

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-3585-I

Appeal PA13-502

Alcohol and Gaming Commission of Ontario

March 11, 2016

Summary: The appellant seeks access to an electronic copy of all records relating to a specified complaint and the AGCO investigation stemming from that complaint. The AGCO denied access to the records pursuant to the discretionary exemptions in sections 14(1) (law enforcement), 14(2)(a) (law enforcement report) and 19 (solicitor-client privilege) and the mandatory exemptions in sections 17(1) and (2) (third party commercial information) and 21(1) (personal privacy). In addition, the AGCO identified certain records as not responsive to the appellant's request. The appellant raised the possible application of the public interest override in section 23 of the *Act*. During the inquiry, the AGCO, appellant and an affected party agreed to bifurcate the appeal so that the application of the law enforcement, solicitor client privilege and personal privacy exemptions could be determined first. In this interim decision, the adjudicator upholds the AGCO's decision to withhold the majority of the records at issue under the law enforcement exemptions in sections 14(1)(a), (b) and 14(2)(a). The adjudicator also upholds the AGCO's decision to withhold some records as not responsive. Finally, the adjudicator orders the AGCO to disclose a small number of records to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 14(1)(a) and (b), 14(2)(a), 19 and 24(2)

Orders and Investigation Reports Considered: PO-3321, PO-3338

OVERVIEW:

[1] The appellant made a request to the Alcohol and Gaming Commission of Ontario (the AGCO) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an electronic copy of all records relating to a specified complaint made in

regard to an identified business and all records relating to the investigation stemming from that complaint.

[2] The AGCO located records and provided a decision to the appellant denying access to all responsive records. The AGCO advised that the records were denied pursuant to the discretionary exemptions in sections 14(1)(a) (law enforcement matter), (b) (law enforcement investigation), (c) (reveal investigative techniques and procedures), (d) (confidential source of information), 14(2)(a) (law enforcement report) and 19 (solicitor-client privilege) of the *Act*. In addition, the AGCO advised the appellant that the records were denied pursuant to the mandatory exemptions in sections 17(1) and (2) (third party commercial information) and 21(1) (personal privacy). The AGCO also denied the appellant access to some information as it considers it to be not responsive to the request.

[3] During the course of mediation, the AGCO prepared an index of records and shared it with the mediator and the appellant. Upon review, the appellant advised that she does not pursue access to any personal information that an adjudicator would find is contained in the records. Additionally, the appellant raised the possible application of the public interest override in section 23 of the *Act* to the records.

[4] Mediation did not resolve the appeal and the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. The adjudicator who had carriage of this appeal sent the AGCO and the organization identified in the request (the affected party) a Notice of Inquiry, seeking their representations in response to the issues under appeal.

[5] Subsequent to receiving the Notice of Inquiry, both the AGCO and the affected party contacted the adjudicator and requested that she bifurcate the appeal, in order to consider the application of the exemptions other than section 17(1). The adjudicator decided to bifurcate the appeal and informed the affected party that they were not required to provide representations unless the adjudicator determined that the other exemptions in the appeal did not apply. The AGCO provided representations in response to the Notice of Inquiry.

[6] The adjudicator then invited the appellant to submit representations in response to the Notice of Inquiry and the non-confidential portions of the AGCO's representations, which were shared with the appellant in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. The appellant submitted representations. The adjudicator then sought and received reply representations from the AGCO.

[7] The appeal was transferred to me. In the discussion that follows, I uphold the AGCO's decision, in part.

RECORDS:

[8] In the index of records, FSCO described the records at issue as follows:

Page Number	Record Description	Exemption
1-3	Correspondence	14(1)(a), 17(1) and (2), 21, 19
14-75	Investigation Reports	14(2)(a), 21, 19, 17(1) and (2), N/R (pages 72-75)
76-117	Investigation Notes	14(1)(a) to (d), 21, 17(1), 19, N/R (pages 76-117)
118-134	Email correspondence	14(1)(a), 15 (pages 124-125), 17(1) and (2), 19, 21, N/R (page 118)
135-149	Correspondence	14(1)(a), 17(1) and (2), 19, 21, N/R (pages 135-139)
150-189	Reports (final and draft)	17(1)
190-191	Correspondence	14(1)(a), 17(1) and (2)
192-194	Correspondence	17(1)
195-204	Correspondence	14(1)(a), 17(1) and (2), 19
205-210	Correspondence	14(1)(d) and 21 (amended to reflect the AGO's position in its representations)
211-213	Correspondence	14(1)(a), 17(1) and (2), 19 and 21
214-217	Memorandum	14(1)(a) and (c), 17(1) and (2)
218	Draft Terms of Registration	17(1) and (2), 19
219	Implementation Schedule	17(1)
220-766	Email Correspondence	14(1)(a) to (d), 17(1) and (2), 19, 21, N/R (pages 609 and 695)
855-933	Affected Party Response	14(1)(a), 17(1) and (2), 19

[9] I will not be considering the application of the mandatory exemption in section

17 to the records at issue in this interim order. Accordingly, I will not consider whether records 150-189, 192-194 and 219 are exempt from disclosure in this order.

[10] In addition, I note that Records 627 and 685 do not exist. I confirmed with the AGCO that Records 627 and 685 are not missing and instead resulted from an oversight in the numbering of the records.

ISSUES:

- A. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary law enforcement exemption at section 14(1)(a), (b), (c), (d) or 14(2)(a) apply to the records?
- C. Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?
- D. Did the AGCO exercise its discretion under section 14? If so, should this office uphold the exercise of discretion?
- E. What is the scope of the request? What records are responsive to the request?

DISCUSSION:

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

[11] The appellant indicated that she does not pursue access to information that I would find constitutes “personal information”. Therefore, I must determine whether the records contain the personal information of identifiable individuals as defined in section 2(1) of the *Act*. As any “personal information” that is contained in the record will be outside of the scope of the appeal, I will not need to consider whether that information is exempt under the personal privacy exemption in section 21(1) of the *Act*.

[12] The term “personal information” is defined in section 2(1) of the *Act* 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.

[13] 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.¹

[14] 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.

[15] 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

¹ Order 11.

individual.²

[16] 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.³

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[18] In its representations, the AGCO states that it highlighted all the personal information in the records and inscribed 21 (to represent the personal privacy exemption in section 21 of the *Act*) in the margins of each applicable record. The AGCO states that it withheld the following types of personal information from disclosure: dates of birth, personal email addresses, individual names alongside other personal information, personal views or opinions of an individual, information relating to the education or employment history of various individuals and information relating to financial transactions in which the individual has been involved.

[19] The AGCO submits that the portions of records 1-3, 14-75, 76-117, 118-134, 140-149, 195-204, 205-210, 211-213, 218, 220-766 and 855-933 that have a "21" inscription in the margins should be exempt from disclosure as they contain personal information. The AGCO submits that these portions contain information about an individual in a personal capacity and they reveal something of a personal nature about an individual.

[20] In her representations, the appellant states that she does not seek personal information such as dates of birth, personal e-mail addresses, home addresses and home telephone numbers. As a result, this information is no longer at issue in this appeal. However, the appellant submits that information that relates to the views of individuals and financial transactions collected during the course of the AGCO's investigation is not personal information and should not be exempt under section 21 of the *Act*.

[21] Based on my review of the records, I find that the AGCO properly identified "personal information" in the records by highlighting them and inscribing them with "21" in the margins. In particular, I find the following information to constitute the "personal information" of identifiable individuals: the names of the individuals who filed the complaint that is the subject of the request, descriptions of the alleged wrong doing of certain identifiable individuals who were part of the investigation and the salaries of identifiable individuals. In addition, I find that the records contain the views and opinions relating to identifiable individuals. For example, on Record 22, the first portion of the record withheld under section 21 contains the views and opinions of other

² Orders P-257, PO-427, P-1412

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

individuals about an identifiable individual, which meets the definition of "personal information" under paragraph (g). I note that the records do not contain any personal information relating to the appellant.

[22] The appellant submits that information relating to the views of individuals collected during the course of the AGCO's investigation does not constitute personal information. However, the *Act* does not define that term so narrowly to exclude information about an individual collected during an investigation. Similarly, the appellant submits that information relating to the financial transactions of the individuals involved in the investigation do not contain their personal information. Again, I find that the *Act* does not exclude this type of information from the definition of "personal information" in section 2(1). Therefore, I find that the information contained in the record that is the views and opinions about an identifiable individual to be personal information within the meaning of section 2(1) of the *Act*.

[23] Accordingly, based on my review of the records, I find that they contain the personal information of identifiable individuals as defined by section 2(1) of the *Act*. Further, I agree with the AGCO's identification of personal information within the record. As the appellant advised that she is not pursuing access to the personal information contained in the records, I will not consider the application of the personal privacy exemption in section 21(1) to any of the information highlighted and inscribed by the AGCO as "21" further in this order.

Issue B: Does the discretionary exemption at section 14(1)(a), (b), (c), (d) or 14(2)(a) apply to the records?

[24] The AGCO claims the application of section 14(1)(a) to the following records: 1-3, 118-134, 140-149, 190-191, 195-204, 211-213 and 855-933. The AGCO claims the application of the exemptions in sections 14(1)(a), (b), (c) and (d) to Records 76-117 and 220-766. The AGCO claims the application of the exemption in section 14(1)(d) to Records 205-210. The AGCO claims the application of the exemptions in 14(1)(a) and (c) to Records 214-217. Finally, the AGCO claims section 14(2)(a) to Records 14-75. The relevant sections of the *Act* state as follows:

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;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) 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;

14(2) A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with law

[25] 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 leave 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)

[26] The term "law enforcement" has covered the following situations:

- a municipality's investigation into a possible violation of a municipal by-law that could lead to court proceedings.⁵
- a police investigation into a possible violation of the *Criminal Code*.⁶
- a children's aid society investigation under the *Child and Family Services Act* which could lead to court proceedings.⁷
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997*.⁸

[27] The office has stated that "law enforcement" does not apply to the following situations:

- an internal investigation by the institution under the *Training Schools Act* where the institution lacked the authority to enforce or regulate compliance with any law.⁹

⁵ Orders M-16 and MO-1245.

⁶ Orders M-202 and PO-2085

⁷ Order MO-1416.

⁸ Order MO-1337-I

- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.¹⁰

[28] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹¹

[29] 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.¹² 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.¹³

Section 14(1)(a) (law enforcement matter) and (b) (law enforcement investigation)

[30] In addition to the requirements set out above regarding the definition of "law enforcement", previous orders of this office established that, for the section 14(1)(a) exemption to apply, the matter in question must be ongoing or in existence.¹⁴ The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters.¹⁵ The "matter" may extend beyond a specific investigation or proceeding¹⁶ and the institution holding the records does not need to be the institution conducting the law enforcement matter for the exemption to apply.¹⁷

[31] Similarly, previous orders of this office have established that, for the section 14(1)(b) exemption to apply, the law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed or where the alleged interference is with "potential" law enforcement investigations.¹⁸ The investigation in question must be ongoing or in existence.¹⁹ The

⁹ Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.).

¹⁰ Order P-1117.

¹¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹² Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras 52-54.

¹⁴ Order PO-2657.

¹⁵ Orders PO-2085 and MO-1578.

¹⁶ *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

¹⁷ Order Po-2085.

¹⁸ *Ibid.*

¹⁹ Order PO-2657.

institution holding the records need not be the institution conducting the law enforcement investigation for the exemption to apply.²⁰

[32] In its representations, the AGCO submits that section 14(1)(a) applies to records 1-3, 76-117, 118-134, 140-149, 190-191, 195-204, 211-213, 214-217, 220-766 and 855-933 and section 14(1)(b) also applies to records 76-117 and 220-766. The AGCO submits that the law enforcement matter at issue concerns the investigation of whether an organization is compliant with its registration obligations under the *Gaming Control Act, 1992*. The AGCO confirmed both in its representations and in an email in November 2015 that the law enforcement matter is open and ongoing.

[33] The AGCO describes the records withheld under sections 14(1)(a) and (b) as follows:

- investigation notes of an OPP officer concerning the law enforcement matter
- findings from the OPP officer's interviews and meetings with employees of the organization under investigation
- status updates on the investigation
- various email chains or other correspondence between the organization under investigation, the OPP and AGCO with regard to the investigation and
- information relating to correspondence and discussion between AGCO legal counsel and the AGCO regarding the investigation, including updates.

[34] The AGCO submits that disclosure of the records withheld under section 14(1)(a) and/or (b) above could reasonably be expected to interfere with its ongoing investigation and cause a reasonable expectation of harm. The AGCO submits that these records relate to the investigation that is still ongoing. The AGCO notes that it has various options on how to proceed further with the ongoing investigation and submits if the records withheld under sections 14(1)(a) and (b) are publicly disclosed, it is reasonable to expect that their disclosure will harm AGCO's ability to conclude the investigation. The AGCO submits that if the records are disclosed, it would be compromised in continuing and concluding its investigation in a manner free from external influence.

[35] In addition, the AGCO submits that it is reasonable to expect that disclosure of the records withheld under sections 14(1)(a) and (b) could interfere with future and ongoing investigations.

[36] Finally, the AGCO states that it is standard practice for the AGCO and other policing bodies to request non-disclosure of records pertaining to ongoing law enforcement investigations. Otherwise, the AGCO submits that the organization under investigation itself could make a request to access those records that the AGCO is using

²⁰ Order PO-2085.

to determine how to proceed with the investigation. The AGCO submits that this could compromise the AGCO's investigation since its internal reports and internal discussions would be revealed to the very registrant under investigation. Therefore, the AGCO submits that disclosure of the records withheld under sections 14(1)(a) and (b) could reasonably be expected to interfere with and cause harm to AGCO's ongoing investigation.

[37] In response, the appellant states that she accepts that the AGCO has a law-enforcement mandate and that its mandate includes enforcing the *Gaming Control Act, 1992*. However, the appellant questions whether the records withheld under sections 14(1)(a) and (b) are actually part of an "ongoing investigation". The appellant attached two pieces of correspondence with her representations. The first email dated July 2013 is from AGCO's media spokeswoman and it states that "the investigation was concluded". However, the second email dated September 2013, is from another AGCO spokesperson which says that the file was an "ongoing regulatory matter". The appellant submits that this "complete reversal of the state of affairs" occurred after her inquiries. The appellant also notes that a number of years have passed since the investigation started.

[38] In its reply representations, the AGCO confirms that the investigation is ongoing. The AGCO submits that the two responses its spokesperson provided to the appellant are both accurate. With regard to the first response, the AGCO states that the statement made by the then-spokesperson that the investigation "has concluded" referred to the fact that investigation work itself which was performed by the OPP officer had concluded. The AGCO submits that the second statement is not a reversal of the state of affairs, but was and remains accurate because the affected party is still under investigation.

[39] As the status of the investigation was questioned by the appellant, the AGCO attached a sworn affidavit from its Director of Licensing & Registration. In the affidavit, the AGCO's Director of Licensing & Registration confirms that the investigation is ongoing. The AGCO submits that its Director of Licensing & Registration has authority and knowledge of the investigation because, in his role, he oversees the management of registration matters under the *Gaming Control Act, 1992* and would know whether an investigation is ongoing or is closed.

[40] In addition, I contacted the AGCO in November 2015 to confirm the status of the investigation. The AGCO confirmed that the investigation is "still open and ongoing".

Finding

[41] I have reviewed the records at issue and considered both the AGCO's and appellant's representations, including the confidential representations provided by the AGCO. In the circumstances, I find that the requirements for the application of the exemptions in sections 14(1)(a) and (b) have been established for the majority of the records withheld under those exemptions.

[42] I am satisfied that the first requirement, that the records form a part of the "law enforcement matter", has been met. The records consist of investigatory notes, findings, status updates and correspondence between the OPP, AGCO and/or the affected party as part of an AGCO investigation under the *Gaming Control Act, 1992*. The appellant did not dispute this.

[43] The second requirement of section 14(1)(a) and (b) is that the law enforcement matter or investigation in question be ongoing or in existence.

[44] Based on my review of the AGCO's representations and explanation with regard to the discrepancy the appellant raised, I am satisfied that the majority of the records withheld under sections 14(1)(a) and (b) are being used as part of an ongoing law enforcement matter and investigation into the affected party's compliance with the *Gaming Control Act, 1992*. I am satisfied with the AGCO's evidence, specifically the affidavit provided by its Director of Licensing & Registration and the most recent confirmation in November 2015, that the investigation is ongoing.

[45] The third requirement of section 14(1)(a) and (b) is that the AGCO must provide evidence to demonstrate a risk of interference to the ongoing law enforcement matter and investigation that is well beyond the merely possible or speculative. However, it need not prove that disclosure will in fact result in such harm. Based on my review of the records withheld under section 14(1)(a) and (b) and the AGCO's representations, I am satisfied that the AGCO has provided me with sufficient evidence to establish that the disclosure of the majority of these records could reasonably be expected to interfere with the ongoing law enforcement matter and investigation.

[46] The majority of the records withheld under sections 14(1)(a) and (b) contain information relating to the AGCO's investigation into the affected party's organization, activities and compliance under the *Gaming Control Act, 1992*. The records contain a significant amount of detailed information regarding the investigation, updates and the manner in which the AGCO could proceed with the investigation. The AGCO specifically states in its representations that it would be compromised in continuing and concluding its investigation in a manner that is free from external influence if these records were to be disclosed. Further, the AGCO notes that its standard practice is to request non-disclosure of records pertaining to ongoing law enforcement investigations. In my view, having regard to the nature of the records withheld under sections 14(1)(a) and (b) and the fact that the majority of them relate directly to the ongoing law enforcement investigation and matter, I am satisfied that the disclosure of the majority of the records withheld under sections 14(1)(a) and (b) could reasonably be expected to interfere with those matters.

[47] In addition to the records claimed to be exempt under sections 14(1)(a) and (b), I note that there are a number of records for which the AGCO did not claim sections 14(1)(a) or (b) but which are attachments to emails that were claimed to be exempt under those sections. For example, Records 25-26, which were withheld under sections 14(2)(a), 17(1) and (2), 19(a) and (b) and 21(1), are attached to Record 234, which was withheld under 14(1)(a), (b), (c) and (d), 19, 17(1) and (2) and 21. Given the fact

that Records 25-26 are attached to a document that I found to be exempt under sections 14(1)(a) and (b) and because of the nature of these records and the context within which they are attached to Record 234, I also find that Records 25-26 are exempt under sections 14(1)(a) and (b). Similarly, I find that Records 45-67 and 150-163, which are records that are attached to emails I found to be exempt under sections 14(1)(a) and (b) are also exempt under those exemptions.

[48] Furthermore, I note that there are a number of records that were withheld under section 17(1), (2) and/or 19, but whose duplicates I found to be exempt under section 14(1)(a) and (b). These records are: 192-194 and 218. Given the fact that I have found their duplicates, Records 407 and 724-726, to be exempt under section 14(1)(a) and (b), I find that these records, while claimed to be exempt under only 17(1), (2) and/or 19, are similarly exempt under sections 14(1)(a) and (b). Therefore, I find that Records 150-164, 192-194 and 218 are also exempt under section 14(1)(a) and (b) and will not consider them further in this appeal.

[49] In addition, I note that Records 205-210 are duplicates of Records 363-368. The AGCO did not claim Records 205-210 to be exempt under section 14(1)(a) or (b). However, given the fact that I found Records 363-368 exempt under sections 14(1)(a) and (b), their duplicates, while claimed to be exempt under sections 14(1)(d), are similarly exempt under sections 14(1)(a) and (b). Therefore, I find that Records 205-210 are exempt under section 14(1)(a) and (b) and will not consider them further in this appeal.

[50] Having reached this conclusion for the majority of the records withheld under section 14(1)(a) and (b), I note that there are a few exceptions to my finding. First I note that there are a number of generic administrative emails²¹ between staff at the AGCO and/or members of the OPP assisting with the investigation contained in the records. Based on my review of these records, which I will refer to collectively as the "Administrative Emails", I find that they do not contain information that qualifies for exempt under section 14(1)(a) or (b) of the *Act*. Most of these internal Administrative Emails relate to arranging meetings between the sender and recipients of the email and while they relate to the investigation, I find that they do not contain information that, if disclosed, would interfere with the investigation. Further, I find that sections 14(1)(c) and (d) do not apply to these records as they do not contain information that would reveal investigative techniques or procedures or reveal a confidential source of information. Accordingly, I find that section 14(1) does not apply to exempt the Administrative Emails from disclosure.

[51] Further, there are a number of emails, such as Records 263, 264-265 and 266-267, that contain information such as press releases and other information that appears to be publicly known or available. As such, I find that the disclosure of the records would not interfere with the ongoing law enforcement matter or investigation as suggested by the AGCO. Furthermore, I find that these records do not contain

²¹ Records include the following: 229-232; all emails except the oldest email in 276-290; 320-325; 371-374; 376-377; all emails except the oldest email in 378-390; 557 and 697.

information that would reveal investigative techniques or procedures as contemplated by section 14(1)(c) or would reveal a confidential source of information as contemplated by section 14(1)(d).

[52] In addition, Record 692 is an INFO-GO print out for an individual. According to the website (www.infogo.gov.on.ca), INFO-GO is a publicly available online database of Government of Ontario employees, their office locations, telephone numbers and email address. In addition, INFO-GO contains an office directory, which provides the following information on Government of Ontario offices: office names and descriptions, postal addresses, telephone and fax numbers, and e-mail and Website addresses. Record 692 is an INFO-GO print out containing a Government of Ontario employee's name, office location, title, telephone number and email address. Further, I note that as the information relates to an individual in a business or professional capacity, I find that the information does not constitute the personal information of an identifiable individual as that term is defined in section 2(1) of the *Act*. Based on my review of this record, I find that the disclosure of this record could not reasonably result in any of the harms in sections 14(1)(a), (b), (c) or (d) of the *Act*.

[53] Therefore, I find that the discretionary exemption in section 14(1)(a) and (b) applies to the majority of the records, with the exception of the Administrative Emails, Records 263-267 and Record 692, subject to my review of the AGCO's exercise of discretion. Since I have upheld the AGCO's application of section 14(1)(a) and (b) to the majority of the records, it is unnecessary for me to consider whether sections 14(1)(c), (d), 15, 17(1) or (2) or 19 are also applicable to the records found to be exempt under sections 14(1)(a) and (b).

[54] With regard to the Administrative Emails and Record 692, I will consider whether these records are exempt under section 19 later in this order. I have already found that these records are not exempt under either section 14(1)(c) or (d) of the *Act*.

[55] I note that, in its representations, the AGCO abandoned its claim of section 19 to Records 263-267. As no other discretionary exemptions were claimed to these records, I will not consider the records further in this order. However, I note that these records contain information that may affect the interests of the affected party, if disclosed. Accordingly, I remain seized of Records 263-267 and will seek the affected party's position on their disclosure.

Section 14(2)(a): law enforcement report

[56] In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the AGCO must satisfy each part of the following three part test:

1. The record must be a report; and
2. The report must have been prepared in the course of law enforcement, inspections or investigations; and

3. The report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.²²

[57] The word "report" means a "formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.²³

[58] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.²⁴

[59] Section 14(2)(a) applies to "a report prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law". This wording is not seen elsewhere in the *Act* and supports a strict reading of an exemption.²⁵ An overly broad interpretation of the word *report* could create an absurdity. If *report* means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 14(1) and 14(2)(b) through (d) superfluous.²⁶

[60] The AGCO submits that Records 14-71 were created following an investigation into a complaint about the affected party as a registrant under the *Gaming Control Act, 1992*. As such, the AGCO submits that the investigation is a *law enforcement matter* for the purposes of meeting the section 14 exemption because the OPP is an organization with an undisputed law enforcement mandate. The AGCO submits that Records 14-71 contain the OPP officer's conclusions or opinions of the results of the investigations, including notes on whether further actions are required. The AGCO further submits that the fact that the reports were prepared for the Registrar as part of the AGCO's law enforcement mandate reinforces the law enforcement nature of the reports.

[61] The AGCO submits that Records 14-71 should be considered collectively because each successive report chronologically builds on previous reports, with the goal of allowing the OPP officer to draw conclusions such as follow-up action steps to be taken or what progress has been made on compliance with the *Gaming Control Act, 1992*. The AGCO submits that these records discuss the outcome of the officer's investigation and are based on an analysis and review of witness interviews and legal documentation.

[62] Specifically, the AGCO submits that Records 14-30, 39-51 and 69-71 (called "Interim Reports 1" by the AGCO) arrive at a conclusion regarding further actions to be taken after setting out the potential compliance issues under investigation and steps already taken to investigate those issues. The AGCO submits that Records 31-38 and 52-68 ("Interim Reports 2") are follow-up reports. The AGCO submits that Interim Reports 2 are part of an ongoing, open investigation in which the action steps to be

²² Orders P-200 and P-324.

²³ Orders P-200, MO-1238 and MO-1337-I.

²⁴ Orders MO-1238 and MO-1337-I.

²⁵ Order PO-2751.

²⁶ Order MO-1238.

taken that are set out in Interim Reports 1 were still in progress. As a result, the AGCO submits that it was premature of the OPP officer to arrive at final conclusions in the Interim Reports 1. The AGCO submits that Interim Reports 2 are law enforcement reports and should not be disclosed because their disclosure would reveal the contents of Interim Reports 1.

[63] The AGCO submits that Records 14-71 “must be read together to reach the appropriate conclusion under the *Act*, which is that they are law enforcement reports prepared by an institution that regulates compliance with the law.”

[64] The appellant did not make representations on the application of section 14(2)(a) to Records 14-71.

Finding

[65] As discussed above, I found that Records 25-26 and 45-67 to be exempt under sections 14(1)(a) and (b) as they are attachments to emails that were withheld under those exemptions. Therefore, I will not consider whether the exemption in section 14(2)(a) also applies to those records. Based on my review of the records, I find that Records 14-24, 27-44 and 68-71 are not similarly attached to other records or duplicated elsewhere in the records.

[66] Adjudicator Stephanie Haly considered the application of the exemption in section 14(2)(a) of the *Act* to various reports, emails and other correspondence in Order PO-3338. In that appeal, the Ministry of Community Safety and Correctional Services submitted that the records it claimed to be exempt under section 14(2)(a) constitute formal written accounts of specific law enforcement investigations undertaken by police services in relation to the requester appellant. Upon review of the records claimed to be exempt under section 14(2)(a), Adjudicator Haly found as follows:

I find that the records [at issue] are law enforcement reports for the purposes of section 14(2)(a) and are exempt under section 49(a). The reports were prepared by either OPP officers or police officers from police services boards and relate to investigations of occurrences involving the appellant and other individuals. I find the reports contain more than a collation of facts and, in particular, **describe in detail suggested courses of action and investigation**. Accordingly, these records are exempt under section 49(a), subject to my finding of the ministry’s exercise of discretion.²⁷ [Emphasis added]

[67] I adopt Adjudicator Haly’s analysis for the purposes of this appeal. Based on my review of the records, I find that Records 14-24, 27-44 and 69-71 are law enforcement reports for the purposes of section 14(2)(a) and are exempt from disclosure. As the AGCO submitted, these reports were prepared by an OPP officer and relate to the

²⁷ Order PO-3338 at para 155.

investigation involving the affected party and whether it complies with the *Gaming Control Act, 1992*. Similar to those records considered by Adjudicator Haly, I find that these reports contain more than a mere collation or summary of facts. Based on my review of Records 14-24, 27-44 and 69-71, I find that these records include a summary of the facts and investigation as well as detailed descriptions of suggested courses of action and the next steps in the investigation. Accordingly, these records are exempt from disclosure under section 14(2)(a), subject to my determination of whether the AGCO properly exercised its discretion.

[68] However, I find that Record 68 does not constitute a "law enforcement report" and is therefore not exempt under section 14(2)(a). Record 68 is a letter from the affected party to the Ontario Racing Commission relating to the AGCO's investigation. I have reviewed Records 14-75 and it does not appear that Record 68 is attached to any of the memoranda or briefing notes surrounding it. Further, as Record 68 was prepared by the affected party and not by an agency which has the function of enforcing and regulating compliance with a law, I find that it is not exempt under section 14(2)(a).

Issue C: Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

[69] As I have found that the majority of the records at issue are exempt from disclosure under sections 14(1)(a) and (b) of the *Act*, I am required to consider the application of the solicitor-client privilege exemption to only the following records: Record 68, the Administrative Emails and Record 692.

[70] 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 for use in giving legal advice or in contemplation of or for use in litigation.

[71] Section 19 contains two branches. Branch 1, which arises from the common law and section 19(a) encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege and (ii) litigation privilege. Branch 2 is a statutory exemption that is available in the context of Crown Counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

[72] The AGCO claims that Records 68, 692 and the Administrative Emails are subject to solicitor-client communication privilege. Solicitor-client 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.²⁸ The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.²⁹ This 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.³⁰

[73] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.³¹ 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.³²

[74] Under Branch 1, the actions by, or on behalf of, a party may constitute waiver of common law solicitor-client privilege. Waiver of privilege is ordinarily established where it is shown that the holder of the privilege knows of the existence of the privilege and voluntarily evinces of an intention to waive the privilege.³³ Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.³⁴ Waiver has been found to apply where, for example: the record is disclosed to another outside party; the communication is made to an opposing party in litigation; or the document records a communication made in open court.³⁵

[75] In its representations, the AGCO submits that Records 14-75 are all investigation reports of an OPP Officer. Relying on *Balabel v. Air India*³⁶, the AGCO submits that these investigation reports are protected by solicitor-client privilege because they contain information gathered on behalf of the AGCO’s solicitor. Similarly, the AGCO submits that records 76-117, which are the investigation notes prepared by the OPP officer, are exempt under section 19 of the *Act* because the notes were gathered on behalf of the AGCO’s solicitor.

[76] With regard to the remainder of the records at issue, the AGCO submits that they consist of communication between AGCO’s General Counsel, Registrar, staff and/or the OPP and qualify as solicitor-client privileged records. The AGCO submits that these communications relate to the status and findings of inquiries made by General Counsel

²⁸ *Decôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

²⁹ Orders PO-2441, MO-2166 and MO-1925.

³⁰ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

³¹ *Susan Hosiery Ltd. v. Ministry of National Revenue*, [1969] 2 Ex. C.R. 27.

³² *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

³³ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

³⁴ J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que.S.C.).

³⁵ Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.); Orders MO-1514, MO-2396-F, P-1551 and MO-2006-F.

³⁶ *Supra* note 29.

or AGCO staff and the information contained in these records was used by General Counsel in preparation of legal strategy and in providing legal advice. Further, the AGCO submits that these records are part of the continuum of communications relating to the AGCO's strategy and the successive steps for AGCO staff and General Counsel to take in the investigation.

[77] In her submissions, the appellant states that "without the benefit of being able to see the records, I am unable to speak to whether [the exemption in section 19] applies."

Finding

[78] I have reviewed the records that remain at issue, namely, Records 68, 692 and the Administrative Emails. Based on my review of these records, I find that none are exempt under section 19 of the *Act* as they do not form part of the continuum of communications between solicitor and client as the AGCO claims.

[79] In order for me to find that Records 68, 692 and the Administrative emails are subject to the common law solicitor-client privilege exemption, I must be satisfied that the records contain written communication of a confidential nature between a client and a legal advisor that is directly related to seeking, formulating or giving legal advice.³⁷

[80] As described above, Record 68 is a letter from the affected party to the Ontario Racing Commission relating to the AGCO's investigation. I have reviewed Records 14-75 and it does not appear that Record 68 is attached to any of the memoranda or briefing notes surrounding it. Contrary to the AGCO's submission, Record 68 is not an investigation report prepared for legal counsel nor does it appear to be attached to an investigation report. Furthermore, with regard to the AGCO's claim that Records 14-75 are covered by privilege because they contain information gathered on behalf of its solicitor, I rely on Adjudicator Daphne Loukidelis' finding in Order PO-3321 with regard to records that were part of a Crown brief or records that formed part of an OPP investigation:

I find that these records **were prepared by the police for the purpose of investigating this criminal matter, a purpose that "is distinct from Crown counsel's purpose of deciding whether or not to prosecute criminal charges."** As [Commissioner Brian Beamish] observed [in PO-2494], records of this nature, such as witness statements, Criminal Investigation Branch memos, and witness lists, are "prepared" twice: first, when the record is brought into existence, and second, when the police, applying their expertise, exercise their discretion to select certain records for inclusion in the Crown brief, and then make copies of those records for Crown counsel. I agree with [the Commissioner] that the fact that copies of some of the records found their

³⁷ *Decôteaux v. Mierzwinski*, *supra* note 27.

way into the Crown brief does not alter the purpose for which the records were originally prepared.

Based on my review of Record 68, it was not prepared by or for legal counsel and/or the client in relation to the provision of legal advice. Therefore, I find that section 19 does not apply to exempt Record 68 from disclosure.

[81] Record 692 is an INFO-GO print out for an individual. As discussed above, INFO-GO is a publicly available online database of Government of Ontario employees, their office locations, telephone numbers and email address. In addition, INFO-GO contains an office directory, which provides the following information on Government of Ontario offices: office names and descriptions, postal addresses, telephone and fax numbers, and e-mail and Website addresses. Record 692 is an INFO-GO print out containing a Government of Ontario employee's name, office location, title, telephone number and email address. Based on my review of Record 692 and the records surrounding it, it does not appear that the record was prepared by or for legal counsel and/or AGCO staff in relation to the provision of legal advice and I have insufficient evidence to make that finding. Further, it does not appear that Record 692 is attached to a record that would be covered by solicitor-client privilege. Therefore, I find that section 19 of the *Act* does not apply to Record 692.

[82] Finally, I have reviewed the Administrative Emails that I have found not to be exempt under section 14. Based on my review of these records, while some of them do consist of correspondence or communications between AGCO Counsel and members of AGCO's staff, I find that the records do not contain information relating to the provision of legal advice. As discussed above, these internal Administrative Emails relate to arranging meetings between the sender and recipients of the email. While some of these emails are communications between AGCO Counsel and AGCO staff or the chair of the AGCO, the communications do not relate to seeking, formulating or providing legal advice. Therefore, I find that the Administrative Emails are not exempt under section 19 of the *Act*.

[83] In conclusion, I find that Records 68, 692 and the Administrative Emails are not exempt under sections 14 and 19. I will order the AGCO to disclose Record 692 and the Administrative Emails to the appellant.

[84] I note that Record 68 contains information that may affect the interests of the affected party, if disclosed. Therefore, I remain seized of Record 68 and will seek the affected party's position on its disclosure. I will order the AGCO to disclose the remainder of the records that are not exempt from disclosure and not potentially subject to exemption under a mandatory exemption to the appellant.

Issue D: Did the AGCO exercise its discretion under section 14? If so, should this office uphold the exercise of discretion?

[85] After deciding that records or portions thereof fall within the scope of a discretionary exemption, an institution is obliged to consider whether it would be

appropriate to release the records, regardless of the fact that they qualify for exemption. Section 14 is a discretionary exemption, which means that the AGCO could choose to disclose the information, despite the fact that it may be withheld under the *Act*.

[86] In applying the exemption, the AGCO was required to exercise its discretion. On appeal, the Commissioner may determine whether the AGCO failed to do so. In addition, the Commissioner may find that the AGCO erred in exercising its discretion where it did so in bad faith or for an improper purpose; where it took into account irrelevant considerations; or where it failed to take into account relevant considerations. In either case, I may send the matter back to the AGCO for an exercise of discretion based on proper considerations.³⁸ According to section 54(2) of the *Act*, however, I may not substitute my own discretion for that of the AGCO.

[87] As I upheld the AGCO's decision to apply section 14 to the majority of the records, I must review its exercise of discretion under that exemption.

[88] The AGCO submits that it properly exercised its discretion in withholding the records subject to the section 14(1) and (2) exemptions and considered all relevant factors, including, the purposes of the *Act*, the wording of the exemption and the interests it seeks to protect, whether there exists a compelling need to receive the information and the historical practice of the institution. In particular, the AGCO submits that it considered the fact that the investigation was and continues to be ongoing. It states that the exemption in section 14(1) is meant to allow the head to withhold records if disclosure could harm the effective conduct of law enforcement activities.

[89] Further, the AGCO states that it is aware that the appellant is a member of the media. While it states that it appreciates the role journalists play to inform the public, the AGCO submits that it also has a vital role in serving the public interest on alcohol and gaming investigatory matters. The AGCO submits that disclosure of the records would impair its ability to fulfill its public interest regulatory mandate by prematurely releasing records that are subject to an ongoing investigation. Furthermore, the AGCO submits that disclosure of the records could compromise its ability to continue the investigation and conclude the investigation in a manner free from external influence. Finally, the AGCO submits that it exercised its discretion in good faith and for the proper purpose of ensuring a fair and unbiased investigation.

[90] The appellant did not make representations on the AGCO's exercise of discretion.

[91] Based on the AGCO's representations and my review of the information for which I have upheld the sections 14(1)(a), (b) and 14(2)(a) exemptions, I am satisfied that the AGCO considered relevant factors in exercising its discretion, including the fact that the appellant is a media requester, the nature of the exemptions claimed and the fact that the investigation is ongoing. I am satisfied that the AGCO exercised its discretion properly and in good faith and I will not interfere with it on appeal. Therefore, I uphold

³⁸ Order MO-1573.

the AGCO's decision to exempt the records under sections 14(1)(a), (b) and 14(2)(a) of the *Act*.

Issue E: What is the scope of the request? What records are responsive to the request?

[92] In its representations, the AGCO submits that the following records are not responsive to the appellant's request: 72-75, portions of 76-117, 118, 135-139, 609 and 695. I note that I have already found Records 118, 609 and 695 are exempt from disclosure under the law enforcement exemption under section 14. As I have upheld the AGCO's decision to withhold these records, I do not need to consider whether these records are also responsive to the appellant's request.

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

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

[94] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.³⁹

[95] To be considered responsive to the request, records must "reasonably relate" to the request.⁴⁰

[96] The appellant's original request reads as follows:

An electronic copy of all records pertaining to an April, 2012 complaint made in regards to [the affected party] and all records related to the investigation stemming from that complaint.

³⁹ Orders P-134 and P-880.

⁴⁰ Orders P-880 and

[97] The AGCO submits that Records 72-75 and the marked portions of Records 76-117 and 135-139 are not responsive to the appellant's request. The AGCO states that the appellant seeks access to records relating to an investigation of the affected party from April 2012 to the date of the request, August 7, 2013. The AGCO states that it used September 7, 2013 as the end date for the time period to account for the search time it required to satisfy the appellant's request. As the request referred to a specific complaint and the period covered by the request was clearly stated, the AGCO submits that there was no need for it to clarify the request with the appellant.

[98] The AGCO submits that Records 72-75 contain information relating to the change of board membership to the affected party. The AGCO submits that Records 72-75 are not responsive because it is not related to the investigation itself. The AGCO states that the affected party provided the update pursuant to section 4(3) of the *Gaming Control Act, 1992* which requires registrants to notify and obtain consent from the Registrar when there is a change in the officers or directors.

[99] The AGCO submits that Records 76-117 contain the hard-written investigation notes of the OPP officer who conducted the investigation. While these notes contain references to the subject matter of the appellant's request, the AGCO states that the notes also contain references to other investigation cases and these other cases are outside the scope of the request.

[100] Finally, the AGCO submits that Records 135-139 are not responsive to the request because they are not related to the AGCO investigation and they relate to the affected party's administrative and legislative requirements with respect to its corporate structure. Furthermore, the AGCO submits that Records 135-139 are not responsive because they are dated after the September 7, 2013 end date of the search time period.

[101] The appellant did not make representations on whether Records 72-75, portions of 76-117 and 135-139 are responsive to her original request.

Finding

[102] Based on my review, I find that Records 72-75, the portions of 76-117 that were marked as not responsive and 135-139 are not responsive to the appellant's request.

[103] With regard to Records 72-75 and 135-139, I accept the AGCO's position that these records are outside the scope of the request because they are dated after the appellant's request was received. I note that the AGCO did not restrict the appellant's request in the time period to the date of her request. Rather, the AGCO added thirty days to the end date for the time period of the search to account for the search time required to satisfy the request. Therefore, I find that Records 72-75 and 135-139 are outside the scope of the appellant's request.

[104] In addition, I uphold the AGCO's decision to withhold portions of Records 76-117 as not responsive as they are notes that relate to other investigation cases that are not

the subject of the appellant's request.

[105] Therefore, I uphold the AGCO's decision to withhold Records 72-75 and 135-139 and portions of Records 76-117 as not responsive.

ORDER:

1. I order the AGCO to disclose Record 692 and all records that I have identified as "Administrative Emails" to the appellant, with the exception of the information withheld under section 21 of the *Act*. These records are not exempt under section 14(1)(a), (b), (c), (d) or 19. The AGCO is ordered to disclose these records by **April 8, 2016**.
2. I find that Records 68 and 263-267 are not exempt from disclosure under sections 14(1)(a), (b), (c), (d), 14(2)(a) or 19 of the *Act*. As the affected party may have an interest in these records, I remain seized of these records and will seek the affected party's position on the disclosure of these records.
3. I uphold the AGCO's decision to withhold Records 72-75 and 135-139 and portions of Records 76-117 as not responsive.
4. I uphold the AGCO's decision to withhold the remainder of the records considered in this order under sections 14(1)(a), (b) or 14(2)(a) of the *Act*.
5. In order to confirm compliance with this order, I reserve the right to require the AGCO to provide me with the records disclosed to the appellant pursuant to Order Provision 1 above.
6. I remain seized of the issues that remain outstanding in this interim order, namely, the application of the mandatory exemption in section 17(1) or (2) and the possible application of the public interest override to those records.

Original Signed by: _____

Justine Wai
Adjudicator

March 11, 2016 _____