Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4090

Appeal PA18-250

Ministry of the Attorney General

November 25, 2020

Summary: An individual submitted a request to the Ministry of the Attorney General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information it received regarding the need for safe access zones around facilities that provide abortion services. The ministry granted partial access to the responsive records, relying on the exclusion for information relating to the provision of abortion services (section 65(13)), and a number of exemptions, to deny access to the withheld information.

The requester appealed the ministry's decision. In particular, the appellant objected to the ministry's reliance on the abortion services exclusion, as well as its reliance on the third party information, solicitor-client privilege, and personal privacy exemptions at sections 17, 19, and 21, respectively. The appellant raised the application of section 23 of the *Act* by claiming that disclosure of the information was in the public interest. She also requested a waiver of the $552.50 fee that the ministry had charged for providing access to the disclosed records.

In this order, the adjudicator upholds the ministry's decision to deny access to information in two records based on the exclusion in section 65(13). She also finds that a number of additional records, which were withheld by the ministry based on the exemptions in sections 19 and 21(1), contain information that is excluded under section 65(13).

The adjudicator upholds the ministry's decision to deny access to records based on the exemptions in sections 17(1) and 19, and she upholds the ministry's fee, and its decision to deny the appellant's fee waiver request.

The adjudicator also upholds the ministry's decision to withhold some information under the personal privacy exemption at section 21, but finds that portions of the withheld information are not "personal information" once identifiers are removed, and orders disclosure of that information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1), 10(2), 17(1), 19, 23, 57(1), 57(4), and 65(13); Regulation 460 section 6.

Orders and Investigation Reports Considered: Orders 43, M-264, P-454, and PO-3989.

OVERVIEW:

[1] This appeal arises from the Ministry of the Attorney General's (the ministry) response to a request, received under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*), for access to information that was before the government when it decided to enact legislation establishing "safe access zones" around facilities that provide abortion services. In particular, the initial request was for access to the following:

> […] information relating to the Ontario Bill to Create Safe Access to Abortion Services. This would include all emails to and from the Attorney General, and to and from all employees, all briefing notes, reports, etc. made from January 1, 2017 to the present day.
>
> This would also include all details of all evidence that supports such a bubble zone, including police reports etc.

[2] The ministry contacted the requester, and together the parties clarified that the request was for access to:

> All information provided to the Ministry of the Attorney General from external sources from January 1, 2017 to October 30, 2017 regarding the need for bubble zones or safe access zones.

[3] The parties further agreed that the request:

> … excludes the analysis, internal exchanges, and information received from other ministries; in addition to excluding media or news releases or any information which is publicly available and limiting the request to final documentation and submissions that speak of the need for bubble zones.

[4] The ministry then issued a fee estimate and interim access decision. Upon receipt of the decision, the appellant requested a fee waiver based on financial hardship and benefit to public health and safety.[1] The ministry asked the appellant for further details in support of her request, and referred her to the IPC's document "IPC Fees, Fee

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[1] Pursuant to sections 57(4)(b) and (c) of the *Act*.

Estimates and Fee Waivers." After some correspondence between the requester and the ministry, the requester paid the fee deposit but continued to maintain that the fee should be waived.

[5] The ministry issued its final access decision and final fee. The ministry's decision was to grant partial access to the 712 pages of responsive records. The ministry cited the exclusion at section 65(13) (provision of abortion services), and the exemptions at sections 12 (cabinet records), 13 (advice or recommendations), 17 (third party information), 19 (solicitor-client privilege), 21 (personal privacy), and 22 (publicly available) as reasons for withholding information. The ministry also withheld some information on the basis that it was not responsive to the request.

[6] The ministry's final fee was $552.50, which it calculated as follows:

15 hours of search time ($30/hour)	$450.00
Preparation for disclosure (121 minutes @ $.50 per minute)	$60.50
Photocopying (210 pages @ $.20/page)	$42.00
Total:	$552.50

[7] The requester appealed the ministry's access decision and fee to this office. A mediator was assigned to explore the possibility of resolving the issues under appeal.

[8] During the mediation stage, the appellant asked about police reports, indicating that they were not in the records package she had received. The ministry advised there were no police reports responsive to the request.

[9] The ministry provided an index of records. Upon review of the index, the appellant advised the mediator that she is not pursuing access to the following:

- Records 5, 13, 130, 137, 166, 183, 232-254, 256-260, and 262-293;
- Information withheld pursuant to the exclusion in section 65(13), with the exception of records 255 and 261;
- Information withheld pursuant to exemption in section 22 (publicly available); and
- Information withheld as non-responsive to the request.

[10] Since the appellant is not pursuing records 241 and 281, sections 12 and 13 are

no longer at issue in the appeal.[2]

[11] The appellant advised the mediator that she believes there is a public interest in disclosure of the responsive records, thereby raising section 23 of the *Act.*[3] She argues that she cannot exercise her rights under the *Canadian Charter of Rights and Freedoms* without disclosure of the information. The appellant also confirmed that she objects to the $552.50 final fee, believing it to be excessive. The appellant continues to seek a fee waiver from the ministry based on the grounds described in sections 57(4)(b) and (c) of the *Act*.

[12] A mediated resolution was not achieved and the appeal was transferred to the adjudication stage of the appeal process. I decided to conduct an inquiry under the *Act*, during which I sought and received written representations from the ministry, the appellant, and the third parties that were identified by the ministry as having an interest in records 255 and 261.[4]

[13] For the reasons that follow, I uphold the ministry's decision that parts of records 255 and 261 are excluded from the scope of the *Act* under section 65(13), and I find that there is other information in the records at issue to which the exclusion applies.

[14] I also uphold the ministry's application of section 17(1) to the remainder of records 255 and 261, and I partially uphold its application of section 21(1) to the records for which it is claimed.

[15] I find that there is no compelling public interest in the disclosure of the portions of the records that are exempt under sections 17(1) and 21(1), and I uphold the ministry's decision to withhold that information.

[16] I find that some information in records 1, 7, and 10, and the entirety of records 213-231 are exempt pursuant to solicitor-client communication privilege and/or litigation privilege under section 19(a), and I uphold the ministry's decision to withhold that information.

[17] Finally, I uphold the ministry's fee of $552.50 as well as the ministry's decision to deny the appellant's request for a fee waiver.

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[2] Sections 12 and 13 were only claimed for Records 241 and 281.
[3] The public interest override in section 23 of the *Act* does not apply to the exclusions listed in the *Act*, including the one at issue in this appeal, section 65(13).
[4] The representations were shared in accordance with *Practice Direction Number 7* and the *IPC's Code of Procedure*.

RECORDS:

[18] The records at issue consist of emails, correspondence, and a survey.[5]

[19] According to the ministry, some of the records were obtained while conducting consultations with affected stakeholders during the development of the *Safe Access to Abortion Services Act, 2017*, which was enacted as Schedule 1 of Bill 163, the *Protecting a Woman's Right to Access Abortion Services Act, 2017*. The ministry advises that much of the correspondence was received by the ministry, unsolicited, from members of the public, or via public officials.

PRELIMINARY ISSUE:

The appellant's *Charter* claim

[20] As mentioned above, during the mediation stage of the appeal process, the appellant claimed that without access to the requested information, she is unable to exercise her rights under the *Canadian Charter of Rights and Freedoms*. She also raised this argument in the representations that she provided during my inquiry, which I summarize below.

[21] However, the appellant did not file a Notice of Constitutional Question with this office, as required by *Practice Direction Number 9* and section 12 of the *Code of Procedure*, nor is there evidence before me to show that she provided such a Notice to the Attorney Generals of Ontario or Canada. As she did not follow the process required for raising a *Charter* issue, and because her submissions on the *Charter* are cursory in nature, I will not address them in this order.

ISSUES:

A. Does section 65(13) apply to exclude information in the records from the application of the *Act*?

B. Does the mandatory exemption at section 17(1) apply to the portions of records 255 and 261 to which the *Act* applies?

C. Do records 1-4, 6-12, 14-15, 17-129, 131-136, 138-165, 167-182, 184-205, and 207-212 contain "personal information" as defined in section 2(1)?

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[5] See the Appendix for a more fulsome description of the records remaining at issue.

D. Does the mandatory personal privacy exemption at section 21(1) apply to the withheld personal information in records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, 210 and 211?

E. Is there a compelling public interest in disclosure of the exempt portions of the records that clearly outweighs the purpose of the exemptions in sections 17 and 21(1)?

F. Does the discretionary solicitor-client privilege exemption at section 19 apply to records 1, 7, 10, and 213-231?

G. Did the institution exercise its discretion under section 19? If so, should this office uphold the exercise of discretion?

H. Should the fee of $552.50 be upheld?

I. Should the fee be waived?

DISCUSSION:

Issue A: Does section 65(13) apply to exclude information in the records from the application of the *Act*?

[22] The ministry claims that section 65(13) applies to exclude information contained in records 255 and 261 from the application of the *Act*. This section states:

> This *Act* does not apply to information relating to the provision of abortion services if,
>
> > (a) the information identifies an individual or facility, or it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual or facility; or
> >
> > (b) disclosure of the information could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building.[6]

[23] For information to be "relating to" the provision of abortion services in this

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[6] Note: Section 65(13) replaced the now repealed section 65(5.7), which excluded all "records relating to the provision of abortion services."

section, it must be reasonable to conclude that there is "some connection" between the information and the provision of abortion services.[7]

[24] Further, section 65(14) of the *Act* states:

> A reference in subsection (13) to a facility includes reference to a pharmacy, hospital pharmacy or institutional pharmacy, as those terms are defined in subsection 1 (1) of the *Drug and Pharmacies Regulation Act*.

[25] Section 65(15) provides that abortion services related information that does not come within section 65(13) is subject to the *Act*.

Representations

The ministry's representations

[26] As background, the ministry notes that section 65(13) replaces the former abortion services exclusion at section 65(5.7), which was struck down as a violation of section 2(b) of the *Charter of Rights and Freedoms* in *ARPA Canada and Patricia Maloney v R* [*ARPA*].[8] The ministry submits that the amended abortion services exclusion strikes an appropriate balance between (i) individuals concerned that disclosure of certain information poses a risk to their privacy, health, safety, and security, and (ii) the disclosure of information to inform public discussions on a matter of public interest.

[27] The ministry maintains that the exclusion should be interpreted consistently with the *Safe Access to Abortion Services Act, 2017*, as they were both enacted as part of Bill 163 and share the same legislative purposes of protecting the privacy, health, safety, and security of persons seeking and providing access to abortion services.

[28] The ministry relies on sections 65(13)(a) and (b) to withhold "nearly all" of the information in records 255 and 261, which consist of an email and a survey, respectively. In the non-confidential portion of the ministry's representations, it maintains that both records identify specific facilities that provide abortion services, as contemplated by section 65(13)(a). According to the ministry, even if the references to specific facilities were withheld, it would be reasonably possible to identify the facilities by considering the remaining information in the records.

[29] The ministry also submits that section 65(13)(b) is applicable to both records,

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[7] *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.). See also, Orders PO-3222 and PO-3442.
[8] 2017 ONSC 3285 [*ARPA*].

because disclosing the withheld information could reasonably be expected to threaten the health or safety of patients and individuals who provide abortion services, and the security of the facilities themselves. For example, the ministry says that disclosing the contents of record 255 would draw attention to specific facilities, which could, in turn, draw protest activity. Similarly, with respect to record 261, the ministry maintains that disclosure could provide a "roadmap" for disrupting healthcare activities and undermining the ability of facilities to provide abortion services in a safe environment.

[30] Although record 261 contains statistical information, the ministry argues that it is unlike the statistical information that was at issue in *ARPA*, as it is not "non-identifiable general statistical information or historical statistical information which may no longer present any safety risks."[9] In the context of this appeal, the ministry maintains that disclosure could reasonably be expected to threaten the health or safety of individuals and the security of identifiable facilities.

[31] The ministry explains that it acted with caution in considering whether the exclusion applies to these two records. It says that while some parts may fall outside of the section 65(13) exclusion, those parts have been properly withheld under section 17(1).

The third party's representations

[32] The third party that provided representations submits that section 65(13)(a) applies to both records because they specifically name facilities providing abortion services. The third party also maintains that the records are excluded under section 65(13)(b) because the appellant could publish the information contained in the records, which could, in turn, make the facilities more vulnerable to picketing and harassment by protesters.

The appellant's representations

[33] The appellant questions why it is "reasonable to expect" that disclosure of the withheld information in records 255 and 261 would threaten the health or safety of individuals and the security of abortion facilities, as purported by the ministry. She maintains that the ministry has not provided any evidence to support this claim. The appellant submits that for the period of time covered by her request, there have been "no police reports in the entire province of Ontario to corroborate that statement" and that an "abortion doctor's study showed no such harassment."[10]

[34] The appellant says that through an access request to the Ottawa Police, she

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[9] *ARPA*, *ibid*, at para 44.
[10] The appellant refers to Wendy Norman *et al*, Abortion Health Services in Canada, *Canadian Family Physician*, Vol 62, 2016.

obtained records showing that although there were 64 incidents reported at one particular clinic, "most of them were false alarms, cancelled calls, administrative issues, and other minor issues."[11] She reports that there were a total of two "level 1 assaults (minor injury or no injury)," and maintains that it is unknown whether the assaults were "perpetrated against pro-life or pro-choice individuals."

[35] The appellant also argues that public discussion and criticism are substantially impeded by the exclusion of records 255 and 261 from the application of the *Act*. She explains that she is trying to find evidence that would support the need for safe access zones, and so far, she has found "absolutely nothing." She submits that obtaining access to the information at issue would allow for meaningful public discussion about safe access zones and why they are necessary.

[36] The remainder of the appellant's submissions address her belief that disclosure of the withheld information is in the public interest. These submissions are summarized and addressed below (Issue E).

The ministry's reply representations

[37] In response, the ministry maintains that protection of safe access to abortion services, and the safety, security, health, and privacy of those seeking or providing abortion services, requires more than prohibitions against physical violence at abortion clinics.[12]

Analysis and findings

[38] The language of the exclusion in section 65(13) refers to "information" being excluded, rather than a "record" being excluded. This appears to have been an intentional departure from the original abortion services exclusion in section 65(5.7) of the *Act*, which stated that *FIPPA* does not apply to "*records* relating to the provision of abortion services" (emphasis added). As a result, section 65(13) can exclude portions of a record from the application of the *Act*. Where only portions of a record are excluded under section 65(13), the institution may rely on exemptions to withhold the remainder of the record, as the ministry has done in this case.

[39] In Order PO-3989, Adjudicator Diane Smith found that for section 65(13)(a) to apply, the institution must establish that the information relating to the provision of abortion services identifies an individual or facility, or that it is reasonably foreseeable

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[11] The appellant provided details of these police reports for my consideration. The incidents documented include the removal of unwanted persons, demonstrations in progress, trespassing, and other disturbances.

[12] The appellant provided sur-reply representations, which I have also considered and which I refer to as appropriate elsewhere in this order.

that the information could be utilized, either alone or with other information, to identify an individual or facility. In that case, Adjudicator Smith found that portions of the records at issue, which included emails, consultation notes, and letters, were excluded pursuant to section 65(13)(a). She ordered the institution to disclose the portions that did not fall under the exclusion.

[40] Although section 65(13)(b) has not yet been considered by this office, the language in the exclusion is similar to that found in the exemptions at sections 20 and 14(1)(l) of the *Act*, which exempt information from disclosure where it could *reasonably be expected to* "seriously threaten the safety or health of an individual," or "endanger the security of a building," respectively. In order to meet the burden of proof to establish sections 14(1) and 20 of the *Act*, an institution must provide 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] The Supreme Court of Canada has affirmed that this is the appropriate test to be used wherever the "could reasonably be expected to" language is used in access to information statutes.[14]

[41] In my view, it is appropriate to apply the onus developed through this office's section 20 and 14(1)(l) jurisprudence for the purposes of the section 65(13)(b) exclusion. Therefore, for section 65(13)(b) to apply, the ministry must provide detailed evidence demonstrating how disclosure of the information could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building. The ministry 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. It is not sufficient for the ministry to take the position that the harms under section 65(13) are self-evident from the record, or that the exclusion applies simply because a record relates to abortion services.

[42] For the reasons below, I find that section 65(13)(a) applies to exclude some of the information in records 255 and 261, and that section 65(13(b) applies to exclude additional portions of those records.

[43] For either paragraph to apply, I must first find that the information relates to the provision of abortion services. Based on my review of the parties' submissions and records 255 and 261, I am satisfied and I find that both records contain information relating to the provision of abortion services.

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[13] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[14] *Ibid.*

[44] I find that both records contain the names of facilities that provide abortion services, which is caught by the exclusion in section 65(13)(a). I am also satisfied, and I find, that even if facility names are redacted, it is reasonably foreseeable in the circumstances that other information in the records could be used, either alone or with other information, to identify these facilities. This includes, for example, information regarding the cities or locations where the facilities are located, descriptions of the facilities themselves, and other facility-specific information. Accordingly, I find that section 65(13)(a) applies to exclude information in records 255 and 261 that relates to the provision of abortion services, and which, if disclosed, could be used to identify abortion services facilities.

[45] Furthermore, having considered the totality of the evidence before me, I accept that the records contain information relating to abortion services that, if disclosed, could reasonably be expected to threaten the health or safety of an individual, or the security of a facility or other building for the purpose of the exclusion in section 65(13)(b). At times, this information overlaps with the information I have found to be excluded under section 65(13)(a). I am satisfied of the reasonable expectation of the harm described in section 65(13)(b) because I find that disclosure of certain portions of the records could reasonably be expected to draw attention to specific facilities and, to use the ministry's term, provide a "roadmap" for deterring individuals from seeking or obtaining abortion services, or otherwise undermining the ability of the facilities to deliver healthcare in a safe environment.

[46] There is nothing in the *Act*, nor do past orders considering sections 14(1)(l) or 20 suggest, that the type of threat (to health or safety of an individual, or security of an abortion services facility or other building) is limited to threats of physical violence. So, while a threat of physical violence would typically satisfy the requirements of the exclusion, it is just one type of threat that would do so.[15]

[47] I find that the records contain information that, if disclosed, could reasonably be expected to result in harassment, intimidation, or other similar threats to the health or safety of individuals. In making this finding, I am satisfied that the evidence provided by the ministry demonstrates that the risk of these harms occurring is well beyond the merely possible or speculative, such that it satisfies the onus and establishes the exclusion under section 65(13)(b) of the *Act*. Even though the appellant asserts that the evidence she provided from the Ottawa Police shows that there were a total of two "level 1 assaults (minor injury or no injury)" at a particular clinic, I am still satisfied that the totality of the evidence supports my finding of a reasonable expectation of harm.

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[15] See, for example, Order PO-2642, where the adjudicator determined that harassing behaviour towards individuals may constitute a threat under section 20 of the *Act*, if it is clear that the individuals perceive that disclosure of the information could reasonably be expected to seriously threaten their health or safety.

[48] While I have found that portions of records 255 and 261 are excluded from the *Act* under sections 65(13)(a) and (b), this finding does not exclude the records in their entirety. Portions of both records remain subject to the *Act*. Under Issue B, I will consider whether the remaining information in the records is exempt from disclosure under section 17(1).

[49] In addition to records 255 and 261, for which the ministry claimed the exclusion in section 65(13), my review of the records at issue reveals that a number of additional records contain information that fits within the exclusion in section 65(13)(a).

[50] In particular, records 1, 3, 4, 8, 10, 11, 12, 14, 20, 24, 35, 37, 49, 54, 55, 56, 57, 58, 61, 66, 67, 69, 72, 74, 75, 76, 77, 78, 79, 81, 84, 88, 90, 92, 93, 95, 97, 98, 99, 100, 104, 105, 108, 109, 110, 111, 113, 114, 116, 117, 118, 119, 120, 122, 123, 127, 134, 150, 169, 170, 182, 188, 192, 194, 195, 196, 200, 209, and 213-231 contain information – such as the names of clinics that provide abortion services, or other information that could reasonably be used to identify those facilities – that is excluded under section 65(13)(a). These records were withheld by the ministry pursuant to the personal privacy exemption in section 21(1) and/or the solicitor-client privilege exemption in section 19, and the non-excluded information will be considered under those exemptions below (Issues C, D, and F).

Issue B: Does the mandatory exemption at section 17(1) apply to the portions of records 255 and 261 to which the *Act* applies?

[51] The ministry relies on section 17(1)(b) to withhold the portions of records 255 and 261 that are not excluded by section 65(13). This section states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> > (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied.

[52] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. For section 17(1) to apply, the institution must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Representations

The ministry's representations

[53] According to the ministry, the records were provided by "affected stakeholders" participating in "targeted consultations" with the ministry during the policy development for the *Safe Access to Abortion Services Act, 2017*. The ministry maintains that both records 255 and 261 contain scientific information that was either prepared for, but in any case provided to, the ministry to assist in developing legislation. The ministry notes that both records indicate that they are to be treated as confidential, and that record 255 includes a specific confidentiality provision. On this basis, the ministry submits that parts one and two of the three-part test for section 17(1) are established.

[54] With respect to the third part of the test, the ministry explains that the records contain information that, if disclosed, could be used to frustrate efforts to protect the safety and privacy of patients and service providers. Therefore, if the records were to be disclosed, it may result in similar information no longer being supplied to the government in the future, as contemplated by section 17(1)(b). According to the ministry, it is in the public interest for similar information to be supplied and considered in developing legislation and policies.

The third party's representations

[55] The third party that provided representations did not specifically address the relevance of the section 17 exemption in their representations, but did note that record 261 is marked "confidential."

The appellant's representations

[56] The appellant's submissions focus on the health or safety harms that the ministry claims could reasonably be expected to result from disclosure of the information excluded under section 65(13), rather than the harms that the ministry claims could reasonably be expected to result from the disclosure of the information exempt under section 17(1)(b).[16] She maintains that "since there have been no recorded charges or arrests in the entire province of Ontario" and because a "pro-abortion doctor says that harassment is extremely low to non-existent at abortion clinics," the ministry has not provided sufficient evidence in support of the alleged harms.

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[16] In other words, the appellant's submissions do not address the harms that the ministry says could reasonably be expected to result if the non-excluded portions of records 255 and 261 are disclosed.

[57] The appellant also notes that not all of the third parties that were notified of the appeal decided to provide representations in response to the Notice of Inquiry. She claims that she should be able to access information relating to the third parties that chose not to participate in my inquiry.

The ministry's reply representations

[58] In response, the ministry notes that the appellant's submissions address the health or safety interests protected by section 65(13), rather than those protected under section 17(1)(b).

[59] The ministry submits that it is not merely private commercial information at stake. Rather, the ministry explains that the third parties are "an affected group that faces significant safety and security concerns" and, as a result, are "highly cautious in respect of the information" they share. The ministry says that the third parties shared records 255 and 261 with the ministry with an express request that they be kept in confidence. According to the ministry, disclosing the information that it obtained from stakeholders in strict confidence would send a message that the government cannot be trusted. In turn, the ministry submits, it is reasonable to expect that valuable sources of information would be closed off in future.

[60] According to the ministry, evidence-based policy development is inherently in the public interest, as it builds thoughtful and informed policies. In order to develop evidence- based policies, the government must review available research and solicit input from affected stakeholders. Therefore, the ministry maintains that its policy development processes would be adversely affected if its sources of information were cut off.

[61] In addition to the arguments put forward in its initial submissions, the ministry maintains that the records contain information from "fourth parties" who supplied information in confidence to the third parties. In the ministry's view, disclosing the records would not only undermine the relationship of trust between the ministry and third parties, but also between the third and fourth parties, which "further heightens the risk that the third parties would refuse to share information with the ministry going forward."

[62] The ministry notes that as the third parties' participation in the inquiry was optional, a decision not to provide representations should not lead to an adverse inference regarding their interest in the records.[17]

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[17] Again, the appellant provided sur-reply representations, which I have also considered and which I refer to as appropriate elsewhere in this order.

Analysis and findings

[63] To begin, I note that the section 17(1) third party information exemption is mandatory; therefore, a finding under section 17(1) is based on the submissions of the parties and the content of the records themselves. The decision by a third party not to participate in an inquiry under the *Act* does not defeat an institution's section 17 exemption claim, nor can I infer that a third party consents to the disclosure of information exempt under section 17(1) simply because they declined to submit representations.

[64] As noted above, the ministry has denied access to information under section 17(1)(b). For section 17(1)(b) to apply to the information remaining at issue in records 255 and 261, the ministry must satisfy a three-part test. Based on my review of the evidence before me, I am satisfied that each part has been met, such that the exemption in section 17(1) applies to the information in records 255 and 261 that is subject to the *Act*.

Part 1: the records contain scientific information

[65] With respect to part 1 of the test, the ministry maintains that the records contain scientific information. In Order P-454, former Assistant Commissioner Irwin Glasberg defined "scientific information" as:

> information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. For information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field.

[66] Having reviewed the records, it is clear that they contain information that can be characterized as belonging to the social sciences. The portions that are not excluded under section 65(13), and for which the ministry relies on section 17(1), include, for example, information relating to study objectives, background or contextual information, conclusions drawn from data, and recommendations resulting from studies that were conducted by third parties, including stakeholders interested in laws and policies relating to the provision of abortion services. I am satisfied that the information relates to the "observation and testing of a specific hypothesis or conclusion," such that it satisfies the definition of "scientific information" for the purpose of section 17(1).

Part 2: the records were supplied in confidence

[67] For part 2 of the test, the ministry must establish that the information at issue

was supplied to it in confidence. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.[18]

[68] In order to satisfy the "in confidence" component of part 2, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality at the time the information was provided. This expectation must have an objective basis.[19] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all of the circumstances of the case are considered. This includes, for example, considering whether the information was communicated to the institution on the basis that it was confidential, treated consistently by the third party in a manner that indicates a concern for confidentiality, and not otherwise disclosed or available from sources to which the public has access.[20]

[69] Both the ministry and the third party assert that records 255 and 261 contain information that was supplied to the ministry based on an understanding that it would remain confidential. Both parties also maintain that the records are marked "confidential."

[70] Based on my review of both records and the parties' submissions, I find that the information at issue was "supplied" to the ministry by the third parties, as required for part 2 of the test. I note that the records both contain confidentiality statements, and therefore accept that it was communicated to the ministry that the information was to remain confidential. I am also satisfied, based on the nature of the record and the parties' submissions, that the information was treated in a manner that indicates a concern for its protection from disclosure prior to the records being shared with the ministry. Accordingly, I find that part 2 of the test is satisfied.

Part 3: the harms in section 17(1)(b) are established

[71] For the final part of the test, the ministry relies on the harm described in section 17(1)(b), which applies where third parties could, as a result of the prospect of disclosure, reasonably be expected to no longer provide an institution with similar information in the future, and where it is in the public interest for that information to continue to be supplied.[21] To satisfy this part of the test, the ministry must establish a risk of harm from disclosure that is well beyond the merely possible or speculative, but

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[18] Orders PO-2020 and PO-2043.
[19] Order PO-2020.
[20] Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).
[21] Order M-333.

need not prove that disclosure will in fact result in such harm.[22]

[72] The ministry submits that the third parties provided information that was used in the development of government policy, and that it is desirable to continue receiving this type of information to inform future evidence-based policy development. According to the ministry, the third parties have safety and security concerns, which make them very selective about with whom they share information. On this basis, the ministry maintains that the third parties may be disinclined to share confidential information with the ministry in the future if they know there is a prospect of that information being disclosed.

[73] I accept the ministry's submission that evidence-based policy development is inherently in the public interest, as it facilitates the creation of thoughtful and informed policies. Therefore, I also accept that it is in the public interest for the ministry to receive and consider information from informed stakeholders when engaging in policy and legislative development. On this basis, I am satisfied that it is desirable for the ministry to foster and maintain the trust of informed stakeholders, such as the third parties in this appeal.

[74] Above I found that records 255 and 261 were provided to the ministry by the third parties in confidence. Given the nature of the information remaining at issue, and the third (and "fourth") parties' safety and security concerns - as described by the ministry in both its confidential and non-confidential representations - I am satisfied that it is reasonable to expect that the third parties will only continue to provide information to the ministry if they have confidence that it will not be subject to disclosure under the *Act*. I accept that disclosure of the information remaining at issue in records 255 and 261 - including that relating to study objectives, conclusions, and recommendations - would undermine the third parties' trust in the ministry's ability to maintain the confidentiality of information provided to it in confidence. This could reasonably be expected, in turn, to have a chilling effect on the third parties' willingness to provide similar information to the ministry in the future. In my view, the risk of this harm occurring is more than merely possible or speculative. Therefore, I find that the third part of the test is met, such that the portions of records 255 and 261 to which the *Act* applies are exempt under section 17(1)(b).

[75] Portions of record 255 were also withheld under the section 21(1) personal privacy exemption. However, because I have found that the entirety of the record is either excluded by section 65(13) or exempt under section 17(1), it is not necessary for me to consider whether the personal privacy exemption also applies to this particular

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[22] *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674, *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

record.

Issue C: Do records 1-4, 6-12, 14-15, 17-129, 131-136, 138-165, 167-182, 184-205, and 207-212 contain "personal information" as defined in section 2(1)?

[76] The ministry relies on the mandatory personal privacy exemption at section 21(1) of the *Act* to withhold records 1-4, 6-12, 14-15, 17-129, 131-136, 138-165, 167-182, 184- 205, and 207-212 either in part or in full.

[77] In order to determine whether the personal privacy exemption applies, first it is necessary to decide whether those records contain "personal information" and, if so, to whom that information relates. The term "personal information" is defined in section 2(1) of the *Act* as, "recorded information about an identifiable individual," including information that fits within the list of examples provided in paragraphs (a) to (h). The list of examples under section 2(1) is not exhaustive; information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[23]

[78] Exceptions to the definition of personal information exist for information about individuals that have been deceased for more than 30 years,[24] and information that would identify an individual in a business, professional, or official capacity.[25] However, even when information relates to an individual in a business, professional, or official capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual.[26]

[79] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[27]

Representations

The ministry's representations

[80] The ministry explains that the records containing personal information consist of correspondence that the ministry received either directly or indirectly through a public official forwarding the records to the ministry. According to the ministry, the records

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[23] Order 11.
[24] Section 2(2) of the *Act*.
[25] Sections 2(3) and 2(4) of the *Act*. 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. See, for example, Orders MO-1550-F and PO-2225.
[26] Orders P-1409, R-980015, PO-2225, and MO-2344.
[27] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] ON NO 4300 (CA).

contain, "personal recollections that relate to the medical and psychiatric histories of individuals," as well as addresses, phone numbers, personal email addresses, personal views and opinions, and individuals' names.

[81] The ministry submits that in some of the records, it was not obvious whether the writer was communicating in a personal capacity or in a professional, official, or business capacity. As an example, the ministry cites one record in which an individual identifies themselves as writing on behalf of a particular organization, but the record itself does not include an official letterhead, signature, or professional title. The ministry says that, "even if the individual was writing in a professional, official, or business capacity, the information contained within the letter reveals extremely personal and intensely held viewpoints and opinions of the writer."

[82] Many of the records are letters from members of the public. The ministry concedes that it would not be reasonable to expect that an individual could be identified if those letters were disclosed without the names and other identifying information (such as email addresses or cities). However, the ministry maintains that even if the more obvious identifiers were withheld, the records would still contain "lengthy reflections or personal experiences with abortion services," which could reasonably be expected to identify individuals.

The appellant's representations

[83] The appellant maintains that individuals' names and other identifying information, such as addresses, phone numbers, and personal email addresses, could be easily redacted.

[84] In response to the ministry's submissions, the appellant says that even if the records do contain "extremely personal and intensely held viewpoints," that is not a sufficient reason to withhold information. She also argues that if the author of a letter clearly stated that they spoke on behalf of an organization, they should be taken at their word.

Analysis and findings

[85] Personal information is defined in section 2(1) of the *Act* as recorded information about an identifiable individual, including:

- information relating to the religion, age, sex, sexual orientation or marital or family status of the individual (paragraph (a));
- information relating to the medical, psychiatric, psychological history of the individual (paragraph (b));

- an individual's address or telephone number (paragraph (d));
- the personal opinions or views of the individual (paragraph (e));[28]
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature (paragraph (f)); and
- 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 (paragraph (h)).

[86] Having reviewed the records, I am satisfied that records 1-4, 6-12, 14-15, 17-23, 25-113, 115-129, 131-136, 138-165, 167-182, 184-205, and 207-212 contain personal information, as described above. These records typically consist of correspondence between members of the public and public officials, including MPPs, mayors, and the Ministry of the Attorney General, or staff in these offices. In most cases, an individual has written to a public official to express their views or opinions in favour or against the implementation of safe access zones around facilities that provide abortion services. The records typically include the individuals' names, which may be indicative of their sex, and either their mailing or email addresses, or other information that relates to their location (ex. a city or postal code). The records often include other personal information, such as the individual's personal or family experience with abortion services and/or protesting activity outside of abortion facilities. Therefore, I find that the above-mentioned records contain the personal information of those individuals as defined in paragraphs (a), (b), (d), (f), and (h) of section 2(1) of the *Act*, as well as under the introductory wording of the definition.[29]

[87] The ministry also relies on the personal privacy exemption to withhold records 24, and 114 in their entirety. These are emails or letters that were sent by individuals who identify as being associated with particular organizations. The correspondence was sent to public officials on behalf of organizations, and could therefore be said to have been sent in the individuals' professional or official capacity. However, in my view, the records reveal something of a personal nature about the individuals who authored them.[30] By associating themselves with certain organizations, the letters reveal the individuals' views or opinions on the matter of abortions and safe access zones. These records also contain the individuals' personal contact information, including their names, and email and/or mailing addresses. Accordingly, I am satisfied that these records contain personal information as defined in paragraphs (d), (e), and (h) of the definition in section 2(1) of the *Act*.

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[28] Except where they relate to another individual.
[29] Similar records that were authored by the appellant have already been disclosed to the appellant.
[30] See Order PO-2225.

[88] For clarity, I find that the information in these records that relates to public officials is the public officials' professional, not personal, information, as described in section 2(3) of the *Act*. This includes information such as their names, workplace mailing or email addresses, and responses to the correspondence they received.

Severability of personal information

[89] Section 10(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. It states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

[90] An institution will not, however, be required to sever a record and disclose portions of it where to do so would reveal only "disconnected snippets", or "worthless," "meaningless" or "misleading" information."[31]

[91] In Order M-264, the adjudicator found that when it is possible to sever all personal identifiers in accordance with the principles in section 4(2) of the *Municipal Freedom of Information and Protection of Privacy Act* (the equivalent to section 10(2) of the *Act*) such that it is no longer possible to identify individuals, then the remainder of the information is no longer about identifiable individuals. In such cases, the record would no longer be a record of personal information that would qualify for exemption under the personal privacy exemption.

[92] In Order 43, the adjudicator found that the proper test to be applied when considering section 10(2) as it relates to a record of personal information is whether, after the record has been severed, the remaining information constitutes personal information.

[93] As summarized above, the appellant says that she is not interested in obtaining access to identifying information, such as names, addresses, phone numbers, and personal email addresses. She also submits that this kind of information can be easily severed from the responsive records. While the ministry concedes that it is not reasonable to expect that individuals could be identified by many of the records if identifiers are severed, it maintains that some of the records contain "lengthy

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[31] Order PO-1663.

reflections" that could reasonably be expected to identify an individual even if names and addresses are redacted.

[94] Applying section 10(2) of the *Act*, I find that the following information can reasonably be severed from many of the above-mentioned records, and the remainder disclosed without revealing personal information: names, contact information (email addresses, phone numbers, mailing addresses, and references to the author's hometowns or other location-based information),[32] and other identifiers, including unique letterheads or email signatures that could lead to the identification of an individual in the circumstances. I am satisfied that when this information is removed from the records, the remaining information consists of more than "meaningless snippets" of information.

[95] Once severed as described, records 1-4, 6, 9, 10, 12, 14, 15, 17, 18, 19, 22, 23, 26, 27, 29, 30-57, 60-71, 73, 75, 76, 78, 80, 81, 83-90, 93, 96-98, 100, 101, 103-108, 111-115, 117, 118, 119, 121, 122, 123, 125-129, 131-133, 135, 136, 138, 139, 142-149, 151-153, 156-158, 161-165, 167-179, 181, 182, 184-195, 197-205, 208, and 212 cannot be associated with "identifiable individuals," and therefore do not constitute "personal information" as defined in section 2(1) of the *Act*. As these severed records no longer contain "personal information" for the purposes of the *Act*, they cannot qualify for exemption under the mandatory personal privacy exemption in section 21(1). I will order the ministry to sever these records in accordance with section 10(2), and disclose them as described in my order provisions. Given my finding, I do not need to consider the application of the public interest override to this information.

[96] In my view, however, when records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, 210 and 211 are severed as described above,[33] they remain records of "personal information" for the purposes of the *Act*. This is because, unlike the records listed in the preceding paragraph, these records will continue to contain identifying information, including, for example, anecdotes describing the author's personal or family experience with abortion services and/or protesting activity outside of abortion facilities. I find it reasonable to expect that the individuals in question may be identified through disclosure of this information. As records of personal information, they may be exempt from disclosure under the mandatory personal privacy exemption in section 21(1). I will consider the possible application of section 21(1) to these records next.

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[32] For example, postal codes, IP addresses, and other information that may reveal an individual's location, etc.

[33] By removing names, contact information (including email addresses, phone numbers, mailing addresses, and references to the author's hometowns or other location-based information), and other identifiers including unique letterheads or email signatures.

Issue D: Does the mandatory personal privacy exemption at section 21(1) apply to the withheld personal information in records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, 210, and 211?

[97] Above, I found that even when severed to remove the information that the appellant does not seek access to, i.e. names and contact information, records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, 210, and 211 remain records of "personal information" for the purposes of the *Act*. Where a requester seeks access to the 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. The sections 21(1)(a) to (e) exceptions are relatively straightforward. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 21(1).

[98] The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21. Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy, while section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[99] 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. 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" at section 23 applies.[34] None of the section 21(4) paragraphs are relevant in this appeal. The applicability of the public interest override is considered at Issue E, below.

[100] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[35] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.[36]

[101] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section

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[34] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[35] Order P-239.
[36] Orders PO-2267 and PO-2733.

21(2).[37]

Representations

[102] The ministry submits that some of the records are covered by the presumption at section 21(3)(a). In addition, the ministry maintains that the factors favouring privacy protection in sections 21(2)(f) and (i) are also relevant. These sections state:

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (f) the personal information is highly sensitive;
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[103] The ministry notes that for a record to be "highly sensitive" for the purpose of section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed. The ministry cites Order PO-2518 in support of its position that "commonplace societal intolerance can cause significant personal distress." Because views on abortion services are "uniquely polarizing," and individuals often keep their personal experiences private, the ministry maintains that disclosing personal information detailing such experiences may cause significant personal distress.

[104] In support of its reliance on section 21(2)(i), the ministry maintains that individuals who express "extreme viewpoints" on the topic of abortion may face "social stigma if they are identified," which could, in turn, result in damage to or loss of personal relationships.

[105] Finally, the ministry cites fairness[38] as an unlisted factor favouring privacy protection over disclosure. The ministry submits that disclosing the withheld personal information would be unfair to the individuals who authored the records, because the ministry does not know whether the individuals have shared their stories or opinions with others. The ministry also states that "it was not obvious that the individuals who

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[37] Order P-99.
[38] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

provided submissions did so with the realization that their views may be provided to [the Ministry of the Attorney General] and, therefore, subject to the application of *FIPPA*. This is particularly true for records that were forwarded to MAG by third parties."

[106] The appellant does not specifically address the exemption in section 21(1) in her submissions. She does not address the relevance of section 21(3)(a), or any of the other presumptions, or raise any of the listed or unlisted factors under section 21(2); however, based on the totality of her submissions, it appears that the unlisted factor of ensuring public confidence in an institution,[39] and the factors in sections 21(2)(a) and (b) may be relevant. These sections state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
> >
> > (b) access to the personal information may promote public health and safety.

Analysis and findings

[107] The information remaining at issue in records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, and 210 consists of the portions of these records that remain after names and contact information have been severed. All of these records consist of correspondence that the government received from individuals regarding the implementation of safe access zones around facilities that provide abortion services.

[108] Based on my review of these records and the parties' submissions, I am satisfied that the presumptions in sections 21(3)(a) and (h) are relevant in this appeal. Section 21(3)(a) is set out above, and provides that it is a presumed unjustified invasion of personal privacy to disclose personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. Section 21(3)(h) provides that it is a presumed unjustified invasion of personal privacy to disclose personal information that indicates an individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[109] In particular, I find that records 7, 8, 28, 58, 59, 82, 120, 140, 210, and 211

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[39] Orders M-129, P-237, P-1014 and PO-2657.

contain personal anecdotes that reveal the author's personal or family history with abortion services, and/or their religious, sexual orientation, or political beliefs. These portions of the records are exempt under section 21(1), on the basis that their disclosure would be a presumed unjustified invasion of privacy under sections 21(3)(a) and (h).

[110] The remaining records also contain personal anecdotes or other identifying information, although I am not persuaded that any of the presumptions in section 21(3) apply to this information. Regardless, these portions of the records will be exempt under section 21(1), unless I am satisfied that their disclosure would not be an unjustified invasion of personal privacy under section 21(1)(f).

[111] In order to find that disclosure of personal information does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances *favouring* disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.[40]

[112] As I noted above, although the appellant did not specifically address the application of section 21(1) or raise any listed or unlisted factors favouring disclosure of the personal information at issue, her representations can been seen to implicitly raise sections 21(2)(a) and (b), and the unlisted factor of ensuring public confidence in the ministry. Considering the totality of the evidence before me, however, I am not satisfied that disclosing the personal information in question would shed light on the government's actions, such that disclosure is desirable for the purposes of subjecting the ministry's actions to public scrutiny or otherwise ensuring public confidence in the ministry. I am also not persuaded that disclosing this personal information would promote public health and safety. Therefore, I find that there is insufficient evidence to establish that the unlisted factor favouring disclosure, or either of the factors in sections 21(2)(a) or (b) apply. Accordingly, I find that the mandatory personal privacy exemption in section 21(1) applies to exempt the personal information in records 11, 21, 24, 25, 72, 74, 77, 79, 91, 92, 94, 95, 99, 102, 109, 110, 116, 123, 124, 134, 141, 150, 154, 159, 160, 180, 196, 207, and 209 from disclosure.

[113] I find that the remaining portions of records 7, 8, 11, 21, 24, 25, 28, 58, 59, 72, 74, 77, 79, 82, 91, 92, 94, 95, 99, 102, 109, 110, 116, 120, 123, 124, 134, 140, 141, 150, 154, 159, 160, 180, 196, 207, 209, 210, and 211 must be disclosed to the appellant. These portions of the records contain non-identifiable views or opinions regarding the implementation of safe access zones.

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[40] Orders PO-2267 and PO-2733.

Issue E: Is there a compelling public interest in disclosure of the exempt portions of the records that clearly outweighs the purpose of the exemptions in sections 17 and 21(1)?

[114] The appellant raised the application of the public interest override at section 23 of the *Act*. Although section 23 does not apply to the exclusions listed in the *Act,* including section 65(13) at issue in this appeal, it may apply to "override" the application of certain exemptions. In particular, this section states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[115] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[116] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus that could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[41]

Compelling public interest

[117] In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[42] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[43]

[118] A public interest does not exist where the interests being advanced are essentially private in nature.[44] Where a private interest in disclosure raises issues of

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[41] Order P-244.
[42] Orders P-984 and PO-2607.
[43] Orders P-984 and PO-2556.
[44] Orders P-12, P-347 and P-1439.

more general application, a public interest may be found to exist.[45]

[119] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[46]

[120] Any public interest in *non*-disclosure that may exist also must be considered.[47] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[48]

[121] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[49]
- the integrity of the criminal justice system has been called into question[50]
- public safety issues relating to the operation of nuclear facilities have been raised[51]
- disclosure would shed light on the safe operation of petrochemical facilities[52] or the province's ability to prepare for a nuclear emergency[53]
- the records contain information about contributions to municipal election campaigns[54]

[122] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations[55]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[56]

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[45] Order MO-1564.
[46] Order P-984.
[47] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[48] Orders PO-2072-F, PO-2098-R and PO-3197.
[49] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[50] Order PO-1779.
[51] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[52] Order P-1175.
[53] Order P-901.
[54] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[55] Orders P-123/124, P-391 and M-539.

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[57]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[58]
- the records do not respond to the applicable public interest raised by the appellant.[59]

Purpose of the exemption

[123] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[124] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[60]

Representations

The ministry's representations

[125] The ministry maintains that the public interest override does not apply to the information withheld under sections 17(1)(b) and 21(1). In support of its position, the ministry says that there has already been "wide public coverage and debate on this issue" and therefore, disclosing the exempt portions of the records would not contribute to meaningful public discussion or criticism.

[126] The ministry notes that the appellant argues that she cannot exercise her rights under section 2 of the *Charter of Rights and Freedoms* without accessing the withheld records. According to the ministry, this echoes the argument in *ARPA* where the Superior Court concluded that the former exclusion under section 65(5.7) substantially impeded meaningful public discussion and criticism of abortion services. However, the ministry claims that the records at issue in this appeal are different from those considered in *ARPA*, as they contain identifying information, the disclosure of which may, according to the ministry, present a safety risk.

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[56] Orders P-532, P-568, PO-2472, PO-2614 and PO-2626.
[57] Orders M-249 and M-317.
[58] Order P-613.
[59] Orders MO-1994 and PO-2607.
[60] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

[127] With respect to the information in records 255 and 261 that is exempt under section 17(1)(b), the ministry says that it is in the public interest to ensure that the government continues to receive information from abortion service providers, and other organizations in civil society, as that exchange of information is "fundamental" for developing evidence-based policies. If the exempt information is disclosed, the ministry says that there is a risk that these organizations will cease to provide similar information in the future. The ministry maintains that the purpose of the section 17 exemption "far outweighs" the "minimal public interest in disclosure of the residue of records 255 and 261."

[128] With respect to the information that is exempt under section 21(1), the ministry submits that there is "no public interest in knowing the identities of persons who wrote correspondence" to the government, as that information is "irrelevant to the government's policy decision regarding safe access zones." The ministry also maintains that disclosure of this "highly sensitive" information could subject the authors to "significant criticism, embarrassment and distress." According to the ministry, infringing on the authors' privacy is not justified given "the nominal public interest in disclosure of any information that could identify" them.

The appellant's representations

[129] In the appellant's view, "abortion is always a topic that is [a] high matter of public interest." Therefore, it is "most certainly in the public interest to divulge" any evidence that the government relied upon to support the implementation of safe access zones in the province. In particular, she maintains that "pro-life people [should] get the opportunity to review the information and publicly correct any of the misleading and inaccurate information that [the government] used to enact their abortion bubble zone [legislation]" because they are the group that is targeted by its enactment.

[130] The appellant explains that during the government's deliberative process, she sent in a 2012 report by Dr. Wendy Norman[61] and over 60 police reports that she obtained through an access to information request to Ottawa Police, for the government's consideration. The appellant claims that none of that documentation demonstrated a need for safe access zones. The appellant notes that neither the 2012 report nor the police reports were included in the records identified by the ministry as responsive to her request. On this basis, she concludes that the "government did not even bother to investigate them or use them as input in their deliberations."

[131] Instead of relying on the documents that she supplied, the appellant submits that the government relied on a 2010 study conducted by a "known radical abortion supporter," with "a track record of making misleading anti-truth statements against pro-

[61] Wendy Norman *et al*, Abortion Health Services in Canada, Canadian Family Physician, Vol 62, 2016.

life persons." She claims that the 2010 study was "totally subjective." In contrast, the appellant says the 2012 report and police reports were objective evidence that there was no need for the implementation of safe access zones.

[132] The appellant also notes that her original request was to view all records that were used in drafting safe access zone legislation. She claims that upon reviewing the information that was disclosed to her, she "read nothing that could reasonably be used to support the need" for safe access zones, such as examples of violence and harassment at abortion clinics. The appellant believes this suggests that records 255 and 261 contain that type of information. She further says that if records 255 and 261 were prepared for or provided to the ministry to assist in developing legislation, then it is in the public interest to share the information.

The ministry's reply representations

[133] In response, the ministry maintains that the mere fact that a document was prepared to assist in developing government legislation does not meet the test required for applying the public interest override in section 23. Such a broad reading of the override would, according to the ministry, result in the disclosure of a "vast amount of information and […] would overwhelm the exemptions" in the *Act*.

[134] The ministry also maintains that the appellant's arguments about the merit of the policy underlying the *Safe Access to Abortion Services Act, 2017* are irrelevant in determining the application of the public interest override.

[135] The ministry submits that much of the appellant's representations should be rejected, as they are based on a "mistaken understanding of the scope of… this access request, and an overstatement of the role of these records in the policy process." The ministry notes that while the original request was for "information relating to the Ontario Bill to Create Safe Access to Abortion Services," it was subsequently clarified and narrowed through discussions between the parties to be for "all information provided to the Ministry of the Attorney General <u>from external sources</u>…" (emphasis added by ministry). The scope was further narrowed to exclude any information that is publicly available.

[136] The ministry explains that it is because of the subsequent clarification and narrowing of the original request that its final package of responsive records did not include the "publicly available [2012 report provided by the appellant] or [the author's] blog that are hyperlinked in records 16 and 183," nor did it include material outside the scope of the request, such as the "appellant's correspondence with the ministry that included a hyperlink to the Ottawa police reports." The ministry also states that it does not agree with the appellant's position that incidents of physical violence documented in police reports are the only basis that could demonstrate a need for safe access zones.

[137] Finally, the ministry submits that it has already released a "very large quantity of documents to the appellant relevant to the development" of the provincial safe access

zone legislation, and disclosing the parts of the records that are exempt under sections 17(1) and 21(1) would not provide any additional meaningful information.

The appellant's sur-reply representations

[138] In response, the appellant maintains that the disclosure of the withheld information rouse strong interest. She questions how the ministry can enact a "discriminatory bubble zone law," but then deny access to information that was relied on in developing that law. The appellant maintains that the withheld portions of the records must "contain something that would support the bubble zone […] otherwise we can safely assume that [the implementation of safe access zone legislation] was done purely for political reasons."

Analysis and findings

[139] To determine if the public interest override in section 23 may apply, I must review the portions of records that I found exempt from disclosure under sections 17(1) and 21(1), in order to decide whether (a) there is a compelling public interest in their disclosure, and, if so, (b) whether the compelling public interest clearly outweighs the purpose of the exemptions.

[140] The first step in this analysis is to determine whether there is a compelling public interest in the disclosure of the withheld information. The appellant asserts that there is because the records that have been disclosed to her have not revealed anything that could "reasonably be used to support the need" for safe access zones. Therefore, she maintains that the withheld information must demonstrate a need for their implementation. Accordingly, I must decide whether it is in the public interest to disclose the exempt portions of the records in order to shed light on what informed the government's policy and legislative decision-making process with respect to safe access zone.

[141] Generally speaking, I agree that it is desirable for the public to be informed about how the government develops policy and legislation, and I accept that this may be particularly important when a specific policy or piece of legislation is controversial. However, a significant factor to be considered when deciding whether the public interest override applies is the degree of public disclosure that has already taken place concerning a matter.[62] When the public has already been provided with a considerable amount of information about a matter, there is unlikely to be a compelling public interest in disclosure that outweighs the purpose of an exemption.

[142] Based on my review of the records that have been disclosed to the appellant, I

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[62] See Order M-381 and others.

am satisfied that a considerable amount of information has already been provided to her that illustrates the type of information that was before the government when making its decisions around safe access zones. And, despite the appellant's submissions, I am also satisfied that the disclosures reveal that the government had before it information that weighed both in favour of, and against, the implementation of safe access zones.

[143] I am also mindful of the fact that I will be ordering the disclosure of numerous additional severed records consisting of correspondence between individuals and public officials. Those records reveal views and opinions, both for and against, the implementation of safe access zones, which were before the government during the policy and legislative development process.

[144] Considering the information that has been disclosed and that which will be disclosed as a result of this order, I find that there is no compelling public interest in the disclosure of the information exempt pursuant to sections 17(1) and 21(1), as it will not meaningfully contribute to public discussions regarding the implementation of safe access zone legislation. As the first part of the test under section 23 is not met, it is not necessary for me to consider the second part. I uphold the ministry's decision to withhold those portions of the records.

Issue F: Does the discretionary solicitor-client privilege exemption at section 19 apply to records 1, 7, 10, and 213-231?

[145] The ministry relies on the solicitor-client privilege exemption at section 19 to withhold portions of records 1, 7, 10, and the entirety of records 213-231. This section states:

> 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 or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[146] Section 19 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 (prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital) is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[147] At common law, solicitor-client privilege encompasses two types of privilege: (i)

solicitor-client communication privilege; and (ii) litigation privilege.

Solicitor-client communication privilege

[148] Solicitor-client communication 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.[63] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[64] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.[65] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[66]

[149] 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.[67] The privilege does not cover communications between a solicitor and a party on the other side of a transaction.[68]

Litigation privilege

[150] Litigation privilege protects records created for the dominant purpose of litigation. It is based on the need to protect the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial.[69] Litigation privilege protects a lawyer's work product and covers material going beyond solicitor-client communications.[70] It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[71] The litigation must be ongoing or reasonably contemplated.[72]

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[63] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[64] Orders PO-2441, MO-1925 and MO-2166.
[65] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[66] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[67] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[68] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).
[69] *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[70] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).
[71] *Ontario (Ministry of Correctional Service) v. Goodis*, 2008 CanLII 2603 (ON SCDC).
[72] Order MO-1337-I and *General Accident Assurance Co. v. Chrusz,* cited above; see also *Blank v. Canada (Minister of Justice)*, cited above.

Loss of privilege

[151] Under the common law, solicitor-client privilege may be waived. An express waiver of privilege will occur where the holder of the privilege knows of the existence of the privilege, and voluntarily demonstrates an intention to waive the privilege.[73]

[152] An implied waiver of solicitor-client privilege may also occur where fairness requires it and where some form of voluntary conduct by the privilege holder supports a finding of an implied or objective intention to waive it.[74]

[153] Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.[75] However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.[76]

[154] Common law litigation privilege generally comes to an end with the termination of litigation.[77]

Branch 2: statutory privileges

[155] Branch 2 is a statutory privilege that applies where the records were prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital "for use in giving legal advice or in contemplation of or for use in litigation." The statutory exemption and common law privileges, although not identical, exist for similar reasons.

[156] This privilege applies to records prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.

[157] In contrast to the common law privilege, termination of litigation does not end the statutory litigation privilege in section 19.

Representations

[158] The ministry maintains that section 19(a) applies to a portion of record 1, the hand-written notations on records 7 and 10, and the entirety of records 213 and 214,

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[73] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).
[74] *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.
[75] J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).
[76] *General Accident Assurance Co. v. Chrusz,* cited above; Orders MO-1678 and PO-3167.
[77] *Blank v. Canada (Minister of Justice)*, cited above.

because they are communications between solicitor and client that were prepared for use in giving legal advice.

[159] The ministry also submits that section 19(b) applies to records 215-231 in their entirety, because they were prepared by or for Crown counsel in contemplation of or for use in litigation, on behalf of its client. The ministry notes that section 19(b) does not import the temporal limits of the common law litigation privilege, and therefore applies to records prepared for litigation, or in contemplated of litigation, regardless of the current status of that litigation.

[160] The appellant's submissions do not address the solicitor-client privilege exemption.

Analysis and findings

[161] I have considered the ministry's submissions and carefully reviewed the information that it withheld under section 19 in order to determine whether the records are subject to the solicitor-client privilege exemption.

[162] First, I considered whether any of the withheld information consisted of communications to or from the ministry staff and legal counsel made for the purpose of giving or obtaining legal advice, which would qualify as solicitor-client communication privileged under both Branch 1 and Branch 2. Based on my review, I am satisfied that records 213 and 214 consist of emails between ministry staff and legal counsel made for the purpose of obtaining or giving professional legal advice. I am also satisfied that the first page of record 1 consists of correspondence from the ministry's legal counsel to other ministry staff aimed at keeping both informed so that legal advice could be sought and given, which is also covered by solicitor-client communication privilege.[78] Therefore, I find that page 1 of record 1 and the entirety of records 213 and 214 are exempt under section 19(a).

[163] Solicitor-client communication privilege also applies to a legal advisor's working papers relating to the seeking, formulating, or giving of legal advice.[79] I am satisfied that the handwritten notations in the upper margins of records 7 and 10 are the working notes of the ministry's legal counsel. Accordingly, I find that those portions of records 7 and 10 are also exempt under section 19(a).

[164] Records 215-231 consist of letters, emails, notes, and transcribed voicemails sent or received by Crown counsel in relation to litigation. That, on its own, does not necessarily mean that the records are subject to the common law or statutory litigation privilege under section 19. For example, the exemption does not apply to records

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[78] *Balabel v. Air India*, cited above.
[79] *Susan Hosiery Ltd. v. Minister of National Revenue*, cited above.

created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel. That being said, based on the content of records 215-231, I am satisfied that they were created within the zone of privacy necessary to prepare for and investigate reasonably contemplated litigation. Therefore, I find that these records are exempt under the litigation privilege in section 19(b).

[165] The ministry's submissions are silent on the subject of the waiver of privilege. Based on my review of the records, I find no evidence demonstrating that privilege has been waived. I will, therefore, uphold the solicitor-client communication privilege attaching to the withheld portions of records 1, 7, 10, 213 and 214, and I uphold the ministry's decision to withhold those portions of the responsive records under section 19(a), subject to my review of the ministry's exercise of discretion.

[166] The ministry has also not advised whether the litigation relating to records 215-231 is ongoing. However, as noted by the ministry, the statutory litigation privilege under section 19(b) applies regardless of whether the litigation has concluded. I also have no evidence before me that the privilege has been waived. Therefore, I uphold the ministry's decision to withhold records 215-231 on this basis, subject to my review of the ministry's exercise of discretion, below.

Issue G: Did the institution exercise its discretion under section 19? If so, should this office uphold the exercise of discretion?

[167] The section 19 exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[168] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations. In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[80] According to section 54(2) of the *Act*, this office may not, however, substitute its own discretion for that of the institution.

[169] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[81]

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[80] Order MO-1573.
[81] Orders P-344 and MO-1573.

- the purposes of the *Act*, including the principles that
    - information should be available to the public
    - individuals should have a right of access to their own personal information
    - exemptions from the right of access should be limited and specific
    - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

Representations

[170] The ministry maintains that it relied on the exemption in section 19 in good faith after having considered all relevant facts. The ministry submits that solicitor-client privilege is a "cornerstone of both criminal and civil justice, and there is a strong social interest in preserving the confidentiality of [communications, such as those in records 213 and 214] to allow for frank dialogue and informed instructions, free from public view."

[171] The ministry further submits that, with respect to records 215-231, in particular, it took into consideration that the records relate to "the fact-finding and investigation process of litigation counsel acting for the ministry, the need for a zone of privacy around such work, and the historical practice of the ministry with respect to such communications."

[172] The appellant's submissions do not address the ministry's exercise of discretion under section 19.

Analysis and findings

[173] Having regard to the ministry's submissions and the circumstances of this appeal, including the importance of solicitor-client privilege as recognized by the courts, I uphold the ministry's exercise of discretion.

[174] I am satisfied that the ministry considered relevant factors when exercising its discretion and deciding to withhold information under section 19. The evidence does not indicate that the ministry took into account irrelevant considerations, or failed to take into account relevant considerations, when deciding to withhold information on the basis of the solicitor-client privilege exemption. I am also not persuaded that the ministry exercised its discretion in bad faith or for an improper purpose. Therefore, I uphold the ministry's decision to withhold records, or portions of records, under section 19 of the *Act*.

Issue H: Should the fee of $552.50 be upheld?

[175] Under section 57(1), an institution is required to charge fees for providing access to records requested under the *Act*. An institution must advise the requester of the applicable fee where the fee is $25 or less. Where the fee exceeds $25, an institution must provide the requester with a fee estimate.[82]

[176] Where the fee is $100 or more, the fee estimate may be based on either the actual work done by the institution to respond to the request, or a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.[83] The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access.[84] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.[85]

[177] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[86] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

[178] Section 57(1) reads:

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[82] Section 57(3) of the *Act*.
[83] Order MO-1699.
[84] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[85] Order MO-1520-I.
[86] Orders P-81 and MO-1614.

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[179] More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 460. Those sections read:

> 6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD- ROM.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
>
> 7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.
>
> (2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

> 9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations

The ministry's representations

[180] In this case, the ministry's final fee was $552.50, which it calculated as follows:

15 hours of search time ($30/hour)	$450.00
Preparation for disclosure (121 minutes @ $.50 per minute)	$60.50
Photocopying (210 pages @ $.20/page)	$42.00
Total:	$552.50

[181] According to the ministry, ten staff in four areas of the ministry (Policy Division, Constitutional Law Branch, Crown Law Office Civil, and the Minister's office) searched through saved electronic and written documents, emails, and correspondence in order to locate responsive records. The ministry maintains that the time spent locating all of the responsive records was 22.5 hours, but that the ministry based its search fee on only 15 hours of work "in the interest of good customer service." The ministry also submits that the appellant was charged for the time spent locating records, but not the time required to determine whether or not the records should be disclosed.

[182] The ministry says that its fee was calculated based on what is allowable under the *Act*. It explains that the total charge for preparing the records for disclosure was one minute per page for records requiring severances, and that the fee only included pages where information was withheld in part. The ministry further states that 210 pages were disclosed to the requester, and she was only charged for photocopying those pages. The ministry confirms that the appellant was not charged for the pages that were withheld in full, nor was she charged for the cost of shipping the records.

The appellant's representations

[183] The appellant's submissions do not directly address the issue of how the ministry calculated the fee associated with her request. However, she claims to have previously received information in response to many access to information requests at both the provincial and federal level without having paid fees.

[184] She submits that the government exists to serve the public, and to be open, transparent, and accountable. She further maintains that the ministry is at "complete liberty to release the information," and that just because the *Act* says that fees can be charged, does not make it right or ethical.

Analysis and findings

[185] In this appeal, the ministry's fee was $552.50, which I uphold for the following reasons.

Determining the appropriate basis for the fees

[186] The records in this appeal do not contain the appellant's personal information. Therefore, I find that the ministry correctly calculated its fee according to what is set out in section 6 of Regulation 460.[87] As a result, the ministry is permitted to charge the appellant for the time spent searching for responsive records and preparing them for disclosure.

Calculation of fees

[187] The fees that are relevant to this appeal, and allowable under section 6 of Regulation 460, are $7.50 for every 15 minutes spent searching for a record,[88] $7.50 for every 15 minutes spent preparing a record for disclosure,[89] and $0.20 for each photocopied page of records.[90] Also relevant, although not relied upon by the ministry, is section 57(1)(d) of the *Act*, which permits the ministry to charge a requester for shipping.

[188] The ministry submits that staff in multiple divisions of the ministry spent 22.5 hours searching for records responsive to the request. However, in "the interest of good customer service," the ministry only charged the appellant $450 of search fees, which is the amount allowable for 15 hours of search time (15 hours at $30 per hour).[91] I accept the ministry's evidence, including the concession it made on the number of hours charged. Therefore, I find that the $450 search fee is reasonable, and I uphold it under section 57(1)(a) of the *Act*, considered with section 6 of the regulation.

[189] The allowable fees associated with preparing records for disclosure are set out in section 57(1)(b) of the *Act*. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.[92] This office has not allowed fees to be charged under 57(1)(b) for the time spent deciding whether or not to claim an exemption[93] and identifying records requiring severing.[94]

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[87] As opposed to section 6.1, which sets out the allowable fees for when records contain a requester's own personal information.
[88] Section 57(1)(a) of the *Act* considered together with paragraph 3 of section 6 of Regulation 460.
[89] Section 57(1)(b) of the *Act* considered together with paragraph 4 of section 6 of Regulation 460.
[90] Section 57(1)(e) of the *Act* considered together with paragraph 1 of section 6 of Regulation 460.
[91] Or $7.50 for 15 minutes.
[92] Orders MO-1169, PO-1721, PO-1834 and PO-1990.
[93] Orders P-4, M-376 and P-1536.

[190] The ministry's submissions make it clear that the appellant was not charged for the time spent reviewing records to determine whether exemptions and/or exclusions apply, and that it only charged the appellant for the time spent severing the responsive records. In doing so, the ministry calculated the fee based on it having spent one minute per page that required severing.

[191] Based on my review of the records, I note that many of the pages that were disclosed in part had multiple severances on them. Therefore, although the ministry calculated its preparation fee at a rate of one minute per page requiring severances, in my view, it was open to the ministry to calculate its fee at a rate of two minutes for a number of the pages that were disclosed, in accordance with the regulation. The ministry opted to charge a lower rate, therefore resulting in a lower fee being charged to the appellant. With this in mind, I find that the ministry's fee of $60.50, calculated at a rate of $0.50/minute[95] for 121 minutes, is reasonable and allowable under section 57(1)(b) of the *Act* and section 6 of the regulation. I will uphold this aspect of the fee.

[192] Finally, the ministry disclosed a total of 210 pages of records to the appellant, either in full or in part. The ministry charged a total of $42.00 for photocopying, which it calculated at a rate of $0.20 per page. As this is the fee prescribed for photocopying costs in paragraph 1 of section 6 of Regulation 460, I uphold it.

[193] In conclusion, I uphold the ministry's final fee of $552.50.

Issue I: Should the fee be waived?

[194] Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;

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[94] Order MO-1380.
[95] Or $7.50 for 15 minutes.

> (c) whether dissemination of the record will benefit public health or safety; and
>
> (d) any other matter prescribed by the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[195] The fee provisions in the *Act* establish a user-pay principle, which is founded on the premise that requesters pay the prescribed fees associated with processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees.[96]

[196] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[97] The institution or this office may decide that only a portion of the fee should be waived.[98]

Representations

The ministry's representations

[197] The ministry maintains that there is no reason why the fee should be waived in part or in whole, as the fee is already "very reasonable." In support of its position, the ministry explains that numerous counsel spent a "significant number of hours collecting and reviewing a vast number of documents" in order to respond to the appellant's request. And, according to the ministry, the appellant did not provide documentation of financial hardship when she requested a fee waiver, nor did she demonstrate how dissemination of the records would provide a public health or safety benefit.

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[96] Order PO-2726.
[97] Orders M-914, P-474, P-1393 and PO-1953-F.
[98] Order MO-1243.

The appellant's representations

[198] The appellant submits that she reduced the scope of her request in the hopes of reducing the fees that would be charged. As a result, she claims that she received "a lot less information than [she] originally requested," and what she did receive "showed absolutely no information on the supposed need for" safe access zones.

[199] The appellant's fee waiver request relies primarily on the "financial hardship" ground under section 57(4)(b). She explains that she was able to pay the required fee because a third party provided $450, and she was only responsible for covering the balance.

[200] The appellant says that the ministry failed to explain its parameters for determining what constitutes "financial hardship," although it did ask that she provide details regarding her financial situation. She says that she has "no intention" of providing her personal information to the ministry.

[201] In her appeal letter to this office, the appellant claims that during her conversations with the ministry prior to this appeal, she provided "reasonable arguments as to why the fee should be waived [on financial grounds]." From a review of the email correspondence between the parties, which the appellant enclosed with her appeal letter, I gather that the appellant relied on the fact that she is "a senior on a fixed income" in support of her fee waiver request.

[202] In addition to the ground in section 57(4)(b), the appellant argues that during her prior conversations with the ministry, she also provided reasonable arguments for the waiver of fees based on health and safety under section 57(4)(c). Again, from a review of that earlier correspondence, I note that the appellant said,

> This abortion bubble zone law's alleged reason for being, is to protect the health and safety of women who go to abortion facilities […] I see no allowance in the legislation that would provide protection to pro-life people whose health and safety is frequently in danger from people who spit at us; who rip our signs; who threaten us […] That is why I want to be able to understand why this legislation was enacted – why are we not also provided with health and safety protections?

[203] The appellant did not elaborate on either of these arguments in the representations that she provided during my inquiry.

Analysis and findings

[204] Section 57(4) of the *Act* makes it mandatory for the head of an institution to

waive payment of "all or any part" of a fee if the head determines that it is fair and equitable to do so after considering relevant factors, including certain prescribed matters.[99] This office may review an institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify that decision.[100] In addition, an adjudicator may decide that only a portion of the fee should be waived.[101]

[205] In *Mann v Ontario (Ministry of the Environment)*,[102] the Divisional Court confirmed that each of the factors in section 57(4) must be considered; however, if only one applies, or even if none of the enumerated considerations apply, a fee waiver may still be granted if it is fair and equitable to do so. Specifically, the Court stated:

> There is only one requirement in the subsection for waiver of all or part of a fee and that is whether, in the opinion of the head, it is fair and equitable to do so. The head is guided in that determination by the factors set out in the subsection, but it remains the fact that *the sole test is whether any fee waiver would be fair and equitable*. (emphasis added)

[206] Accordingly, it is possible for a fee waiver to be fair and equitable in the circumstances where only one, or even none, of the section 57(4) factors is made out. Conversely, it is possible for a fee waiver not to be fair and equitable even if one or more of the section 57(4) factors apply.

[207] In this case, the appellant's fee waiver request relies on the application of the factors at sections 57(4)(b) and (c). The appellant has not relied on the considerations at sections 57(4)(a) or (d), and the ministry has argued that they do not apply in the circumstances. Having considered the evidence before me, I am satisfied that the considerations in sections 57(4)(a) and (d) are not relevant for determining whether a fee waiver would be fair and equitable in this appeal.

Section 57(4)(b) – financial hardship

[208] For section 57(4)(b) to apply, the appellant must provide some evidence regarding her financial situation, including information about income, expenses, assets and liabilities.[103] The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.[104]

[209] In her earlier correspondence with the ministry, the appellant advised that she

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[99] Sections 57(4) and section 8 of Regulation 460 under the *Act*.
[100] Orders M-914, P-474, P-1393 and PO-1953-F.
[101] Order MO-1243.
[102] 2017 ONSC 1056 (CanLII).
[103] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.
[104] Order P-1402.

was a senior on a fixed income. This was the sole justification that she provided in support of her claim that paying the $552.50 fee would cause her financial hardship. The appellant did not provide the ministry or this office with evidence regarding her financial situation, such as documentation of her income, assets, or expenses. Therefore, neither the ministry nor I are in a position to conclude that the appellant has faced a financial hardship as a result of paying the fee for access.

[210] Moreover, in my view, the fact that the appellant was able to pay the fee with the assistance of an interested third party weighs against finding that the factor at section 57(4)(b) applies. Therefore, without evidence substantiating the appellant's claim of financial hardship, I conclude that the factor in section 57(4)(b) is not a relevant consideration in determining whether a fee waiver is fair and equitable in this case.

Section 57(4)(c) – benefit public health and safety

[211] For a finding that section 57(4)(c) applies, the appellant must establish that the dissemination of the records would benefit public health or safety.[105] It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know." There must be some connection between the public interest and a public health and safety issue.[106] A requester's intention to disseminate the record, and the likelihood that such dissemination would yield a public benefit by revealing a public health or safety concern or contributing to the understanding of a public health or safety issue, may also be relevant. [107]

[212] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by:
    - disclosing a public health or safety concern, or
    - contributing meaningfully to the development of understanding of an important public health or safety issue

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[105] Orders MO-1336, MO-2071, PO-2592 and PO-2726.
[106] Orders MO-1336, MO-2071, PO-2592 and PO-2726.
[107] Orders P-2, P-474, PO-1953-F and PO-1962.

- the probability that the requester will disseminate the contents of the record.[108]

[213] In the circumstances of this appeal, I am satisfied that the appellant may disseminate the records that she obtains as a result of her request. I am also satisfied that there is a public interest in the subject matter of the records, and that the subject matter relates to a matter of public health or safety.

[214] However, the appellant's assertion is that dissemination of the records will benefit public health or safety by revealing why "pro-life people whose health and safety is frequently in danger" were not provided any protections under the province's safe access zone legislation. I am not satisfied, based on the content of the records themselves, that the appellant's concern would be meaningfully addressed as a result of dissemination of the records, nor am I persuaded that this information would reveal a public safety concern that is not already known.

[215] Therefore, I find that section 57(4)(c) of the *Act* has not been established as a consideration in support of a determination that a fee waiver is fair and equitable in the circumstances of this appeal.

Other relevant considerations

[216] In deciding whether it is fair and equitable to waive all or part of a fee, a decision- maker will have regard not only to the prescribed considerations, but also to the fairness of shifting some or all of the burden of the cost of the request from the requester to the institution and, by extension, to the Ontario public.[109] Therefore, my findings regarding the applicability of the factors described in sections 57(4)(a)-(d) is not, on its own, determinative of the fee waiver issue. I must also consider whether there are additional factors relevant to determining whether a fee waiver is "fair and equitable" in the circumstances.[110]

[217] In addition to paragraphs (a) to (d) of section 57(4), other factors that must be considered in deciding whether it would be fair and equitable to waive the fees may include:

- the manner in which the institution responded to the request
- whether the institution worked constructively with the requester to narrow and/or clarify the request
- whether the institution provided any records to the requester free of charge

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[108] Orders P-2, P-474, PO-1953-F and PO-1962.
[109] Order PO-4001-R.
[110] See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.

- whether the requester worked constructively with the institution to narrow the scope of the request
- whether the request involves a large number of records
- whether the requester has advanced a compromise solution which would reduce costs, and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[111]

[218] In my view, the remainder of the appellant's submissions do not persuasively demonstrate that it would be fair and equitable for the ministry to grant the requested fee waiver, based on the considerations listed above or any other considerations.

[219] Having regard to the evidence before me, I am satisfied that both parties worked constructively together to narrow the scope of the request. As noted in the correspondence that accompanied the appellant's appeal letter, the scope was narrowed considerably, and resulted in a reduction of the initial $675 fee to $552.50.

[220] Moreover, I agree with the ministry that relevant factors in this case include the large number of responsive records and the effort required by multiple divisions of the ministry in order to respond to the request. I also accept the ministry's submission that the cost to process the entirety of the request was higher than the fees paid, and that a full fee waiver would shift an unreasonable burden of the cost from the appellant to the ministry.

[221] Therefore, I find that it would not be fair or equitable in the circumstances to waive the fee charged by the ministry, and I uphold the ministry's decision to deny the appellant's fee waiver request.

ORDER:

1. I find that portions of the following records are excluded from the *Act* under sections 65(13)(a) and (b): records 1, 3, 4, 8, 10, 11, 12, 14, 20, 24, 35, 37, 49, 54, 55, 56, 57, 58, 61, 66, 67, 69, 72, 74, 75, 76, 77, 78, 79, 81, 84, 88, 90, 92, 93, 95, 97, 98, 99, 100, 104, 105, 108, 109, 110, 111, 113, 114, 116, 117, 118, 119, 120, 122, 123, 127, 134, 150, 169, 170, 182, 188, 192, 194, 195, 196, 200, 209, 213-231, 255 and 261.

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[111] Orders M-166, M-408 and PO-1953-F.

2. I uphold the ministry's decision to withhold the non-excluded portions of records 255 and 261 under section 17(1).

3. I uphold the ministry's decision to withhold information under section 21(1), in part.

4. I order the ministry to disclose the portions of the following records that are not excluded from the *Act* and are not exempt under section 21(1): records 1-4, 6-12, 14-15, 17-129, 131-136, 138-165, 167-182, 184-205, and 207-212. I order the ministry to disclose these severed records to the appellant by **January 8, 2021,** but not before **January 4, 2021.**

   For clarity, a copy of the highlighted records will be provided to the ministry. **The highlighted portions are to be withheld** on the basis that they can be severed under section 10(2), are exempt under section 21(1), or excluded under section 65(13). **Other information in those records that the ministry previously identified as being not responsive to the request, exempt under section 22, or excluded under section 65(13) should also be withheld**.

5. I uphold the ministry's decision to withhold portions of records 1, 7, and 10, and records 213-231 in their entirety, under section 19.

6. I uphold the $552.50 fee charged by the ministry and its decision to deny the appellant's request for a fee waiver.

7. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records that I have ordered disclosed in order provision 4.

8. The timelines in this order may be extended if the ministry is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

Original signed by: November 25, 2020

Jaime Cardy
Adjudicator

APPENDIX - INDEX OF RECORDS AT ISSUE

Record #	Description	Number of pages	Sections claimed by the ministry (and remaining at issue)
1	Email dated May 2, 2017: RE: Abortion inquiries	9	s.19, 21
2	Email April 18/17: RE: Please respond: Access zones around women's health services	1	s.21
3	Email April 21/17 RE: Feedback from MAG site	4	s.21
4	Email Apr 27/17 RE: MCSCS website English feedback submission - complaint about protection for [withheld]	1	s.21
6	Email May 24/17 RE: Please respond: Ottawa contacting Attorney General about Access Zones	1	s.21
7	Email May 23/17 RE: Law restricting anti abortion protests	1	s.19, 21
8	Email with scanned Letter May 26/17 To the Honourable Yasir Naqvi	4	s.21
9	Letter May 26/17 To [named individual]	1	s.21
10	Email May 29/17 RE: provincial bubble zone law	1	s.19, 21
11	Letter May 28/17 RE: Your letter to province requesting bubble zone legislation to ban Pro-Life demonstrations in front of abortion clinics	2	s.21
12	Letter May 26/17 … very pleased to read in the Globe & Mail …	1	s.21
14	Email Jun 8/17 FW: MAG Issue - Bubble Zones	3	s.21
15	Email May 25/17 RE: Free speech	1	s.21
17	Email Jun 8/17 FW: Proposed Legislation	1	s.21

18	Email May 29/17 RE: Abortion Clinic Safe Zone	1	s.21
19	Email May 29/17 Re: Abortion Clinic Safe Zones -- THANK YOU!	1	s.21
20	Email May 27/17 RE: Please do not support bubble zone legislation	2	s.21
21	Email May 27/17 RE: The right to expression	1	s.21
22	Email May 27/17 RE: Abortion clinics	1	s.21
23	Email May 26/17 Re: provincial bubble zone law	1	s.21
24	Email Jun 11/17 RE: Bubble Zone Legislation	1	s.21
25	Email Jun 1/17 Fw: Abortion clinic bubble zone	1	s.21
26	Email Jun 1/17 Fwd: restore freedom of speech	1	s.21
27	Email May 26/17 RE: Free speech	1	s.21
28	Email May 26/17 RE: Freedom of Speech	1	s.21
29	Email May 25/17 RE: Freedom of Speech	1	s.21
30	Email May 25/17 RE: Pro life	1	s.21
31	Email May 25/17 RE: Freedom of speech	1	s.21
32	Email May 25/17 RE: freedom of speech	1	s.21
33	Email May 25/17 Fwd: Protests	1	s.21
34	Email May 25/17 RE: Stop the intolerance	1	s.21
35	Email May 25/17 RE: Mayor seeks law banning protests outside Ottawa's abortion clinic	1	s.21
36	Email May 25/17 RE: Stand for Freedom of Speech	1	s.21
37	Email May 25/17 RE: peaceful use of freedom of speech	1	s.21
38	Email May 25/17 RE: Don't take away my freedom	1	s.21
39	Email May 25/17 RE:	1	s.21

40	Email May 29/17 RE: Contact Form Message	1	s.21
41	Email May 29/17 RE: Yasir Naqvi to propose safe zones around Ontario abortion clinics	1	s.21
42	Email May 30/17 RE: Feedback from MAG Site	1	s.21
43	Email May 30/17 RE: Bubble Zones	1	s.21
44	Email May 30/17 RE: Bill 89 and safe zones	1	s.21
45	Email May 30/17 RE:	1	s.21
46	Email May 29/17 RE: Proposed Safe Zone	1	s.21
47	Email May 27/17 RE: Free Speech	1	s.21
48	Email May 26/17 RE: Bubble zone	1	s.21
49	Email May 25/17 RE: Shame on you	1	s.21
50	Email May 25/17 RE: Say No To Bubble Zone	1	s.21
51	Email May 25/17 RE: Free Speech	1	s.21
52	Email May 25/17 RE: free speech and anti-abortion flag and protest	1	s.21
53	Email May 25/17 RE: Peaceful protest re abortions	1	s.21
54	Email May 26/17 RE: Ontario law to prevent harassment of women	2	s.21
55	Email May 26/17 RE: FREEDOM OF SPEECH AND FREEDOM TO PROTEST	1	s.21
56	Email May 26/17 RE: Arresting Protesters	1	s.21
57	Email May 26/17 RE: FREE SPEECH - PEACEFULL PROTEST	2	s.21
58	Email May 26/17 RE:	1	s.21
59	Email May 25/17 RE: Right to peaceful protest	1	s.21
60	Email May 25/17 RE: Free Speech	1	s.21

61	Email May 25/17 RE: Freedom	1	s.21
62	Email May 25/17 RE: (to Mayor Watson and AG Naqvi)	2	s.21
63	Email May 25/17 RE: Freedom of speech threatened in Canada.	1	s.21
64	Email May 25/17 RE: Free Speech is a PROTECTED right of citizens	1	s.21
65	Email May 25/17 RE: protect free speech!	1	s.21
66	Email May 26/17 RE: Mayor seeks law banning protests outside Ottawa's abortion clinic	1	s.21
67	Email May 26/17 RE: Stop the Attack on Freedom of Speech in Ottawa and across Ontario	2	s.21
68	Email May 25/17 RE: Freedoms/Abortion Clinics/Ottawa/Mayor Watson	1	s.21
69	Email May 25/17 RE: Freedom of speech	1	s.21
70	Email May 25/17 RE: Free speech	1	s.21
71	Email May 25/17 RE: free speech and anti-abortion flag and protest	1	s.21
72	Email May 29/17 RE: Support for law restricting protests at Ontario abortion clinics	1	s.21
73	Email May 29/17 RE: Contact Form Message	1	s.21
74	Email May 30/17 RE: Support for safe abortion clinic zones	1	s.21
75	Email May 30/17 RE: Abortion Protests and Legislation	1	s.21
76	Email May 29/17 RE: I support safe zones	1	s.21
77	Email May 30/17 RE: abortion clinic safe zones - Thank you for taking action!	1	s.21
78	Email May 25/17 RE: Infringing on our Freedoms	1	s.21

79	Email May 25/17 RE: Peaceful Protest Against Abortion [withheld]	1	s.21
80	Email May 25/17 RE: Free Speech	1	s.21
81	Email May 25/17 RE: protests outside abortion clinic	1	s.21
82	Email May 25/17 RE: Concern for ProLife freedom of speech	1	s.21
83	Email May 25/17 RE: free speech?	2	s.21
84	Email May 25/17 RE: Arresting Protesters [withheld]	1	s.21
85	Email May 25/17 RE: Free speech	1	s.21
86	Email May 25/17 RE: Freedom of speech	1	s.21
87	Email May 25/17 RE: FREEDOM OF SPEECH	1	s.21
88	Email May 25/17 RE: Freedom	2	s.21
89	Email May 25/17 RE: Free Speech	1	s.21
90	Email May 25/17 Re: Freedom	2	s.21
91	Email May 27/17 RE: bubble zone	1	s.21
92	Email May 29/17 to: [named individual]	2	s.21
93	Email May 29/17 RE: [withheld] bubble zone	1	s.21
94	Email May 29/17 RE: safe zones around abortion clinics	1	s.21
95	Email May 29/17 RE: Bubble zone protection [withheld] is urgently needed	1	s.21
96	Email May 29/17 RE: The bubble zone	1	s.21
97	Email May 29/17 RE: "safe zones"	1	s.21
98	Email May 30/17 RE: Support for buffer zone legislation for abortion/reproductive rights clinics -	1	s.21

	this is a gender issue!		
99	Email May 29/17 RE: I support bubble zone legislation proposal	1	s.21
100	Email May 25/17 re: freedom of speech	1	s.21
101	Email May 25/17 RE: Bubble zones kill free speech	1	s.21
102	Email May 25/17 RE: Protecting Freedom of Speech	1	s.21
103	Email May 25/17 RE: Freedom of expression:	1	s.21
104	Email May 25/17 RE: Pleas respond…In gratitude: Access Zones in Ontario	1	s.21
105	Email May 25/17 RE: Please support a bubble zone to protect abortion access	1	s.21
106	Email May 26/17 RE: Against request from Ottawa mayor to ban pro-lifer demonstration	1	s.21
107	Email May 26/17 RE: Bubble zone censorship	1	s.21
108	Email May 26/17 RE: Please support a bubble zone to protect abortion access 2	s.21	
109	Email May 25/17 RE: Right to life protest	1	s.21
110	Email May 25/17 RE: Harassment-Free Access	1	s.21
111	Email May 25/17 RE: Against Freedom of Speech	1	s.21
112	Email May 25/17 RE: Bubble Zones	1	s.21
113	Email May 29/17 RE:	4	s.21
114	Letter Jun 7/17 To: Dear [named individual]	1	s.21
115	Email Jun 13/17 RE: consultation process on bubble zones around abortion clinics	1	s.21
116	Email Jun 9/17	4	s.21
117	Email Jun 11/17 RE: Pro-choice Bubble Zone Law	1	s.21

118	Email Jun 13/17 RE: province-wide bubble zone law	1	s.21
119	Email Jun 10/17 RE: Contact Form Message	1	s.21
120	Letter May 31/17	1	s.21
121	Email Jun 15/17 RE: "Bubble Zone" PREFERENTIAL Rights	7	s.21
122	Email Jun 20/17 RE: safe zones around abortion clinics - please move fast	1	s.21
123	Email Jun 20/17	3	s.21
124	Letter Jun 23/17	10	s.21
125	Email Jun 21/17 RE: Bubble Zones	1	s.21
126	Email Jun 24/17 RE: Bubble Zones	1	s.21
127	Email Jun 29/17	4	s.21
128	Letter Jun 27/17	1	s.21
129	Email Jul 1/17 RE: Free Speech	1	s.21
131	Email Jul 9/17 RE: Right to Life of me and you	1	s.21
132	Email Jul 7/17 RE: Bubble Zones	1	s.21
133	Email Jul 11/17 re: safe access zones around abortion clinics	1	s.21
134	Email Jun 26/17	5	s.21
135	Email Aug 11/17 RE: Introduction of Butter Zones Legislation	2	s.21
136	Email Aug 13/17 RE: Freedom of speech and expression	1	s.21
138	Email Aug 27/17 RE: Bubble Zones	1	s.21
139	Email Sept 7/17 Re proposed abortion obstruction law	1	s.21

140	Email Sept 7/17 RE: [withheld] Comments about Bubble Zone	2	s.21
141	Letter Sept 2/17 RE: "No" to Bubble Zone Legislation	1	s.21
142	Email Sept 6/17 RE: Bubble zones	1	s.21
143	Email Sept 8/17 RE: Pregnant Women Need Help	1	s.21
144	Email Sept 11/17 RE: Considerations re: bubble zone law	3	s.21
145	Email Sept 14/17 Re: Safe Access Zones Around Abortion Centers	2	s.21
146	Email Sept 21/17 RE: Bubble Zone message	1	s.21
147	Email Sept 20/17 RE: Say NO to a bubble zone	2	s.21
148	Email Aug 3/17 RE: "Bubble zone legislation	2	s.21
149	Email Sept 21/17 RE: Proposed law banning pro-life witness at abortion facilities in Ontario	2	s.21
150	Letter Oct 4/17 To: Attorney General Yasir Naqvi	1	s.21
151	Email Oct 4/17 RE: General Inquiry	1	s.21
152	Email Oct 5/17 RE: Abortion Supporter	1	s.21
153	Email Oct 5/17 RE: "safe zones"	1	s.21
154	Email Oct 5/17 RE: Safe Access to Abortion Services Act, 2017 (Well done)	1	s.21
155	Email Oct 5/17 RE: Thank you for protecting Women's rights in Ontario 1	s.21	
156	Email Oct 9/17 RE: Safe Access Zones Around Abortuaries	1	s.21
157	Email Oct 9/17 RE: Feedback from MAG Site	1	s.21
158	Email Oct 6/17 RE: "bubble zone" legislation	1	s.21

159	Email Oct 24/17 RE: Bill 163	3	s.21
160	Email Oct 6/17 RE: Bubble Zone Law	1	s.21
161	Email Oct 8/17 RE: Abortion clinic protesters	2	s.21
162	Email Oct 10/17 RE: Bill 163	1	s.21
163	Email Oct 5/17 RE: Abortion safe space	1	s.21
164	Email Oct 10/17 RE: Contact Form Message	1	s.21
165	Email Oct 9/17 RE: Bill 163	1	s.21
167	Email Oct 5/17 RE: Bubble Zones	1	s.21
168	Letter Oct 5/17 Attention Yasir Naqvi	2	s.21
169	Email Oct 5/17 RE: Merci!	1	s.21
170	Email Oct 11/17 RE: Feedback from MAG Site	1	s.21
171	Email Oct 12/17 RE: General Inquiry	1	s.21
172	Email Oct 11/17 Fw: "Bubble Zone" PREFERENTIAL Rights	6	s.21
173	Letter Oct 6/17	1	s.21
174	Letter Oct 9/17	1	s.21
175	Email Oct 11/17 RE: Regarding Criminal Penalties on Pro-Life Speakers	1	s.21
176	Greeting Card Oct 16/17	2	s.21
177	Email Oct 14/17 RE: Bubble Zones	1	s.21
178	Letter Oct 11/17 To: Ministry of the Attorney General	1	s.21
179	Letter Oct 12/17 "To the Attorney General"	1	s.21
180	Letter Oct 11/17 "To the Honourable Mr. Yasir Naqvi"	1	s.21
181	Email Oct 19/17	1	s.21

182	Email Oct 18/17	2	s.21
184	Letter Oct 17/17 "To the Honourable Mr. Yasir Naqvi"	1	s.21
185	Letter Oct 17/17 "To: Ministry of the Attorney General"	1	s.21
186	Email Oct 21/17 RE: Safety	1	s.21
187	Letter Oct 13/17 re: Bubble Zone Law	1	s.21
188	Letter Oct 16/17 "To Honourable Yasir Naqvi"	2	s.21
189	Email Oct 24/17 RE: Bill 163, third reading	3	s.21
190	Email Oct 24/17 RE: Contact Form Message	2	s.21
191	Letter received Oct 25/17	1	s.21
192	Letter Oct 10/17	1	s.21
193	Email Oct 25/17 Fwd: Bill 163	2	s.21
194	Email Oct 25/17 RE: Life	1	s.21
195	Email Oct 25/17 RE: Bill 163	2	s.21
196	Email Oct 24/17	2	s.21
197	Email Oct 25/17 RE: "safe access to abortion law"	2	s.21
198	Email Oct 25/17	4	s.21
199	Email Oct 25/17 RE: Bill 163	1	s.21
200	Email Oct 26/17 RE: Bill 163 is against Charter Rights and Freedoms	1	s.21
201	Email Oct 26/17 RE: Thank you!	2	s.21
202	Email Oct 26/17 RE: Bill	2	s.21
203	Letter Oct 22/17	1	s.21
204	Letter Oct 20/17 To: Honorable Attorney General	1	s.21

205	Email Oct 27/17	2	s.21
207	Email Oct 4/17 RE: Bubbles around abortion clinics	1	s.21
208	Email Oct 12/17	2	s.21
209	Email Jul 17/17 RE: Friday July 14th July Phone Call	2	s.21
210	Email Oct 17/17	5	s.21
211	Email Oct 26/17 RE: Ontario PC Party	6	s.21
212	Email May 27/17 RE: Tweet	1	s.21
213	Email Jun 5/17	4	s.19
214	Email Oct 27/17	3	s.19
215	Voicemail #1	1	s.19
216	Voicemail #2	1	s.19
217	Letter Jun 13/17	1	s.19
218	Emails Jun 20/17	5	s.19
219	Letter Jul 12/17	1	s.19
220	Email July 25/17	1	s.19
221	Record of Telephone Call July 15/17	1	s.19
222	Letter Jul 14/17	1	s.19
223	Emails Jul 18/17	2	s.19
224	Letter via email Jun 27/17	12	s.19
225	Letter via email Jun 22/17	1	s.19
226	Letter via email Jun 13/17 to MAG Counsel	1	s.19
227	Voicemail transcription #1 Sept 12/17	1	s.19
228	Voicemail transcription #2 Sept 12/17	1	s.19

229	Email Aug 17/17	2	s.19
230	Note dated June 8/17	13	s.19
231	Email Jun 7/17	3	s.19
255	Email Sept 21/17	17	s.65(13), s.17(1), s.21
261	Survey	69	s.65(13), s.17(1)