Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3506

Appeal PA13-217-3

Ministry of Community Safety and Correctional Services

June 30, 2015

Summary: At issue in this appeal is the appellant's request for access to records relating to authorizations to carry restricted firearms or prohibited handguns, but with all personal identifiers removed. The ministry relied on sections 14(1)(a), 14(1)(e), 14(1)(i), 14(1)(l), 16, 20 and 21(1) to deny access to the requested information and asserted that the records were incapable of being severed without revealing information that was exempt. The ministry provided sample responsive records in support of its position. This order upholds the decision of the ministry not to disclose the registration certificate number of a firearm in one of the sample records but determines that after removing any personal identifiers, the balance of the information in the sample records can be disclosed to the appellant. The adjudicator also orders the ministry to provide an access decision to the appellant with respect to the remaining responsive records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 10(2), 14(1)(a), 14(1)(e), 14(1)(i), 14(1)(l), 16, 20 and 21(1); *Firearms Act*, SC 1995, c 39, sections 5, 17 and 20.

Orders Considered: Orders PO-2455, PO-2582, PO-2811 and PO-3374.

Cases Considered: *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.); *Big Canoe v. Ontario*, 1999 Canlii 3816 (Div. Ct.); *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* [2007] O.J. No. 4233 (Div. Ct.); *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

OVERVIEW[1]:

[1] The Ministry of Community Safety and Correctional Services (the ministry) states that the Chief Firearms Officer's (CFO) mandate is to ensure public safety as set out in section 5 of the *Firearms Act*[2]. The Chief Firearms Officer is delegated their authority under the *Firearms Act* by the Minister of Community Safety and Correctional Services. The CFO administers the licensing requirements of the *Firearms Act* to individuals and businesses residing and operating within the Province of Ontario.

[2] The CFO is responsible for the following activities:

> Issues, refuses to issue, renews or revokes firearms licences for businesses and individuals, authorizations to transport restricted and prohibited firearms, authorizations to carry restricted and prohibited firearms for purposes prescribed within the *Firearms Act*.
>
> Approves shooting ranges.
>
> Approves the transfer of prohibited and restricted firearms and other regulated items between individuals and businesses.
>
> Conducts inspections of firearms licensed businesses and firearms shooting ranges to ensure compliance with the *Firearms Act*.
>
> Attends court in relation to challenges to decisions made under the *Firearms Act*.
>
> Prepares affidavits on behalf of police services for use in criminal trials and proceedings.
>
> Maintains records in the Canadian Firearms Information System (CFIS)

[3] One of the roles of a CFO that pertains to the matters at issue in this appeal relates to authorizing who can carry a restricted firearm or a prohibited handgun[3] in circumstances that would otherwise constitute an offence under the *Criminal Code*[4].

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[1] Portions of this overview are sourced from the ministry's representations as well as the website of the Royal Canadian Mounted Police: www.rcmp.gc.ca, and the Ontario Provincial Police: www.opp.ca.

[2] SC 1995, c 39. Section 5 reads: A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.

[3] 'Restricted firearm' is defined in section 84 of the *Criminal Code*, RSC. 1985, c C-46, and 'prohibited handgun' is defined in the Authorizations to Carry Restricted Firearms and Certain Handguns Regulations, SOR/98-207 made pursuant to the *Firearms Act*.

[4] The ministry states that the CFO can issue an authorization to carry a restricted firearm or prohibited handgun for the protection of life where the individual's life or the life of another individual is in imminent danger from one or more other individuals; where police protection is not sufficient in the circumstances; and where a firearm is a proportionate response to the threat, having regard to the circumstances. Individuals issued an authorization to carry a restricted firearm or a prohibited handgun for the protection of life may include foreign nationals, who have legitimate concerns about being victimized by terrorist acts.

[5] The ministry contends that imposing strict controls on who can carry a restricted firearm or a prohibited handgun, and setting conditions on when such carriage is permitted, protects public safety by lessening the risk of firearms-related casualties.

[6] As explained by the ministry, section 20[5] of the *Firearms Act*, and the regulations made pursuant to it, address the issuance of "an authorization to carry restricted firearms or prohibited handguns (ATC)." Accordingly, that will be the terminology I employ in this order.

THE ACCESS REQUEST

[7] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to the following information:

> All Authorizations to Carry restricted or prohibited firearms, issued in Ontario, including (a) application forms, (b) supporting documents, (c) requests for more information, (d) responses to requests in (c), notes, memos, emails, faxes, voice and video recordings pertaining to the issuance or refusals to issue Authorizations to Carry restricted or prohibited firearms since [the date of the] coming into force of [the] *Firearms Act* and to the present.

[8] The ministry wrote to the requester seeking clarification of the request. The requester replied that "the scope is stated in the request and there is no information I can possibly add." The requester (now the appellant) then filed an appeal with this office asserting that he did not receive a response to his request within the 30 day time period set out in the *Act.* As a result, appeal file number PA13-217 was opened as a

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[4] RSC 1985, c C-46. An example of a *Criminal Code* offence is section 95, which makes it an offence to possess a restricted or prohibited firearm, except if the person is authorized or licensed to do so. See also section 4 of the *Firearms Act*, which sets out the purpose of the *Firearms Act*.

[5] Section 20 reads: An individual who holds a licence authorizing the individual to possess restricted firearms or handguns referred to in subsection 12(6.1) (pre-December 1, 1998 handguns) may be authorized to possess a particular restricted firearm or handgun at a place other than the place at which it is authorized to be possessed if the individual needs the particular restricted firearm or handgun (a) to protect the life of that individual or of other individuals; or (b) for use in connection with his or her lawful profession or occupation.

deemed refusal appeal. When the ministry issued its initial access decision, appeal file number PA13-217 was closed.

[9] In its initial access decision, the ministry interpreted the request to be for access to "general records relating to authorizations and refusals to carry restricted or prohibited firearms in Ontario." The ministry advised the appellant that the CFO conducted a search for these general records and granted access to the responsive records they located, in full, to the appellant. The disclosed records consisted of blank application and renewal forms, blank cover letters and blank questionnaires pertaining to applications for authorizations to carry restricted firearms or prohibited handguns.

[10] The appellant appealed the ministry's access decision, and appeal file number PA13-217-2 was opened. In his appeal letter, the appellant took issue with the ministry's characterization of the scope of his request, setting out that:

> The request […] was clear in that it requested all authorizations to carry concealed firearms and all documents pertaining to the issuance of the authorizations to carry concealed firearms in Ontario. Provided were only a small subset of documents, namely the blank application forms, questionnaires, etc.. The response letter […] described the provided subset as 'general records'.
>
> What is missing is the rest of the requested documents – submitted forms, follow up letters (requests for more information, background checks, etc.), responses to follow up letters, internal communications (emails, memos, notes, voicemails) within CFO office, communications of CFO office with other organizations and responses thereto, refusals to issue and all actually issued ATC's.

[11] In an effort to resolve any confusion over the scope of the request, this office confirmed its understanding of the appellant's request in an email to the ministry, stating that:

> … the requester is asking for copies of all authorizations to carry restricted or prohibited firearms, issued in Ontario, including application forms, supporting documents, requests for more information, responses to requests in notes, memos, emails, faxes, voice and video recordings pertaining to the issuance and refusals to issue authorizations to carry restricted or prohibited firearms from the time the *Firearms Act* came into force to February 12, 2013.
>
> In other words, he is asking for the actual authorizations issued or refusals along with the additional documentation identified.

[12] In response, the ministry conducted a second search for additional responsive records and issued a supplementary access decision. The ministry relied on sections 14(1)(a) (interfere with a law enforcement matter), 14(1)(e) (endanger life or safety) 14(1)(i) (endanger security of a building or vehicle), 14(1)(l) (facilitate the commission of an unlawful act), 16 (prejudice defense of Canada), 20 (danger to safety or health) and 21(1) (invasion of privacy) of the *Act* to deny access to the additional responsive information that was found.

[13] In addition, it its supplementary decision letter, the ministry also advised the appellant that:

> … The CFO advised that it has been responsible for Authorizations to Carry under the *Firearms Act* since December 1, 1998. No responsive records exist prior to 1999.

[14] The appellant appealed the ministry's supplementary decision, which was designated as file number PA13-217-3. As a result, appeal file number PA13-217-2 was closed. In his appeal letter with respect to file number PA13-217-3, the appellant wrote that:

> … complete denial of the request is not warranted. The spirit and purpose of the *Act* is to provide the public with the opportunity to obtain information. All of the sections quoted as grounds for denial could be addressed by censoring personally identifiable information from the respective portions of the documents. Instead the [ministry] chose to provide no documents at all. …

[15] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an appeal under the *Act*.

[16] During my inquiry into the appeal, I sought and received representations from the ministry and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. In the course of the adjudication, I also requested from the ministry, and received, a random sample of what the ministry viewed as the type of record that would be responsive to the request.

[17] The sample provided by the ministry included ATC's relating to individuals who are armed security, a trapper and an individual who works in the wilderness.

DISCUSSION

Preliminary matter

[18] The scope of this appeal was the subject of a series of exchanges during the processing the appeal. However, throughout this appeal, the appellant has maintained that he is not seeking any personal identifiers contained in the records, and that these can be removed from the scope of the appeal.

[19] In the Notice of Inquiry the parties were invited to address the issue of whether the records could be severed. The relevant portion of the Notice of Inquiry stated:

> Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. The institution is asked to consider whether there is any undisclosed information which should be disclosed pursuant to section 10(2) and to make representations on that subject.
>
> Please note that pursuant to sections 10(2), 54(1) and 54(3) of the *Act*, the decision maker may order the disclosure of any portions of records which are not found to be subject to an exemption.

[20] In its representations, the ministry takes the position that the records cannot be severed. It states:

> We submit that the records cannot be severed without disclosing personal information and law enforcement records that are responsive to this appeal.

[21] The ministry also provided extensive representations on the exemptions it claims apply to the records. For some of these exemptions, namely sections 14(1)(a), 14(1)(e), 14(1)(i), 16, 20 and 21(1), the ministry takes the position that the exemptions apply primarily to the names or other personal identifiers contained in the records. For section 14(1)(l) the ministry also argues that disclosure of additional information in the records would result in the harms set out in the exemption.

[22] In addition, due to the volume of records responsive to the appellant's request, the ministry has not provided this office with all of the responsive records, rather it has provided a sample of a number different types of records responsive to the request.

[23] In the circumstances of this appeal, I have decided to review the application of the exemptions claimed by the ministry to the sample records before me, and make a final decision on access to only the sample records before me at this time.

[24] In this order, I find that it is possible to sever portions of the sample records before me, and that the remaining portions of these records do not qualify for exemption under the *Act*. Accordingly, I order the ministry to disclose to the appellant the sample records at issue before me, as severed.

[25] Because I have found that the sample records provided in this appeal can be severed, and portions disclosed to the appellant, I also order the ministry to issue an access decision on the other records requested by the appellant. The ministry's access decision is to be in accordance with sections 26, 27, 28 and 29 of the *Act*, and the ministry can consider all the elements permitted under an access decision, including fees under section 57.

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

[26] 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;

[27] 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.[6]

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

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[29] 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.[7]

[30] 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.[8]

[31] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[9]

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

[32] The ministry submits that it has withheld all responsive records which contain information about those who applied for permission to carry a restricted firearm or a prohibited handgun, and those who received such permission (and conversely those who did not). The ministry submits that in order to determine whether an applicant should be given permission to carry a restricted firearm or prohibited handgun, the CFO collects extensive amounts of sensitive personal information from and relating to the applicant, including:

> (a) Whether the applicant has prior interactions with the police (including a criminal record);
>
> (b) The applicant's medical history (e.g., whether the applicant has a history of self-harming behaviour); and,
>
> (c) The reasons why the applicant is applying for permission to carry a restricted firearm or prohibited handgun.[10]

[33] The ministry submits that occupational purposes for which authorizations are issued include issuance to security guards who are responsible for protecting cash and other valuables; to individuals working in remote wilderness areas; and to individuals engaged in the occupation of trapping.

[34] The ministry submits that in order to evaluate whether or not an applicant should be granted authority to carry a restricted firearm or a prohibited handgun, the CFO must collect a significant amount of personal information from the applicant, including:

> (a) Identifying information such as the names of applicants, their addresses, and telephone numbers;
>
> (b) Information about an applicant's occupation and employment, especially where it is relevant to the application (e.g., trappers or geologists who require authorization to carry a restricted firearm or a prohibited handgun while working in a remote wilderness area);
>
> (c) Information about aspects of their medical background (e.g. if they ever engaged in self-harming behavior);
>
> (d) Information about their past interaction with the police, including whether they have a criminal record; and,

[10] Section 20 of the *Firearms Act*, as well as the regulations made pursuant to it, allows the CFO to issue an authorization to carry a restricted firearm or a prohibited handgun to an individual for occupational purposes or for the protection of life.

> (e) Information about why they want to apply to be authorized to carry a restricted firearm or a prohibited handgun, which in turn would reveal information about them, such as concerns about their safety or threats made against them, as well as the police response to those threats and police protection that may have been attempted and failed, or that may still be in place.

[35] The appellant submits that the ministry's concerns can be addressed through the removal of any personal identifiers. The appellant further submits that "individuals with criminal records are disqualified by the *Firearms Act* and *Firearms Licenses Regulation* from being eligible for a [Possession and Acquisition License], which is a pre-requisite for an ATC."

[36] With respect to the random sample of records the ministry provided, I find that removing the following information would result in the removal of any personal identifiers from the records:

- The subject individual's name and address
- The application number
- To whom the authorization is issued
- The authorization number
- The licence or FAC Number
- The employer's name
- The employer's address
- The geographic or authorized static location of the subject individual[11]

[37] Subject to my determination below with the respect to the registration certificate number of the firearm to be carried by the individual who works in the wilderness[12], once the information set out above is severed, disclosing the remainder of the information in the sample records would not disclose any personal information. In other words, it would not be reasonable to expect that an individual may be identified if the balance of the information is disclosed.

[38] The finding that a record is subject to exemption under section 21(1) is contingent on a finding that a record contains personal information. The exemption does not apply if a record no longer contains personal information. Accordingly, removing any personal identifiers from a sample record will result in there being no personal information contained therein. As a result it is not necessary to consider whether disclosing the personal information in the sample records constitutes an

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[11] See in this regard, the discussion in Order PO-2811 as upheld by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 SCR 674, 2014 SCC 31.

[12] See the discussion below regarding the possible application of section 14(1)(l).

unjustified invasion of personal privacy pursuant to section 21(1) of the *Act*, if the personal identifiers have been removed.

Issue B: Do the discretionary exemptions at sections 14(1)(a),(e),(i) or (l) apply to records from which personal identifiers have been removed?

[39] The ministry claims that the responsive records would qualify for exemption under sections 14(1)(a), (e), (i) and/or (l) of the *Act*. Those sections read:

> 14 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) 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 reasonable required;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.

[40] 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)

[41] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[13]

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[13] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[42] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.[14] The institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[15]

[43] The ministry submits that the records are "law enforcement" records for the following reasons:

a) The records are collected, and used by the CFO, which operates under the umbrella of the Ontario Provincial Police (OPP), a provincial law enforcement agency;

b) The records are used for a law enforcement purpose, which is to protect public safety by regulating the circumstances in which someone may carry a restricted firearm or a prohibited handgun; and,

c) The records are used by the OPP and other law enforcement agencies for investigative and public safety purposes. Records are used, for example to determine whether individuals have been authorized to carry a restricted firearm or a prohibited handgun. If they have not received such an authorization, and they are carrying such a firearm or handgun, they are in contravention of the *Criminal Code*.

[44] I accept that the records are created for oversight and policing purposes and pertain to law enforcement.

Section 14(1)(a) - Law Enforcement Matter

[45] In order for section 14(1)(a) to apply, the law enforcement matter in question must be ongoing or in existence.[16] The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.[17] However, the "matter" may extend beyond a specific investigation or

[14] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[15] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[16] Order PO-2657.
[17] Orders PO-2085 and MO-1578.

proceeding.[18] The institution holding the records need not be the institution conducting the law enforcement matter for the exemption to apply.[19]

[46] The ministry submits that its application of section 14(1)(a) is informed by the decision of the Divisional Court in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*,[20] ("*Toronto Star*"). The ministry submits that in *Toronto Star*, the Divisional Court held that:

> The term 'matter' in section 14(1)(a) is "very broad", and that it does not "necessarily always have to apply to some specific on-going investigation or proceeding" [paragraph 72]
>
> A firearms data base registry, established in order to carry out the ministry's responsibilities under the *Police Services Act*, was held in *Toronto Star* to be within the scope of law enforcement because the records were related to policing, and had to be updated on an ongoing basis [at paragraph 72]. The ministry submits this same reasoning applies to the records at issue in this appeal, which are maintained and updated pursuant to the [*Firearms Act*], and therefore ought to also be considered within the scope of a 'law enforcement matter'.

[47] The ministry provides the following examples of "law enforcement matters" that relate to the sample records:

> (a) Law enforcement agencies may need to know from the CFO if someone has proper authorization to carry a restricted firearm or a prohibited handgun. If they do not, they could be in contravention of the *Criminal Code*; and,
>
> (b) Law enforcement agencies may need to access CFO records to determine how they will respond to an incident. Knowing who has been authorized to carry a restricted firearm or a prohibited handgun may inform their response.

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[18] From the judicial review decision concerning Order PO-2455: *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* [2007] O.J. No. 4233 (Div. Ct.).
[19] Order PO-2085.
[20] [2007] O.J. No. 4233 (Div. Ct.).

[48] The ministry continues its representations by stating that:

> … the disclosure of records would interfere with 'law enforcement matters', by thwarting law enforcement investigations and the law enforcement response to incidents. The ministry submits that the efficacy of the records depends to a large measure on the fact that these records are highly confidential and are used solely by law enforcement agencies.

[49] The appellant takes issue with the broad characterization of the records as being part of a "law enforcement matter". The appellant submits that:

> It is reasonable to establish, that some records of some law enforcement agencies could be exempted, but not all records and not of all agencies. Further, the *Firearms Act* in its entirety is designed to inter-operate with *Criminal Code* of Canada, therefore every record collected under the *Firearms Act* that the ministry's CFO office is tasked to administer, would fall under law enforcement according to the ministry's assertion. However, the records collected under *Firearms Act* have been routinely released under FOI since its coming into force and the examples are numerous. Mass media (newspapers, radio and TV stations) and associations, such as Coalition for Gun Control, National Firearms Association and Canadian Shooting Sports Association published many FOI responses that they obtained for the records from Canadian Firearms Center and provincial CFO offices. Clearly, some records have not been considered a "law enforcement matter" and it is reasonable to expect that not all records, requested by the [appellant] are exempt.

[50] The appellant further submits that:

> … if the requested records were released, the law enforcement agencies' ability to query CFO [regarding the] proper authorization of individuals would not be affected. Clearly, releasing the records would neither destroy them, nor prevent lawful access. … releasing the records would not prevent law enforcement from knowing who is authorized to carry.

[51] The appellant also submits that the assertion that disclosure of the records would "thwart" law enforcement investigations is without merit and if the records were released, nothing would prevent the police from responding to the police incidents. He further states that he has "no means of interfering with investigations with or without [the] requested information."

[52] I acknowledge that the word "matter" in section 14(1)(a) may include ongoing police activity regarding a specific type of criminal activity, as well as monitoring and maintaining certain types of databases. In this regard, although this is not a request for

the collection of data stored in a database maintained by the police, the maintenance of this type of record and program at issue in this appeal may fall within the scope of a "law enforcement matter" as discussed in *Toronto Star*. That said, the ministry's examples of harm are dependent upon a nexus between a sample record and an identifiable individual. I find that removing personal identifiers from the sample records, as set out above, will address that concern.

[53] Accordingly, I find that, because the personal identifiers can be removed from the sample records in the manner set out above, the ministry has failed to establish that disclosing the anonymized sample records could reasonably be expected to cause the section 14(1)(a) harm alleged.

Section 14(1)(e) - Life or Physical Safety

[54] A person's subjective fear, while relevant, may not be enough to justify the section 14(1)(e) exemption.[21] The term "person" is not necessarily limited to a particular identified individual, and may include the members of an identifiable group or organization.[22]

[55] The ministry relies on *Big Canoe v. Ontario*,[23] (*Big Canoe*) and submits that it has applied this exemption to the records because there is a "reasonable basis for concluding that disclosure could be expected to endanger the life or physical safety" of individuals.[24]

[56] The ministry submits that disclosure of the sample records could reasonably be expected to endanger the life or physical safety of individuals in the following circumstances:

> (a) Individuals who have been authorized to carry a restricted firearm or a prohibited handgun may be targeted by individuals with criminal intent who wish to steal their restricted firearms or prohibited handguns. This may happen since the authorization to carry a restricted firearm or a prohibited handgun identifies the specified circumstances in which the firearm or handgun may be carried on the person. Disclosing the records could allow individuals with criminal intent to determine where a particular restricted firearm or prohibited handgun may be located;
>
> (b) If an individual with criminal intent knows who has been authorized to carry a restricted firearm or a prohibited handgun, it may cause that person to carry more powerful (and therefore deadlier) firearms or

[21] Order PO-2003.
[22] Order PO-1817-R.
[23] 1999 Canlli 3816.
[24] The ministry refers to paragraph 25 of the *Big Canoe* decision.

handguns to overpower their victim in the event of an assault, which in turn could have deadlier consequences;

(c) Section 17[25] of the *Firearms Act* requires the records that are at issue to indicate the dwelling-house of the individual who possesses a restricted firearm or prohibited handgun, meaning that the disclosure of a record would reveal where a restricted firearm or prohibited handgun is located. We are concerned that this type of identification may make restricted firearms or prohibited handguns subject to theft, or home invasions; and,

(d) The disclosure of records would reveal who is not authorized to carry a restricted firearm or a prohibited handgun. Having this information available could be used to plot kidnappings, assaults, or other acts of violence because it would reveal a gap or vulnerability in security that would otherwise not be known.

[57] The appellant submits:

> … The ministry asserted that "disclosure of records would reveal who is not authorized to carry". That is simply not true, as it is reasonable to estimate that only a tiny fraction of population in Ontario is authorized [to carry a firearm]. The very nature of Authorizations to Carry is exceptional. …

[58] As above, the ministries examples of section 14(1)(e) harms are dependent upon a nexus between a sample record and an identifiable individual. Again, as was the case with section 14(1)(a), removing personal identifiers from the sample records in the fashion set out above, will address that concern.

[59] Accordingly, I find that the ministry has failed to establish that disclosing the anonymized sample records could reasonably be expected to cause the section 14(1)(e) harm alleged.

Section 14(1)(i): security of a building, vehicle, system or procedure

[60] Although this provision is found in a section of the *Act* dealing specifically with law enforcement matters, it is not restricted to law enforcement situations and can cover any building, vehicle or system which requires protection.[26]

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[25] Section 17 reads: Subject to sections 19 and 20, a prohibited firearm or restricted firearm, the holder of the registration certificate for which is an individual, may be possessed only at the dwelling-house of the individual, as recorded in the Canadian Firearms Registry, or at a place authorized by a chief firearms officer.

[26] Orders P-900 and PO-2461.

[61] The ministry submits that the records are subject to this exemption because they could endanger either the security of a building or of a system for the following reasons:

> (a) The security of buildings would be harmed where they identify the dwelling units of individuals who have been authorized to carry restricted firearms or prohibited handguns. As mentioned, section 17 of the [*Firearms Act*] requires that the records identify these dwelling units. We submit the disclosure of this information endangers the security of these buildings by making them more vulnerable to theft and home invasions by individuals attempting to steal restricted firearms or prohibited handguns; and,
>
> (b) The security of a system and the procedures made pursuant to it established by federal authorities and the CFO pursuant to the [*Firearms Act*] to protect the safety of Canadians from restricted firearms or prohibited handguns would also be jeopardized. The ministry submits that this system is premised on confidential communications between individuals applying to carry a restricted firearm or a prohibited handgun and the CFO, which acts as a regulator. The ministry submits it is in the public interest for this confidentiality to be preserved, so that it is not known outside the law enforcement community as to who has permission to carry a restricted firearm or a prohibited handgun, and it is not known the conditions under which such permission has been granted.

[62] The appellant does not make specific representations with respect to the application of section 14(1)(i).

[63] As above, the ministry's examples of section 14(1)(i) harms are dependent upon a nexus between a sample record and an identifiable individual or location. As was the case with my analysis under section 14(1)(a) and (e), I find that removing personal identifiers from the sample records in the fashion set out above will address that concern.

[64] Accordingly, I find that the ministry has failed to establish that disclosing the anonymized sample records could reasonably be expected to cause the section 14(1)(i) harm alleged.

Section 14(1)(l): Commission of an Unlawful Act or Hamper Control of Crime

[65] The ministry submits that it has applied this exemption to the records for the following reasons:

(a) The records contain information, which would provide insight as to how the CFO determines who is granted permission to carry a restricted firearm or a prohibited handgun. The ministry submits this information could be used by the appellant (or any third party who obtains access to the records) to modify his or her behaviour when applying to carry a restricted firearm or prohibited handgun in such a way as to interfere with CFO operations. We contend this could lead to an increase in firearms related offences. In Order PO-2582, this reasoning was used to deny access to similar CFO records responsive to that appeal. The ministry submits that the reasoning applicable to Order PO-2582 should be applied to the records responsive to this appeal; and,

(b) Disclosing the records could facilitate the commission of unlawful acts against individuals who have been granted permission to carry a restricted firearm or a prohibited handgun by providing the appellant (or any third party who obtains access to the records) with detailed information about the location of the firearm, who has permission to carry it, and who does not.

[66] The appellant submits in response that:

… The criteria for issuance of the ATC are not a secret. They are clearly spelled out in the *Firearms Act*, Firearms Licenses Regulation, Authorizations to Carry Restricted Firearms and Certain Handguns Regulations, on the (released) application forms for an ATC and a number of other documents available to the public. One of the goals of the FOI request at hand is to discover whether the ministry used other criteria not prescribed in law and regulations in order to restrict or limit issuance of the ATCs. The theory that anyone with criminal intent would be empowered by the released records into obtaining an illegitimate ATC is far-fetched for many reasons: in order to be issued an ATC, the person is required to possess a [Possession and Acquisition License], which entails thorough background checks, reference checks and potentially an investigation by the CFO and Firearms Officer of the local police; due to the exceptional circumstances where an ATC would be required, the individuals and their situation would automatically come onto the radar of involved law enforcement agencies, as they would be approached for a document stating that police protection is not sufficient. If the situation with the applicant for an ATC was so bad, that the police were not capable of protecting them, clearly there [would have been a] criminal investigation at the very least. …

…

> Contrary to the assertion of the ministry … it is in [the] vital interests of Ontario public to learn how the ministry (CFO) "determines who is granted permission to carry" as those are our lives that are in danger – a fact that the ministry completely missed. It is Ontario public … who are interested in validating the efficacy of the existing framework for the issuance of ATCs and clearly the only way to obtain relevant facts is through the FOI at hand. This in no way suggests an intent to release the obtained records to any third parties.

[67] In Order PO-2582, Adjudicator Diane Smith addressed a request for information pertaining to a requester in the hands of the CFO. When it came to the application of section 14(1)(l), the information that she was considering under section 14(1)(l) had been reduced to include only an undisclosed portion of a page of the requester's Firearm's Application, a police code found in a record that she identified in her order as "notes", and a record which is also identified in her order as "notes". She wrote:

> The ministry has applied section 49(a) in conjunction with 14(1)(l), to the undisclosed portions of page 12 of Record 1, the police code in Record 3, and Record 8. It has also applied this exemption to the undisclosed portions already dealt with in my discussion of section 14(1)(c). However, there is no need for me to consider the applicability of section 14(1)(l) to those portions of the records that I have found to be exempt under section 14(1)(c)[27].
>
> With respect to the undisclosed portions on page 12 of Record 1, the police code in Record 3, and Record 8, I agree with the ministry that disclosure of these records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. As stated by the ministry in its representations, disclosure of this information would reveal to the appellant aspects of the CFO assessment and analysis of investigative and enforcement matters involving the appellant. As a result, the appellant could use this information to modify his behaviour and activities in such a way as to interfere with CFO officials seeking to control crime.
>
> Therefore, subject to my consideration of the Ministry's exercise of discretion and the absurd result principle, below, I find that page 12 of Record 1, the police code in Record 3, and Record 8, to be exempt under section 49(a), in conjunction with section 14(1)(l).

[27] The application of section 14(1)(c) exemption is not at issue in the appeal before me.

[68] In Order PO-3374, Adjudicator Smith had another opportunity to consider the application of section 14(1)(l) to a note pertaining to the requester in that appeal, who had asked for access to his firearm application records. She wrote:

> The ministry states that it applied this exemption to page 31 of the records, which consists of typewritten notes, for the following reasons:
>
> > (a) The records contain information, which would provide insight as to how the CFO and other CFOs in Canada determine who is granted permission to acquire and to possess a firearm. The ministry submits this information could be used by the appellant (or any third party who obtains access to the records) to modify his or her behaviour when applying to possess a firearm in such a way as to interfere with CFO operations. We contend this could lead to an increase in firearms related offences; and,
> >
> > (b) Disclosing the records could be expected to discourage individuals from cooperating with the CFO. The ministry questions why anyone would be candid and forthright in response to CFO inquiries, if they knew that the information they provided to the CFO, no matter how sensitive it might be, would be subject to disclosure. We contend that the lack of cooperation could be expected to undermine CFO measures, also potentially leading to a resulting increase in firearms related offences.
>
> Analysis/Findings
>
> Page 31 of the records contains information about the status of the appellant's firearm application. I determined above that this page does not contain the personal information of other individuals.
>
> I find that the ministry's representations do not address how disclosure of the particular information in page 31 of the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. The information at issue on page 31 simply consists of brief notes about the status of the appellant's firearm application.
>
> Based on my review of the information at issue in page 31 of the records, I find that disclosure could not reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. As no other exemptions apply to this page, I will order it disclosed.

[69] I do not read Order PO-2582 to provide a blanket exemption over all information that may appear in a responsive record from which personal identifiers have been removed. This is reinforced by Adjudicator Smith's finding in PO-3374 that certain information at issue in that appeal should be disclosed. It should also be noted that the appellant was provided with blank questionnaires showing the type of information sought when applying for Authorizations to Carry under the *Firearms Act*. Furthermore, the sample records do not, in my view, contain the type of information that Adjudicator Smith found in Order PO-2582 to qualify for exemption under section 14(1)(l).

[70] That said, previous IPC orders that have found that the serial numbers of firearms qualify for exemption under section 14(1)(l).[28] The sample record pertaining to the individual who works in the wilderness contains the registration certificate number of a firearm to be carried. Accordingly, I find that this information qualifies for exemption under section 14(1)(l). I also find that in all the circumstances the ministry properly exercised its discretion in not disclosing to the appellant the registration certificate number of a firearm to be carried by the individual who works in the wilderness.

[71] However, in light of the insufficiency of evidence in support of the application of this exemption to the balance of the information in the anonymized sample records, I am not satisfied that the ministry has established, based on the representations it has provided in support of the application of section 14(1)(l), that disclosing the sample records from which the personal identifiers, and in the case of the individual who works in the wilderness, the registration certificate number of a firearm to be carried have been removed, could reasonably be expected to cause the section 14(1)(l) harm alleged.

Issue C: Does the discretionary exemption at section 16 apply to the records?

[72] Section 16 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

[73] It is evident from the context of this exemption that it is intended to protect vital public security interests. Section 16 must be approached in a sensitive manner, given

[28] Order PO-2455, upheld on judicial review on this point in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* [2007] O.J. No. 4233 (Div. Ct.). See also Order MO-2862.

the difficulty of predicting future events affecting the defence of Canada and other countries.[29]

[74] In order for section 16 to apply, the institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[30]

[75] The ministry submits that it has not sought the approval of Executive Council to make the decision to claim the application of section 16 because "the CFO has been designated authority under the [*Firearms Act*] to exercise authority under that Act."

[76] The ministry submits:

> As with section 14, we have approached the exemption in section 16 as endorsed by Senior Adjudicator Higgins in Order PO-2500, namely, "in a sensitive manner, given the difficulty of predicting future events affecting the defence of Canada and other countries, particularly in the context of possible espionage, sabotage or terrorism."
>
> The ministry has applied this exemption because we submit the disclosure of records would prejudice the defence of Canada, by revealing records created pursuant to a federal legislative scheme, that are treated by law enforcement agencies as highly confidential, and further, that have been designed to protect Canada from the public safety risks posed by restricted firearms and prohibited handguns.
>
> More specifically, we submit that the disclosure of records would reveal the identities of public officials, and foreign nationals who may have been issued authorizations to carry a restricted firearm or a prohibited handgun in Ontario in order to protect themselves, and in which circumstances.

[77] The ministry further submits that:

> … there is a compelling public interest for the records to not enter the public realm, because disclosing whether applicants have been authorized to carry a restricted firearm or a prohibited handgun would in fact interfere with security measures that have been undertaken to protect them. The ministry is also concerned because the disclosure of the records would also highlight which representatives of foreign states have

[29] See Order PO-2500.
[30] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

> not been issued such authorizations, which could equally harm their safety. On a broader scale, the disclosure of these records could significantly interfere with Canada's relations with representatives of foreign states who have a diplomatic or trade presence in Canada. The ministry submits that in the circumstances, the Government of Canada ought to be provided with prior knowledge and the opportunity to comment on any proposed disclosure of records.

[78] The appellant submits that these assertions are essentially a repeat of the ministry's submissions in support of its application of section 14(1)(e), which can be addressed through the severing of any personally-identifiable information.

[79] The appellant further submits that:

> … Under the *Firearms Act*, the foreign military and law enforcement officers, acting in law enforcement capacity while in Canada, are exempt from firearms licensing, registration and authorization to carry. Clearly, the majority of foreign nationals, legitimately carrying firearms in Ontario, would belong to either category: military officers or law enforcement officers, both acting in that capacity. Only a small fraction of foreign nationals, who do not fall into either of the two categories, would need a firearm and thus require an Ontario ATC. That small number of records would not be too difficult for the ministry to censor for personally-identifiable information.

[80] As above, the ministry's examples of section 16 harms are dependent upon a nexus between a sample record and an identifiable individual. I am satisfied that removing any personal identifiers from the sample records in the fashion set out above will address that concern.

[81] Accordingly, I find that the ministry has failed to establish that disclosing the anonymized sample records could reasonably be expected to cause the section 16 harm alleged.

Does the discretionary exemption at section 20 apply to the records?

[82] Section 20 states:

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

[83] For this exemption to apply, the institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well

beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[31] An individual's subjective fear, while relevant, may not be enough to justify the exemption.[32]

[84] The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.[33]

[85] The ministry submits that this exemption is similar in wording and intent to the exemption in section 14(1)(e), which it has also claimed and relies on the submissions it provided with respect to section 14(1)(e) to support its section 20 exemption claim.

[86] The appellant submits that the ministry's concerns can be addressed through the severing of any personally-identifiable information.

[87] As above, the ministries examples of section 20 harms are dependent upon a nexus between a sample record and an identifiable individual. As was the case with the other exemptions claimed, I conclude that removing any personal identifiers from the sample records in the fashion set out above will address that concern.

[88] Accordingly, I find that the ministry has failed to establish that disclosing the anonymized sample records could reasonably be expected to cause the section 20 harm alleged.

Final Comment

[89] In light of my determinations above, I will order the ministry to provide an access decision to the appellant with respect to the remaining responsive records. The ministry is to treat the date of this order as the date of the request, all in accordance with sections 26, 27, 28 and 29 of the *Act*, and the ministry can consider all the elements permitted under an access decision, including fees under section 57.

ORDER:

1. I uphold the decision of the ministry not to disclose the registration certificate number of a firearm to be carried by the individual who works in the wilderness.

2. I order the ministry to disclose the sample records to the appellant with the personal identifiers (and in the case of the individual who works in the wilderness, the registration certificate number of a firearm to be carried)

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[31] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[32] Order PO-2003.
[33] Order PO-1817-R.

removed in the manner set out in this order by sending them to him by **August 6, 2015**, but not before **July 31, 2015**.

3. I order the ministry to provide an access decision to the appellant with respect to the remaining responsive records. The ministry is to treat the date of this order as the date of the request, all in accordance with sections 26, 27, 28 and 29 of the *Act*, and the ministry can consider all the elements permitted under an access decision, including fees under section 57.

4. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the sample records as disclosed to the appellant as well as a copy of its access decision issued in accordance with order provision 3.

Original Signed By: June 30, 2015
Steven Faughnan
Adjudicator