Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

RECONSIDERATION ORDER PO-2175-R

Appeals PA-010085-2 and PA-010085-3

Order PO-1944

Ministry of Public Safety and Security

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BACKGROUND AND NATURE OF THE APPEAL:

The Ministry of Public Safety and Security (the Ministry) received a request from a member of the media under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

> Dates, destinations and billings for security, for the Ontario Provincial Police [OPP] detail attached to the Premier, for each trip to the United States from Jan 1, 2000 to Jan 22, 2001, inclusive.
>
> Air costs, hotels and associated expenses for the security detail for each trip to the United States should be listed separately and purpose of trip noted.

The Ministry identified a number of responsive records, consisting of expense claims submitted by various OPP officers providing security services for the Premier during the timeframe specified in the request. The Ministry denied access to all of these records on the basis of the following exemptions in the *Act*:

- section 14(1)(e) - endanger life or safety of law enforcement officer or other person
- section 14(1)(l) - facilitate commission of unlawful act, and
- section 20 - danger to safety or health of an individual.

The appellant appealed the Ministry's decision.

After conducting an inquiry under the *Act*, I issued Order PO-1944. In that order, I upheld the Ministry's decision to deny access to most of the responsive records under the exemption in section 14(1)(e), but found that portions of one record did not qualify for any of the claimed exemptions, and ordered the Ministry to disclose these portions to the appellant.

Both the appellant and the Ministry applied for a judicial review of Order PO-1944.

The Ontario Superior Court of Justice (Divisional Court) considered the two judicial review applications. One argument put forward by the appellant in this context was that my definition of the scope of the request was overly narrow, and he made a motion to file new evidence to support his position. The Court reviewed the interpretations I made in Order PO-1944 regarding "billings" and "purpose of the trips" on a reasonableness standard, and found that they were unreasonable. In dealing with the issues, the Court stated:

> We are of the view the narrow interpretation applied by the Commissioner regarding both billing and purpose is unreasonable. In our view, the position put forth by [the appellant] is reasonable. We are not prepared to allow the introduction of new evidence on this judicial review application. The new evidence must be introduced before the Commissioner. The Ministry must have the opportunity of searching for the records, providing the relevant documents and raising their claims for exemption. ...

[*Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* [2002] O.J. No. 4703]

In response to the Court's direction, I decided to reconsider Order PO-1944.

To initiate the reconsideration process, I wrote to the Ministry asking it to undertake additional searches for responsive records and to provide the appellant with a new access decision. Specifically, I asked the Ministry to identify:

- records reflecting salary-related costs incurred by the Ministry for the OPP security services; and

- records reflecting the purpose of the various trips from the Premier's perspective, including records that would confirm whether each trip was taken by the Premier for government business or for pleasure.

The Ministry issued a new decision letter, indicating that it had conducted additional searches and located more responsive records. The Ministry denied access to these new records under sections 14(1)(e), 14(1)(l), 20 and 21(1) (invasion of privacy). The Ministry's decision letter also stated that some information contained in these new records was not responsive to the appellant's request.

The appellant appealed this decision. The appeal was streamed directly to the adjudication stage of the appeal process.

I decided to seek representations from the Ministry, initially. I sent the Ministry a Notice of Inquiry identifying the facts and issues in this appeal. In addition to the issues raised concerning the application of the various exemption claims, I identified the following additional issue:

> The copies of the records which have been provided by the Ministry contain numerous portions which have been severed by the Ministry and which the Ministry has identified as "non-responsive" to the request. The responsiveness of the records is therefore an issue in this appeal.

I also added the reasonableness of the Ministry's search for responsive records as an issue in the inquiry, and asked for representations substantiating the various search activities. In the context of preparing its representations, the Ministry identified one additional responsive record. The Ministry wrote to the appellant, claiming that this new record falls outside the scope of the *Act*. The appellant appealed this decision, and issues relating to this record are the subject of a separate appeal with this office (Appeal No. PA-010085-4).

The Ministry provided representations in response to the Notice of Inquiry. I then sent a copy of the Notice to the appellant, along with the non-confidential portions of the Ministry's representations. The appellant provided representations in response. In his representations, the appellant raised a number of issues that I decided should be addressed by the Ministry. Accordingly, I provided the Ministry with a copy of the appellant's representations, along with a cover letter that stated, in part:

You are invited to address **all** of the matters raised by the appellant.

In particular, you are asked to respond to the following:

1) the appellant's position concerning the adequacy of the Ministry's search as it relates to the scope of the request and the interpretation of the words "billings" and "purpose of trip" in light of the Divisional Court decision dealing with Order PO-1944 in *Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)* [2002] O.J. No. 4703;

2) the appellant's position on the issue of the "fresh evidence" as it relates to the records at issue in this appeal and the records at issue in the earlier appeal resulting in Order PO-1944 (PA-010085-2); and

3) the appellant's position that section 23 (public interest override) applies to records that may be covered by the exemptions in sections 20 and/or 21, as it relates to both the records in this appeal and in the earlier appeal (PA-010085-2).

The Ministry provided reply representations, which I shared with the appellant. The appellant submitted a final set of representations in response.

RECORDS:

The records at issue in this appeal consist of:

1) All of the records covered by Order PO-1944, being various individual Statement of Expense forms submitted by OPP officers who were involved in providing security services to former Premier Harris on his trips to the United States for the period from January 1, 2000 to January 22, 2001, as well as the summary report (excluding the portion relating to non-responsive trips) and the itemized breakdown.

2) The additional records located by the Ministry during the course of this inquiry, being:

- Overtime Report/Bank Register Forms - Records 1-23

- OPP officers' notebook entries - Records 24-118

DISCUSSION:

RIGHT OF COUNSEL TO VIEW THE RECORDS

The appellant's counsel argues that he should be able to view the records in order to make effective representations in the inquiry. He states:

> As a preliminary matter, the [appellant] submits that it is unfair to require it to address the issue of whether the severed portion of the newly located records may be responsive to the request based only on the vague and ambiguous description of these records provided by the Ministry. The [appellant], through his solicitor, requires access to the severed portions in order to make informed submissions on this issue. Without such access, its right to make submissions is rendered illusory.

I do not accept the appellant's position on this issue.

The Commissioner's published *Code of Procedure* governs the conduct of inquiries under the *Act*. These procedures address fairness issues. Parties are provided with a Notice of Inquiry, which identifies the facts and issues in an appeal, and describes the records. The *Code* also includes a process for submitting and sharing representations (see *Practice Direction 5* and *Practice Direction 7*, which form part of *Code*), which ensures that each party is aware of the evidence and argument put forward by the other party, subject only to confidentiality considerations outlined in *Practice Direction 7*. The *Code* does not contemplate a process whereby an appellant or his counsel is allowed to view the very records that are at issue in an appeal, and no appellant has ever been allowed to view records during the course of an inquiry, whether represented by counsel or otherwise.

I have considered the appellant's request and I find that there is no need to allow him or his counsel to view the records at issue in this appeal in order to ensure procedural fairness. In my view, the description of the records provided to the appellant in the Notice of Inquiry and in the shared portions of the Ministry's representations is sufficient to permit him to make informed submissions in this inquiry.

I recognize that the appellant's counsel has had access to the records in Order PO-1944, in accordance with undertakings provided to the Divisional Court in the context of the two judicial review applications relating to that order. However, as Madam Justice Lang concluded in the context of a motion relating to a different judicial review application (*Fuda v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2790 (Div Ct.)), there are significant distinctions between procedures followed by the Commissioner in the context of an inquiry under the *Act* and the process before the Divisional Court on judicial review.

RESPONSIVENESS OF RECORDS

General

Former Adjudicator Anita Fineberg addressed the issue of the responsiveness of records in Order P-880. That order dealt with a re-determination of the issue of responsiveness following the decision of the Divisional Court in *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197. In that case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In Order P-880, Adjudicator Fineberg noted the court's guidance and commented as follows:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

Applying this reasoning to the present appeal, I must first look to the wording of the appellant's request in order to identify the boundaries of relevancy. The request reads:

> Dates, destinations and billings for security, for the Ontario Provincial Police [OPP] detail attached to the Premier, for each trip to the United States from Jan 1, 2000 to Jan 22, 2001, inclusive.
>
> Air costs, hotels and associated expenses for the security detail for each trip to the United States should be listed separately and purpose of trip noted.

Applying the direction of the Court in the judicial review of Order PO-1944, and adopting the reasoning from Order P-880, I find that, in order to be responsive, information contained in the records must be reasonably related to:

- trips taken by OPP officers to the United States during the period January 1, 2000 to January 22, 2001;

- expenses incurred by these officers for any such trip, including salary-related costs;

- the purpose of any such trip from the Premier's perspective.

Records 1-23

The Ministry claims that certain portions of Records 1-23 fall outside the scope of the appellant's request because:

1. they relate to activities that fall outside the timeframe of the appellant's request, or relate to trips taken to locations other than the United States; or

2. they contain the names, Social Insurance Numbers, file numbers and other identifiers that the appellant has not requested.

The appellant accepts that information falling exclusively under the first category is not responsive and is properly withheld, but that any non-responsive information "co-mingled" with responsive information should be treated as responsive. The appellant's representations do not address the second category identified by the Ministry.

I have carefully reviewed the portions of Records 1-23 withheld by the Ministry. I find that some portions relate to trips taken to locations other than the United States. This information is not reasonably related to the appellant's request and is properly withheld on that basis. The other withheld portions identify individual police officers by name, signature and social insurance number, and also include administrative information such as "file numbers" and approval signatures. I find that these portions are all directly related to the various trips taken by the various OPP officers to the United States during the timeframe identified in the appellant's request, and are responsive. Although information concerning the United States trips and other trips are contained in the same records, I find that the responsive and non-responsive portions are easily severed from each other, and that no responsive information is "co-mingled" with non-responsive information and withheld for that reason.

I will assess the responsive portions of Records 1-23 on the basis of the same exemption claims made by the Ministry for other responsive records.

Records 24-118

The notebook entries that comprise Records 24-118 all reflect activities undertaken by various OPP officers on trips during the timeframe identified in the appellant's request. The Ministry has severed these records in an effort to identify the portions that reflect the "purpose of the trip", as opposed to other portions that relate to other activities undertaken by the officers during the various trips.

The appellant submits:

> … that even if there is no express statement in any records as to the purpose of the trip from the former Premier's perspective, information as to what the former Premier is doing on his trips would be responsive to a request for the "purpose" and should be disclosed. If a record discloses that the former Premier spent a trip

> meeting with local politicians, business leaders or potential investors, this information should be disclosed as it would tend to show that the purpose of the trip was business related. Similarly, if a record discloses that the former Premier spent his trip at a health spa or golf resort, this information should also be disclosed as it would tend to show that the purpose of the trip was non-business related.

Having carefully reviewed the various notebook entries, I find that some small portions relate to trips taken to locations other than the United States. This information is not reasonably related to the appellant's request and is properly withheld on that basis. The other withheld portions, which represent the majority of Records 24-118, are responsive to the appellant's request. They all relate to trips taken by various OPP officers who have been assigned to provide security services to the former Premier in the context of his travel to the United States during the timeframe identified in the appellant's request. Although some portions contain information relating more directly to the purpose of a particular trip than other portions, in my view, all of the notebook entries relating to United States trips were created in the context of providing security services on various trips undertaken by the Premier during the timeframe covered by the appellant's request. It is not reasonable to sever these records in the narrow manner undertaken by the Ministry. Applying the reasoning from Order P-880, I find that, with the exception of the portions relating to non-United States travel, all other portions of Records 24-118 are relevant to the appellant's request for access to security-related records during the timeframe and destination parameters identified by the appellant, and therefore they are all responsive to the request.

I will assess the responsive portions of Records 24-118 on the basis of the same exemption claims made by the Ministry for other responsive records.

REASONABLENESS OF SEARCH

Introduction

In its decision concerning Order PO-1944, the Divisional Court interpreted the scope of the appellant's request as it relates to records reflecting "billings" and "purpose of the trip". I required the Ministry to undertake additional searches for responsive records based on the Court's direction.

In appeals involving the possible existence of further responsive records, the issue to be decided is whether the institution has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the Ministry's decision; if not, I may order further searches. The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the Ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records.

Representations

The Ministry's initial representations on this issue consist of the following:

> In response to the [appellant's] request a member of the Security Unit conducted a search. All officers assigned to the Unit during the course of the requested time period were located and contacted individually. The Ministry was advised that the notebooks of a former officer were destroyed by that individual. All remaining notebooks were collected and provided to the IPC. The policy of the OPP is that notebooks are returned upon an employee's [sic] from the OPP.
>
> In addition, the administration offices were searched and further responsive records (Overtime Sheets) located and also provided to the IPC.
>
> The Ministry has located an additional responsive record. This record and correspondence to the appellant can be found in Appendix A.
>
> The Ministry has been advised that there is no financial record, which exists, that provides salary dollars in response to the specifics of the request.

After reviewing the Ministry's representations, the appellant raised a number of concerns. He points out that the Ministry has not provided a detailed, step-by-step explanation of how expenses or costs incurred by the OPP security detail are paid or reimbursed, and without these details, it is not possible to determine whether the searches conducted by the Ministry were reasonable.

The appellant submits that the Ministry's own description of its search activities raises questions regarding their adequacy. In particular, the appellant states, in part:

> (a) There is no specific reference to original receipts supporting claims for expenses. There is also no reference to a search for receipts. Are the receipts available? If not, why not?
>
> (b) There is a general reference to the "administrative offices" being searched and "overtime sheets" being located. Does a search of the "administrative offices" only involve a search of the payroll office or did it include a search of the "accounts payable" or accounting office generally?
>
> (c) The Ministry states that "there is no ***financial record***, which exists, that provides the ***salary dollars*** in response to the specifics of the request.". The Ministry does not indicate, however, whether there are any financial records relating to any of the ***other*** expenses relating to the former Premier's trips to the United States. …

(d) When the Ministry states that there is no "financial record" relating to salary dollars, does the above also mean that there are ***no records at all***, setting out salary information? …

(e) The Ministry is also very specific in stating that "there is no financial record, which exists, that provides salary dollars ***in response to the specifics of the request***". Does this mean that there are records setting out salary dollars? If so, how do they not fall within the "specifics" of the request? …

… [appellant's emphasis]

Finally, the appellant identifies concerns regarding the search for records reflecting the "purpose of the trip". He states:

> The Ministry has not disclosed the purpose of the trips to the United States from the former Premier's perspective. This was the interpretation of "purpose of trip" advanced by [the appellant] and approved by the Divisional Court on [the appellant's] judicial review application. The Ministry has provided no reason for refusing to provide this information. Is the Ministry claiming that there is no record of the purpose of the trips to the United States from the former Premier's perspective? If so, this would be shocking indeed.
>
> The [appellant] submits that even if there is no express statement in any records as to the purpose of the trip from the former Premier's perspective, information as to what the former Premier is doing on his trips would be responsive to a request for the "purpose" and should be disclosed. If a record discloses that the former Premier spent a trip meeting with local politicians, business leaders or potential investors, this information should be disclosed as it would tend to show that the purpose of the trip was business related. Similarly, if a record discloses that the former Premier spent his trip at a health spa or golf resort, this information should also be disclosed as it would tend to show that the purpose of the trip was non-business related.

The Ministry responded to a number of the points raised by the appellant.

As far as its record-keeping practices are concerned, the Ministry provided an explanation of how receipts for expenses are submitted by the OPP security officers providing services to the Premier, and details as to how these receipts are recorded, verified, monitored, stored and paid out by the Ministry.

As far as records reflecting the "purpose of the trip" and "billings" are concerned, the Ministry states:

> … The members of the security detail are not provided with information regarding the purpose of the trip. They are advised of the destinations, the dates

> and times of departure, and the length of stay. This information is conveyed to the members verbally. The supervisor decides who will be involved in the security detail for these trips and assigns the members. The members usually make their own travel arrangements. Sometimes the Premier's office books flights and hotel accommodations for the security detail. In these instances the officers are responsible to pay these expenses. The officers then retain any receipts or related documents and attach them to their expense account in order to claim reimbursement. The members may make notes in their notebooks regarding the trip and destinations attended. Photocopies of the notebooks of the members involved have already been supplied. There are no other records. The Ministry does not have a record, which speaks to this issue.
>
> With respect to the salary costs the OPP does not have a record, which records the salary costs of the members of the security team who were at various times assigned to provide security for the former Premier during the relevant period. The OPP Security Unit is comprised of a number of officers who are responsible for providing security to a variety of officials, including the Premier. They are assigned on a strategic basis and as such the officers who provide security to the Premier vary. No record exists which provides the salary costs of the various officers who were assigned to provide security to the former Premier during the relevant time period. The overtime process is recorded by the OPP and the Ministry has provided those records.

In reply, the appellant points out that no receipts in support of various expenses have been identified by the Ministry in this appeal, and takes the position that these receipts would clearly qualify as responsive records.

Findings

With the exception of receipts to support the various individual expense claims, I am satisfied that the Ministry has now made reasonable efforts to locate all records responsive to the appellant's request. It is clear that the Ministry's search parameters address the Divisional Court's direction on the interpretation of "billings" and "purpose of the trip", and the details provided by the Ministry in response to the appellant's expressed concerns regarding search activities, in my view, are sufficient in order to adequately discharge its statutory responsibility.

As far as the receipts are concerned, I accept the appellant's position that receipts in support of expense claims made by individual OPP officers would fall within the scope of this appeal, and the Ministry's representations regarding its record-keeping practices would appear to confirm that receipts of this nature should have been required and should exist.

However, in the particular circumstances of this appeal, I find that no useful purpose would be served in requiring the Ministry to conduct further searches for these receipts. I base this decision on my finding under section 14(1)(e) of the *Act* set out below, and the fact that the reasoning for upholding the exemption claim for the expense records would apply equally to the supporting receipts.

LAW ENFORCEMENT

Section 14(1)(e): endangerment to life or physical safety

Introduction

Section 14(1)(e) of the *Act* reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > endanger the life or physical safety of a law enforcement officer or any other person;

For section 14(1)(e) to apply, the Ministry must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the Ministry must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated (*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)).

Representations of the parties in Order PO-1944

In Order PO-1944, I summarized the representations of the parties as follows:

> In support of its view that the records qualify for exemption under section 14(1)(e) of the *Act*, the Ministry submits:
>
> > The Ministry has applied section 14(1)(e) to all of the responsive records. It is the view of the Ministry that release of the requested information can reasonably be expected to endanger the life or physical safety of other individuals.
> >
> > ….
> >
> > The records at issue are the Statements of Expenses forms submitted by each member of the security detail for the Premier. These records document all the "billed" expenses incurred on each trip and are itemized and submitted by the individual officer(s). The expenses listed on the responsive records consist of the air costs, hotels as well as associated costs such as meals, gratuities, parking, tolls, service charges and laundry. The records clearly contain sensitive information as they would not only identify the size and composition of the security detail during the trips (which is extremely confidential) but would also allow a person to identify the exact routines employed by the detail.

> The requester is seeking access to the records in a specific configuration. This configuration is to list the expenses separately by officer as well as on a per trip basis. The appellant is also seeking access to records, which cover an extended period of time. The Ministry, in responding to the configuration requested by the appellant, would clearly expose the unit to harm.

The Ministry goes on to identify that the disclosure of the records would provide a detailed description of the size of the security detail or the routines followed by it. As well, the Ministry states:

> There are person(s) who, if provided with the opportunity, would pursue their concerns by attempting to aggressively gain access or cause injury to the Premier or the security detail or persons in close proximity. The release of any record or information contained in the record, supplemented with information already in the public domain and not known by the Ministry could reasonably endanger the life or physical safety not only of the members of the detail but also put at risk those person(s) who are under its care. This information would allow those persons to undertake a strategy in their efforts to attempt to gain access to the Premier.

The Ministry refers to a recent "trashing" of an MPP's constituency office as an example of individuals or groups who resort to criminal activity to express their anger at government officials.

The Ministry also makes the point that, given the appellant's role as member of the media, disclosure of the records:

> … must be viewed as disclosure to the public generally in a broad manner and will have the effect of escalating those who may elect to engage in activities which include threats or harassment.

The Ministry refers to my order P-1499 in this regard.

As part of its representations the Ministry also includes an affidavit sworn by the officer in charge of the Investigation Support Bureau of the OPP. This affidavit supports the Ministry's position by identifying the harms and risks associated with providing the requested information to the appellant. The officer maintains that disclosing this information, which would identify the number of officers assigned to the security detail and the routines employed, would create a risk to identified individuals. A portion of his affidavit, which was not shared with the appellant for confidentiality reasons, elaborates on these risks and provides examples to support the Ministry's position.

The appellant disputes the position taken by the Ministry. He submits that the Ministry has not adequately explained how and why the alleged harm would result from disclosure of the information contained in the records, thereby failing to discharge its burden of establishing the requirements of any of the exemption claims. The appellant also made submissions, which can be summarized as follows:

- The Ministry has not shown how disclosing the costs for salary, hotel and airfare would reveal the size and composition of the security detail or the exact routines followed by the OPP officers.

- The appellant maintains that he is not requesting the records in a specific configuration, nor that the expenses be listed separately by individual OPP officer. Rather, what he seeks is categories of expenses listed separately for each trip. In the appellant's view, information provided in this format would not permit someone to determine the size or composition of the security detail.

- Even if disclosure of the records would identify the size, composition or "exact routine" of the security detail (which the appellant disputes), he submits that this would not give rise to the reasonable probability of harm claimed by the Ministry. The appellant submits that the size, composition and routine would vary depending on the purpose of the trips, the city visited, the political climate, and the intelligence as to security risks associated with each trip. The appellant refers to Order M-333, where a similar issue was raised with respect to the requests for lunch expense claims provided by an employee of a municipal institution who had been the subject of threats in the past. In that Order, former Adjudicator Anita Fineberg dismissed the institution's concern that disclosing the records would show a "pattern of activity", because the locales of the lunches were sufficiently unpredictable, and did not disclose a pattern.

- The appellant points out that his request deals with past trips, and that disclosure of this historical data would not cause any risks for future trips.

- The appellant also states that the Ministry has provided no evidence to support its claim that the Premier's safety has been threatened on trips to the United States.

- The appellant rejects the relevance of the recent incident where a MPP's constituency office was vandalized; identifying that this was done while the member was not in the office. He also points out that the member's assistant was quoted as saying that nobody was hurt or threatened during the vandalism.

- The appellant also submits that "[W]hile demonstrations against the current government have at times been loud and boisterous, they have largely been conducted with full respect for the law. Any risk to the Premier is remote and speculative."

- In the appellant's view, the current appeal is distinguishable from Order P-1499 on the basis of the cogency of evidence provided to me in this previous case that supported my finding that the requirements of section 14(1)(e) had been established.

Representations of the parties in this inquiry

The Ministry and the appellant both maintain their respective positions from Order PO-1944 in the context of this inquiry.

The Ministry claims that all responsive records (i.e., those at issue in the earlier appeal and the additional records identified here) qualify for exemption under section 14(1)(e).

The Ministry reiterates its position that disclosing expense claims would reveal the size and composition of the security detail during the trips, as well as the exact routines employed by the detail.

As far as the newly identified records are concerned, the Ministry states:

> In the case of the overtime records these are also submitted by individual officers and would account for costs related to the security assignment. The records also clearly contain sensitive information as they would not only identify the size and composition of the security detail during the trips (which is extremely confidential) but would also allow a person to identify the exact routines employed by the detail.
>
> In the case of the officers' notes they are also prepared on an individual basis and contain personal as well as sensitive operational and security information. This sensitive information would not only identify the size and composition of the security detail during the trips (which is extremely confidential) but would also allow a person to identify the exact routines employed by the Unit.

The Ministry also reiterates its position that releasing any information contained in the records, supplemented with information already in the public domain and not known by the Ministry, could reasonably be expected to endanger the life or physical safety not only of the members of the security detail but also individuals who are under its care.

The Ministry again refers to Order PO-1499 and also to my reasons in Order PO-1944 to support its position that disclosing records that would disclose the size of the security detail, would in turn establish the section 14(1)(e) harm.

The appellant once more takes issue with the Ministry's position. The essential elements of his argument can be summarized as follows:

- The Ministry has failed to meet the onus, by not providing detailed and convincing evidence of the alleged harm. By the Ministry's own admission, the harm would result from the release of the records supplemented with "information already in the public domain and not known to the Ministry". The appellant takes the view that general statements like these, without reference to the actual information in the public domain, are insufficient to meet the onus.

- Disclosing the records would not reveal the exact routines followed by the security detail. There is nothing supporting a change in the finding on this point made in Order PO-1944.

- Even if disclosing the statement of expenses would reveal the size of the security detail, the Ministry must do more in order to establish the exemption claim. It must prove that revealing the size of the security detail would result in the section 14(1)(e) harm, and the Ministry has not shown how disclosure of the size alone would create this harm. In particular:

    - merely disclosing the size of the security detail would not lead to the harms contemplated – the individuals would not be locatable;

    - relying on Order M-333, revealing the size of the detail through disclosure of the expense claim information would not identify the location or exact routine, which is necessary in order to establish the section 14(1)(e) risk;

    - the Ministry has not identified that the same number of officers are involved in each trip, nor whether any locations are regularly visited. It is unclear how knowing the number of officers in the security detail in 2000 could lead to the harm identified;

    - the security detail would likely be changed depending on a number of variables including the purpose of the trip, the city visited, the political climate, and the particular security concerns;

- the Ministry has provided no evidence that any opponent of the former Premier followed him to the Unites States to express opposition through violent or illegal means.

The appellant also submits the "new evidence" he had asked the Court to consider on his motion in the Order PO-1944 judicial review application. This new evidence consists of a number of press releases from the Office of the Premier's web site. The appellant argues that this evidence is relevant for the following reasons:

- The press releases identify specific locations visited by the former Premier on different dates and describe the activities he was involved at those times. This brings into question the Ministry's position that the disclosure of the records at issue will lead to the identified risks. Why is there a concern about certain information regarding the Premier's whereabouts, when other details are made publicly available?

- The press releases show that the Premier was at certain locations on specified dates, yet some of the records at issue in this appeal establish that the security detail was elsewhere on those dates. This brings into question whether disclosing these records would reveal the size of the security detail accompanying the former Premier.

- The records reveal that the security detail went to locations in advance of the former Premier and, because there is no evidence to establish that the size of the detail would be the same with or without the former Premier, it is unreasonable to assume disclosing the records would reveal the size of the detail when accompanying the former Premier.

The appellant also points to the following actions taken by the government that, in his view, undermine its position regarding the impact of disclosing the records at issue in this appeal:

- The government's voluntary release of seven years worth of expense records to the media on December 3, 2002, because:

  - these expense claims would presumably disclose the precise locations visited by Ministers, and no section 14(1)(e) harms were identified;

  - seven years of expense claims would be more likely to disclose any "pattern" or "routine" followed by a particular Minister, than the records at issue in this appeal;

  - these records were disclosed to the media;

- According to published reports, the government has apparently recently confirmed the size of the OPP detachment assigned to Queen's Park and, in

his view, disclosing this information without risk of section 14(1)(e) harm is inconsistent with the Ministry's position regarding the size of the security detail accompanying the former Premier.

- There has been a material change in circumstances because Mr. Harris is no longer the Premier of Ontario, which is relevant because:

  - the harm identified by the Ministry arose from the fact that the former Premier was a representative of the government, and since this is no longer the case, he would not be the subject of violence by any persons expressing their displeasure;

  - the former Premier will no longer be making any trips to the United States as a representative of the government;

  - the former Premier will not likely be making the same trips to the United States as he did during the timeframe covered by the request, and even if he does, it is not likely that he would be accompanied by the same number of OPP officers as when he was Premier.

- The records at issue in this appeal are historic in nature.

Findings

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context (*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)).

In Order PO-1944, I found that, with one exception, the records at issue in that appeal qualified for exemption under section 14(1)(e). I stated:

> Turning first to the question of whether disclosure of the records would reveal the routines followed by the security detail and the Premier while travelling in the United States, I do not accept the Ministry's position on this aspect of the exemption claim. Although the expense claim forms contain specific information concerning out-of-pocket expenses incurred by various OPP officers while on travel status - flights to and from cities/states, hotel charges, toll fees, gratuities, etc. - they do not contain the type of specific information necessary to reveal any routines or travel patterns. For example, no specific hotel or restaurant is identified on any of the records, and in many cases only the state visited and not even the city, is listed on the claim form. The information contained on the summary report and the itemized breakdown is even less specific. Similar to the situation faced by former Adjudicator Fineberg in Order M-333, I find that the information contained on the various records at issue in this appeal would not reveal a pattern of activity on the part of the OPP security detail or the Premier sufficient to bring the records within the scope of section 14(1)(e) of the *Act*.

As far as the size of the security detail is concerned, in my view, different considerations apply depending on the type of record. Because the expense claim forms were submitted individually by different OPP officers, I find that disclosing them would necessarily reveal the number of OPP officers accompanying the Premier on a particular trip. Even if the information provided on the forms is not identical in each case, there is sufficient similarity in content and format to enable accurate inferences to be drawn regarding the size of the security detail on each trip. Because each of these records was submitted individually by a specific OPP officer, I also find that it is not possible to sever them in a way which would avoid revealing the size of the security detail on each trip. As far as the itemized breakdown is concerned, because of the way it is structured, I find that disclosing it would also reveal the number of OPP officers assigned to the security detail for each of the Premier's trips.

Further, based on the evidence and representations provided by the Ministry, including the specific incidents identified in the affidavit submitted by the officer in charge of the OPP's Investigations Support Bureau, I find that disclosing the size of the security detail could reasonably be expected to endanger the life or physical safety of the Premier and the officers assigned to his security detail. The evidence provided by the Ministry is both detailed and convincing. Applying the standard established by the Court of Appeal in *Ontario (Ministry of Labour)*, I find that the reasons for applying the section 14(1)(e) exemption claim to records that would reveal the size of the Premier's security detail, cannot accurately be described as a frivolous or exaggerated expectation of endangerment to safety. On the contrary, the Ministry has persuaded me that there is a reasonable basis for believing that the Premier's safety could be endangered by disclosing records that would reveal the size of his security detail, as well as the safety of the officers themselves. My conclusion in this regard certainly does not imply that the appellant himself would be the source of any such harm. However, as has been established in many past orders, disclosure of records to a particular requester is tantamount to disclosing the information contained in the records to the public generally, and this is the basis for my finding that the section 14(1)(e) exemption applies to the various expense claim forms and the itemized breakdown.

However, I find that different considerations are relevant with respect to the responsive portions of the summary report. This record does not list expenses by individual OPP officer, nor can the size of the security detail supporting the Premier be ascertained through the disclosure of the summarized expense information listed in this record. In my view, substantiating the section 14(1)(e) exemption claim in the circumstances of this appeal is dependent on the existence of information that would establish the size of the Premier's security detail. Because the summary report does not meet this threshold requirement, I find that the risks of harm through disclosure of the responsive portions of this record are not reasonable and, therefore, it does not qualify for exemption under section 14(1)(e) of the *Act*.

Having carefully considered the detailed representations of the parties in the current appeal, and in particular the arguments and "new evidence" provided by the appellant, I reach the same conclusion here.

The essence of the Ministry's position is that knowing the size of the security detail assigned to a Premier (in this case former Premier Harris) could reasonably be expected to endanger the life or physical safety of the OPP officers, the Premier, and others who may be attending events involving the Premier. The Ministry has provided sufficient evidence to support this position and, in my view, the rationale offered by the Ministry applies regardless of the fact that Mr. Harris is no longer Premier, whether or not there may be conflicting information concerning the actual travel dates of OPP officers and the former Premier, and whether some information about the activities of the former Premier is otherwise publicly available through the disclosure of expense claims or on a web site. In my view, it is reasonable to assume that security arrangements for Premiers remain relatively consistent irrespective of incumbent office holder, and that disclosing the size of the security detail used by former Premier Harris during the time period covered by the appellant's request could reveal reasonably accurate information concerning security arrangements for the current Premier. It is also reasonable, in my view, to assume that security arrangements could differ based on location and circumstance, and that disclosing information that would reveal different sized security details for different locations could create a risk to the safety of the officers and the official they are accompanying to these locations in future. Consistent with the direction of the Divisional Court in *Ontario (Attorney General) v.Fineberg*, in my view, a reasonable degree of deference should be accorded to the Ministry as it relates to the assessment of the potential danger in revealing the size of the security detail that accompanied former Premier Harris, in light of its potential impact on current and future security arrangements for Premier Eves and his successors.

I find that disclosing the individual Statement of Expense forms at issue in Order PO-1944 would not reveal a pattern of activity on the part of the OPP security detail or the former Premier sufficient to bring the records within the scope of section 14(1)(e) of the *Act*. However, I find that disclosing these records would necessarily reveal the number of OPP officers accompanying the former Premier on a particular trip, and for the same reasons outlined in Order PO-1944, this is sufficient to bring these records within the scope of section 14(1)(e). I also find that, because of the way that the itemized breakdown of expenses is structured, disclosing it would also reveal the number of OPP officers assigned to the security detail for each of the former Premier's trips, and this record also qualifies for exemption under section 14(1)(e).

However, I continue to find that different considerations relate to the responsive portions of the summary report. As I determined in Order PO-1944, this record does not list expenses by individual OPP officer, nor can the size of the security detail supporting the Premier be ascertained through the disclosure of the summarized expense information listed in this record, and the risks of harm through disclosure of the responsive portions of this record are not reasonable. Therefore, the responsive portions of the summary report do not qualify for exemption under section 14(1)(e) of the *Act*.

As far as the responsive portions of Records 1–23 in this appeal are concerned, each of them was prepared by an individual identifiable OPP officer and, in my view, all of these records should be treated in the same manner as the Statement of Expense forms at issue in Order PO-1944. I do not accept the Ministry's position that disclosing Records 1-23 would reveal a pattern of activity on the part of the OPP security detail or the former Premier sufficient to bring the records within the scope of section 14(1)(e); however, I do find that disclosing them would necessarily reveal the number of OPP officers assigned to provide security to the former Premier on a particular trip, and that this is sufficient to bring these records within the scope of section 14(1)(e) of the *Act*.

Turning to Records 24-118, I find that the responsive portions of these records qualify for exemption under section 14(1)(e) for the same reasons as Records 1-23. In addition, because of the detailed nature of the police officers' notebook entries, and the fact that they reveal all activities undertaken by the various officers on the days in question, I accept the Ministry's position that disclosing these records would reveal a pattern of activity on the part of the security detail, which reinforces my finding that these records meet the requirements of the section 14(1)(e) exemption.

SECTION 14(1)(l): FACILITATE THE COMMISSION OF UNLAWFUL ACT
SECTION 20: DANGER TO SAFETY OR HEALTH OF AN INDIVIDUAL
SECTION 21(1): INVASION OF PRIVACY

Section 14(1)(l) of the *Act* reads:

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

Section 20 reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The Ministry's submissions on section 20 are the same as those provided for section 14(1)(e). As far as section 14(1)(l) is concerned, the Ministry takes the position that disclosing the records would reveal confidential information about the deployment of resources to the Premier's security detail.

Because I have determined that most of the records qualify for exemption under section 14(1)(e) it is not necessary for me to consider them here.

As far as the responsive portions of the summary report are concerned, for the same reasons outlined in my discussion of section 14(1)(e), I find that section 14(1)(e) and section 20 do not apply to this record. With one exception, the summary report identifies the trips by state name

only and, as I have already determined, the record contains no information that would reveal the size of the security detail for a particular trip. Therefore, I find that disclosing the information contained in the responsive portions of the summary report would not reveal routines or patterns of travel by the former Premier, nor would disclosing information that does not establish the size of the security detail result in a reasonable expectation of the harms identified in sections 14(1)(l) or 20, applying the standards established by the Court of Appeal in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.) for section 14(1)(l), and *Ontario (Ministry of Labour), supra*, for section 20.

Accordingly, I find that the responsive portions of the summary report do not qualify for any exemptions claimed by the Ministry, and should be disclosed to the appellant.

The Ministry takes the position that portions of the records contain the personal information of identifiable individuals, and qualify for exemption under section 21(1) of the *Act*. However, the Ministry's representations on this issue relate to Records 1–23. Because I have found that the responsive portions of Records 1-23 are exempt under section 14(1)(e), it is not necessary for me to deal with the section 21(1) exemption.

PUBLIC INTEREST

In his representations, the appellant raises the possible application of the public interest override in section 23 of the *Act*. Section 23 does not apply to records that qualify for exemption under section 14. I have determined that all records that are not to be disclosed to the appellant qualify for exemption under section 14(1)(e). Therefore, similar to my finding in Order PO-1944, I find that section 23 has no application in the circumstances of this appeal.

ORDER:

1. I order the Ministry to disclose the responsive portions of the summary report to the appellant by **September 25, 2003**. I have attached a highlighted version of this record to the copy of this order sent to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator, which identifies the portions that should **not** be disclosed.

2. I uphold the Ministry's decision to deny access to all other responsive records.

3. I order the Ministry to provide me with a copy of the record disclosed to the appellant under Provision 1 of this order.

Original signed by: September 4, 2003
Tom Mitchinson
Assistant Commissioner