Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3941

Appeal PA16-594

Ministry of Community Safety and Correctional Services

March 26, 2019

Summary: The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to Ontario Provincial Police (OPP) records relating to a traffic stop involving the requester. The ministry granted partial access to the responsive records. The ministry denied access to some of the records on the basis that they are excluded from the scope of the *Act* as records relating to labour relations and employment related matters subject to the exclusion at section 65(6). The ministry also denied access to portions of the records pursuant to the discretionary exemptions at section 49(a), read in conjunction with the law enforcement exemption at section 14(1)(l), as well as section 49(b) (personal privacy) of the *Act*.

In this order, the adjudicator partially upholds the ministry's decision. She finds that section 65(6) applies to exclude the records for which it was claimed. She finds that the exemptions at section 49(a), read in conjunction with section 14(1)(l), and section 49(b) apply to the portions of records for which they were claimed, with the exception of a small amount of information on pages 12 and 13 of the records, which she orders disclosed. The adjudicator also finds that the ministry is not required under the *Act* to transcribe the handwritten officers' notes.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1)(l), 48(4), 49(a), (b), and 65(6).

Orders and Investigation Reports Considered: Orders 19, M-715, MO-2242, MO-2269-I, PO-2409, PO-2098, PO-2519 and PO-3742.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for Ontario Provincial Police (OPP) records relating to a traffic stop involving the requester, an off-duty OPP officer. Specifically, the records sought were described as follows:

> A copy of officer notes from [named officer] of all involvement in this traffic stop including conversation(s) with any other police officers specifically [second named officer] and any direction given to him from any supervisor(s) of the OPP.
>
> A copy of the Provincial Communications Center [PCC] recordings with this traffic stop broadcasted over the Fleetnet radio system of landline conversations to the PCC.
>
> A copy of any emails between [named officer], [second named officer], [third named officer], and [fourth named officer].
>
> A copy of officer notes from the aforementioned Supervisors [second named officer], [third named officer], and [fourth named officer] concerning the traffic stop or above mentioned vehicle [specified number] and any conversations related to it.
>
> Any other writing, notes, emails or documents related to the above traffic stop.

[2] The ministry issued a decision granting partial access to the requested records. Access to some of the withheld information was denied pursuant to the discretionary exemptions at section 49(a), read in conjunction with the law enforcement exemptions at sections 14(1)(a), (l) and 14(2)(a), and section 49(b), taking into account the presumption for records compiled as part as an investigation into a possible violation of law at section 14(3)(b) of the *Act*. The ministry also claimed that some of the records fall outside the scope of the *Act* by virtue of the application of the exclusion for records relating to labour relations and employment related matters at section 65(6). The ministry also withheld some information on the basis that it is not responsive to the request.

[3] The requester, now the appellant, appealed the ministry's decision.

[4] During mediation, the appellant confirmed that he is not seeking access to the information that was withheld as not responsive to the request. The appellant also advised that he is unable to read some of the handwritten officer notes and that he asked the ministry to provide him with a transcript of the officers' notes. As the ministry was not prepared to do so, the appellant requested that the issue of "comprehensible

form" be added to this appeal.

[5] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. I began my inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the ministry. The ministry provided representations in response.

[6] In the ministry's representations, it advised that, upon review, it determined that portions of pages 12 and 13 of the records (information from the Automatic Licence Plate Recognition system) are not exempt under the *Act* and should be disclosed. As a result, it is no longer relying on sections 14(1)(a) and 14(2)(a) to withhold portions of pages 12 and 13. As sections 14(1)(a) and 14(2)(a) have been not been claimed for any other portions of the records at issue, I have removed them from the scope of the appeal.

[7] The ministry confirmed, however, that it continues to claim section 49(a), read in conjunction with section 14(1)(l), to portions of pages 12 and 13. It also advised that it is now claiming section 49(b) for an employee Workplace Identification Number (WIN) on page 13. I added the issue of the late raising of this exemption as an issue on appeal.

[8] The appellant provided representations in response to the ministry's representations. I determined that it was not necessary to share them with the ministry.

[9] In this order, I find that section 65(6) applies to exclude the records for which it was claimed. I also find that the exemption at section 49(a), read in conjunction with section 14(1)(l), and section 49(b) apply to the portions of information for which they were claimed, with the exception of a small amount of information on pages 12 and 13 of the records. I order the ministry to disclose this non-exempt information to the appellant. I also find that the ministry is not required under the *Act* to transcribe the handwritten officers' notes, as requested by the appellant.

RECORDS:

[10] There are five records remaining at issue in this appeal as well as a CD containing an audio file:

- Page 4 is a page of police officer notes that has been withheld in part. The ministry claims section 65(6)3 applies to this record.
- Page 6 is an email that has been withheld in its entirety. The ministry claims section 65(6)3 applies to this record.

- Page 7 is an email chain. The portions identified as responsive have been withheld in their entirety. The ministry claims that 65(6)3 applies to this record.

- Page 12 is a document containing information about the Automatic Licence Plate Recognition System (ALPR System) that has been withheld in part. The ministry claims that section 49(a), read with section 14(1)(l), applies.

- Page 13 is a document containing information about the ALPR System that has been withheld in part. The ministry claims that section 49(a), read with section 14(1)(l), and section 49(b) apply to this record.

- The CD contains an audio file of a telephone call between an officer and dispatcher and has been withheld in part. The ministry claims that section 49(a), read with section 14(1)(l), and section 49(b) apply to this record.

[11] Although page 5 was identified as remaining at issue, the only portions that have been severed from the record have been identified by the police as not responsive to the request. The appellant has indicated that he does not seek access to information identified as not responsive to the request. Therefore, page 5 is not at issue and I will not address it.

PRELIMINARY ISSUE:

Is the ministry entitled to raise the applicability of section 49(b) to an "employee workplace identification number" on page 13 of the records?

[12] In its representations, the ministry claimed for the first time that section 49(b) applies to what it describes as an employee WIN that appears on page 13 of the records.

[13] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

> In an appeal from an access decision an institution may make a new discretionary exemption within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[14] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal

process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.[1]

[15] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the ministry and to the appellant.[2] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[3]

[16] The ministry submits that its late-raising of section 49(b) to a portion of record 13 is justified and that there is discretion to do so under the circumstances. It submits that it will not cause the appellant any prejudice as it was information that was previously withheld under a different exemption.

[17] In his representations, the appellant does not specifically comment on the ministry's late-raising of its claim that section 49(b) applies to an employee WIN on page 13.

[18] In the circumstances of this appeal, I am allowing the ministry to raise the possible application of section 49(b) to the information that it describes as an employee WIN on page 13. I find that the appellant has not been prejudiced in any way by the late claiming of this discretionary exemption as he has had the opportunity to fully address its application.

ISSUES:

A. Does the exclusion for labour relations and employment records at section 65(6)3 apply to remove records 4, 6, and 7 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 at section 49(a), read in conjunction with section 14(1)(l), apply to the information at issue?

D. Does the discretionary exemption at section 49(b) apply to the information at issue?

---

[1] *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.); see also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).
[2] Order PO-1832.
[3] Orders PO-2113 and PO-2331.

E. Is the ministry required under the *Act* to transcribe the handwritten officers' notes so that they are comprehensible to the appellant?

DISCUSSION:

A. Does the exclusion for labour relations and employment records at section 65(6)3 apply to remove pages 4, 6, and 7 from the scope of the *Act*?

[19] Section 65(6) sets out a broad exclusion for labour relations and employment records. The ministry takes the position that paragraph 3 of section 65(6) applies to exclude pages 4, 6, and 7 of the records from the application of the *Act*. The police claim section 65(6) applies to a portion of page 4 which is a page of police officer notes, to all of page 6 which is an email sent by one officer to another, and to the responsive portions of page 7 which is an email chain between two officers. The portion of page 7 which has been severed as not responsive to the request is not at issue.

[20] Section 65(6)3 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> …
>
> Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest[.]

[21] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[22] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[4]

[23] 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

---

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

restricted to employer-employee relationships.[5]

[24] 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 employees that do not arise out of a collective bargaining relationship.[6]

[25] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.[7]

[26] Section 65(6) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.[8]

[27] This office has consistently taken the position that the exclusions at 65(6) of the *Act* (and the equivalent section in the *Act's* municipal counterpart) are record-specific and fact-specific.[9] This means that in order to qualify for an exclusion, a record is examined as a whole. This whole record method of analysis has also been described as the "record-by-record" approach.[10] As a result, although the ministry has claimed section 65(6) to particular pages, my determination of whether the exclusion applies as set out below relates to its application to the record to which that page relates, as a whole. I will discuss this further, below.

[28] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions that are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[11]

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

---

[5] *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.
[6] Order PO-2157.
[7] *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.
[8] Orders P-1560 and PO-2106.
[9] See, for example, Orders M-797, P-1575, PO-2531, PO-2632, MO-1218, PO-3456-I and others.
[10] The "record-by-record" method of analysis for dealing with requests for records of personal information is set out in Order M-352. Under this method, the unit of analysis is the whole record, rather than individual paragraphs, sentences or words contained in a record. In addition, where the information at issue is the withheld portion of a record that has been partially released, the whole of the record (including released portions) is analyzed in determining a requester's right to access the withheld information.
[11] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

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.

Parts 1 and 2: collected, prepared, maintained or used … in relation to meetings, consultations, discussions or communications

[30] Parts 1 and 2 of the section 65(6)3 test require that records were collected, prepared, maintained or used by an institution, in relation to meetings, consultations, discussions or communications. I find that these parts have been established.

[31] The ministry submits that "because OPP members have collected the information in the records, which they then prepared and used" the first part of the test has been met. With respect to the second part, the ministry submits that the records were "used [by the OPP] to facilitate a discussion, which took place between two OPP inspectors, about the appellant's conduct when the appellant was stopped by another member of the OPP during a traffic stop."

[32] The appellant's submissions on whether parts 1 and 2 of the section 65(6)3 test have been met do not specifically address whether the records were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications. He does dispute that neither of the authors of the emails were "inspectors" as described by the ministry in its representations and indicates that he is confused as to why emails between supervisors about this matter even exist. He also states that from the portion of the police notes that have already been disclosed to him, there is no indication that his conduct was inappropriate or that he broke any law.

[33] From my review of the records for which the exclusion was claimed and the ministry's representations on them, it is clear that they were collected, prepared and maintained by the OPP, which the ministry oversees. It is also clear, particularly from the content of the records, that they were prepared, maintained or used in relation to meetings, consultations, discussions or communications amongst OPP personnel. Accordingly, I am satisfied that the ministry has established that the first and second parts of the three-part test for section 65(6)3 to apply has been met.

Part 3: Labour relations or employment-related matters in which the institution has an interest

[34] Part 3 of section 65(6)3 requires that the meetings, consultations, discussions or communications established in part 2 are about labour-relations or employment-related matters in which the institution has an interest. For the reasons expressed below, I

accept that this part has been established.

[35] The ministry submits that "the records were created for an "employment-related" purpose. It states that previous orders issued by this office have consistently held that "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship."[12] The ministry submits that in Order PO-3098, Adjudicator Colin Bhattacharjee found that records relating to the conduct of specific OPP officers were employment-related because of "the potential for disciplinary action" against those officers. The ministry submits that the records at issue in this appeal were created for the same reason, and that they should also therefore be considered "employment-related."

[36] The appellant disputes the ministry's position, stating that there is "no chance of disciplinary action" against him. He states that it is "bizarre" as his view is that "[i]f there was a concern [he] would have been made aware of it." He submits that he was not spoken to and that "any mention of possible discipline" in the representations is "misplaced." He also disputes that the officers involved were inspectors at the time of the stop.

[37] Having considered the evidence before me, I accept that the meetings, consultations, discussions or communications that occurred were about employment-related matters in which the ministry has an interest.

[38] From my review of the content of pages 6 and 7, which are emails, I accept the ministry's submission that they relate to the conduct of and interaction between specific OPP officers. I also accept that although disciplinary action was not pursued, the records can be described as employment-related because they relate to human resources or staff relations issues arising from the relationship between two OPP officers.

[39] With respect to page 4, which consist of police officer notes, it is clear from the evidence before me that the record of which it forms a part was collected, prepared, maintained or used for the purpose of meetings, consultations, discussions or communications about employment-related matters.

[40] In Order PO-3519, Adjudicator Frank DeVries considered whether reports relating to collisions involving OPP vehicles were excluded from the scope of the *Act* under section 65(6)3. In that order, Adjudicator DeVries considered the argument of the appellant that the records at issue, which he characterized as akin to occurrence reports, were records of an employee's actions, rather than employment-related

[12] See for example, Orders PO-2157 and PO-3098.

records. Adjudicator DeVries stated:

> …Although portions of each of the records … contain merely factual information about the incidents, I am satisfied that this factual information is used specifically to assist in the determination, contained in the other parts of each of the records, regarding whether or not a collision was preventable and whether disciplinary action should be taken against the operator. On this basis, I accept the ministry's position that the records at issue relate to labour relations or employment-related matters because their purpose is to determine whether a collision was preventable, and to establish whether employee discipline should be imposed and, if so, the nature of any such discipline. I am satisfied that these purposes relate directly to labour relations or employment-related matters.
>
> As a result, I find that the record relates to determinations into whether or not a collision was preventable and, if so, what corrective action should be imposed. Given that corrective action may be in the form of operator training or discipline, I accept the ministry's position that the records relate to the terms and conditions of an operator's employment and therefore concern employment-related matters.

[41] In my view, the reasoning expressed by Adjudicator DeVries in Order PO-3519 is applicable in the circumstances. Although the police officer notes in page 4 set out factual information about the interaction between two officers, I am satisfied that the overall purpose of the record of which page 4 forms a part was to determine whether or not disciplinary action should be taken against an officer. As a result, I accept that the record as a whole relates to employment-related matters as required by part 3 of section 65(6)3.

[42] I also accept that the OPP (and by extension, the ministry) has "an interest" in these employment-related matters to which I find the records containing pages 4, 6 and 7 relate, as I accept that it has an interest in managing its relationships with its officers as well as the relationships between its officers. This has previously been routinely accepted by this office.[13]

[43] In conclusion, based on the evidence before me, I find that the police officer notes on page 4 and the emails at pages 6 and 7 were collected, prepared, maintained or used by the OPP in relation to meetings, consultations, discussions or communications about employment-related matters involving OPP officers, in which the ministry has an interest. Consequently, these records are excluded from the scope of the *Act* under section 65(6)3. Section 65(7) provides exceptions to the section 65(6)

---

[13] See for example, Orders PO-3098 and PO-3519.

exclusions but none of them apply to these records.

[44] I note that the ministry has claimed that the exclusion at section 65(6)3 applies only to a portion of page 4 and that it has already disclosed the remainder of that page to the appellant. Previous orders have held that a record-by-record approach is applied when determining whether the section 65(6)3 exclusion applies, and that the severance provisions in section 10(2) of the *Act* do not apply to them.[14] Therefore, my finding that section 65(6)3 applies to page 4 is made in relation to the record as a whole. However, this finding does not necessarily prohibit the ministry from disclosing records that are subject to section 65(6)3 in full or in part. As stated by Adjudicator DeVries in Order MO-2242:

> …although I have found that the records are excluded from the scope of the *Act* as a result of the application of [the municipal equivalent to section 65(6)3], this section in no way prohibits an institution from disclosing records or portions of records, it simply removes them from the access and privacy regimes established by the *Act*. Outside the scope of the *Act*, an institution still has the discretion to disclose records even when [section 65(6)] is applicable.

[45] Following Adjudicator DeVries' reasoning in Order MO-2242, I accept that the ministry has the discretion to disclose records or portions of records even when section 65(6) applies to them, as was done with the police officer notes on page 4.

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

[46] Under the *Act*, different exemptions may apply depending on whether a record contains or does not contain the personal information of the requester. Where the records contain the requester's own personal information, access to the records is considered under Part III of the *Act* and the discretionary exemptions at section 49 may apply. Where the records contain the personal information of individuals other than the requester but do not contain the personal information of the requester, access to the records is considered under Part II of the *Act* and the mandatory exemption at section 21(1) may apply.

[47] In order to determine if any of the personal privacy exemptions applies, it is first necessary to decide whether the record contains "personal information" and, if so, to whom it relates. "Personal information" is defined in section 2(1) as follows:

---

[14] See for example, Order PO-3519.

> "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 by the individual that is implicitly or explicitly of a private or 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;

[48] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[15]

[49] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

---

[15] Order 11.

> (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.

[50] 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.16 Even if 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.[17]

Representations

[51] The ministry claims that the audio call on the CD and page 13 contain the personal information of two individuals other than the appellant. It submits:

> The personal information in the records includes:
>
> > (a) the name of an identifiable individual other than the appellant along with their birthdate, age, and gender; and,
> >
> > (b) the Workplace Identification Number (WIN Number) assigned to an employee on page 13. The ministry relies upon Order PO-3742, which held (at paragraph 37) that the WIN number constitutes personal information, because it could reveal something of a personal nature about the employee. We are especially concerned in this instance, because the appellant and the affected third party are members of the same organization, which may make the affected third party individual even more identifiable. The ministry submits, in the alternative, that the WIN number is non-responsive.

[52] The ministry submits that the personal information recorded on the CD is information about an individual other than the appellant in a personal capacity. It also submits that in the case of the WIN number on page 13, it is information that would reveal something of a personal nature about an employee.

---

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

[53] The appellant does not specifically comment on whether the records contain the personal information of individuals other than himself.

Analysis and findings

[54] I have reviewed pages 12 and 13 and have listened to the audio call on the CD. I find that all of them contain the personal information of the appellant as they relate to the traffic stop in which he was involved.

[55] I find that the audio call on the CD and page 12 also contain the personal information of an identifiable individual other than the appellant within the meaning of "personal information" as defined in section 2(1) of the *Act*, including information of the type described in paragraphs (a) and (h) of the definition of that term.

[56] I find that page 13 does not contain the personal information of any identifiable individuals other than the appellant.

[57] The police submit that page 13 contains a WIN assigned to an employee that is that employee's personal information. With its representations, the police provided me with a revised copy of page 13, identifying the portions that it was now prepared to disclose and those which it continues to claim are exempt. On the copy that was provided to me, the columns titled "Unit ID", "ID", and "Terminal" have been severed. A column entitled "Employees" is one of the columns that has not been severed. Under the heading "Employees", there are seven entries, all of which are the same 5-digit number. From the face of the record, it appears that this 5-digit number is the WIN referred to by the ministry in its representations. However, despite the ministry's representations, the severed copy of the record attached to the ministry's representations suggests that the ministry is prepared to disclose the number identified under the title "Employees."

[58] Even if the ministry neglected to sever the column entitled "Employees" in error and it is not prepared to disclose it, I do not find that the employee number listed under this column on page 13 is equivalent to the WIN discussed in Order PO-3742.

[59] The number under the heading "Employees" on page 13 is clearly an officer's badge number. Previous orders have consistently held that a police officer's badge number does not amount to personal information within the meaning of the definition of that term under the *Act*[18] because it is associated with an officer in a professional rather than personal capacity. I agree with these previous orders.

[60] The ministry has not provided specific evidence to support a conclusion that the officer's badge number as listed in the column entitled "Employees" on page 13 appears

[18] See for example, Orders MO-2050, MO-2112, MO-2225 and MO-2344.

in anything other than a professional context or that disclosure of that number could reveal something personal about the officer to whom the badge number relates. Accordingly, in keeping with the previous orders referenced above, I find that the number under the heading "Employees" on page 13 does not qualify as personal information as that term is defined in the *Act*.

[61] In summary, I find that page 13 contains the personal information of the appellant but does not contain the personal information of any other identifiable individuals. With respect to the audio call on the CD and page 12, I find that these records contain the personal information of the appellant as well as the personal information of another identifiable individual.

[62] As pages 12, 13 and the audio call contain the personal information of the appellant, the appropriate exemptions to consider are those set out in section 49 of the *Act*. The ministry has claimed that sections 49(a), read in conjunction with section 14(1)(l), applies to portions of pages 12, 13 and the audio call and that section 49(b) applies to page 13 and the audio call.

[63] As I have found that the number under the heading "Employees" on page 13 is not personal information and that page 13 does not contain any personal information of an identifiable individual other than the appellant, the personal privacy exemption at section 49(b) cannot apply to that page. As no other exemptions have been claimed for this information, nor do any appear to apply, I will order the ministry to disclose to the appellant the police badge number under the column heading "Employees" on page 13.

C: Does the discretionary exemption at section 49(a), read in conjunction with section 14(1)(l), apply to the information at issue?

[64] The ministry claims that section 14(1)(l) applies to the audio call on the CD and parts of pages 12 and 13.

[65] [65] Section 47(1) gives individuals a general right of access their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[66] Section 49(a) 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, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[67] Section 49(a) of the *Act* 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 personal information.[19] In this case, the ministry relies on section 14(1)(l) to withhold the audio call on the CD and portions of pages 12 and 13.

[68] Section 14(1)(l) reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

[69] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or 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).

[70] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[20]

[71] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.21 The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it 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

---

[19] Order M-352.
[20] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[21] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

consequences.22

Representations

[72] The ministry submits that it has applied section 14(1)(l) to withhold the internal police codes in the audio call on the CD and on portions of pages 12 and 13 which it states are "widely used as part of OPP operations." It submits that it has applied the exemption to the information in order to protect the integrity of its law enforcement operations and "in accordance with the usual practice of the OPP" as disclosure would reveal internal knowledge of how police systems, such as ALPR, operate. To support its position, it states that a long line of orders have found that police codes qualify for exemption under section 14(1)(l) because of the reasonable expectation of harm if they were disclosed.[23]

[73] To clarify, the ministry confirms that it is specifically applying section 14(1)(l) to police ten codes, and the information under the headings "Unit ID," "ID" and "Terminal" on page 13 and the Unit ID referenced in the CD because, it submits, the disclosure of this information "would reveal the identifier of a specific device used as part of ALPR."

[74] The appellant submits that as an OPP officer himself, he is aware of police codes, including ten codes.

Analysis and findings

[75] I accept the ministry's submission that this office has previously held that police operational codes qualify for exemption under section 14(1)(l) because of the reasonable expectation of harm from their release.[24] These codes have been found to include ten codes and other codes that represent common phrases, particularly in radio transmissions which identify areas being patrolled or types of incidents reported or responded to.

[76] With respect to the information that has been severed from page 13 under the headings Unit ID, ID and Terminal, I accept the ministry's submission that disclosure of these codes would reveal internal information about how the ALPR system used by the OPP operates. I also accept that the information severed from page 13 and the audio call on the CD qualify as police codes that are not generally known to the public. I accept that section 49(a), read in conjunction with section 14(1)(l), applies to this

---

[22] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[23] The police reference Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO-2409.
[24] For example, Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO-2409.

information.

[77] I am also satisfied that the ministry exercised its discretion in good faith to withhold this information under section 49(a), read in conjunction with section 14(1)(l). The police disclosed the remainder of the record, which I conclude demonstrates that they appropriately considered the appellant's right to his own information on the record, adhering to the principle that exemptions from the right of access should be limited and specific. There is also no evidence that the police acted in bad faith in withholding this information. Therefore, I uphold their discretion to do so.

[78] I acknowledge that, as an OPP officer, the appellant is likely aware of the type of codes that might fall under the heading on pages 12 and 13 and in the audio call on the CD. I do not accept, however, that he is aware of all the specific identifying codes that appear in the records themselves, including the individual numbers that identify units or terminals used. I am cognizant of the fact that disclosure of information under the *Act* cannot be conditional or restricted only to the requester. It is a well-established freedom of information principle that disclosure of information under the *Act* is disclosure to "the world" and that once in the public domain, there is no way of limiting or controlling its dissemination.[25]

[79] For these reasons, I find that section 49(a), read in conjunction with section 14(1)(l), applies to the information for which it was claimed.

D: Does the discretionary exemption at section 49(b) apply to the information at issue?

[80] Under section 49(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 institution may refuse to disclose the information to the requester.

[81] Section 49(b) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[82] Section 21 of the *Act* provides guidance in determining whether the unjustified invasion of personal privacy threshold is met. If the information fits within any of the paragraphs of sections 21(1) or 21(4), disclosure is not an unjustified invasion of

[25] See, for example, Orders MO-2304 and MO-2635.

personal privacy and the information is not exempt under section 49(b).

[83] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and 21(3) and balance the interests of the parties.[26] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[84] In this appeal, the ministry has applied section 49(b) to withhold portions of page 12 and the audio call on the CD. Specifically, the ministry asserts that the presumption in section 21(3)(b) and the factor at section 21(2)(f) apply to render disclosure of that information an unjustified invasion of another individual's personal privacy. Section 21(3)(b) states that the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Section 21(2)(f) is a factor that the head must consider when determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, specifically, whether the personal information is highly sensitive.

[85] The appellant does not make any specific submissions that address the possible application of section 49(b), including whether sections 21(3)(b) and 21(2)(f) are relevant considerations in the determination of whether the disclosure of the information that remains at issue would constitute an unjustified invasion of another individual's personal privacy.

[86] I have reviewed the information that has been severed from page 12 and the audio call on the CD and find that the majority of that information is exempt under the discretionary personal privacy exemption at section 49(b). The only exception is the last line in the column under the heading "Remark" on page 12, which constitutes information that is not only already known to the appellant but is information that has also already been disclosed to him in the police notes. In my view, the absurd result principle applies to this information because to withhold the information would be absurd and inconsistent with the purpose of the exemption.[27] I will order the ministry to disclose this information to the appellant.

[87] With respect to the remaining information that has been severed from page 12 and the audio call on the CD, given the application of the presumption in section 21(3)(b), and the fact that no factors favouring disclosure were established, I am satisfied that its disclosure would constitute an unjustified invasion of another

---

[26] Order MO-2954.
[27] Orders M-444 and MO-1323.

individual's personal privacy.[28] Accordingly, I find that this personal information is exempt from disclosure under section 49(b) of the *Act*. I am also satisfied that the undisclosed portions of these records cannot be reasonably severed, without revealing information that is exempt under section 49(b) or resulting in disconnected snippets of information being disclosed.[29]

[88] Finally, I have considered the circumstances of this appeal and I am satisfied that the ministry has not erred in its exercise of discretion under section 49(b). As with its application of section 49(a), I am satisfied that it exercised its discretion in good faith when it relied upon section 49(b) to withhold portions of the audio call on the CD and page 12. The ministry disclosed the majority of the information in the records and I accept that it appropriately considered the appellant's right of access to his own personal information while withholding the personal information of other individuals. I accept that the ministry adhered to the principle that exemptions from the right of access should be limited and specific and there is no evidence before me that the ministry acted in bad faith. Therefore, with respect to the information I found exempt under section 49(b), I uphold the ministry's exercise of discretion not to disclose it.

E: Is the ministry required under the *Act* to transcribe the handwritten officers' notes so that they are comprehensible to the appellant?

[89] The appellant submits that the officers' notes to which he has been given access are illegible and the ministry should be required to provide him with a "transcript" of the notes in comprehensible form. The police decline to do so.

[90] Section 48(4) of the *Act* reads:

> Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

[91] In Order 19, former Commissioner Sidney B. Linden addressed the issue of the applicability of section 48(4). The former Commissioner found that section 48(4) only requires an institution to ensure that the average person can comprehend the records; it does not create a further duty to assess a specific requester's ability to comprehend particular records.

[92] The ministry submits that it is under no obligation to provide the appellant with a

---

[28] As I have found that the section 21(3)(b) presumption applies, it is not necessary for me to also consider the application of the factor at section 21(2)(f).

[29] See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

transcript of the officers' notes. In support of its position, the ministry relies on Order M-715, where the appellant claimed that they could not read the records that were disclosed to them. The ministry points to the portion of that order where Adjudicator Laurel Cropley stated "[t]here is nothing in the *Act* which specifically provides that copies of records disclosed to a requester must be legible."

[93] The ministry also relies on Order MO-2269-I. In that order, Adjudicator Colin Bhattacharjee followed former Commissioner Linden's reasoning in Order 19, mentioned above, and found that the Guelph Police Services Board provided the appellant with officers' notes in a comprehensible form. He stated that although "some officers' handwritten notes are more challenging to read than others because of their particular handwriting style," the officers' notes that were before him were, "for the most part, comprehensible to the average person."

[94] The ministry submits that it has met its obligations under the *Act* by providing a copy of the original records which, it submits, are "comprehensible to the average person."

[95] The appellant continues to take the position that the officers' notes are illegible and submits that he has knowledge that in prior years under the OPP Freedom of Information process if an officer's notes could not be read, the officer would be required to type them out.

[96] Having considered the evidence before me, including the records themselves, I accept the ministry's position that, in this case, it has met its obligations under section 48(4) of the *Act* by providing the information to the appellant in a "comprehensible form."

[97] I agree with the finding of former Commissioner Linden, subsequently followed by Adjudicator Bhattacharjee, which states that section 48(4) requires only that an institution ensure that the average person is able to comprehend the records. I also agree with the finding of Adjudicator Cropley in Order M-715, as set out by the ministry, that the *Act* does not place a specific duty on an institution to provide copies of records that are legible. However, I also note that in Order M-715, Adjudicator Cropley goes on to state that "the general principles of access under the *Act* require that, if the institution is going to provide the appellant with a copy of the records, it should make every effort to ensure that the copies are of a reasonable quality." I agree with Adjudicator Cropley's finding in that respect. In my view, these findings from previous orders are relevant and applicable to the case before me.

[98] Having reviewed the officers' notes that the appellant argues are illegible, while I acknowledge that some of those officers' notes are quite challenging to read, in my view, they are of reasonable quality and are comprehensible. Therefore, I find that the officers' notes were provided to the appellant in a comprehensible form within the meaning of section 48(4) and there is no obligation on the ministry to provide him with a typewritten copy or transcript of those records.

ORDER:

1. I order the ministry to disclose to the appellant the last line of text under the heading "Remark" on page 12 of the records by **April 29, 2019**.

2. I order the ministry to disclose to the appellant the numbers under the heading "Employees" on page 13 of the records by **April 29, 2019**.

3. I uphold the ministry's decision to withhold the remainder of the information at issue.

4. In order to verify compliance with order provisions 1 and 2, I reserve the right to require that a copy of pages 12 and 13 severed as disclosed to the appellant be provided to me.

Original signed by | March 26, 2019

Catherine Corban
Adjudicator