

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION ORDER PO-3873 - R

Appeal PA14-9-2

Order PO-3851

Ministry of Community Safety and Correctional Services

August 14, 2018

**Summary:** This is a reconsideration of an aspect of Order PO-3851. In this reconsideration order the adjudicator finds that the ground for reconsideration under section 18.01(a) of the *Code* is established. The order provision in Order PO-3851 is varied to allow the ministry to withhold the 911 operator identification codes in the responsive records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 21(3)(b) and 49(b); *IPC Code of Procedure*, section 18.01(a).

**Order Considered:** PO-3851.

### OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) asked that I reconsider my determination in Order PO-3851 that the ministry disclose to the appellant any 911 call operator identification codes that are found in the responsive records.

[2] Order PO-3851 arose from a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to information pertaining to the appellant, including a copy of OPP records. The ministry identified records that it determined were responsive to the request and granted partial access to them. The

police relied on section 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(c) (reveal investigative techniques) and 14(1)(l) (hamper control of crime) as well as section 49(b) (personal privacy) to deny access to certain portions of the reports they withheld, including a transcript of a 911 call. The ministry also raised an issue of paramountcy between the *Act* and the *Criminal Code*<sup>1</sup> with respect to the request for access to any wiretap records. The appellant raised the reasonableness of the ministry's search for responsive records and sought access to a better copy of a 911 call recording.

[3] In Order PO-3851, I upheld the reasonableness of the ministry's search for responsive records, other than any wiretap records, and found that the ministry met its obligations under the *Act* with respect to the appellant's access to the July 13, 2013 911 call recording and identifying information that was responsive to the request. I also upheld the ministry's decision that certain information qualified for exemption under section 49(a), in conjunction with section 14(1)(c) of the *Act*, but ordered the ministry to disclose to the appellant any 911 call operator identification codes that are found in the responsive records. I did not find any issue of paramountcy between the *Act* and the *Criminal Code* with respect to the request for access to any wiretap records and order the ministry to issue an access decision regarding the appellant's request for access to any wiretap records.

[4] After Order PO-3851 was issued, the ministry sought a reconsideration of my determination that the ministry disclose to the appellant any 911 call operator identification codes that are found in the responsive records. The basis for its reconsideration request is set out below.

[5] I shared the ministry's reconsideration request with the appellant, but she did not provide responding submissions.

[6] In this order, I find that the ministry has established the grounds for reconsideration in section 18.01(a) of the IPC *Code of Procedure (Code)* and I vary Order PO-3851 to allow the ministry to withhold the 911 operator identification codes in the responsive records.

**Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider a portion of Order PO-3851?**

[7] This office's reconsideration process is set out in section 18 of the *Code* which applies to appeals under the *Act*. Sections 18.01 and 18.02 state:

18.01 The Commissioner may reconsider an order or other decision where it is established that there is:

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<sup>1</sup> *Criminal Code*, R.S.C., 1985, c. C-46.

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

### ***The ministry's submissions***

[8] Referring to section 18.01 of the Code, the ministry alleges that there are fundamental defects in the adjudication process, which included:

...

In ordering out the numeric codes used to identify the 911 telephone call operators, the Order failed to consider the fact that the names of the operators had already been provided to the appellant;

The Order failed to apply its own significant body of jurisprudence, and having failed to do so, the order then failed to consider the application of other exemptions, which if applied, would have exempted the information from disclosure.

[9] The ministry submits that the numerical codes are the operators' Workplace Identification Numbers (WIN), which I found in Order PO-3742 to qualify as the subject employee's personal information under section 2(1) of the *Act*. The ministry adds that my decision in Order PO-3742 postdated the exchange of representations in the appeal that led to Order PO-3851.

### ***Analysis and finding***

[10] At the time that I was making my determinations in Order PO-3851, it was not clear to me that the 911 call operator identification codes in the records were actually the employees' WIN numbers.

[11] In Order PO-3742, I was addressing a matter that involved a request for access to a WIN employee number of an assisting employee who entered information on a General Occurrence Report. The ministry argued in the appeal that resulted in Order PO-3742 that this information belonged to the employee and qualified as their personal information as defined in section 2(1) of the *Act*. I agreed.

[12] At paragraph 37 of Order PO-3742, I wrote:

... , I find that disclosure of the WIN number, particularly when taken with the employee's name (which has already been disclosed to the appellant) reveals something of a personal nature about the employee. I find that the undisclosed information represents an identifying number that has been assigned to the employee, who is also identified in the record by name. I also note that the number provides a link to other personal information of the employee, i.e., human resources information. Accordingly, I find that the employee number qualifies as the employee's personal information within the meaning of paragraph (c) of the definition.

[13] The ministry further argued in the appeal that resulted in Order PO-3742 that the personal information fell within the section 21(3)(b) presumption, because it related an OPP investigation initiated as a result of a complaint filed by the appellant, even though no charges were laid.

[14] Section 21(3)(b) of the *Act* reads:

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;

[15] The ministry also argued in that appeal that releasing the employee's WIN number could cause that employee significant distress. This submission was set out at paragraph 67 of Order PO-3742 as follows:

... Given that the WIN number is predominantly used for human resources purposes, and is linked to personal information held about the employee relating to their employment, we submit that any disclosure could be expected to increase the possibility of personal information being disclosed in an unauthorized manner, especially in this instance, where the appellant has also been provided with the employee's name. The ministry submits it has an obligation to protect this personal information from unauthorized access pursuant to the *FIPPA*, that unauthorized access would cause the employee significant distress, and we rely upon Order MO-2134, which contains a similar finding.

[16] As set out at paragraph 74 of Order PO-3742, I agreed with the position of the ministry that the presumption against disclosure in section 21(3)(b) applied. I therefore found that this personal information was exempt from disclosure under section 49(b) of the *Act*.

[17] Section 49(b) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy

[18] In my view, there is no real difference in the circumstances before me. The ministry advised that the appellant has the names of the operators, which is sufficient for the appellant to identify them for whatever purpose she wishes. In my view, the 911 operator identification codes in the responsive records, belong to the subject employee and qualifies as their personal information. Furthermore, I am satisfied that the presumption in section 21(3)(b) applies to this information and that disclosing it would constitute an unjustified invasion of another individual's personal privacy. Accordingly, I find that the 911 operator identification codes in the responsive records is exempt from disclosure under section 49(b) of the *Act*.

[19] In my view, failing to consider my findings in Order PO-3742 when dealing with the same type of information resulted in a fundamental defect in the adjudication process that resulted in Order PO-3851. Accordingly, I find that the ministry has established the ground for reconsidering my decisions identified in section 18.01(a) of the *Code*. As such, I reconsider the relevant portion of Order PO-3851 and grant the ministry's request. I therefore vary Order PO-3851 to allow the ministry to withhold the 911 operator identification codes in the responsive records and I uphold the ministry's discretion doing so.

[20] As I have concluded that the 911 operator identification codes qualify for exemption under section 49(b) of the *Act*, it is not necessary for me to consider the other grounds for reconsideration raised by the ministry.

**ORDER:**

1. I grant the ministry's reconsideration request.
2. I uphold the ministry's decision to withhold the 911 operator identification codes in the responsive records pursuant to section 49(b) of the *Act*.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

August 14, 2018 \_\_\_\_\_