order P-99.
[22] Orders M-444 and MO-1323.
[23] The police note that the appellant was found to be Not Criminally Responsible of attempted murder, and is currently in an institution.

[43] Concerning the presumption in section 14(3)(b), the police submit that the records at issue were collected and created as part of their investigation into a possible violation of the *Criminal Code of Canada*, as referred to above.

[44] The police are also claiming that three factors found in section 14(2) apply to the personal information at issue. Section 14(2) states that a head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all relevant circumstances, including whether: (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm; (f) the personal information is highly sensitive; and (h) the personal information has been supplied by the individual to whom the information relates in confidence.

[45] With respect to the factor in section 14(2)(e), which does not favour disclosure of personal information, the police submit that the information was supplied by third parties while the police conducted their search for the appellant, who had yet to be arrested for attempted murder. The police argue that the disclosure of the third parties' personal information would place undue stress on these individuals, and could cause post-traumatic stress disorder or undue stress that could affect their personal lives.

[46] Concerning the factor in section 14(2)(f), which also does not favour disclosure, the police submit that the personal information at issue is highly sensitive, including sensitive medical information about the victim of the attempted murder, and information provided to the police by third parties. The police go on to state:

> If such information is released to the Appellant . . . it would cause undue stress to these individuals. At the time of the investigation, it would be stressful enough to be involved in questioning and providing information to officers to assist in the lawful arrest of someone accused of Attempt Murder, however, to have this information re-surface and to be released to the very one who was arrested and institutionalized as a result of the attempt murder charge after all these years could create anxiety and stress as to what this individual wants to do with it . . .

[47] Turning to the factor in section 14(2)(h), the police submit that it is reasonable for an individual to assume that the information they supply to the police during an investigation is done so in confidence. The police state:

> While these people were assisting the police with an investigation, albeit an investigation of a very serious nature, these people provided information to the police with an expectation that this information would be able to assist the police in the apprehension of the accused, to assist with prosecution of the accused but not for further personal use of anyone, including the accused (the Appellant).

[48] The police's representations also deal with the concept of absurd result. The police state that they did take into consideration that some of the records may be within the appellant's knowledge, but that they were acquired either through warrants,

seized as evidence, provided to the police by other government agencies, or provided by third parties who the police contacted during the search for the appellant.

[49] I find that the personal information of other individuals contained in the records is exempt from disclosure under section 38(b), subject to my findings regarding the police's exercise of discretion. I find that the presumption in section 14(3)(b) applies to the personal information at issue because it was compiled as part of the police's investigation into a violation of law. I also find that the presumption in section 14(3)(a) relates to some of the records because they contain information relating to the victim's medical diagnosis, condition, treatment and evaluation. I have also weighed the appellant's interests in the disclosure of the records with the presumptions referred to above, and I am satisfied that this balancing weighs in favour of non-disclosure.

[50] I further find that all of the personal information of others is highly sensitive and that there is a reasonable expectation of significant personal distress to these individuals if this information is disclosed. Therefore, I find that the factor in section 14(2)(f) weighs in favour of the non-disclosure of this information. I find, therefore, that disclosure of this personal information would constitute an unjustified invasion of the personal privacy of other individuals. I also note that in many of the records the personal information of the appellant is so intertwined with the personal information of other individuals that it would be impossible to sever the appellant's personal information from others.

[51] I note that two records consist of the audio CD of the police's interview with the appellant and the transcript of that interview. While I have considered the absurd result principle, I find that the limited personal information of other individuals in these records, that was withheld from the appellant is inherently sensitive, despite the fact that the appellant was present when it was disclosed during the interview. I remain of the view that this personal information is also exempt under section 38(b), subject to my findings regarding the police's exercise of discretion.

[52] Lastly, there are records containing solely the personal information of the appellant. I find that section 38(b) does not apply to the appellant's own personal information. However, the police have also claimed other exemptions to this information, which I consider, below.

Issue D. Does the discretionary exemption in section 38(a) in conjunction with section 7(1) apply to the records?

[53] The police claim that section 7(1) applies to pages 166, 167, 177, 181-184, 189, 199, 218, 219 and 221.

[54] Section 7(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

[55] The purpose of section 7 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[24]

[56] Advice and recommendations have distinct meanings. Recommendations refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[57] Advice has a broader meaning that recommendations. It includes policy options, which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. Advice includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[25]

[58] Advice involves an evaluative analysis of information. Neither of the terms advice or recommendations extends to objective information or factual material. Advice or recommendations may be revealed in two ways:

- The information itself consists of advice or recommendations; or
- The information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[26]

[59] The application of section 7(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 7(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 7(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[27]

[60] Examples of the types of information that have been found not to qualify as advice or recommendations include: factual or background material;[28] a supervisor's direction to staff on how to conduct an investigation;[29] and information prepared for public dissemination.[30]

[61] The police submit that the information for which they claimed this exemption consists of advice given to officers during the investigation, specifically what caution to

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[24] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 43.
[25] Ibid at paras. 26 and 47.
[26] Order P-1054.
[27] *John Doe v. Ontario (Finance)*, cited above, as para. 51.
[28] Order PO-3315.
[29] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[30] Oder PO-2677.

take during their search for the appellant. In each case, the advice or recommendations provide a suggested course of action for officers to take.

[62] Having read the records for which the police claim section 7(1), I find that, with one exception, none of them contain either advice or recommendations and are, therefore, not exempt from disclosure under section 7(1). The exception is one sentence contained on page 177, which sets out a recommendation to a decision-maker. I conclude that this sentence is exempt from disclosure under section 7(1), subject to my findings regarding the police's exercise of discretion.

[63] Concerning the remaining information at issue, the police are also claiming the application of other exemptions to these records, which I consider below.

Issue E. Does the discretionary exemption in section 38(a) in conjunction with sections 8(1) and 8(2)(a) apply to the records?

[64] The police are claiming the application of sections 8(1)(c), (d), (e), (g) and (h) to numerous records, as well as section 8(2)(a) to one record.

[65] The relevant portions of sections 8(1) and (2) state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
> >
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > . . .
> >
> > (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
> >
> > (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
>
> (2) A head may refuse to disclose a record,
>
> > (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

[66] The term law enforcement is used in several parts of section 8, and is defined in section 2(1) as follows:

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

[67] The term law enforcement has been interpreted to cover a police investigation into a possible violation of the *Criminal Code*.[31] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[32]

[68] It is not enough for the police to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[33] The police must provide detailed and convincing evidence about the potential for harm. They must demonstrate a risk of harm that is well beyond the merely possible or speculative although they need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[34]

Section 8(1)(c) – investigative techniques and procedures

[69] In order to meet the investigative technique or procedure test, the police must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[35]

[70] The police submit that during the course of this investigation, officers were deployed to conduct surveillance. They argue that there is information in the records regarding the manner in which surveillance was conducted, including the targets, locations, professionals who were contacted, and techniques which are not generally known to the public. The police provide further representations, which meet this office's confidentiality criteria.

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[31] Orders M-202 and PO-2085.
[32] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[33] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[34] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[35] Orders P-170, P-1487, MO-2347-I and PO-2751.

Section 8(1)(d) – confidential source

[71] The police must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.[36]

[72] The police submit that section 8(1)(d) applies as the records at issue contain the statements of other individuals given to them during the course of the investigation. The police argue that it is reasonable for citizens to assume that if they supply information to the police, the information will be held in confidence, especially in the case of an investigation into a serious crime. The police provide further representations, which meet this office's confidentiality criteria.

Section 8(1)(e) – life or physical safety

[73] A person's subjective fear, while relevant, may not be enough to justify the exemption.[37]

[74] The police state that section 8(1)(e) applies as they identified third parties from whom information was obtained as individuals whose life or physical safety could be endangered by the appellant, despite the fact that he is currently institutionalized. This endangerment, the police argue, could result in these individuals' living in fear.

Section 8(1)(g) – law enforcement intelligence information

[75] The term intelligence information means:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.[38]

[76] With respect to the application of section 8(1)(g), the police state:

> Section 8(1)(g) applies in this case as the type of information contained within the records at issue contain Police intelligence information and the disclosure of these records would reveal law enforcement intelligence information or would interfere with the ability to gather this type of information.

[77] The police also provided further representations, which meet this office's

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[36] Order MO-1416.
[37] Order PO-2003.
[38] Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

confidentiality criteria.

Section 8(1)(h) – record confiscated by a peace officer

[78] The purpose of this section is to exempt records that have been confiscated or seized by search warrant.[39] This exemption applies where the record at issue is itself a record which has been confiscated from a person by a peace officer, or where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer.[40]

[79] The police submit that section 8(1)(h) applies to evidence that was seized by it, including letters from the appellant, video evidence of the crime scene, documents for fingerprint evidence, medical records, photographs of physical evidence and other documents that were confiscated from third parties during the course of the investigation, pursuant to the *Police Services Act* R.S.O. 1990, Chapter P.15.

Section 8(2)(a) – law enforcement report

[80] In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the police must satisfy each part of the following three-part test:

- the record must be a report; and
- the report must have been prepared in the course of law enforcement, inspections or investigations; and
- the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.[41]

[81] The word *report* means a formal statement or account of the results of the collation and consideration of information. Generally, results would not include mere observations or recordings of fact.[42] The title of a document does not determine whether it is a report, although it may be relevant to the issue.[43]

[82] The police are claiming the application of section 8(2)(a) to pages 1023-1035 of the records. They state that these pages consist of a report, which is contained within an investigative report. The report was prepared by the Ontario Provincial Police's Threat Assessment Unit (the OPP) in the course of law enforcement. The police also submit that the OPP is an agency that has the function of enforcing and regulating compliance with the law.

[83] Based on my review of the records for which sections 8(1)(c), (d), (e), (g) and

[39] Order PO-2095.
[40] Order M-610.
[41] Orders P-200 and P-324.
[42] Orders P-200, MO-1238 and MO-1337-I.
[43] Order MO-1337-I.

(h) were claimed, and of the police's representations, I am satisfied that the police have provided sufficiently detailed and convincing evidence that these exemptions apply to the records at issue either in whole or in part, and I therefore find that they are exempt from disclosure, subject to my findings regarding the police's exercise of discretion.

[84] With respect to the application of section 8(2)(a) to pages 1023-1035, I find that they too are exempt from disclosure, subject to my findings regarding the police's exercise of discretion. These pages of records consist of a report, which constitutes the formal statements of the OPP's threat assessment unit, including their investigative findings and conclusions. Consequently, I find that these pages consist of a law enforcement report for the purposes of section 8(2)(a).

Issue F. Does the discretionary exemption in section 38(a) in conjunction with the mandatory exemption in section 9(1)(d) apply to the records?

[85] The police are claiming the application of the mandatory exemption in section 9(1)(d) to numerous records.

[86] Section 9 states:

> (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
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> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c); or
>
> (e) an international organization of states or a body of such an organization.
>
> (2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

[87] The purpose of this exemption is to ensure that governments under the jurisdiction of the *Act* continue to obtain records which other governments might otherwise be unwilling to supply without having this protection from disclosure.[44]

[88] If disclosure of a record would permit the drawing of accurate inferences with

[44] Order M-912.

respect to information received from another government, it may be said to reveal the information received.[45]

[89] For a record to qualify for this exemption, the institution must establish that:

- Disclosure of the record could reasonably be expected to reveal information which it received from one of the governments, agencies or organizations listed in the section; and

- The information was received by the institution in confidence.[46]

[90] The focus of this exemption is to protect the interests of the supplier of information, and not the recipient. Generally, if the supplier indicates that it has no concerns about disclosure or vice versa, this can be a significant consideration in determining whether the information was received in confidence.[47]

[91] The police rely on section 9(1)(d) and state that during the course of the investigation, reports and information were received from officers of other police agencies to assist with the investigation and were shared in the strictest of confidence. In this case, the police state they received information through the CPIC system, the Ministry of Transportation's (MTO) PARIS system and from various Ontario Provincial Police (OPP) detachments. The police contacted the OPP and information was shared to assist them in their search for the appellant, who was at large. With respect to the information received from the MTO, the police submit that it allows police services access to its databases for law enforcement purposes.

[92] In addition, the police submit that a number of the records were received from the Crown's office (the Ministry of the Attorney General) or copies of documents that were created for or directed to the Crown's office.[48]

[93] In all cases, the police argue that the information received was done so in the strictest of confidence and that the disclosure of such records would diminish the integrity of the confidence held between police agencies and government agencies. In addition, the police argue that disclosure of these records could jeopardize licensing, as well as future investigations both in the normal course of law enforcement and law enforcement matters handled in a covert manner.

[94] The police's representations do not address section 9(2).

[95] With two exceptions, I find that the exemption in section 9(1)(d) applies to the records at issue. I am satisfied that these records were supplied to the police by the Crown, the OPP, the MTO, and other provincial government agencies. I am also satisfied that the information provided to the police was done so in confidence. In

[45] Order P-1552.
[46] Orders MO-1581, MO-1896 and MO-2314.
[47] Orders M-844 and MO-2032-F.
[48] The police rely on Reconsideration Order MO-1972-R to support this position.

making this finding, I am mindful that past orders of this office have found that information received by a police service from the Crown Attorney's office was exempt under section 9(1)(d), due to the nature of the relationship between the Crown Attorney's office and the police, giving rise to a reasonable expectation of confidentiality surrounding the sharing of information.[49] Consequently, I find that section 9(1)(d) applies and these records are exempt from disclosure, subject to my findings regarding the police's exercise of discretion.

[96] Conversely, I find that two records do not qualify for exemption under section 9(1)(d). These records consist of court transcripts at pages 1222-1282 and a CPIC search result at pages 1287-1288. With respect to the court transcripts, I find that they do not qualify as having been provided in confidence by the Crown or received in confidence by the police, given that these court transcripts are publicly-available documents. As the purpose of this exemption is to protect the interests of the supplier of the information, I find that the Crown does not have a proprietary interest in publicly-available documents. Consequently, I find that the court transcripts are not exempt under section 9(1)(d). However, the police are also claiming the application of the discretionary exemption in section 15(1) to the court transcripts at pages 1222-1282, which I consider below.

[97] With respect to the CPIC search results, I find that they do not qualify for exemption under section 9(1)(d). In Order MO-2534, Adjudicator Stephanie Haly summarized this office's approach to the application of section 9(1)(d) to CPIC records. She stated:

> This office has considered the application of section 9(1)(d) to information provided to police forces by CPIC in several prior decisions and found that this section of the *Act* does not apply to exempt requested information if the appellant is the individual referred to in the record. In Order MO-1288, Adjudicator Holly Big Canoe addressed similar records, which were obtained by the Toronto Police from CPIC, though in that case the information held by CPIC originated with another Canadian police agency. She found that applying the principles set out above respecting the expectation of confidentiality on the part of the senior government agency:
>
> > The CPIC computer system provides a central repository into which the various police jurisdictions within Canada enter electronic representations of information they collect and maintain. Not all information in the CPIC data banks is personal information. That which is, however, deserves to be protected from abuse.
> >
> > Hence, a reasonable expectation of confidentiality exists between authorized users of CPIC that the personal information therein will be collected, maintained and distributed in compliance with the

[49] See, for example, Reconsideration Order MO-1972-R.

> spirit of fair information handling practices. However, the expectation that this information will be treated confidentially on this basis by a recipient is not reasonably held where a requester is seeking access to his own personal information.
>
> . . .
>
> Similarly, I find in the present case that there is no reasonable expectation of confidentiality in the information relating to the appellant that is the subject of this appeal. In the appeal before me, as was the case in Order MO-1288, the appellant is the requester and in this case, the information contained in the CPIC entries is about him. Having found that section 9(1)(d) does not apply, I find that the information in the record from CPIC relating to the appellant is not exempt under section 38(a). . .

[98] I agree with and adopt the approach taken by Adjudicator Haly. Applying that approach to the CPIC records at issue, I find that the exemption in section 9(1)(d) does not apply and, therefore, pages 1287-1288 are not exempt from disclosure. As the police have not claimed any other exemptions to pages 1287 and 1288, I will order them to disclose these pages to the appellant.

Issue G. Does the discretionary exemption in section 38(a) in conjunction with section 12 apply to the records?

[99] The police are claiming the application of the discretionary exemption in section 12 to pages 179, 182, 378 to 398, 1022 and 1059 to 1068.

[100] Section 12 states as follows:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[101] Section 12 contains two branches; namely branch 1, which is the common-law and branch 2, which is the statutory privilege. The police are claiming that the above-records are subject to litigation privilege under branch 1 or 2.

[102] Litigation privilege protects records created for the dominant purpose of litigation. It is based on the need to protect the adversarial process by ensuring that counsel for a party has a zone of privacy in which to investigate and prepare a case for trial.[50] It does not apply to records created outside of the zone of privacy intended to be protected by the litigation privilege, such as communications between opposing counsel.[51] The litigation must be ongoing or reasonably contemplated.[52]

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[50] *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.).
[51] *Ontario (Ministry of Correctional Services) v. Goodis*, 2008 CanLII 2603 (ON SCDC).

[103] The statutory litigation privilege applies to records prepared by or for counsel employed or retained by an institution in contemplation of or for use in litigation. It too does not apply to records created outside the zone of privacy. Records that form part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt under the statutory litigation privilege.[53] Documents not originally created for use in litigation, which are copied for the Crown brief as the result of counsel's skill knowledge, are also covered by this privilege.[54] However, the privilege does not apply to records in the possession of the police, created in the course of an investigation, just because copies later become part of the Crown brief.[55]

[104] Common law litigation privilege generally comes to an end with the termination of litigation,[56] whereas termination of litigation does not end the statutory litigation privilege in section 12.[57] Only the head of an institution may waive the statutory privilege in section 12.

[105] The police submit that the records for which section 12 is claimed were prepared for the dominant purpose of litigation, namely the prosecution of the appellant, and that they were prepared for submission to the Crown, which is the holder of the privilege.

[106] I find that the records for which the police have claimed section 12 are exempt from disclosure, subject to my findings regarding the police's exercise of discretion. All of the records at issue form part of the Crown brief and were prepared, not by the police, but by Crown counsel. The content of these records includes communications between Crown counsel, the Crown's strategy regarding the prosecution, and documents prepared in preparation of the prosecution. Consequently, I am satisfied that these records are exempt by virtue of the litigation privilege in branch 2 of section 12. I am also satisfied that the Crown has not waived its privilege, despite having provided these records to the police.

[107] Finally, I note that the records for which the police claimed the application of the exemption in section 13 I have already found to be exempt under sections 38(b), 8, 9 or 12 of the *Act*. Therefore, it is not necessary for me to consider this exemption.

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[52] Order MO-1337-I and *General Accident Assurance Co. v. Chrusz (1999)*, 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Ministry of Justice)*, cited above.
[53] Order PO-2733.
[54] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above, and Order PO-2733.
[55] Orders PO-2494, PO-2532-R and PO-2498, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2009] O.J. No. 952.
[56] *Blank v. Canada (Ministry of Justice)*, cited above.
[57] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, [2009] O.J. No. 952.

Issue H. Does the discretionary exemption in section 38(a) in conjunction with section 15(a) apply to the records?

[108] The police are claiming the application of section 15(a) to pages 1222 to 1282. Section 15(a) states:

> A head may refuse to disclose a record if,
>
> > the record or the information contained in the record has been published or is currently available to the public;

[109] For this section to apply, the police must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.[58] To show that a regularized system of access exists, the police must demonstrate that a system exists, the record is available to everyone, and there is a pricing structure that is applied to all who wish to obtain the information.[59]

[110] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.[60]

[111] Examples of the types of records and circumstances that have been found to qualify as a regularized system of access include unreported court decisions.[61]

[112] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.[62] However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply.[63]

[113] The police state that the records at issue are a transcript of a proceeding in the Ontario Court of Justice. They note that pages 1222-1237 are a single transcript and that pages 1238-1282 are copies of the transcript. The police then set out in their representations specifically how the appellant can access transcripts of in-court proceedings.

[114] In Order MO-2422, Adjudicator Catherine Corban articulated this office's approach to the application of section 15(a) to court records which are publicly available. She stated:

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[58] Order PO-1817-R.
[59] Order MO-1881.
[60] Orders P-327, P-1114 and MO-2280.
[61] Order P-159.
[62] Orders P-159, PO-1655, MO-1411 and MO-1573.
[63] Order MO-1573.

> . . . [P]rior orders of this office have found that court documents filed with or issued by identified courts, including factums, appeal books, case books, court notices, court forms, endorsements, judgments and transcripts of court proceedings, are publicly available, within the meaning of section 15(a) of the *Act* . . .
>
> [emphasis added]

[115] I adopt the approach taken by Adjudicator Corban and apply it to the records at issue in this appeal, which are court transcripts from the Ontario Court of Justice.

[116] Past orders of this office have also stated that an institution that wishes to rely on section 15(a) has a duty to inform the requester of the specific location of the publicly available records. In the circumstances of this appeal, the police have advised the appellant how to access the transcripts and where they can be located, namely through the Attorney General's website. I conclude that the police have satisfied their obligation to inform the appellant as to the specific location of the records.

[117] Consequently, I find that the police have established that the court transcripts are generally available to the public through a regularized system of access, as is required by section 15(a). This system of access is available to any member of the public and a pricing structure exists for anyone wishing to obtain access to these transcripts. I find that the balance of convenience favours this method of access as an alternative to the *Act*. Accordingly, I find that the court transcripts are exempt from disclosure under section 15(a) of the *Act*, subject to my findings regarding the police's exercise of discretion.

Issue I. Did the police exercise their discretion under sections 38(a) and 38(b)? If so, should this office uphold the exercise of discretion?

[118] The sections 38(a) and (b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

[119] In addition, this office may find that the institution erred in exercising its discretion where for example:

- It does so in bad faith;
- It takes into account irrelevant considerations; or
- It fails to take into account relevant considerations.

[120] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[64] The office may not, however,

[64] Order MO-1573.

substitute its own discretion for that of an institution.[65]

[121] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant and additional unlisted considerations may be relevant:[66]

- The purposes of the *Act*, including the principles that information should be available to the public, individuals should have a right to their own personal information, exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected;
- The wording of the exemption and the interests it seeks to protect;
- Whether the requester is seeking his own personal information;
- Whether the requester has a sympathetic or compelling need to receive the information;
- Whether the requester is an individual or an organization;
- The relationship between the requester and any affected persons;
- Whether disclosure will increase public confidence in the operation of the institution;
- The nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- The age of the information; and
- The historic practice of the institution with respect to similar information.

[122] Based on the police's representations, I am satisfied that they properly exercised their discretion because they took into account relevant considerations and did not take into account irrelevant considerations. I find that the police considered the appellant's position and circumstances, balanced against the importance of the affected parties' personal privacy, the objectives of law enforcement, the importance of solicitor-client privilege and the ability of staff to provide full and frank advice, in weighing against disclosure of the information at issue. I am also satisfied that efforts were made by the police to maximize the amount of disclosure, while at the same time considering the nature and type of personal information contained in the withheld portions of these records. I also note on my review of the records and the index of records that the police disclosed as much of the appellant's personal information to him as possible.

[123] I accept that the police considered the particular and specific circumstances of

[65] See section 54(2).
[66] Orders P-244 and MO-1573.

this case and made decisions regarding disclosure based on a defensible balancing of rights. Therefore, under all the circumstances, I am satisfied that the police appropriately exercised its discretion under sections 38(a) and 38(b) to the portions of the records that I have found to be exempt from disclosure.

Issue J. Did the police conduct a reasonable search for records?

[124] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[67] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[125] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[68] To be responsive, a record must be *reasonably related* to the request.[69]

[126] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[70] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[71]

[127] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[72]

[128] The police provided their evidence by way of an affidavit sworn by the police's Freedom of Information Coordinator (the FOIC) and the Freedom of Information Analyst (the analyst). Both state that the search for records was conducted by the analyst for both electronic and hard copy records, yielding 2116 pages of records. During the mediation of the appeal, the appellant advised the mediator that he believed that there should be records relating to items seized and DNA evidence. As a result, the FOIC conducted a further search for records responsive to the request, but found none. The FOIC advises that records relating to items seized, including DNA evidence, are included in the 2116 pages of records. These records, she states, include the reports sent to and received back from the Centre of Forensic Sciences.

[129] The appellant submits that the police collected evidence at the time of the incident, which was found to be exculpatory, that is, DNA evidence which did not match

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[67] Orders P-85, P-221 and PO-1954-I.
[68] Orders P-624 and PO-2559.
[69] Order PO-2554.
[70] Orders M-909, PO-2469 and PO-2592.
[71] Order MO-2185.
[72] Order MO-2246.

the appellant's DNA, and that there should be records of this. In addition, the appellant argues that there should be a receipt indicating that he was in a different province at the time of the offence.

[130] On my review of the representations provided by the police, I am satisfied that they have conducted reasonable searches for responsive records, taking into account all of the circumstances of this appeal. As previously stated, a reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request. The police have provided an explanation of the nature and extent of the search conducted in response to the request and also during the mediation of the appeal. In addition, while I am sympathetic to the appellant's concerns, I find that he has not provided sufficient evidence to establish a reasonable basis for concluding that the police's search was inadequate, or that further records exist. Consequently, I am satisfied that these searches were reasonable in the circumstances.

[131] In sum, I uphold the police's decision, in part. I find that the majority of the records are either excluded from the *Act* or exempt from disclosure under the *Act*. I uphold the police's exercise of discretion and its search for records responsive to the request. I order the police to disclose one record to the appellant which is not exempt from disclosure.

ORDER:

1. I order the police to disclose pages 1287 and 1288 to the appellant in their entirety by **August 14, 2017** but not before **August 9, 2017**.

2. I reserve the right to require the police to provide this office with a copy of the records its discloses to the appellant.

Original Signed By: July 10, 2017
Cathy Hamilton
Adjudicator