

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3681

Appeal PA15-671

Ontario Civilian Police Commission

December 22, 2016

Summary: The request in this appeal was for an investigation report compiled by the Ontario Civilian Police Commission (the OCPC) and the names of the witnesses including their anticipated evidence. The OCPC denied access to the records in full, claiming the application of the exclusion in section 65(6) (employment or labour relations), the mandatory exemption in section 21(1) (personal privacy) and the discretionary exemptions in sections 13 (advice or recommendations) and 19 (solicitor-client privilege). The appellant raised the possible application of the public interest override in section 23. In this order, the adjudicator finds that the exclusion in section 65(6) does not apply to remove the records from the scope of the *Act*. She also finds that both records are exempt from disclosure under section 21(1), and that the public interest override in section 23 is not applicable in the circumstances of this appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 21(1), 23, 65(6)1 and 65(6)3; *Police Services Act*, R.S.O. 1990, c. P. 15, sections 25(1)(a) and 25(4).

Orders Considered: Orders M-757, MO-2428, P-1345, P-1560 and PO-3341.

OVERVIEW:

[1] This order disposes of the issues raised as a result of a decision made by the Ontario Civilian Police Commission (the OCPC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester's access request was for the complete contents of the OCPC file used in the prosecution of a named individual, including all witness statements, OPP reports, OPP correspondence to the OCPC, audio statements and video evidence, as well as other correspondence.

[2] In response, the OCPC issued a fee estimate to the requester. The requester subsequently narrowed the scope of the access request to:

- The OCPC's Investigation Report;
- The names of witnesses and their anticipated evidence; and
- The video of the incident in question.

[3] In response, the OCPC issued an access decision, denying access to the Investigation Report and the witness information, claiming the application of the discretionary exemptions in sections 13(1) (advice or recommendations) and 19 (solicitor-client privilege) of the *Act*. Concerning the request for the video, that portion of the request was ultimately transferred to the Timmins Police Service (the TPS) under section 25(2), as the TPS was deemed to have a greater interest in the video.

[4] The requester (now the appellant) appealed the OCPC's decision to this office. During the mediation of the appeal, the OCPC issued a revised decision letter in which it advised the appellant that it was also claiming the application of the exclusion in section 65(6) (employment or labour relations), and the mandatory exemption in section 21(1) (personal privacy) to the records at issue. The appellant advised the mediator that there is a public interest in the disclosure of the records. Consequently, section 23 was added as an issue in the appeal.

[5] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought representations from the OCPC and the appellant. I received representations from only the OCPC.

[6] For the reasons that follow, I uphold the OCPC's decision and dismiss the appeal.

RECORDS:

[7] The records at issue consist of an Investigation Report (48 pages), the witness names and their anticipated evidence (four pages) and a cover letter.

ISSUES:

- A. Does section 65(6) exclude the records from the *Act*?
- B. Do the records contain personal information?
- C. Does the mandatory exemption in section 21(1) apply to the information at issue?

DISCUSSION

Background

[8] The OCPC provided background information about its mandate, duties and authority, which are set out in the *Police Services Act*.¹ The OCPC has a broad adjudicative, regulatory and policy role in respect of the civilian oversight of policing, including overseeing compliance with prescribed policing standards, reviewing complaints and assessing police performance and conduct.

[9] The OCPC states that much of its work relates to the adjudication of appeals of disciplinary hearings conducted by police services in relation to internal and public complaints.² However, it also has the discretion to bypass those internal disciplinary and public complaints processes set out in the *PSA* by conducting its own investigation into the conduct of police officers and chiefs of police. This power is set out in section 25 of the *PSA*, which states:

25. (1) The Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board . . .

[10] The OCPC further states that as part of an investigation under section 25 of the *PSA*, OCPC investigators prepare a report of their findings for consideration by members of the OCPC. These reports are used by OCPC members in deciding how to address the conduct or performance of concern.

[11] It goes on to state that investigations under section 25 of the *PSA* may ultimately lead to the OCPC holding a first-instance disciplinary hearing, where it may order various penalties, such as suspension without pay or forfeiture of pay, upon a finding of misconduct or unsatisfactory work performance. If a hearing proceeds, the OCPC acts as prosecutor and adjudicator.

Issue A: Does section 65(6) exclude the records from the *Act*?

[12] Section 65(6) states, in part:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.

¹ R.S.O. 1990, c. P. 15 (*PSA*).

² Under Part II of the *PSA*.

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[13] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[14] For the collection, preparation, maintenance or use of a record to be *in relation to* the subjects mentioned in paragraph 1 or 3 of this section, it must be reasonable to conclude that there is some connection between them.³

[15] The term *employment of a person* refers to the relationship between an employer and an employee. The term *employment-related matters* refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.⁴

[16] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.⁵ Section 65(6) may apply where the institution that received the request is not the same institution that originally collected, prepared, maintained or used the records, even where the original institution is an institution under the municipal version of the *Act*.⁶

[17] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.⁷

Section 65(6)1

[18] For section 65(6)1 to apply, the institution must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; and
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

³ Order MO-2589; see also Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner, 2010 ONSC 991 (Div. Ct.).

⁴ Order PO-2157.

⁵ Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner) (2001), 55 O.R. (3d) 355 (C.A.) leave to appeal refused [2001] S.C.C.A. No. 507.

⁶ Orders P-1560 and PO-2106.

⁷ Ontario (Ministry of Correctional Services) v. Goodis (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.) (Goodis).

[19] The word proceedings means a dispute or complaint resolution process conducted by a court, tribunal or other entity which has the power, by law, binding agreement or mutual consent, to decide the matters at issue.⁸ For proceedings to be anticipated, they must be more than a vague or theoretical possibility. There must be a reasonable prospect of such proceedings at the time the record was collected, prepared, maintained or used.⁹

[20] The proceedings to which the paragraph appears to refer are proceedings related to employment or labour relations per se – that is, to litigation relating to terms and conditions of employment, such as disciplinary action against an employee or grievance proceedings. In other words, it excludes records relating to matters in which the institution has an interest as an employer. It does not exclude records where the institution is sued by a third party in relation to actions taken by government employees.¹⁰

Representations

[21] The OCPC submits that the three-part test in section 65(6)1 is met and applies to the records, and that none of the exceptions in section 65(7) applies. As a result, it argues, the records are excluded from the scope of the *Act*. The OCPC advises that the records relate to an anticipated hearing before it regarding the conduct of the chief of a municipal police service. The hearing that was scheduled resulted from an investigation conducted by the OCPC under section 25(1)(a) of the *PSA*.

[22] The first record is the investigation report that was created by OCPC investigators in their investigation on, inquiry into and report on, the chief's conduct. Members of the OCPC reviewed the investigation report and decided to send the matter to a disciplinary hearing.

[23] The second record, which is the witness names, their anticipated evidence and a cover letter was created by and for the OCPC prosecution in anticipation of a first instance hearing before the OCPC. However, it advises that a hearing was not held because the chief who was the subject matter of the investigation ultimately reached a settlement agreement with the OCPC, and entered a guilty plea to an amended allegation.

[24] Turning to the first part of the three-part test for section 65(6)1 to apply, the OCPC states that the records were prepared and/or used by OCPC investigators, members and prosecutors in relation to a disciplinary proceeding before an OCPC adjudicator about the chief's conduct.

[25] With regard to the second part of the test, the OCPC states that it is designated as an adjudicative tribunal pursuant to Ontario Regulation 126/10: *Adjudicative*

⁸ Orders P-1223 and PO-2105-F.

⁹ Ibid.

¹⁰ Goodis, cited in note 7.

*Tribunals and Clusters*¹¹ made under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.¹² It has a statutory mandate set out in the *PSA* to adjudicate and resolve conflicts regarding police disciplinary proceedings, and render a decision that affects the parties' legal rights and/or obligations.¹³

[26] The OCPC goes on to state:

Disciplinary hearings conducted under the *PSA* qualify *as a dispute or complaint resolution process conducted by a tribunal which has, by law, the power to decide disciplinary matters*.¹⁴ Therefore, the Chief's disciplinary hearing constitutes a *proceeding* before a tribunal for the purposes of the exclusion under clause 65(6)1.¹⁵

[27] Concerning the third part of the test, the OCPC submits that it has been met because the proceeding before it was disciplinary in nature, involving the chief's conduct, which constitutes an employment issue given the potential for disciplinary action.¹⁶ Because police officers and chiefs, among others, are subject to penalties under the *PSA* following disciplinary action, such proceedings can reasonably be characterized as employment related.

[28] Lastly, the OCPC submits that while the chief is employed by a municipal services board and not the OCPC, the word *institution* in section 65(6) can encompass an institution under the municipal equivalent of the *Act* for the purposes of the exclusion in section 65(6) of the *Act*.¹⁷

Analysis and findings

[29] I find that the records at issue were prepared, collected and used by the OCPC in reference an incident involving a police chief acting in his capacity as chief. Accordingly, the OCPC has met the first part of the three-part test.

[30] Turning to the second part of the test, I find that the first record documents the results of the investigation the OCPC undertook under section 25(1)(a) of the *PSA* into the police chief's conduct, which resulted in the scheduling of a disciplinary hearing. The second and third records set out the witness names and anticipated evidence to be used at the OCPC's disciplinary hearing of the chief. Consequently, I find that the records are in relation to a proceeding or anticipated proceeding before a tribunal or other entity.

[31] Past orders of this office have established that disciplinary hearings under Part V

¹¹ Schedule 1, s. 4.

¹² S.O. 2009, c. 33, Schedule 5, s.2.

¹³ *PSA*, Part II.

¹⁴ See Order MO-2428.

¹⁵ See Orders M-835, M-840, M-899, PO-1797, MO-2216 and PO-3010.

¹⁶ See Orders PO-2658 and PO-2982.

¹⁷ See Orders PO-2426 and PO-2499.

of the *PSA* qualify as *proceedings* before a tribunal or other entity for the purpose of the exclusion. For example, in Order MO-2428, Adjudicator Catherine Corban summarized this office's approach to disciplinary hearings under Part V of the *PSA*:

This office has found that a disciplinary hearing under Part V of the *Police Services Act* qualifies as a dispute or complaint resolution process conducted by a tribunal or other entity which has, by law, the power to decide disciplinary matters. As such, prior orders have consistently held that these hearings are properly characterized as *proceedings* for the purposes of section 52(3)1 [the municipal equivalent of section 65(6)1].

[32] I note that the investigation conducted by the OCPC under section 25(1)(a) of the *PSA* falls within Part II of that legislation. However, section 25(4) of the *PSA* also states:

If the Commission concludes, after a hearing, that the conduct of a police officer, other than an officer appointed under the *Interprovincial Policing Act, 2009*, or municipal chief of police is proved on clear and convincing evidence to be misconduct or unsatisfactory work performance, it may direct that any action described in section 85 [Part V of the *PSA*], as specified by the Commission, to be taken with respect to the police officer or municipal chief of police or it may direct that the police officer or municipal chief of police be retired if he or she is entitled to retire.

[33] The effect of these provisions is it that, while the investigation and anticipated hearing were commenced under Part II of the *PSA*, the possible penalties that the chief would be subject to are set out in Part V of the *PSA*. I find, therefore, that investigations and hearings conducted under sections 25(1)(a) and (4) of the *PSA* are analogous to the disciplinary hearings conducted under Part V of the *PSA* for the purposes of part two of the test. Therefore, in the circumstances of this case, the investigation and anticipated hearing under section 25 of the *PSA* qualify as *proceedings* before a tribunal or other entity for the purpose of the exclusion. I am satisfied with the OCPC's evidence that at the time the records were created, the police chief's disciplinary hearing was not only anticipated, but had been scheduled. While the hearing did not ultimately ensue, I am satisfied that the records at issue were collected, prepared, maintained and used as a result of the investigation for the purposes of an anticipated discipline proceeding under the *PSA*. Consequently, part two of the test has been met.

[34] Part three of the test articulates that the proceedings or anticipated proceedings relate to the employment of a person by the institution. In this appeal, the institution that received the request is the OCPC. The police chief is not an employee of the OCPC and there is no employment relationship between them. Past orders of this office have held that section 65(6)1 may apply where the institution that received the request is not the same institution that originally collected, prepared, maintained or used the records. However, in those cases the records that were found to be excluded from the scope of the *Act* were either submitted to the institution by the employer or sent by the

institution to the employer and used by the employer.¹⁸ In this case, based on the OCPC's representations, all of the records were collected, prepared, maintained or used solely by the OCPC and not by any other institution under the *Act* or its municipal equivalent, including the police services board. The request is to the OCPC. There is no evidence before me to suggest that the records were provided to the OCPC by the police services board. In the circumstances, I find that the requirements of part three of the three-part test have not been met and the records are not excluded from the scope of the *Act* under section 65(6)1. The OCPC has also claimed the application of the exclusion in section 65(6)3, which I consider below.

Section 65(6)3

[35] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. the collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[36] The phrase *employment-related matters* has been found to apply in the context of disciplinary proceedings under the *Police Services Act*.¹⁹

[37] The phrase *in which the institution has an interest* means more than a mere curiosity or concern, and refers to matters involving the institution's own workforce.²⁰

Representations

[38] The OCPC states that the records were prepared and/or used by investigators, members and prosecutors in relation to a disciplinary proceeding before an OCPC adjudicator concerning the police chief's conduct. It goes on to state that various meetings, consultations, discussions and/or communications took place between the OCPC and the police chief, including the investigators' interview of the chief during the investigation and the prosecutors' negotiations with the chief that ultimately led to a settlement agreement, and that the records are substantially connected to these activities.

[39] Concerning the third part of the test, the OCPC argues that disciplinary proceedings under the *PSA*, including the self-initiated investigation, relate to the employment of the individual whose conduct and/or performance is being assessed.

¹⁸ See Orders P-1345 and P-1560.

¹⁹ Order MO-1433-F.

²⁰ Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner), cited in note 5.

The records are about employment-related matters because of the potential for disciplinary action.²¹ The OCPC goes on to state:

Given the OCPC's role in adjudicating the disciplinary charges against the Chief as an independent and impartial decision-maker, the OCPC itself did not have *an interest* in the matter. Rather, the records were collected, prepared, maintained or used in relation to *employment-related matters* in which the municipal police services board – considered an institution under *MFIPPA* and thus *FIPPA*²² – has an interest.²³ Because the records relate to the municipal police services board's *own workforce*, its interest in them amounts to *more than a mere curiosity or concern*, and the third requirement of the clause 65(6)3 test is met.²⁴

Analysis and findings

[40] I find that even if the requirements of parts one and two of the test were met, the OCPC has not met the requirements of part three of the test and, therefore, the exclusion in section 65(6)3 does not apply to remove the records at issue from the scope of the *Act*.

[41] In Order P-1345, former Adjudicator Donald Hale found that section 65(6)3 did not apply to records created and held by the Ontario Labour Relations Board (the OLRB) in relation to a proceeding before it because an institution such as the OLRB, acting as an impartial adjudicator would not *have an interest* in an employment-related matter in the sense intended by the section, as such an interest would be inconsistent with impartial adjudication. However, he also found that some records were excluded from the scope of the *Act* by virtue of section 65(6)3 because they had originated with the employer.²⁵ These included, for example, any pleadings filed by the employer and any correspondence or records of communications between the OLRB and the employer.

[42] Similarly, in the orders the OCPC references and relies on in its representations, section 65(6)3 applied to records that were provided to the institution by a police services board (as the employer)²⁶ and to records that were provided to the police chief (in his capacity as an employer) by the OCPC.²⁷

[43] In this case, the OCPC concedes that it does not have an interest in the records as contemplated by section 65(6)3, but it submits that the police services board does have an interest, as it is the police chief's employer. The OCPC has indicated in its representations that it created the records, but there is no evidence of the involvement

²¹ Orders M-899, M-922, PO-1796, PO-2615, PO-2658, PO-2982 and PO-3352.

²² Orders PO-2426 and PO-2499.

²³ Orders PO-2426, PO-2615 and PO-3352.

²⁴ *Ibid.*

²⁵ The employer was also an institution under the *Act*.

²⁶ Order PO-2426.

²⁷ Order PO-2499.

of the police services board respecting the records. The OCPC is essentially claiming the application of the exclusion on behalf of another institution. In these circumstances, I find that the exclusion in section 65(6)3 does not apply to the records. The OCPC has also claimed the application of the mandatory exemption in section 21, as well as the discretionary exemptions in sections 13 and 19 to the records which I consider below.

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

[44] In order to determine which section of the *Act* may apply, it is necessary to decide whether the records contain *personal information* and, if so, to whom does it relate. That term is defined in section 2(1) which states, in part:

personal information means recorded information about an identifiable individual, including,

...

(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,

...

(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;

[45] Section 2(3) also relates to the definition of personal information. It states:

(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.

[46] 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.²⁸ 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.²⁹

²⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁹ Orders P-1409, R-980015, PO-2225 and MO-2344.

[47] The OCPC submits that the records contain the personal information of identifiable individuals, namely the police chief and the individuals who were interviewed during the investigation. In particular, the records contain information about the chief's employment history.

[48] Having reviewed the records, I find that they contain the personal information of several identifiable individuals, including the police chief, several police officers and other individuals.

[49] Concerning the police chief, the records contain information about his employment history (paragraph (b) of the definition of personal information), the views or opinions of others of him (paragraph (g) of the definition) and his name where it appears with other personal information about him (paragraph (h) of the definition). A long line of orders of this office have found that information in records relating to an investigation into alleged improper conduct of an individual in their professional capacity becomes and is characterized as the personal information of that individual.³⁰ In the circumstances, I find that all of the information contained in the records, which consist of the results of an investigation conducted with respect to the police chief's conduct and the anticipated evidence to be used in a disciplinary hearing regarding his conduct, qualifies as the police chief's personal information.

[50] The records also contain the employment history of a number of police officers, which falls within paragraph (b) of the definition of personal information. In addition, the records contain the witness statements of these police officers, as well as other individuals. In the circumstances, I find that the information pertaining to these individuals in their capacity as employees as potential witnesses for the prosecution, including their statements, qualifies as their personal information.³¹

[51] Lastly, the records contain the name of another individual, not in a professional capacity, where it appears with other personal information about him, falling within paragraph (h) of the definition of personal information.

[52] As the records contain the personal information of a number of identifiable individuals, I will now determine whether this personal information is exempt from disclosure under section 21(1).

Issue C: Does the mandatory exemption in section 21(1) apply to the information at issue?

[53] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of the paragraphs (a) to (e), it is not exempt from disclosure under section 21(1).

³⁰ Orders P-165, P-448, P-1117, P-1180, MO-1577-I, MO-2188, PO-2525 and PO-2987.

³¹ Order M-634.

[54] Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. The section 21(1)(f) exception requires a consideration of additional parts of section 21(1).

[55] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[56] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21(1). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the public interest override in section 23 applies.³²

[57] The OCPC submits that the presumption in sections 21(3)(b) and (d) apply, which state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

. . .

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

. . .

(d) relates to the employment or educational history;

[58] With respect to the presumption in section 21(3)(b), it only requires that there be an investigation into a possible violation of law.³³ Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.³⁴

[59] Section 21(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.³⁵

[60] The presumption can apply to a variety of investigations, including those related to by-law enforcement,³⁶ the Ontario Human Rights Code,³⁷ and the *PSA*.³⁸

³² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

³³ Orders P-242 and MO-2235.

³⁴ Orders MO-2213, PO-1849 and PO-2608.

³⁵ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

³⁶ Order MO-2147.

[61] As previously stated, the OCPC submits that the information in the records involves the circumstances of its investigation on its own motion to inquire into and report on the chief's conduct pursuant to section 25(1)(a) of the *PSA*. The OCPC investigators collected information and witness statements in an attempt to determine whether the chief had committed misconduct in violation of the *PSA*. It goes on to state that a finding of misconduct in proceedings under section 25 of the *PSA* may result in various penalties as set out in sections 84(3) and 85 of Part V of the *PSA*. Therefore, the records were compiled during and as part of an investigation into a possible violation of law, falling within the presumption in section 21(3)(b).

[62] Past orders of this office have held that records compiled as part of an investigation that can lead to charges under the *PSA* can be subject to the presumption in section 21(3)(b).³⁹ I have come to the same conclusion with respect to the investigation and investigation report at issue in this appeal. The investigation initiated by the OCPC in this case is one that could lead to a penalty or sanction under Part V of the *PSA*. I find that the personal information in the investigation report was compiled and is identifiable as part of that investigation into a possible violation of law and, consequently, the presumption in section 21(3)(b) applies to the investigation report. Having found that the entire investigation report is subject to the presumption in section 21(3)(b), I find that it is exempt under section 21(1) of the *Act*. I also find that the limitations in section 21(4) do not apply in the circumstances of this appeal.

[63] Turning to the witness names and the summary of anticipated evidence (with accompanying cover letter), I find that this record was compiled after the completion of the investigation and is, therefore, not subject to the presumption in section 21(3)(b). I also find that the presumption in section 21(3)(d) does not apply because there is no employment history information, as contemplated by section 21(3)(d) (for example, the number of years of service) contained in this record.

[64] In order to determine whether the witness names and anticipated evidence is subject to the exemption in section 21(1), I must consider the factors in section 21(2) of the *Act*. The OCPC did not address the factors in section 21(2) in its representations and, as previously stated, the appellant did not provide any representations in this appeal. I am not persuaded by the evidence before me or on my review of the records that there are relevant factors either favouring disclosure or weighing against disclosure. In particular, I have not been provided with any evidence by any of the parties to determine whether:

- the disclosure is desirable for the purpose of subjecting the activities of the police to public scrutiny;⁴⁰

³⁷ Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

³⁸ See, for example, Orders M-757 and PO-3341.

³⁹ Ibid.

⁴⁰ Section 21(2)(a).

- the individual(s) to whom the information relates will be exposed unfairly to pecuniary or other harm;⁴¹
- the information is highly sensitive and its disclosure would cause the police officers and other individuals significant personal distress;⁴²
- the personal information was supplied by the individual(s) to whom the information relates in confidence;⁴³ or
- the disclosure may unfairly damage the reputation of any person referred to in the record.⁴⁴

[65] Consequently, as I find that none of the factors in section 21(2) either weighing in favour or against disclosure apply to the personal information of the witnesses, I find that it too is exempt from disclosure under section 21(1). I further find that the limitations in section 21(4) do not apply in these circumstances. Given that the records as issue are exempt under section 21(1), it is not necessary for me to determine whether the discretionary exemptions in sections 13 and 19 apply as well.

[66] During the mediation of this appeal, the appellant raised the possible application of the public interest override in section 23. In the absence of representations from the appellant and on my review of the records, I find that there is not a compelling public interest in the disclosure of the records at issue. In making this finding, I note that a significant amount of information about the results of the OCPC's investigation and the disposition of the charges made under the *PSA* is already in the public domain.

[67] In sum, I find that the exclusion in section 65(6) does not apply to remove the records from the scope of the *Act*. I find that both records are exempt from disclosure under section 21(1), and that the public interest override in section 23 is not applicable in the circumstances of this appeal.

ORDER:

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

Original signed by: _____
Cathy Hamilton
Adjudicator

December 22, 2016 _____

⁴¹ Section 21(2)(e).

⁴² Section 21(2)(f).

⁴³ Section 21(2)(h).

⁴⁴ Section 21(2)(i).