Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3330

Appeal PA13-53

Ministry of Natural Resources

April 14, 2014

Summary: The appellant sought access to records related to charges laid against him under the *Fish and Wildlife Conservation Act*. The Ministry of Natural Resources denied access to portions of the records pursuant to section 49(a) (discretion to refuse to disclose a requester's own information), read in conjunction with sections 14(1)(d) (confidential source) and 19 (solicitor-client privilege) and section 49(b) (personal privacy) of the *Act*. The appellant appealed the ministry's decision. The ministry's decision is upheld and the appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1)(d), 19, 49(a) and (b).

Cases Considered: *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg*, (December 21, 1995) Toronto Doc. 220/95, leave to appeal to the Court of Appeal refused at [1996] O.J. No. 1838 (C.A.).

OVERVIEW:

[1] The Ministry of Natural Resources (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records covering a specific time period related to charges laid against the requester under the *Fish and Wildlife Conservation Act* (*FWCA*) for alleged offences occurring on a specified date.

[2] The request was subsequently clarified to be for the handwritten notes of a conservation officer related to charges laid against the requester under the *Fish and Wildlife Conservation Act.* The requester also sought access to any correspondence related to those charges (emails, letters, notes of telephone conversations etc.) between the ministry, the Algoma District Services Administration Board and the Ontario Provincial Police.

[3] The ministry located records responsive to the request and issued a decision granting partial access to them. Access was denied to portions of the records pursuant to the exemptions at sections 19 (solicitor-client privilege), and 49(b) (personal privacy), read in conjunction with section 21(1) of the *Act*. The requester, now the appellant, appealed that decision.

[4] During mediation, the ministry clarified that it relies on section 49(a) (discretion to refuse to disclose a requester's own information), in conjunction with not only section 19, but also, for the first time, section 14(1)(d) (law enforcement) with respect to some of the records. The ministry subsequently issued a revised decision letter to the appellant detailing these changes. The appellant took issue with the ministry's revised decision letter taking the position that it should not be permitted to raise section 49(a), read with section 14(1)(d), at the mediation stage of the appeal.

[5] Also during mediation, the appellant narrowed the scope of the appeal, indicating that he only sought access to the information that was severed from pages 1, 2, 3, 4, 40 and 41 of the records. Accordingly, all other records and pages of records are no longer at issue in this appeal.

[6] The mediator attempted to seek consent from an individual who may have an interest in the disclosure of the records (the affected party). Consent was not obtained. As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. During my inquiry, I sought and received representations from the parties and shared these in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction Number 7*.

[7] In this order, I uphold the ministry's decision to deny access to the information at issue**.** In the discussion below, I reach the following findings:

- the ministry is permitted to raise the discretionary exemption for personal privacy at section 49(a), read in conjunction with the law enforcement exemption for confidential sources at section 14(1)(d) during the mediation stage of the appeal;

- the records at issue contain the "personal information" of both the appellant and other identifiable individuals within the meaning of the definition of that term at section 2(1);

- the discretionary exemption at section 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d), applies to the information for which it has been claimed;

- the discretionary exemption at section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19(a), applies to the information for which it has been claimed;

- the ministry's exercise of discretion to apply the exemption at section 49(a) to the information at issue was appropriate.

RECORDS:

[8] The portions of the records that remain at issue in this appeal are pages 1, 2, 3, 4, 40 and 41, which consist of email correspondence.

ISSUES:

A. Is the ministry permitted to raise the discretionary exemption for personal privacy at section 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d) during the mediation stage of the appeal?

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

C. Does the discretionary exemption at section 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d), apply to the records at issue?

D. Does the discretionary exemption at section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19, apply to the records at issue?

E. Does the discretionary exemption for personal privacy at section 49(b) apply to the records at issue?

F. Did the ministry exercise its discretion under section 49(a) and/or (b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Is the ministry permitted to raise the discretionary exemption for personal privacy at section 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d) during the mediation stage of the appeal?

[9] During mediation, the ministry claimed the application of the discretionary exemption at 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d), to some of the records.

[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 raise new discretionary exemption claims during an appeal. Section 11.01 states:

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

[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.[2] The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.[3]

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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.).
[2] Order PO-1832.
[3] Orders PO-2113 and PO-2331.

[13] In the Notice of Inquiry that I sent to the parties, I asked them to consider the following:

1. Whether the appellant has been prejudiced in any way by the late raising of a discretionary exemption or exemptions. If so, how? If not, why not?

2. Whether the ministry would be prejudiced in any way by not allowing it to apply an additional discretionary exemption or exemptions in the circumstances of this appeal. If so, how? If not, why not?

3. By allowing the ministry to claim an additional discretionary exemption or exemptions, would the integrity of the appeals process been compromised in any way? If so, how? If not, why not?

[14] Neither the ministry, nor the appellant, addressed whether the ministry ought to be entitled to rely on the discretionary exemption in section 49(a), read in conjunction with section 14(1)(d), in their representations.

Analysis and Findings

[15] This office has the power to control the manner in which the inquiry process is undertaken.[4] This includes the authority to set a limit on the time during which an institution can raise new discretionary exemptions not originally raised in the decision letter. The adoption and application of this policy was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg.*[5] Nevertheless, this office will consider the circumstances of each case and may exercise its discretion to depart from the policy in appropriate cases.

[16] I am required to weigh and compare the overall prejudice to the parties. In doing so, I must consider any delay or unfairness that could harm the interests of the appellant, as against harm to the institution's interests that may be caused if the exemption claim is not allowed to proceed. In order to assess possible prejudice, the importance of an exemption claim and the interests the exemption seeks to protect in the circumstances of the particular appeal can be an important factor.

[17] In my view, allowing the ministry to make this late exemption claim would not compromise the integrity of the appeal process or prejudice the appellant's interests.

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[4] Orders P-345 and P-537.

[5] December 21, 1995) Toronto Doc. 220/95, leave to appeal to the Court of Appeal refused at [1996] O.J. No. 1838 (C.A.). See also *Duncanson v. Toronto (Metropolitan) Police Services Board*, [1999] O.J. No. 2464 (Div. Ct.).

[18] I note that although the ministry raised the discretionary exemption after the 35-day time period, it raised it during the mediation stage of the process and applied it to portions of only one record. Its possible application was subsequently included as an issue on appeal in the Notice of Inquiry that I provided to the parties. As a result, its inclusion did not result in any delays to the adjudication process and the appellant was provided with an opportunity to provide full representations as to whether the information for which it was claimed qualified for exemption under the relevant sections. The appellant was able to respond to the ministry's representations on the issue. In the circumstances, I find that the late raising of the additional exemption has not resulted in any delays that have unduly prejudiced the position of the appellant.

[19] I am satisfied that the appellant will not be prejudiced and the integrity of the adjudication process will not be compromised if I allow the ministry to raise the application of the the discretionary exemption for personal privacy at section 49(a), read in conjunction with the law enforcement exemption for confidential sources at section 14(1)(d), beyond the 35-day time period for raising discretionary exemptions.

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

[20] Under the *Act,* different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester.[6] Where the records contain the requester's own information, access to the records is addressed under Part III of the *Act* and the discretionary exemptions at section 49 may apply. Where the records contain the personal information of individuals other than the appellant but do not contain the personal information of the appellant, access to the records is addressed under Part II of the *Act* and the mandatory exemptions at sections 12 to 22 may apply.

[21] Accordingly, in order to determine which sections of the *Act* 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), in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> …
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to

[6] Order M-352.

> financial transactions in which the individual has been involved,
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> …
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> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> …
>
> (h) the individual's name if 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;

[22] 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.[7]

[23] 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.[8] 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.[9]

[24] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[10]

[25] The ministry submits that all of the records at issue contain the personal information as defined by the *Act* as they contain individuals' names, details of law enforcement investigations, vacation plans, financial information and opinions about individuals. The ministry submits that the records contain the personal information of both the appellant as well as that of other identifiable individuals.

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[7] Order 11.
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[9] Orders P-1409, R-980015, PO-2225 and MO-2344.
[10] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[26] The appellant does not specifically address whether the records contain personal information as defined in section 2(1) of the *Act*.

[27] Having reviewed the pages of information that are at issue, I find that all of them contain the personal information of the appellant, while some of them also contain the personal information other identifiable individuals who were involved in law enforcement investigations into actions allegedly taken by the appellant. Specifically, the records include information related to the criminal histories of individuals [paragraph (b)], addresses and telephone numbers [paragraph (d)], personal opinions or views [paragraph (e)], and names of individuals together with other personal information about them [paragraph (h)].

[28] Accordingly, I find that the records at issue contain "personal information" of both the appellant and other identifiable individuals within the meaning of the definition of that term at section 2(1) of the *Act*.

[29] As described above, in circumstances where the appellant's personal information is mixed with that of other identifiable individuals, Part III of the *Act* applies and I must consider whether the information is properly exempt pursuant to the discretionary exemptions at section 49.

C. Does the discretionary exemption at section 49(a), read in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d), apply to the records at issue?

[30] 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.

[31] Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[32] 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.[11]

[11] Order M-352.

[33] In this case, the ministry relies on section 49(a), in conjunction with the law enforcement exemption related to confidential sources at section 14(1)(d).

Section 14(1)(d) - Confidential Source

[34] Section 14(1)(d) reads:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

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

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

[36] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[12]

[37] Where section 14(1)(d) 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.[13] Additionally, 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.[14]

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[12] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[13] 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.).
[14] Order PO-2040; *Ontario (Attorney General) v. Fineberg*, *supra* note 12.

[38] For section 14(1)(d) to apply, the ministry must establish a reasonable expectation that disclosure of the information would reveal the identity of a confidential source in respect of a law enforcement matter or reveal information furnished only by the confidential source.[15]

Representations

[39] The ministry submits that the information at issue in record 41 not only identifies a confidential source who provided information to a conservation officer about alleged breaches of the *FCWA* but also reveals that information. It submits that "providing information to the police is a highly sensitive matter and could bring on some form of retribution if the person is identified." The ministry also submits that using the *Act* to identify individuals who provide information to police would have a "chilling effect" on individuals who have information that may be of use to law enforcement and result in them not coming forward.

[40] The appellant believes that the information contained in the records includes information that directly resulted in the termination of his employment and that he was not permitted to defend himself in his termination case. He submits that he is only interested in whether the conservation officer contacted his employer. He states that he does not seek access to individual names or other personal information. The appellant further submits that the ministry's position the confidential source of information could easily be identified if the information is disclosed is "reaching." He submits that the ministry's inference that it could lead to "some form of retribution" is unfounded as he states that he has dedicated part of his life to the public service as member of a number of different community boards and as a participant in municipal politics.

Analysis and finding

[41] The exemption in section 14(1)(d) of the *Act* exists to protect confidential informants.[16] Past orders have found, for example, that section 14(1)(d) applies to law enforcement situations such as anonymous complaints about by-law infractions.[17]

[42] The information at issue in page 41 of the records amounts to the substance of complaint about a possible infraction of the *FWCA* which clearly falls under the rubric of a law enforcement matter. From my review, it appears that the information itself clearly reveals both the identity of the complainant and information that could have been furnished only by that individual. Also from my review, it is clear that the complainant provided this information to a conservation officer with the expectation that both their identity and the information that they provided remain in confidence. Accordingly, I accept the ministry's position that the complainant qualifies as a confidential source in

[15] Orders MO-1416 and PO-3052.
[16] Order MO-2424.
[17] See, for example Orders MO-1805 and MO-2043.

respect of a law enforcement matter and that disclosure of the information would reveal both the identity of and the information provided by that confidential source.

[43] Therefore, I find that the information at issue in record 41 falls within the exemption at section 14(1)(d) dealing with the protection of the identity of and information provided by a confidential source in a law enforcement context. Subject to my discussion on the ministry's exercise of discretion below, I find that it properly applied the discretionary exemption at section 49(a), read with section 14(1)(d), not to disclose it to the appellant.

D. Does the discretionary exemption at section 49(a), read in conjunction with the solicitor-client privilege exemption at section 19 apply to the records at issue?

[44] The ministry also relies on the application of the discretionary exemption at section 49(a) read in conjunction with the solicitor-client privilege exemption at section 19.

Solicitor-client privilege

[45] Section 19 of the *Act* states as follows:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege;
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
>
> (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[46] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b), or in the case of an educational institution or hospital, from section 19(c). The ministry must establish that at least one branch applies. In this case, the ministry's arguments support a claim that section 19(a) applies.

Branch 1: common law privilege

[47] Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the ministry must

establish that one or the other, or both, of these heads of privilege apply to the records at issue.[18]

[48] In the circumstances, it appears that the ministry submits that the information at issue is subject to solicitor-client communication privilege.

Solicitor-client communication privilege

[49] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[19]The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[20]

[50] The privilege applies to "a continuum of communications" between a solicitor and client:

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.[21]

[51] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[22]

[52] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[23]

Representations

[53] The ministry takes the position that pages 1, 2, 3, 4, and 40 fall under the ambit of solicitor-client communication privilege and are exempt, in their entirety, pursuant to section 49(a), read in conjunction with section 19. It submits that pages 3 and 4 consist of an email that contains advice from a Crown Attorney with respect to charges against the appellant while pages 1, 2 and 40 are email chains that describe in detail "activities and communications relating to legal counsel who acted for the Crown with respect to the charges under the *FWCA* …"

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[18] Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[19] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[20] Orders PO-2441, MO-2166 and MO-1925.
[21] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[22] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[23] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

[54] The appellant submits that he was cleared of all charges against him. He quotes from a letter that he received from the ministry which states:

> The Conservation Officer provided information to the Ontario Provincial Police who in turn provided the information to a Crown Prosecutor. The Prosecutor used this and other information to provide advice not to proceed with charges.

[55] The appellant reiterates that the only information he seeks is whether the conservation officer contacted his employer, either directly or indirectly, through a third party.

Analysis and findings

[56] Having reviewed the records closely, I accept that all of the information for which the ministry has claimed section 49(a), qualifies as solicitor-client privileged communications within the meaning of section 19(a).

[57] Records 1, 2, 3, 4 and 40 are emails chains that the ministry has withheld as solicitor-client privileged information. These emails address matters related to charges laid against the appellant under the *FWCA*. Record 3 includes specific advice from a Crown Attorney with respect to those charges. All of the email chains include communications to and from legal counsel assigned to this matter about legal issues involving the prosecution of the appellant.

[58] I accept that all of these emails constitute either direct communications of a confidential nature between solicitors, including a Crown Attorney, and their client, the ministry, made for the purpose of 1) obtaining or giving professional legal advice, or, 2) form part of the continuum of communications aimed at keeping both informed so that that advice may be sought and given as required. Therefore, I find that the records 1, 2, 3, 4, and 40 are exempt from disclosure by virtue of the solicitor-client communication privilege component of section 19(a). Subject to my discussion regarding the ministry's exercise of discretion below, I find that these emails qualify for exemption under section 49(a), read in conjunction with section 19(a).

E. Does the discretionary exemption for personal privacy at section 49(b) apply to the records at issue?

[59] In his representations, the appellant states that he is not interested in the personal information of any identifiable individuals and that names and other personal information about them can remain severed. Section 49(b) addresses the personal privacy of identifiable individuals other than the appellant. As the appellant has

indicated that he has no interest in the disclosure of personal information, it is not necessary for me to address the application of this exemption.

[60] Moreover, I have found that all of the information for which the ministry has claimed section 49(b) applies is exempt from disclosure pursuant to section 49(a) as it consists of information that is either subject to the solicitor-client privilege (section 19(a)) or would reveal the identity of a confidential law enforcement source (section 14(1)(d)).

F. Did the ministry exercise its discretion under section 49(a) and/or (b)? If so, should this office uphold the exercise of discretion?

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

[62] In this order, I have found that all of the information at issue qualifies for exemption under the discretionary exemption at section 49(a). Consequently, I will assess whether the ministry exercised their discretion properly in applying that exemption to the portions of the records that have been withheld. As it was not necessary for me to determine whether the discretionary exemption at section 49(b) applied to the information at issue, it is also not necessary for me to review the ministry's exercise of discretion in applying that exemption.

[63] This office 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, or
- it fails to take into account relevant considerations.

[64] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[24] This office may not, however, substitute its own discretion for that of the institution.[25]

[24] Order MO-1573.
[25] Section 43(2) of the *Act*.

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

- 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.

Representations

[66] The ministry submits that it exercised its discretion appropriately. With respect to its application of section 49(a), read in conjunction with section 19, it submits that it considered the importance of the protection of the solicitor-client privilege in the context of the Canadian justice system and found that, in light of the information at

issue, the balance weighed in favour of non-disclosure. With respect to its application of section 49(a), read in conjunction with section 14(1)(d), it submits that the importance of maintaining the confidentiality of the identity of and information provided by sources in the law enforcement context also weighed in favour of the non-disclosure of information.

Analysis and finding

[67] As stated above, this office cannot substitute its exercise of discretion for that of the institution. Based on my review of the representations and the information at issue in this appeal I am satisfied that the ministry properly exercised its discretion to withhold the information at issue in the records under section 49(a) and that it was made in good faith.

[68] I accept that the ministry considered the information that it withheld, including its sensitivity and importance, the appellant's interest in this information, as well as the purposes of the *Act*. Specifically, I find that it recognized that disclosure of the pages at issue would reveal solicitor-client privileged information and information furnished by a confidential law enforcement source. It exercised its discretion not to disclose this information after considering the importance of solicitor-client privilege as well as the importance of maintaining the confidentiality of the identity of and information provided by sources in the law enforcement context.

[69] Having reviewed the records and having considered the nature of the information that has been severed, I accept that the ministry took proper considerations into account and exercised its discretion under section 49(a) appropriately. Accordingly, I uphold its exercise of discretion as reasonable, and find that the information that has been severed under section 49(a) is properly exempt.

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original signed by: April 14, 2014
Catherine Corban
Adjudicator