Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3766

Appeal PA16-211

Ministry of Community Safety and Correctional Services

August 30, 2017

Summary: The appellant sought access to records relating to herself from the Caledon detachment of the OPP. The ministry granted access to some records and, on the basis of sections 49(b) and 49(a), in conjunction with section 21(1) (personal privacy) and 14(1) (law enforcement), denied access to certain records or portions of records. In this order, the adjudicator upholds the decision of the ministry to withhold many of the non-disclosed portions of the records. However, he finds that some of the withheld information contains only the appellant's personal information and orders the ministry to release that information. He also finds that 2 paragraphs do not qualify for exemption under section 49(a) and 14(1)(c), and orders them disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 21(1) (personal privacy), 14(1)(c), 14(1)(l) (law enforcement).

Orders and Investigation Reports Considered: P-1618, MO-1378, PO-2285.

BACKGROUND:

[1] The appellant made a request to the Ministry of Community Safety and Correctional Services (the ministry) under *Freedom of Information and Protection of Privacy Act,* (the *Act*) for access to records containing her personal information from the Caledon detachment of the Ontario Provincial Police (OPP).

[2] The ministry granted partial access to the OPP reports regarding the requester,

denying part of the responsive information pursuant to sections 49(a), 14(1)(l), 14(2)(a), 19, 49(b), 21(2)(f), 21(3)(b) and 21(3)(d) of the *Act.*

[3] The ministry noted in its decision that some of the information, such as computer generated text associated with the printing of the report, has been marked "N/R" (not responsive to the request) and redacted from the records.

[4] The requester (now appellant) appealed the ministry's decision.

[5] During mediation, the ministry issued a revised decision granting additional access to portions of the requested records and raising one additional discretionary exemption, section 14(1)(c) of the *Act,* to deny access to page 20 of the record.[1]

[6] The mediator discussed the various issues on appeal with the appellant. The appellant acknowledged receipt of the ministry's revised decision and advised the mediator that she was not satisfied with the disclosure and wanted the appeal to proceed based on all the exemptions claimed or redactions made.

[7] As mediation did not resolve the dispute, this appeal was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. Representations were sought and shared in accordance with section 7 of IPC's *Code of Procedure* and *Practice Direction 7*.

[8] In this order, the adjudicator upholds the decision of the ministry to withhold many of the non-disclosed portions of the records. However, he finds that some of the withheld information contains only the appellant's personal information and orders the ministry to release that information. He also finds that 2 paragraphs do not qualify for exemption under section 49(a) and 14(1)(c), and orders them disclosed.

RECORDS:

[9] Twenty-eight pages consisting of OPP Occurrence Reports and Occurrence Summaries.

[10] Although the ministry claims that portions of the records were non-responsive, they do not address this issue in their representations. From my review of the records, it is apparent that the ministry claimed the date of printing the records for the FOI request as well as the employee who printed the records was not responsive to the request. I agree that the information is not responsive to the request. Also, on page 18 one paragraph is marked as non-responsive, however, I find that a portion of that paragraph consists of the personal information of the appellant and the ministry is ordered to disclose the appellant's personal information (see below).

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[1] In its representations, the ministry also applied section 14(1)(c) to part of page 11.

ISSUES:

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

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

C. Does the discretionary exemption at section 49(a) in conjunction with the section 14 exemption apply to the information at issue?

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

DISCUSSION:

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

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

[12] 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.[2]

[13] The ministry claims that the majority of the records contain personal information within the meaning of the definition in section 2 of the *Act*. The ministry submits that the majority of the personal information is about affected parties with only a small portion remaining about the appellant. The ministry submits that due to the subject matter of the records (i.e., OPP investigations where the appellant appears to know all affected parties), even if identifying information such as names and dates of birth were removed from the records, it is reasonable to expect that affected third party individuals could still be identified if the information in the records was disclosed. The Ministry refers to Order PO-2955 to support this position.

[14] The appellant made formal representations in this appeal. In general, she submits that the ministry is aware of the issues she has experienced and suggests that it is condoning an affected party's behaviour by hiding behind the *Act* in order to protect itself. The appellant speaks to the lack of protection regarding the issues she is experiencing stating concern with how she was dealt with.

Finding

[15] From my review of the actual records, I find that they contain information that qualifies as the personal information of the appellant and the affected parties. The appellant and the affected parties' name, age, birthdate, address and other information about them falls within the ambit of paragraphs (a), (d), (g) and (h) of the definition of personal information in section 2(1) of the *Act*. Additionally, given the nature of the information in the record, I find that the individuals would be identifiable even if their names and contact information were severed from the record.

[16] Under section 10 of the *Act,* if the ministry receives an access request that falls within one of the exceptions under sections 12 to 22, the ministry "shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions." The ministry submits that it has disclosed most of the appellant's personal information to her and what remains is her personal information that is intertwined with that of the affected parties.

[17] I note that most of the appellant's personal information has already been disclosed to her and most of the remaining portion of the records contain personal information solely related to the affected persons or the affected persons' views or opinions. However, in my review of the records, there are instances where the appellant's personal information has been severed and it is not intertwined with an affected party's personal information (specifically, portions of pp. 9, 10, 12, 18, 19 and 28). In those instances, the ministry will be directed to disclose this information to the appellant.

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[2] Order 11.

[18] Other than the instances where I find that the appellant's personal information should be disclosed, I find that the remainder of the appellant's personal information is so intertwined with the personal information of the other identifiable individuals that it cannot be further severed.

[19] Accordingly, I will proceed to consider whether this personal information is exempt from disclosure under the exemptions claimed. I will now consider the appellant's access to this information under section 49(b).

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

[20] Since I have found that the record contains both the personal information of the appellant and the affected parties, section 47(1) applies to this appeal. Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[21] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the appellant.

[22] If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the appellant. This involves a weighing of the appellant's right of access to her own personal information against the other individual's right to protection of their privacy.

[23] Sections 21(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 49(b). If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). None of these paragraphs apply to the information remaining at issue.

[24] 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 49(b).

[25] The ministry submits that the presumption at section 21(3)(b) of the *Act* applies to exempt the information from disclosure. Section 21(3)(b) states:

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

Representations:

[26] The ministry states that it has withheld most of the records because to disclose them would constitute an unjustified invasion of the privacy of affected third party individuals identified in law enforcement records, who have not consented to the disclosure of their personal information.

[27] The ministry notes that it withheld most of the records on the basis that to disclose them would presumptively constitute an unjustified invasion of personal privacy of affected third party individuals in accordance with section 21(3)(b) of the *Act*.

[28] The ministry notes that the presumption in section 21(3)(b) only requires that there be an investigation into a possible violation of law, and refers to order PO-2955, where Adjudicator Stephanie Haly stated:

> Even if no criminal proceedings were commenced against any individuals, section 21 (3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Orders P-242 and M0-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders M0-22 l 3, P0-1849 and P0-2608].

[29] The ministry notes that all of the withheld records under this exemption relate to the OPP involvement in incidents, where they investigated a property dispute involving the appellant. It states that even though no charges resulted, the presumption nevertheless applies, because if the OPP officers found that an offence had been committed as a result of its investigation, they could have laid charges.

[30] The ministry also claims that the factor in section 21(2)(f) (highly sensitive) applies. It notes that past IPC orders have held that to meet section 21(2)(f), there must be a reasonable expectation of significant personal distress were the personal information to be disclosed.

[31] The ministry relies on Order P-1618, where the former Assistant Commissioner Tom Michinson found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive" for the purpose of section 21(2)(f). The ministry submits that this reasoning should be applied to the records, especially as some of the affected third party individuals are specifically identified as complainants, or in one instance, a witness. The ministry further notes that some of these records date back to 2009. The ministry states that affected third parties, would be distraught to see personal information about them being disclosed, especially so long after the incident occurred, when disclosure was not anticipated.

[32] The appellant submits that the ministry is attempting to protect the affected parties while giving no regard to her own rights.

Findings:

[33] As previously stated, a portion of pages 9, 10, 12, 18, 19 and 28 of the records contain only the appellant's personal information, which can be severed from the rest of the pages. Accordingly, the appellant's personal information on these pages is not exempt from disclosure and I will order the ministry to disclose it to her.

[34] I have reviewed the withheld portions of the records for which the section 49(b) exemption is claimed, all of which contain the personal information of identifiable individuals other than the appellant. The portions of the records which the ministry claims qualify for exemption under section 49(b) include the identity, address, telephone number and statements made by the affected parties which I find constitutes their personal information. Furthermore, disclosure of many of the severed portions of the records would reveal the identity of the affected persons to whom the information relates.

[35] It is clear that the records at issue in this appeal were compiled by the OPP in the course of its investigation of the matters involving the appellant. On the basis of the representations provided by the ministry, I am satisfied that the personal information remaining at issue for which the section 49(b) exemption is claimed was compiled and is identifiable as part of the police investigation into a possible violation of law, and falls within the presumption in section 21(3)(b).

[36] In addition, I am satisfied that, because of the nature of the investigation and the personal information contained in the withheld portions of the records, the personal information is highly sensitive (section 21(2)(f)). I adopt the reasoning in Order P-1618 (mentioned above) to make this finding.

[37] Although the appellant did not comment on section 21(2) factors that might support her claim, I have assessed the various enumerated considerations in section 21(2) and also considered any unlisted factors and conclude that without specific representations, none of them applies.

[38] Because the factor in section 21(2)(f) and the presumption in section 21(3)(b) apply to the withheld information, and no other factors under section 21(2) have been established, I am satisfied that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties. More specifically, I find that the following information qualifies for exemption under section 49(b):

Page 3: the name and address of an affected party;

Page 4: the address of an affected party;

Page 5: the names, addresses, phone numbers and dates of birth of affected parties;

Page 6 and 7: the name of an affected party along with that affected party's brief statement.;

Page 8: the name of an affected party;

Page 9: the name and address of an affected party;

Page 11: the name and address of an affected party along with that affected party's statements as well as other personal information about that affected party;

Page 12 and 13: the name and address of an affected party along with other personal information about that affected party;

Page 14 and 15: the names of two affected parties and their statements as well as other personal information about them;

Page 16: the name of an affected party and a summary of their statement;

Page 17: the names and phone numbers of two affected parties including the address of one of the affected parties;

Page 18 and 19: the personal information of a named police officer and the name and phone number of an affected party as well as other personal information about that affected party;

Page 20 and 21: although these pages were withheld pursuant to section 14(1)(c) they were also withheld under section 49(b), there are three paragraphs on page 20 and the entirety of page 21 that contain the personal information of an affected party including name, address as well as other personal information about them. The first two paragraphs of page 20 will be discussed under section 14(1)(c) below;

Page 22: the name of two affected parties and the phone number of only one along with their statements;

Page 24 and 25: the name of an affected party and other personal information of that affected party along with the personal information of a named police officer; and,

> Page 27: the identifying information relating to 2 affected parties that would clearly identify them along with other personal information about them.

[39] Accordingly, I find that the withheld portions of the records listed above are exempt from disclosure under section 49(b) of the *Act*, subject to my discussion of the absurd result principle as well as my review of the ministry's exercise of discretion, below.

C: Does the discretionary exemption at section 49(a) in conjunction with the section 14 exemption apply to the information at issue?

[40] Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

[41] The ministry takes the position that sections 14(1)(c) and (l) apply to the records or portions of records remaining at issue. Because I have found that all of the records remaining at issue contain the personal information of the appellant, I will examine the application of these exemptions in the context of section 49(a).

Sections 14(1)(c) and (l)

[42] Sections 14(1)(c) and (l) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[43] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[3]

[44] Where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not

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

sufficient.[4]

[45] It is also not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[5]

[46] The term "law enforcement" is used in sections 14(1)(c), and is defined in section 2(1) as follows:

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

[47] The ministry states:

> The OPP is a law enforcement agency, and the records at issue are operational records that were created during OPP law enforcement investigations. Previous IPC orders have confirmed that the OPP is an agency which has the function of enforcing and regulating compliance with the law pursuant to section 14.

[48] I agree with the ministry that previous orders have confirmed that the OPP is an agency which has the function of enforcing and regulating compliance with the law.[6]

Section 14(1)(c)

[49] In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.[7]

[50] The techniques or procedures must be "investigative." The exemption will not

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[4] See Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.); *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[5] Order PO-2040; *Ontario (Attorney General) v. Fineberg*
[6] see Order PO-2474
[7] Orders P-170, P-1487.

apply to "enforcement" techniques or procedures.[8]

[51] The ministry submits that part of page 11 and page 20 qualify for exemption under section 14(1)(c). Since I have found that the relevant portion of page 11 should not be disclosed pursuant to section 49(b), there is no need to discuss whether section 14(1)(c) also exempts this record.

[52] The ministry stated that it applied section 14(1)(c) to page 20 on the grounds that it contains information about an OPP investigation technique. The ministry submits that the issues between the appellant and one or more affected parties has yet to be resolved and disclosure of this record will prevent the OPP from utilizing the identified technique in future.

Findings:

[53] As I have found that the section 21(3)(b) exemption applies to most of page 20, I must now determine whether section 14(1)(c) applies to remainder of that record, the first two paragraphs.

[54] On my review of the ministry's representations (including the confidential portions of its representations) and the remaining information on page 20 for which section 14(1)(c) is claimed, I am not persuaded that disclosure of this investigative technique or procedure could reasonably be expected to hinder or compromise its effective utilization. It has been accepted in previous IPC orders that the public is generally aware that the police engage in this type of investigative technique. The fact that this particular technique or procedure is generally known to the public leads me to the conclusion that its disclosure could not reasonably be expected to hinder or compromise its effective utilization. I also reject the ministry's suggestion that the record sets out a level of detail about this technique that the public would not be aware of. As set out above, most of this record is being withheld under section 49(b) and I find that the remaining information does not set out a level of detail of the investigative technique that the public will not be aware of. Consequently, I find that this information does not qualify for exemption under section 14(1)(c) and the relevant part of page 20 should be disclosed to the appellant.

Section 14(1)(l)

[55] As stated, the ministry takes the position that certain severed portions of the records fall within the scope of section 14(1)(l). As section 14(1)(l) uses the words "could reasonably be expected to," the ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to

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[8] Orders PO-2034, P-1340.

speculation of possible harm is not sufficient.[9]

[56] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[10] However, it is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record.[11]

[57] The ministry states that it applied section 14(1)(l) to the following:

- Internal Police codes
- Public and affected third party's cooperation
- Internal communications

[58] I have already dealt with third or affected party's personal information including names, addresses, phone numbers and personal views which were properly withheld under section 21(3)(b). I will now discuss whether section 14(1)(l) applies to the internal police codes and internal communications.

[59] The ministry states that the records contain police codes which are widely used internally as part of OPP operations. It also refers to a long line of IPC orders that found that police codes qualify for exemption under section 14(1)(l).

[60] The ministry also submits that the records include confidential law enforcement information, being internal communications, that members of the OPP use for the purpose of documenting their investigations and for communicating with other OPP law enforcement personnel.

[61] The appellant makes no comment in her representations on the application of section 14(1)(l).

Findings:

[62] A number of previous orders have found that police codes and internal communications qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm which may result from their release.[12] In the circumstances of this appeal, I am satisfied that the ministry has provided sufficient

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[9] See Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.); *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[10] *Ontario (Attorney General) v. Fineberg*
[11] Order PO-2040; *Ontario (Attorney General) v. Fineberg*
[12] see, for example, M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339

evidence to establish that disclosure of the operational codes, found on many pages of the records, could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[63] I find that the operational codes and other police code information including other numerical information are exempt under section 49(a), in conjunction with section 14(1)(l), subject to my review of the absurd result principle and the ministry's exercise of discretion, below.

Absurd result

[64] In this appeal, some of the severances from the records relate to incidents in which the appellant was present or involved in some way.

[65] Previous orders have determined that, where a requester originally supplied the information, or a requester is otherwise aware of it, the information may be found not exempt under section 49(b) or 21, because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[13]

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

- the requester sought access to his or her own witness statement[14]
- the requester was present when the information was provided to the institution[15]
- the information is clearly within the requester's knowledge[16]

[67] Previous orders have also stated that, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is in the requester's knowledge.[17]

[68] With respect to whether or not disclosure is consistent with the purpose of the section 21(3)(b) exemption, former Senior Adjudicator Goodis reviewed this issue in Order PO-2285, where he stated:

> Although the appellant may well be aware of much, if not all, of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester.

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[13] Orders M-444, MO-1323
[14] Orders M-444, M-451, M-613
[15] Order P-1414
[16] Orders MO-1196, PO-1679, MO- 1755
[17] Orders M-757, MO-1323, MO-1378

[69] Senior Adjudicator Goodis went on to refer to the following excerpt from Order MO-1378:

> The appellant claims that [certain identified photographs] should not be found to be exempt because they have been disclosed in public court proceedings, and because he is in possession of either similar or identical photographs.
>
> In my view, whether or not the appellant is in possession of these or similar photographs, and whether or not they have been disclosed in court proceedings open to the public, the section 14(3)(b) presumption may still apply. In similar circumstances, this office stated in Order M-757:
>
> > Even though the agent or the appellant had previously received copies of [several listed records] through other processes, I find that the information withheld at this time is still subject to the presumption in section 14(3)(b) of the *Act*.
>
> In my view, this approach recognizes one of the two fundamental purposes of the *Act*, the protection of privacy of individuals [see section 1(b)], as well as the particular sensitivity inherent in records compiled in a law enforcement context. The appellant has not persuaded me that I should depart from this approach in the circumstances of this case.

[70] I adopt the approach taken to the absurd result principle set out above, as well as the approach taken by the Senior Adjudicator in Orders MO-1378 and PO-2285.

[71] In this appeal, the ministry takes the position that the absurd result principle does not apply to the records remaining at issue because it would be inconsistent with the purpose of the exemption, to protect the privacy of the affected third parties whose personal information has been collected as part of law enforcement activities.

[72] The appellant does not comment on the absurd result specifically, however, in her representations, she inserted the name she believes has been severed from the records for one affected party.

Finding:

[73] I have reviewed the circumstances of this appeal, including:

1. the specific records at issue,
2. the background to the creation of the records,
3. the amount of information that has been disclosed to the appellant,

4. the nature of the exemption claims made for this information.

[74] I find that, in the circumstances, there is a particular sensitivity inherent in the information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act,* as identified by Senior Adjudicator Goodis in Order MO-1378 (including the protection of privacy of individuals, and the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, I find that the absurd result principle does not apply in this appeal.

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

[75] The exemptions in sections 49(a) and 49(b) are discretionary and permit the ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.[18]

[76] In its representations, the ministry submits that it exercised its discretion properly in not releasing the records. It states that it exercised its discretion based on the following considerations:

> (i) The public policy interest in safeguarding the privacy of affected third party individuals, and in particular those who are subject to a law enforcement investigation;
>
> (ii) The concern that disclosure of the records would jeopardize public confidence in the OPP, especially in light of the expectation that information the public provides to the police during the course of a law enforcement investigation will be kept confidential; and,
>
> (iii) The OPP has acted in accordance with its usual practices, in severing law enforcement records containing affected third parties' personal information.

[77] In the appellant's representations, she states that the ministry is protecting the "abuser" and itself by using the *Act*. There was no specific detail attached to these allegations.

[78] In considering all of the circumstances surrounding this appeal, I am satisfied that the ministry has considered the appropriate factors in exercising its discretion, and has not erred in its exercise of discretion not to disclose the records under sections 49(a) and 49(b) of the *Act*.

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[18] Orders PO-2129-F and MO-1629

[79] Having found that the relevant records qualify for exemption under sections 49(a) and/or 49(b) of the *Act*, it is not necessary for me to also consider the possible application of the other exemption claimed by the ministry for these pages, sections 19(1) (solicitor-client privilege).

ORDER:

1. I order the ministry to disclose further portions of pages 9, 10, 12, 18, 19 and 28 to the appellant by **October 6, 2017** but not before **October 2, 2017**. I have included copies of these records with this order. The ministry is to disclose the portions that I have highlighted to the appellant.

2. I do not uphold the ministry's application of section 14(1)(c) and order it to disclose the relevant portion of page 20 of the records to the appellant by **October 6, 2017** but not before **October 2, 2017**. I have included a copy of this record with this order. The ministry is to disclose the portion that I have highlighted to the appellant.

3. I reserve the right to require the ministry to provide this office with a copy of the records it discloses to the appellant.

4. I uphold the ministry's decision to withhold the remainder of the records.

Original Signed by: August 30, 2017

Alec Fadel
Adjudicator