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

ORDER PO-2699

Appeal PA07-387

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

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 information concerning two named Ontario Provincial Police (OPP) Constables' reports for a specified investigation. The OPP is part of the Ministry.

The Ministry located the responsive records and granted the requester with partial access to them. The Ministry denied access to the remaining portions of these records citing section 49(a) in conjunction with section 14(1)(l) (commission of an unlawful act or control of crime) and section 49(b) (personal privacy). The Ministry also advised the requester that portions of the records were non-responsive. The requester (now the appellant) appealed the decision of the Ministry.

During the course of mediation, the appellant advised the mediator that, in addition to police reports, he is also seeking access to police investigation notes. The mediator contacted the Ministry to determine if it would be prepared to expand the scope of the request to include investigation notes. The Ministry initially advised that it was not prepared to expand the scope of the request. As a result, scope of request was added as an issue in this appeal.

In addition, based on correspondence from the appellant, it appears that he believed that additional records responsive to the request existed. As a result, the issue of whether the Ministry conducted a reasonable search was added as an issue in this appeal.

Subsequent to the issuance of the original Mediator's Report, the Ministry advised that it would now include officers' notes in the scope of the request. The Ministry then issued a Supplemental Decision Letter, granting partial access to these notes. However, the appellant advised the mediator that the scope of his request still remains at issue.

The parties were unable to resolve the issues under appeal through the process of mediation and the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Ministry, seeking its representations. I received representations from the Ministry. I sent a complete copy of the Ministry representations to the appellant along with a Notice of Inquiry. I received representations from the appellant in response.

RECORDS:

The Ministry has identified a one page Occurrence Summary, a one page Supplemental Occurrence Report and five pages of police officers' notes as the records at issue in this appeal.

DISCUSSION:

SCOPE OF THE REQUEST/RESPONSIVENESS OF RECORDS

I will first determine what the scope of the appellant's request is and what records are responsive to this request.

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

The Ministry submits that:

> The request submitted by the appellant indicated that he was seeking access to the OPP report in relation to the incident that occurred on [date]. There did not appear to be any need for clarification as to what particular records were being sought by the appellant. The request was clear and unambiguous.
>
> During appeal mediation, the appellant indicated that, in addition to the investigation report, he also wished to access the officers' notes in regard to the incident. Although the requester's request does not indicate this … the Ministry ultimately agreed to expand the scope of the appellant's request to include officers' notes. [A] supplemental decision letter was issued to the appellant providing him with partial access to these additional records. The Ministry is not

aware of the existence of any other records that "reasonably relate" to the appellant's request.

The Ministry has identified certain parts of the responsive records as containing information concerning other law enforcement matters and administrative information that is not reasonably responsive to the appellant's request.

The content of the responsive officers' notes is in support of the Ministry's position that certain information concerning administrative matters and law enforcement matters not involving the appellant is not responsive to the appellant's request.

The records also contain … administrative information, such as request faxing and document printing information. This information was created subsequent to the receipt of the appellant's … request. This information reflects when the records in question were transmitted and/or when the records were printed and by whom. The reports were faxed and printed for the sole purpose of responding to the … request submitted by the appellant. The faxing and printing information post-dates the submission of the appellant's access request.

The Ministry notes in that in Order PO-2254, Adjudicator Sherry Liang accepted the Ministry's position regarding the non-responsiveness of certain administrative information relating to the printing of responsive reports for the purposes of a …request. Adjudicator Liang commented:

> To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880]. In this appeal, the Ministry states that some of the information in the record is "administrative information relating to the printing of the reports" and is accordingly not responsive to the request. I have reviewed the information at issue, and I agree with the Ministry's submission. The information in these portions of the record reflect when the record was printed and by whom, and was created after the appellant's request. I am satisfied that this information is not covered by the scope of the appellant's request, and I uphold the Ministry's decision to withhold this information.

The Ministry submits that it has adopted a broad interpretation of the appellant's request for access to information.

The appellant did not address the issue of the responsiveness of the records in his representations, other than stating that he has the right to request that the OPP provide him "with complete investigation reports for my properties vandalized and stolen."

Analysis/Findings

In response to the appellant's request, the Ministry provided the following:

- An initial decision letter disclosing a severed Occurrence Summary (Record 1) and all of the responsive information in the Supplemental Occurrence Report (Record 2) for the investigation specified in the request;

- The first supplemental decision letter disclosing the police officers' handwritten notes (Record 3) relating to the specified investigation; and,

- The second supplemental decision letter, disclosed at the time the Ministry provided representations, disclosing further responsive information from Record 1.

During mediation, following receipt of the first supplemental decision letter, the appellant advised the mediator that the scope of the request was still an issue. However, the appellant has not provided me with any information as to which responsive records or portions of records are still at issue.

The appellant has sought records relating to a specified incident. I find that the Ministry has identified the records that are responsive to his request and I will uphold its decision concerning the responsiveness of the records.

SEARCH FOR RESPONSIVE RECORDS

I will now determine whether the Ministry conducted a reasonable search for records.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

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

The Ministry was asked to provide a written summary of all steps taken in response to the request. In particular, the Ministry was asked to respond to the following preferably in affidavit form:

1. Did the Ministry contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.

2. If the Ministry did not contact the requester to clarify the request, did it:

   (a) choose to respond literally to the request?

   (b) choose to define the scope of the request unilaterally? If so, did the Ministry outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the Ministry inform the requester of this decision? Did the Ministry explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.

4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

If the Ministry provides an affidavit, it should be from the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

The Ministry submits that:

> [T]he OPP [Ontario Provincial Police] has conducted a reasonable search for records in the circumstances of the appellant's request. Experienced OPP staff have conducted a comprehensive record searches based on the information provided by the appellant.
>
> The appellant was not contacted and asked to clarify the scope of his … request. The Ministry was of the view that the appellant's request did not require clarification. The appellant provided his name, home address, the date of the incident in question, the names of the involved OPP officers and the relevant OPP occurrence number. The appellant indicated that he wished to access the OPP report for the investigation. As the appellant's request was received on [date], it encompassed any responsive records in existence as of that date. The appellant's … request was clear and did not require clarification.

Following receipt of the request…, the assigned Program Analyst with the Freedom of Information and Privacy Office contacted the Central Region OPP FOI [Freedom of Information] Liaison Officer and asked that a search be conducted for the requested report in regard to occurrence [specified number]. The Central Region OPP FOI Liaison Officer is responsible for the coordinating of all records searches for all … requests for access to records relating to matters occurring in the OPP Central Region. The Central OPP FOI Liaison Officer is experienced in the retrieval of records and very familiar with the record holdings of the OPP Central Region.

As part of the records retrieval process, the OPP FOI Liaison Officer initially reviewed the information available from … the OPP's records management system and is used to record information relating to incidents investigated by the OPP…

[T]he OPP FOI Liaison Officer was able to confirm that staff from the [named] OPP Detachment had responded to the …incident [and] that an occurrence summary and a supplementary occurrence report were the only reports entered in relation to the incident...

During mediation of the appellant's appeal, the Ministry was informed that the appellant had also been seeking access to any investigative notes made by the OPP officers who responded to occurrence [number]…

[T]he assigned Program Analyst with the Freedom of Information and Privacy Office contacted the OPP FOI Liaison for Central Region and asked that a search be conducted for officers' notes in relation to occurrence [number].

[The] OPP FOI Liaison Officer contacted the responsible [named] OPP Detachment Administrative Clerk and asked that the involved officers be contacted and that their investigative notes be retrieved…

Following receipt of the Notice of Inquiry, the assigned Program Analyst with the Freedom of Information and Privacy Office contacted the OPP FOI Liaison Officer and provided him with a brief description of the 7 pages of responsive records [Records 1 to 3] that had been previously located. The OPP FOI Liaison Officer was asked to confirm that no additional responsive records existed in relation to occurrence [number]. [The] OPP FOI Liaison Officer … confirmed that no further materials exist.

The Ministry submits that the OPP record search activities have been diligent and thorough, in that multiple searches have been conducted and appropriate OPP staff who would have knowledge of records relating to the subject occurrence have been contacted and involved in the records search activities. There are no other possible areas of search for the requested records.

In response, the appellant did not address the issue of the Ministry's search for records in his representations.

Analysis/Findings

Although the appellant asserts that additional responsive records should exist in response to his request, I find that the appellant has not provided me with a reasonable basis for concluding that additional responsive records exist.

Upon my review of the Ministry's representations, I find that the Ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

I conclude that the Ministry has provided a comprehensive description of the steps it undertook to locate records responsive to the appellant's request. Accordingly, I find that the Ministry has performed a reasonable search for responsive records and I dismiss that aspect of the appeal.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1). The Ministry submits that the followings paragraphs of the definition of "personal information" in section 2(1) apply to the records at issue:

> "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,
>
> (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,
>
> (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;

The Ministry submits that the responsive records contain the types of personal information listed above with respect to the appellant. It also states that:

> There is also a small amount of personal information relating to other identifiable individuals on pages 1 [the Occurrence Summary] and 3 [the police officer notes] of the records that have been withheld. Apart from the information about the other individuals, the operational police codes and non-responsive information, the requested records have been fully disclosed to the appellant.

The appellant agreed in his representations that the records contain his personal information. He did not address whether other identifiable individuals' personal information is contained in the records.

Analysis/Findings

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 [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

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 [Orders P-1409, R-980015, PO-2225].

Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2(3) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Upon my review of the records, I agree with the Ministry's description of the records and find that they contain the names of identifiable individuals other than the appellant in their personal capacity (paragraph (h) of the definition of "personal information"). Disclosure of these names would reveal other personal information about these individuals. The records also contain the personal information of the appellant.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

I will now determine whether the discretionary exemption at section 49(a) in conjunction with the section 14(1)(l) exemption applies to the information at issue.

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

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, **14**, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

In this case, the Ministry has applied section 14(1)(l) to the various operational police codes information including "ten" codes and location and zone codes.

Sections 14(1)(l) states:

> 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.

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.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

The Ministry submits that:

> [It] applied section 14(1)(1) to the various operational police code information contained in the responsive records including "ten" codes, location and zone codes.
>
> With particular reference to police "ten" codes referenced in the records at issue, these operational police codes are used by OPP officers in their radio communications with each other and their detachments and Provincial Communication Centres. The Ministry submits that release of "ten" codes would compromise the effectiveness of police communications and jeopardize the safety and security of OPP officers.
>
> The other exempt information in part reveals identifiable zones from which OPP officers are dispatched for patrol and other law enforcement activities. Although a detachment may cover a large geographic region, the exempt information reveals a specific, identifiable zone and service location. This information is used to dispatch officers to calls for service and could be used to track the activities of police officers carrying out law enforcement activities in the community.
>
> The Ministry submits that the public disclosure of these operational police codes would leave police officers more vulnerable and compromise their ability to provide effective policing services. For example, if individuals engaged in illegal activities were monitoring police radio communications and had access to the meanings of the various police codes it would be easier for them to carry out criminal activities and would jeopardize the safety of police officers. Intimate knowledge of the whereabouts of a given officer and of the activities that he/she is involved with at any given time would be a powerful aid to individuals involved with criminal activities.

The appellant does not address this issue in his representations.

Analysis/Findings

The application of section 14(1)(l) to the police codes and descriptive information concerning these codes has been considered in numerous orders of this office. Adjudicator Steven Faughnan stated in Order PO-2409:

> In my view, the finding of the Divisional Court in Ontario *(Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.) that the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context, is applicable here. Saying that nothing has happened so far misses the point, since the test is whether harm could reasonably be expected to result from disclosing the operational codes (including the "ten" codes)… A long line of orders (for example M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339) have found that

> police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release. In the circumstances of this appeal, I am also satisfied that the police have provided sufficient evidence to establish that disclosure of the operational codes (including the "ten" codes) that were withheld could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.
>
> I therefore find that the section 49(a) exemption applies to these operational codes.

I agree with and adopt the findings of Adjudicator Faughnan in Order PO-2409 that disclosure of the police codes and descriptive information concerning these codes could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

Therefore, I find that the undisclosed operational police codes information in the records at issue falls within the ambit of section 14(1)(l). Accordingly, subject to my analysis of the Ministry's exercise of discretion, the exemption in section 49(a) applies to this information.

PERSONAL PRIVACY

I will now determine whether the discretionary exemption at section 49(b) applies to the personal information contained on pages 1 and 3 of the records. Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). The information at issue does not fit within these paragraphs.

In deciding whether the exemption in section 49(b) applies, sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Ministry submits that the personal information at issue was compiled and is identifiable as part of a police investigation into a possible violation of law. The Ministry has claimed the application of the presumption in section 21(3)(b). This section reads:

> A 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, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Ministry submits that:

> As noted in the responsive records, the appellant has alleged that certain individuals committed a break and enter at his cottage. Breaking and Entering is an offence under section 348(1) of the *Criminal Code*. The [named] OPP Detachment investigated this matter and ultimately determined that the allegation was unfounded.

The appellant does not address this issue directly. He indirectly addresses this issue by stating that he has "the right to request OPP providing me with complete investigation reports for my properties vandalized and stolen".

Analysis/Findings

I find that section 21(3)(b) applies in the circumstances of this appeal. I have reviewed the portions of the records remaining at issue and in my opinion, the personal information severed from the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law, namely section 348(1) of the *Criminal Code*. The fact that charges were not laid does not affect the application of section 21(3)(b) [Order PO-1849]. The presumed unjustified invasion of personal privacy at section 21(3)(b) therefore applies to this information.

Section 21(4) does not apply to this information and the appellant did not raise the possible application of the public interest override at section 23 of the *Act* (*John Doe*, [cited above]).

Therefore, subject to my analysis of the Ministry's exercise of discretion, I find that because the remaining withheld portions of the records are subject to the section 21(3)(b) presumption, this

information qualifies for exemption under section 49(b). Disclosure of this information is presumed to be an unjustified invasion of personal privacy.

As I have found that the remaining withheld portions of the records qualify for exemption under the section 21(3)(b) presumption, it is not necessary for me to address whether the factor in section 21(2)(f) raised by the Ministry might also apply.

EXERCISE OF DISCRETION

Because sections 49(a) and (b) are discretionary exemptions, I must also review the Ministry's exercise of discretion in deciding to deny access to the withheld information.

The sections 49(a) and (b) exemptions permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

The Ministry submits that:

> [It was] cognizant of the appellant's right of access to personal information records held by the Ministry. The Ministry took into account that the appellant is an individual rather than an organization.
>
> The Ministry considered releasing the exempt personal information and operational police codes remaining at issue to the appellant notwithstanding that discretionary exemptions from disclosure apply to such information.
>
> The historic practice of the Ministry when responding to personal information requests for police records is to release as much information as possible in the circumstances. The Ministry withholds such information only as necessary in order to protect the privacy interests of individuals and the law enforcement interests of the OPP.
>
> The Ministry in its exercise of discretion took into consideration the fact that confidentiality of information, such as operational police codes, is sometimes necessary in order for the police to effectively and safely carry out their law enforcement responsibilities.
>
> With respect to the exempt personal information on pages 1 and 3, the Ministry took into consideration in its exercise of discretion the fact that the serious allegation that the appellant made against other identifiable individuals was determined by the OPP to be unfounded.

> The Ministry has issued three separate decision letters to the appellant and has provided him with access to nearly all of the responsive information in relation to the records associated with OPP occurrence [number]. It is not possible to sever any non-exempt information from the records.
>
> The Ministry ultimately came to the conclusion in its exercise of discretion that the release of additional information in the circumstances of the appellant's request was not appropriate.

The appellant did not address this issue in his representations.

Analysis/Findings

I find that the Ministry exercised its discretion in a proper manner, taking into account relevant factors and not taking into account irrelevant factors, in denying the appellant access to the information in the records for which it has claimed the sections 49(a) and (b) exemptions. In particular, the appellant does not have a sympathetic or compelling need to receive the information and the information is sensitive as it was gathered during a law enforcement investigation. The information is significant to the Ministry and disclosure will not increase public confidence in the ability of the OPP to provide policing services. In the circumstances of this appeal, the privacy rights of the identifiable individuals in the records other than the appellant are significant.

Accordingly, I uphold the Ministry's exercise of discretion and find that the records are properly exempt under sections 49(a) and (b).

ORDER:

I uphold the Ministry's decision and dismiss this appeal.

Original Signed by: July 25, 2008
Diane Smith
Adjudicator