Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3163

Appeal PA11-423

Ministry of Community Safety and Correctional Services

February 20, 2013

Summary: The appellant sought access to records relating to his parole and supervision by the ministry following his conviction under several provisions of the *Criminal Code*. The ministry located responsive records and denied access to them, in part, claiming the application of sections 49(a) and (b), in conjunction with sections 14(1) and (2) and 15(b). The decision upholds the ministry's decision with respect to most of the records but orders disclosure of certain discrete portions. Disclosure of this information would not give rise to an unjustified invasion of personal privacy because to withhold them would be an absurd result.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of personal information), 14(1)(i) and (l), 14(2)(d), 49(a) and (b).

Orders and Investigation Reports Considered: Orders 98, P-352, P-460, PO-1921 and PO-2582.

Cases Considered: *Ontario (Ministry of Consumer and Correctional Services v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.).

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 access to the following information pertaining to the appellant, who was convicted of certain offences under the *Criminal Code*:

1. Copy of my trial transcripts
2. Copy of my pre-sentence report
3. An impact statement
4. Parole hearing transcripts
5. CD's of complainant and defendant's interview with police
6. Cancellation of first parole hearing document I signed
7. Copy of second parole hearing document confirming I would attend.

[2] With respect to the impact statement, the appellant identified the individual who provided a statement on the day of his sentencing. The ministry issued the appellant with a decision granting partial access to the requested records. The ministry advised that access to other parts of the responsive information was denied in accordance with the discretionary exemptions in sections 49(a), in accordance with sections 14(1)(l), 14(2)(d) and 15(b), section 49(b), with reference to the consideration listed in section 21(2)(f), and section 49(e) of the *Act*. The appellant appealed the ministry's decision denying access to this office.

[3] During the course of mediation, the appellant advised the mediator that he does *not* wish to pursue access to the severed portions of certain records which were then removed from the scope of the appeal. The appellant advised the mediator that he continues to seek access to the withheld portions of the following records (with the exception of any information about his sureties): pages 5, 15, 24-36, 49 and 51. Accordingly, sections 49(a), 14(1)(l), 14(2)(d), 15(b), 49(b), 21(2)(f) and 49(e) of the *Act* remain issues in dispute.

[4] In discussions with the mediator, the appellant identified that a CPIC record and a victim impact statement were referred to in the records, but were not included with them. The ministry issued a supplementary decision to the appellant advising that an additional search was conducted at the Mississauga Probation and Parole Office for the victim impact statement and a CPIC attachment referred to in the Pre-Parole Report (page 49 of the original July 13, 2011 package). The ministry advised that access to the victim impact statement cannot be granted, as the record does not exist at the Mississauga Probation and Parole Office. However, the ministry advised that the victim impact statement may be held by the Crown Attorney's office and provided the appellant with the appropriate contact information for submitting a request. With respect to the five-page CPIC attachment (pages 53-57), the ministry advised that access is denied to it, in part, pursuant to sections 49(a), 14(1)(l), 14(2)(d), 15(b), and 49(b) and (e) of the *Act*.

[5] In a follow-up discussion with the mediator, the appellant advised that he wishes to pursue access to the CPIC report in its entirety, and this has accordingly been added as an issue in dispute. With respect to the victim impact statement of the named individual, the appellant advised the mediator that he will submit a separate FOI request to the Ministry of the Attorney General and is therefore not pursuing the statement as an issue in this appeal.

[6] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the ministry, a complete copy of which was shared with the appellant. The appellant also provided representations in response to the Notice of Inquiry provided to him. In his representations, the appellant indicated that he was not seeking access to specific information about his sureties contained on pages 5, 8, 15, 24, 34, 37, 39, 43, 45 and 50. I will not, therefore, address this information further in this order.

[7] During the inquiry stage of the appeal, the ministry provided the appellant with a supplemental decision letter granting access to much of the information that was not disclosed to him in its original decision. As a result of this disclosure, only certain discrete portions of the records, described below, remain at issue in this appeal.

[8] In this order, I uphold the ministry's decision, in part.

RECORDS:

[9] The information remaining at issue consists of the following:

- The CPIC access and transmission codes, as well as the format information on pages 53-57 [under section 14(1)(i)];
- Pages 29, 31, 32, 36 and 53 to 57 [under section 49(a), in conjunction with section 14(1)(l)];
- Pages 15, 31-36, 51 and 53 [under section 49(a), in conjunction with section 14(2)(d)];
- Pages 53 to 57 [section 49(a), in conjunction with section 15(b)];
- Information interspersed through many of the records relating to persons other than the appellant, [section 49(b)]; and
- Certain portions of pages 15, 24 to 36, 51 and 53 to 57 [section 49(e)].

ISSUES:

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

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

C: Does the discretionary exemption at section 49(a), in conjunction with the section 14(1)(i) and (l), 14(2)(d) and 15(b) exemptions, apply to the information at issue?

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

E: Did the institution exercise its discretion under sections 49(a), (b) and (e)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

PRELIMINARY ISSUE:

Should the ministry be entitled to rely on the discretionary exemption in section 14(1)(i) with respect to the CPIC access and transmission codes and the information formats contained in pages 53 to 57?

[10] 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 claim a new discretionary exemption 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.

[11] 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]

[12] 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 (Order PO-1832). The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period (Orders PO-2113 and PO-2331).

[13] The ministry argues that it ought to be able to claim the application of the discretionary exemption in section 14(1)(i) outside the 35-day period when it is normally allowed to do so. It submits that the integrity of the appeals process has not been compromised and the appellant has not been prejudiced as he still was able to submit representations on the application of this exemption and to respond to the arguments made by the ministry. It also suggests that the impact on the appeals process is minimal as the exemption has only been claimed for small portions of four pages of records, which were also the subject of other exemption claims. It further submits that the four pages of records to which it seeks to apply the section 14(1)(i) exemption originated with CPIC and that other law enforcement agencies which use the CPIC system, such as the RCMP, would be prejudiced if its security was compromised.

[14] The appellant has not addressed this issue in his representations.

[15] In the absence of representations from the appellant as to how he might be adversely affected by allowing the ministry to claim the section 14(1)(i) exemption to some portions of records 53 to 57, I agree with the position taken by the ministry with respect to this issue. I find that the appellant was provided with the opportunity to make submissions on the ministry's application of the section 14(1)(i) exemption, as well as its position regarding its late raising, but chose not to do so. In addition, the amount of information for which section 14(1)(i) is claimed to apply is relatively minor and does not relate to the appellant. For these reasons, I find that the ministry is entitled to rely on section 14(1)(i) for the discrete portions of records 53 to 57 which it is seeking.

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[1] *Ontario (Ministry of Consumer and Correctional Services 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.).

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

[16] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution 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;

[17] 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].

[18] The ministry acknowledges that because all of the records relate to the appellant's involvement in the criminal justice system, they contain his personal information within the meaning of the definition of that term in section 2(1). Based on my review of the records remaining at issue, I agree with this assessment.

[19] In addition, the ministry argues that the records contain information that qualifies as "personal information" about a number of other individuals, including the victim of the crimes for which the appellant was convicted and his family, as well as other identifiable individuals with whom the appellant had been involved.

[20] The appellant has not addressed this issue in his representations.

[21] I have reviewed each of the records, or portions of records, remaining at issue and conclude that all of them contain the personal information of the appellant as they deal with his criminal conviction, incarceration, probation and supervision. In addition, I find that the undisclosed information contained in records 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 38, 41, 44, 46, 51 and 52 as well as all of records 32 and 33 contain the personal information of other identifiable individuals (the affected persons). Specifically, these records consist of their names and other personal information relating to them [paragraph (h)] and their addresses and telephone numbers [paragraph (d)].

[22] The second and third paragraphs of record 34 contain the appellant's personal information. In addition, these two paragraphs refer to several appointments he was to attend with a counselor, whose firm and name are identified. As this information is not personal information relating to an individual other than the appellant, it cannot be subject to exemption under section 49(b). I will consider the application of the other exemptions claimed for this information below.

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

[23] The ministry argues that the disclosure of the personal information relating to the affected persons would constitute an unjustified invasion of their personal privacy, as contemplated by section 49(b). 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.

[24] 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.

[25] 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.

[26] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 49(b) [Order P-239]. The ministry argues that the personal information relating to the affected persons is "highly sensitive" within the meaning of section 21(2)(f) and was supplied to it by the affected persons with an expectation that it would be treated confidentially, as contemplated by section 21(2)(h). These sections state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence

Highly sensitive

[27] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[2]

[28] The personal information relating to several of the affected persons describes events in their lives that were extremely difficult and upsetting to them. In these portions of the records, they describe how they were affected by these events and how they continue to try and deal with them. In my view, because its inherent nature, the personal information contained in the records which relates specifically to the victim and his family, as well as one other identifiable individual, qualifies as "highly sensitive" for the purposes of section 21(2)(f). I ascribe a great deal of weight to this consideration, which favours the non-disclosure of personal information.

[2] [Orders PO-2518, PO-2617, MO-2262 and MO-2344].

Supplied in confidence

[29] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation [Order PO-1670].

[30] In determining whether this consideration applies to the personal information of the affected persons, I must examine the context in which it was provided to the ministry, including the history that existed at that time between the parties and the nature of the circumstances surrounding its disclosure.

[31] Given the circumstances surrounding the supply of the personal information relating to the affected persons to the ministry, I have little difficulty in finding that the affected persons had a reasonable expectation that it would be treated in a confidential fashion. Accordingly, I conclude that the factor listed in section 21(2)(h) applies to this personal information and I will give it significant weight in balancing the factors favouring privacy protection against those favouring disclosure.

Factors favouring disclosure

[32] The appellant's representations do not specifically address the application of any of the considerations favouring disclosure in section 21(2), or any other unlisted factors. Upon a closer examination, the appellant describes his displeasure with the outcome of his criminal prosecution, blaming his counsel and victims for the outcome. His request was made primarily so that he could be apprised of what was being said about him in the context of his probation and supervision. I will, however, determine whether I have been provided with sufficient evidence to consider whether section 21(2)(d) might apply to this information.

[33] For section 21(2)(d) to apply, the appellant must establish that:

(1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

(2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

(3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[34] The appellant has not provided evidence that he is contemplating any further proceedings to challenge his conviction and sentence, which have now been served. More to the point, he has also not provided any evidence to establish that he requires the personal information relating to the affected persons that is contained in the records to prepare for any such proceeding or to ensure an impartial hearing. As a result, I find that the appellant has not established the possible application of the consideration in section 21(2)(d).

Absurd result

[35] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444 and MO-1323].

[36] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444 and M-451]
- the requester was present when the information was provided to the institution [Orders M-444 and P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679 and MO-1755]

[37] If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323 and MO-1378].

[38] Included with the severances made to record 25 by the ministry, it redacted the names of the appellant's own family members. Despite the appellant not addressing this issue in his representations, it is clear that this information is within his knowledge and was provided by him to the author of the pre-sentence report of which it is a part. I find that withholding this information from the appellant would give rise to an absurd result and I will, accordingly, order that it be disclosed. Similarly, I find that the name of an individual has been severed from the final paragraph of page 30 was provided to the author of the report by the appellant and it is clearly within his knowledge. Again, I will order that this information be disclosed to him.

[39] In addition, information from the appellant's Probation Order dated July 19, 2010 on records 38, 41, 44, 46 and 52 which state that he is not to contact three individuals has also been severed from the versions of these records provided to the appellant by the ministry. Clearly, this information is known to the appellant and was communicated to him in order to ensure his compliance with the non-contact order. I find that it would be an absurd result if the appellant was not provided with access to this information and I will order it disclosed to him.

[40] In addition, certain severances made to paragraphs 2 and 3 of page 34 refer to information that is clearly within the knowledge of the appellant. For this reason, I find that their disclosure would not represent an unjustified invasion of the personal privacy of any other identifiable individuals as not disclosing it would give rise to an absurd result.

[41] However, the remaining personal information in records 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 51 that pertains to both the appellant, the victim and his family and another identifiable individual is not subject to the absurd result principle. While it is possible that the appellant may be aware of some of the information contained in these records, I have not been provided with any persuasive evidence that this is the case. However, the very nature of the information itself makes its disclosure inconsistent with the privacy protection purpose of the exemption in section 49(b). As a result, I find that this information is properly exempt from disclosure under that exemption.

Findings respecting section 49(b)

[42] On balance, I am satisfied that the factors weighing in favour of the non-disclosure of the personal information of the victim, his family and another identifiable individual far outweigh any considerations that may favour disclosure. As a result, I find that the disclosure of the personal information of these affected persons would result in an unjustified invasion of their personal privacy and this information is exempt from disclosure under section 49(b).

[43] I have found above that the names of the appellant's own family members in record 25 and another individual's name in paragraph 3 of page 30 and the severed information at paragraphs 2 and 3 of record 34 do not qualify for exemption under section 49(b) because not disclosing this information to the appellant would give rise to an absurd result. Accordingly, this information is not exempt under section 49(b). As no other exemptions have been claimed for them and no mandatory exemptions apply to this information, I will order that it be disclosed.

Issue C: Does the discretionary exemption at section 49(a), in conjunction with the section 14(1)(i) and (l), 14(2)(d) and 15(b) exemptions, apply to the information at issue?

Section 49(a)

[44] 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.

[45] 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 [Order M-352].

[46] In this case, the ministry relies on section 49(a), taken in conjunction with sections 14(1)(i) and (l), 14(2)(d) and 15(b), to deny access to certain portions of the records remaining at issue, which I have found above also contain the personal information of the appellant. I will now review the application of each of these exemptions to the information in the records for which it has been claimed.

Section 14(1)(i) - Security

[47] The ministry argues that the undisclosed portions of records 53 to 57, consisting of various CPIC access and transmission codes, as well as certain "query information formats" qualify for exemption under section 14(1)(i). This section states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[48] The ministry submits that in Orders PO-2582 and PO-1921, this office has upheld the application of the exemption in section 14(1)(i) to CPIC access and transmission codes. It urges me to take a similar approach because the codes and query information formats protect the system from those who would use it improperly. In Order PO-2582, Adjudicator Diane Smith found that:

> The Ministry describes the CPIC system as a tool that assists the Canadian law enforcement community in combating crime by providing information on crimes and criminals. CPIC is operated by the Royal Canadian Mounted Police under the stewardship of the National Police Services, on

> behalf of the Canadian law enforcement community. The Ministry submits that unauthorized access to the CPIC system has the potential to compromise investigations and other law enforcement activities and the privacy and safety of individuals. The Ministry further submits that release of certain CPIC access/transmission codes has the potential to compromise the ongoing security of the CPIC system and facilitate unauthorized access to the CPIC system.
>
> Upon review of the records, I agree with the Ministry that disclosure of those portions of the records claimed to be exempt pursuant to section 49(a) in conjunction with 14(1)(i), could reasonably be expected to endanger the security of the building and the integrity of the CPIC system. With respect to the CPIC coding information in particular, I agree with the findings of Senior Adjudicator David Goodis in Order PO-1921, where he found that disclosure of CPIC information relating to the codes required to access the CPIC database could lead to individuals abusing these communication tools, thus hampering the control of crime by causing harm to the CPIC system.

[49] I adopt the reasoning articulated in these decisions and find that the disclosure of the information at issue in records 53 to 57 could reasonably be expected to endanger the security of the CPIC system, including the coding information that is included in these records. Accordingly, I find the information exempt from disclosure under section 49(a), in conjunction with section 14(1)(i).

[50] The ministry also applied the section 15(b) exemption to the same information in records 53 to 57. Because I have determined that this information qualifies for exemption from disclosure under section 14(1)(i), it is not necessary for me to consider whether it is also exempt under section 15(b).

Section 14(1)(l) - Facilitate commission of an unlawful act

[51] The ministry argues that the undisclosed portions of records 29, 31, 32, 36 and 53 to 57 qualify for exemption under section 14(1)(l). In my discussion of section 49(b), I have found that the personal information contained in records 29, 31, 32 and 36 is exempt from disclosure. Similarly, I found above that the undisclosed information in records 53 to 57 is exempt under section 14(1)(i). Accordingly, it is not necessary for me to consider whether this information is also exempt under section 14(1)(l).

Section 14(2)(d) - Correctional record

[52] The ministry submits that the undisclosed top portion of record 15, as well as portions of records 31-36 and 51, are exempt from disclosure under section 14(2)(d), which reads:

A head may refuse to disclose a record,

> that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

[53] I note that I have found above that the information to which the ministry has applied section 14(2)(d) in records 31-36 and 51 is exempt from disclosure under section 49(b). As a result, it is not necessary for me to also consider whether they are exempt under section 49(a), in conjunction with section 14(2)(d).

[54] The ministry submits that the undisclosed portion at the top of record 15 contains information that relates to the history of the appellant and contacts which took place between representatives of a police service and the ministry's probation staff during its supervision of the appellant.

[55] In order for records to qualify for exemption under section 14(2)(d), they must contain information about the history, supervision or release of a person under the control or supervision of a correctional authority. I note that this exemption cannot apply to the record of an individual whose term of correctional supervision has expired [Order P-352]. In the present appeal, the appellant's probation order dated July 16, 2010 includes a three-year period of probation which includes supervision by ministry probation staff. As a result, I find that the appellant's correctional supervision has not expired and section 14(2)(d) may apply at this time.

[56] In Order P-460, Adjudicator Holly Big Canoe examined the application of section 14(2)(d) in the following way:

> In Order 98, former Commissioner Sidney B. Linden considered the interpretation of section 14(2)(d) as follows:
>
> > In my view, the purpose of subsection 14(2)(d) is to allow an **appropriate level of security with respect to the records of individuals in custody**.
>
> I agree with former Commissioner Linden. At its broadest, the wording of section 14(2)(d) could be interpreted to deny an individual in custody access to virtually all of his or her own personal information. In my view, the overall purposes of the *Act* should be considered in interpreting this exemption. Section 1(a) of the *Act* provides the right of access to information under the control of institutions in accordance with the principle that information should be available to the public and that necessary exemptions from this general right of access should be limited and specific. **When an individual is seeking access to his or her**

> **own personal information, this principle is particularly important.** [emphasis added]

[57] The ministry submits that the disclosure of information documenting contacts between ministry probation staff and a police service "could jeopardize public safety and the Ministry's ability to discharge its duties as it would cause the police to no longer disclose records about offenders to the Ministry if the confidentiality of such records cannot be assured."

[58] I have reviewed the contents of the undisclosed excerpt from record 15 and conclude that its disclosure would reveal information relating to the strategies to be employed by the ministry's probation staff with respect to the supervision of the appellant, in cooperation and in consultation with the police service in question. In my view, despite the fact that it relates exclusively to the appellant, this information is of such a nature that its disclosure could reasonably be expected to result in harm to the relationship between the police service and the ministry's probation staff. As a result, I find that the need for confidentiality in this information is more compelling than the appellant's right of access to it.

[59] Accordingly, I find that the undisclosed information at the top of record 15 qualifies for exemption under section 14(2)(d) and is exempt from disclosure under section 49(a). As a result of my finding with respect to section 14(2)(d) and 49(a), it is not necessary for me to consider whether this information is also exempt under section 49(e).

Issue D: Did the institution exercise its discretion under sections 49(a) and (b)? If so, should this office uphold the exercise of discretion?

General principles

[60] The section 14 and 49(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[61] 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.

[62] 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)].

Representations of the parties

[63] The ministry submits that it exercised its discretion in favour of the non-disclosure of the information contained in the records based on the following considerations:

- the disclosure of the severed records could reveal information that would jeopardize the public safety mandate of the ministry, and would be contrary to public expectations and the expectation of its law enforcement partners, as well the public interest;
- disclosure of the severed records could result in widespread dissemination of the information they contain through the Internet, which could result in further stigmatization of the victim of the appellant's crimes; and

- the ministry seeks to ensure that the personal information of the victim is not disclosed because to do so would result in an unjustified invasion of this individual's personal privacy.

[64] The appellant has not provided me with representations on this issue, other than to maintain generally that he was the victim of an injustice in the manner in which he was tried and convicted.

Findings

[65] I have reviewed the representations of the ministry with respect to the manner in which it exercised its discretion not to disclose certain information contained in the records. I note that as a result of this order, the appellant will obtain access to additional information beyond that originally determined to be not exempt by the ministry. The appellant has been provided with a great deal of information about the circumstances surrounding his supervision and parole. The only information not disclosed as a result of this order will be certain personal information relating exclusively to his victim and the victim's family, and some CPIC codes which are clearly exempt under the *Act*.

[66] The ministry indicates that it was loath to disclose personal information about the appellant's victim to him in order to avoid "re-victimizing" this individual again. I agree that this is a proper consideration for it to have factored into its decision to exercise its discretion not to disclose the personal information relating to the victim.

[67] In the absence of any submissions by the appellant which would lead to a different conclusion, I find that the ministry has provided me with sufficient evidence to enable me to uphold its exercise of discretion with respect to the records at issue in this appeal.

ORDER:

1. I order the ministry to disclose to the appellant records 38, 41, 44, 46 and 52, in their entirety, along with the complete second and third paragraphs of record 34 and the name of an individual in paragraph 3 of record 30, by providing him with a copy of these records by **March 26, 2013** but not before **March 21, 2013**.

2. I uphold the ministry's decision to deny access to the remaining information in the records.

3. In order to verify compliance with order provision 1, I reserve the right to require the ministry to provide me with copies of the records which are disclosed.

Original Signed by: February 20, 2013
Donald Hale
Adjudicator