Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4180

Appeal PA19-00253

Office of the Independent Police Review Director

August 27, 2021

Summary: The appellant submitted a request under the *Act* to the OIPRD for records relating to a complaint he filed alleging police misconduct. The OIPRD located records and denied the appellant access to them, in full, citing the exemptions at sections 49(a), read with section 14(2)(a) (law enforcement report), and 49(b) (personal privacy). In addition, the OIPRD denied the appellant access to some records, claiming it did not have custody or control over them. The appellant appealed the OIPRD's decision. The appellant also claimed that additional responsive records ought to exist, thereby raising the issue of reasonable search. In this order, the adjudicator upholds the OIPRD's decision, in part. The adjudicator upholds the OIPRD's application of sections 49(a), read with section 14(2)(a), and 49(b) to some of the records. However, the adjudicator orders the OIPRD to issue an access decision regarding the records it claimed to be outside of its custody or control. Finally, the adjudicator upholds the OIPRD's search as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of *personal information*), 14(2)(a), 21(2)(f) and (h), 21(3)(b), 24(1), and 49(a) and (b).

Orders and Investigation Reports Considered: Orders MO-2385, MO-3988-I, P-120, PO-1959, PO-3341, PO-3868-I, and PO-4176.

Cases Considered: *City of Ottawa v. Ontario*, 2010 ONSC 6835.

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and*

Protection of Privacy Act (the *Act*) to the Office of the Independent Police Review Director (the OIPRD) for records relating to a complaint he filed against two officers of the Shelburne Police Services Board (the police).[1] Specifically, the appellant seeks access to

> … transcript of interviews the OIPRD conducted on August 8, 2018, with [named individual] (respondent officer) and [named individual] (witness officer). Copies of police notebook entries for [named individual] after November 9, 2017, specific to my arrest that might be on file with the OIPRD. Copies of police notebook entries for [named individual] that might be on file from the OIPRD investigation and interview on August 8, 2018 and previous back to October 27, 2017 for [named individual].
>
> Requesting a copy of my arrest interview on November 9, 2017 if the OIPRD has a copy.
>
> Any correspondence between the OIPRD and the Shelburne Police.
>
> Any correspondence between the OIPRD and the Shelburne Police Services Board.

[2] The OIPRD located twenty records responsive to the request, including OIPRD audio recordings, summaries of interviews, and correspondence. The OIPRD issued an access decision to the appellant, denying him access to the records. The OIPRD claimed the application of the exemptions in section 14(2)(a) (law enforcement report) and 21(1) (personal privacy) of the *Act* to withhold some of the records. In addition, the OIPRD referred to sections 25(2) (transfer of request) and 25(3) (greater interest) to support its decision to deny the appellant access to some of the records.

[3] The appellant appealed the OIPRD's decision to this office.

[4] During mediation, the appellant confirmed his interest in pursuing access to the responsive records. The mediator reviewed the records and noted the records contain personal information relating to the appellant and other identifiable individuals (the affected parties). Accordingly, the OIPRD issued a revised access decision, in which it claimed section 49 (discretion to refuse requester's own information) in addition to the exemptions originally claimed. The OIPRD also provided an index of the records to the appellant and advised he may wish to make an access request to the police because they are the institution with a greater interest in many of the records.

[5] After further discussions, the OIPRD issued a second revised decision, denying access to the records pursuant to sections 14(2)(a), 21(1), 49(a), and 49(b) of the *Act*.

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[1] I note the Shelburne Police Services Board was transitioned to the Ontario Provincial Police in February 2021.

The OIPRD also took the position the police had a greater interest in some of the records. Further, the OIPRD raised the issue of whether it had custody or control of some of the records.[2]

[6] The appellant confirmed his interest in pursuing access to the records and claimed all of the records are within the custody or control of the OIPRD. The appellant also advised he believes further responsive records ought to exist. Accordingly, reasonable search and custody or control were added as issues to the appeal.

[7] Mediation did not resolve the issues and the appeal transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. The adjudicator originally assigned to the appeal began the inquiry by inviting the OIPRD to submit representations in response to a Notice of Inquiry, which summarized the facts and issues under appeal. The OIPRD submitted representations. The adjudicator then invited the appellant to make submissions in response to the Notice of Inquiry and the OIPRD's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations. The adjudicator then sought and received reply representations from the OIPRD and further sur-reply representations from the appellant.

[8] The file was then transferred to me to complete the inquiry. Upon review of the file materials and the records, I decided to provide notice to four individuals whose interests may be affected by the disclosure of the records.[3] I successfully notified and received representations from two affected parties. However, I was unable to notify the other two affected parties.

[9] In the discussion that follows, I uphold the OIPRD's decision in part. I find records 1 to 4, 8 to 10, 13 to 16, and 17 to 19 are exempt from disclosure under section 49(a), read with section 14(2)(a) (law enforcement report), and section 49(b) (personal privacy). I uphold the OIPRD's exercise of discretion to withhold these records. I also uphold the OIPRD's search for records as reasonable. However, I order the OIPRD to issue an access decision regarding the remainder of the records, which I find to be in the OIPRD's custody or under its control.

RECORDS:

[10] There are eighteen paper records and two audio recordings at issue. The OIPRD described them as follows:

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[2] The OIPRD's access decision stated that the records are not within the custody or control of the Ontario Provincial Police, Ministry of the Solicitor General or the Ministry of the Attorney General. The reason for the OIPRD's reference to these other institutions is unclear. In any event, it became apparent during the inquiry that the OIPRD's position was that the records were outside the OIPRD's own custody or control.

[3] The OIPRD did not notify these individuals prior to issuing its access decision or during the appeal process.

Record Description	Record No.	Basis for withholding
Recordings and summaries of OIPRD interviews with the Respondent	1 to 4	Sections 14(2)(a), 21(1), 49(a) and (b)
Officer and Witness Officer Copies of police notebook entries for a Respondent Officer	5	Section 10 (no custody or control)
Copies of police notebook entries for the Witness Officer	6	Section 10
Arrest Booking Report	7	Section 10
Any correspondence between the OIPRD and the Shelburne Police	8-10 13-16	Sections 14(2)(a), 21(1) and 49(a) and (b)
	11-12	Section 10
Any correspondence between the OIPRD and the Shelburne Police Services Board	17-19	Sections 14(1)(a), 21(1) and 49(a) and (b)
	20	Section 10

PRELIMINARY MATTERS

[11] In his representations, the appellant makes a number of submissions regarding his dissatisfaction with the police's conduct and investigation into the incident that resulted in his arrest. The appellant also raises a number of concerns with the OIPRD's investigation into his complaint alleging police misconduct and its subsequent report. I cannot comment on these issues as my jurisdiction is limited to a review of the OIPRD's access decision under the *Act* in relation to the records he seeks access to.

[12] In addition, the appellant requests access to records relating to another disciplinary hearing on page 14 of his representations dated February 10, 2020. These records are not at issue in this appeal. If the appellant wishes to seek access to this information, he will have to file a new request with the OIPRD. This inquiry only addressed, and this order will only deal with, the request he filed with the OIPRD described above.

ISSUES:

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

B. Does the discretionary exemption at section 49(a), read with section 14(2)(a), (law enforcement report) apply to the information at issue?

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

D. Did the OIPRD exercise its discretion under sections 49(a) or (b)? If so, should this office uphold the exercise of discretion?

E. Are records 5 to 7, 11, 12, and 20 in the custody or under the control of the OIPRD under section 10(1)?

F. Did the OIPRD conduct a reasonable search for records?

DISCUSSION:

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

[13] In order to determine which sections of the *Act* may apply, it is necessary to determine whether the records contain *personal information* and, if so, to whom it relates. That term is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[14] 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.[4] However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[5]

[15] To qualify as personal information, it must be reasonable to expect an individual will be identified if the information is disclosed.

[16] In this order, I will consider whether records 1 to 4, 8 to 10, 14 to 16, and 17 to 19 contain personal information. These records are subject to the OIPRD's exemption claims under sections 49(a) and (b). The OIPRD claimed the remainder of the records (i.e. records 5 to 7, 11, 12 and 20) are outside of its custody or control and I will consider this issue below under Issue E.

[17] The OIPRD states the records consist of the police and OIPRD's responses to the

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[4] See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.

complaint filed by the appellant as well as the police's records relating to a criminal investigation involving the appellant. The OIPRD states the records contain personal information relating to the appellant, two officers, the alleged victim and witnesses.

[18] The appellant does not directly address whether the records contain personal information relating to him or other identifiable individuals. However, the appellant states an individual has consented to the disclosure of any information that may relate to them in the records. The appellant also makes a number of submissions on the history of his relationship with another individual.

[19] I have listened to the two audio recordings (records 1 and 2) and reviewed the paper records (records 3, 4, 8 -10, 13-16, and 17-19) that are subject to the OIPRD's exemption claims. I find they all contain the personal information of the appellant. Specifically, I find the records contain the appellant's name where it appears with other personal information (under paragraph (h) of the definition of that term in section 2(1)), information relating to the appellant's race, age, sex, or family status (paragraph (a)), his telephone number (paragraph (d)), his views or opinions (paragraph (e)), and the views of other individuals about him (paragraph (g)). The records relate to a criminal investigation concerning the appellant and the complaint he filed with the OIPRD. Given these circumstances, I find all of the records contain his personal information.

[20] In addition, I find records 1-4, 8-10, 13-16, and 17-19 contain personal information relating to two officers, both of whom were subjects of the appellant's complaint. They are identified as the responding officer and the witness officer in the records. To be clear, the appellant's complaint identified both officers. The OIPRD investigated the first complaint against the respondent officer with the witness officer interviewed as a witness. The police investigated the complaint against the witness officer because the OIPRD referred the complaint to them. However, the OIPRD confirms that its oversight over the complaint against the witness officer continued.

[21] Specifically, the records contain the information relating to the officers' employment (paragraph (b)) and their personal views or opinions (paragraph (e)). Under section 2(3) of the *Act*, information related to an individual in their professional, official or business capacity is not considered to be their *personal information* within the meaning of section 2(1) of the *Act*. However, where information appearing in a professional context reveals something of a personal nature about an individual, the information is personal information under the *Act*.[6] The officers involved in the complaint provided the OIPRD information relating to their conduct in the course of their employment. However, because the officers were the focus of an investigation into a complaint filed by the appellant, the information in the records relating to them takes on a personal quality. There is a long line of orders of this office that have held that

[6] Order PO-2225.

information in records relating to a complaint about the conduct of an individual, and an examination of that conduct contains that individual's personal information under the definition at section 2(1) of the *Act*.[7] I agree with this line of orders, and I find the information relating to the officers is their personal information within the meaning of section 2(1) of the *Act*.

[22] I also find records 1-4, 8-10, 13-16, and 17-19 contain personal information relating to other identifiable individuals, specifically a witness and the alleged victim. I find the records contain the alleged victim's name appearing with other personal information (paragraph (h)), information relating to their family or marital status (paragraph (b)), their personal views or opinions (paragraph (e)), the views or opinions of another individual about them (paragraph (g)), and other information about them in a personal capacity that would serve to identify them (the introductory wording of the definition of personal information). I find the records contain the witness' name along with their views or opinions.

[23] Therefore, I find the records contain personal information relating to the appellant, the two officers who were the subject of the appellant's complaint and two other identifiable individuals. I also find the personal information of the officers and two other individuals in the audio recordings and paper records is inextricably intertwined with the personal information of the appellant.

[24] In conclusion, I find the records contain personal information belonging to the appellant, two officers and two other identifiable individuals. As the records contain personal information belonging to the appellant, I will consider whether he is entitled to access to records 1-4, 8-10, 13-16, and 17-19 under Part III of the *Act*.

Issue B: Does the discretionary exemption at section 49(a), read with section 14(2)(a), (law enforcement report) apply to the information at issue?

[25] Section 47(1), found in Part III of the *Act*, gives individuals a general right of access to their own personal information held by an institution. Section 49 gives a number of exemptions from this right. Section 49(a) reads,

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[26] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to

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[7] See Orders M-757, P-165, P-448, P-1117, P-1180, PO-1912, PO-2525 and PO-3341.

grant requesters access to their personal information.[8]

[27] The OIPRD relies on section 49(a), in conjunction with section 14(2)(a), to withhold records 1-4, 8-10, 13-16, and 17-19. Section 14(2)(a) states:

> A head may refuse to disclose a record,
>
> > that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcement and regulating compliance with a law.

[28] The term *law enforcement* is defined in section 2(1) as,

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

[29] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[9]

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

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.[10]

[31] The word *report* means "a formal statement or account of the results of the collation and consideration of information." Generally, results would not include mere observations or recordings of fact.[11] The title of a document does not determine

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[8] Order M-352.
[9] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[10] Orders P-200 and P-324.
[11] Orders P-200, MO-1238 and MO-1337-I.

whether it is a report, although it may be relevant to the issue.[12]

[32] The OIPRD submits that records 1-4, 8-10, 13-16 and 17-19 are exempt under section 49(a), read with section 14(2)(a). The OIPRD submits that records 1-4 are *reports* as they represent a formal account or documentation of the OIPRD's interviews with the two officers. The OIPRD states these interviews were conducted for the purposes of collecting evidence in the investigation into a complaint made under Part V of the *Police Services Act*. The OIPRD states the summaries of the interviews prepared by the investigator reflect the results of the investigator's effort to collect evidence and information pertinent to the complaint.

[33] The OIPRD states that Record 8 is a decision letter it sent to the police confirming that it will be investigating the complaint and requesting information for the purposes of the investigation. The OIPRD says the record also includes copies of the complaint form. The OIPRD states that records 9 and 10 contain correspondence between the OIPRD and the police regarding the status of the investigation of the complaint and summarizes the investigative steps taken during the investigation. The OIPRD submit that records 9 and 10 reflect a compilation of the information obtained during the course of the OIPRD's investigation and the steps taken during that investigation.

[34] The OIPRD submits records 17-19 are *reports* within the meaning of section 14(2)(a) because they involve the OIPRD's response to the complaint made against an officer. The OIPRD states these records document the OIPRD's decision to refer the matter for the police's consideration and amount to a formal statement or account of the consideration of the information in the complaint.

[35] In conclusion, the OIPRD submits records 1-4, 8-10, 13-16, and 17-19 are *reports* as they represent a formal account or documentation of the OIPRD's response and investigation in the complaints. The OIPRD submits the reports were prepared in the course of law enforcement, inspections or investigations and the OIPRD is a *law enforcement agency*. Therefore, the OIPRD takes the position that the records are exempt under section 49(a), read with section 14(2)(a), of the *Act*.

[36] The appellant did not make submissions on the application of section 49(a), read with section 14(2)(a) to the records. Instead, the appellant made a number of submissions on the substance of the matters discussed in the investigative reports and summaries. The appellant also included a number of comments and questions regarding the incident, the investigation and his arrest. The appellant's concerns regarding the police's conduct and the investigation are beyond the scope of this appeal and I will not address them.

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[12] Order MO-1337-I.

[37] I have reviewed records 1-4, 8-10, 13-16, and 17-19 and find the majority of the records cannot be considered to be *law enforcement reports* for the purposes of section 14(2)(a). I find the Investigative Report contained in Record 16 is a *law enforcement report* for the purposes of section 14(2)(a)of the *Act*. The Investigative Report is a formal account of the results of the collation and consideration of information about the circumstances surrounding the incident, investigation and arrest of the appellant. The Investigative Report consists not merely of observations of fact, but also a formal, evaluative account of the OIPRD's investigation into the complaint. I am satisfied the Investigative Report contains facts, analysis and evaluative elements that demonstrate an exercise of judgment carried out by the OIPRD investigator.

[38] However, I am not satisfied the cover letter to Record 16 or records 1-4, 8-10, 13-15, and 17-19 are *law enforcement reports* for the purposes of section 14(2)(a). In Order PO-3868-I, the adjudicator found that of a 317-page document detailing the results of an Ontario Provincial Police investigation, the only portions that qualified as a *report* were pages 1-46. The adjudicator found the first 46 pages contained facts, analysis and evaluative elements that demonstrate an exercise of judgment carried out by the OPP investigative team. The adjudicator found, however, that the witness statements appended to the report did not form part of the *report* itself. In arriving at this conclusion, the adjudicator relied on previous orders of the IPC that found that appendices or attachments to a report, such as interview notes, will not necessarily form part of the report. For example, in Order PO-1959, the adjudicator found that records such as incident reports, supplementary reports and police officers' notes did not meet the definition of a *report* because they consisted of observations and recordings of fact rather than formal, evaluative accounts.

[39] I agree with these principles and, applying them to the records before me, I find the cover letter to Record 16 and records 1-4, 8-10, 13-15, and 17-19 are not *law enforcement reports* for the purposes of section 14(2)(a). Records 1-4 are the recording and summaries of the officers' statements. I find these records cannot be considered to be *law enforcement reports* because they do not contain a formal evaluative account. Rather, the two officers' statements are akin to witness statements regarding the investigation into the appellant's behaviour and the incident for which he was arrested. The OIPRD states these interviews were conducted to collect evidence in its investigation of the appellant's complaint. However, these statements do not contain the evaluative elements required for a record to be considered a *report*.

[40] In addition, I find records 8-10, 13-15, the cover letter of Record 16, and records 17-19 are not *law enforcement reports* for the purposes of section 14(2)(a). These records consist of letter and email correspondence between the OIPRD and the police regarding the complaint, the investigation into the complaint and the findings. I find none of these records can be considered to be formal, evaluative accounts of the investigation. Rather, these records are cover letters to attachments (such as the cover letter in records 16 and 18, and Record 17) and investigation status updates (such as records 9 and 10). The OIPRD states that Record 8 is a decision letter it sent to the police with a request for information. Based on my review, I find Record 8 does not

have the evaluative elements required for it to be considered a *report*. Furthermore, I note there are copies of the appellant's complaint, in both severed and unsevered form, attached to records 8 and 18. The appellant's complaint is not a *law enforcement report* for the purposes of section 14(2)(a). Finally, I find records 13 to 15 and 19 are not *reports* for the purposes of section 14(2)(a) because they are letters sent to the officers relating to their roles and responsibilities as respondent and witness officer in the complaint.

[41] Therefore, I find the majority of the records are not exempt under section 49(a), read with section 14(2)(a), and will consider whether they are exempt under section 49(b) below. However, I find the Investigative Report in Record 16 is exempt under section 49(a), read with section 14(2)(a), subject to my review of the OIPRD's exercise of discretion below.

Issue C: Does the discretionary exemption at section 49(b) (personal privacy) apply to the information at issue?

[42] I will now consider whether the cover letter to Record 16 or records 1-4, 8-10, 13-15, and 17-19 are exempt under section 49(b) of the *Act*. Under section 49(b), where a record contains personal information of both the requester (the appellant, in this case) and another individual, and disclosure of the information would be an *unjustified invasion* of another individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.[13]

[43] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. In addition, section 21(4) identifies situations that would not be an unjustified invasion of personal privacy.

[44] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.[14] 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.[15] The list of factors under section 21(2) is not

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[13] See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 49(b).
[14] Order MO-2954.
[15] Order P-239.

exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[16]

The parties' representations

[45] In its representations, the OIPRD submits the presumptions in sections 21(3)(a), (b), (d) and (f) apply to the personal information at issue. The OIPRD also takes the position that the factors weighing against disclosure in sections 21(2)(f) and (h)[17] apply. In his representations the appellant raised the application of section 21(2)(a) to the personal information at issue. Sections 21(2)(a) and (f) and 21(3)(a), (b), (d) and (f) read:

> (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,
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> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
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> > (f) the personal information is highly sensitive;
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> > (h) the personal information has been supplied by the individual to whom the information relates in confidence;
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> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
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> > (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
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> > (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
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> > (d) relates to employment or educational history;
> >
> > (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities; or creditworthiness;

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[16] Order P-99.

[17] The OIPRD referred to section 21(2)(h) only, but made representations on the sensitivity of the personal information at issue. Therefore, it appears the OIPRD meant to refer to both sections 21(2)(f) and (h) in its representations.

[46] The OIPRD states the records were created or received to respond to a complaint made under Part V of the *Police Services Act*. As such, there is a presumed invasion of personal privacy in their disclosure under section 21(3)(b) because the records were compiled and are identifiable as part of an investigation into a possible violation of law. The OIPRD states that previous orders of the IPC have held that a complaint investigation undertaken by police services in this context is a law enforcement investigation because the investigation can lead to charges against the subject officer and a hearing before a board of inquiry under the *Police Services Act*.[18] The OIPRD refers to Order PO-3341, in which the adjudicator found that the personal information found on a CD-ROM with recordings of interviews with various officers who were the subject of a complaint and a document was subject to the presumption in section 21(3)(b).

[47] In addition, the OIPRD submits the presumptions in sections 21(3)(a), (d) and (f) apply to the personal information in the records. The OIPRD submit the records include the health, employment, and marital information of the officers and other identifiable individuals.

[48] The OIPRD also claims the factor favouring non-disclosure of the records in section 21(2)(h) applies to the personal information at issue. The OIPRD submits the information was provided by the alleged victim, third parties and witnesses in confidence and with a reasonably held expectation it would be held in confidence under the *Police Services Act*. The OIPRD also submits it is reasonable to expect that the disclosure of the records could cause personal distress to those involved, implicitly raising the application of the factor favouring non-disclosure in section 21(2)(f).

[49] Finally, the OIPRD submits the personal information of the officers and other identifiable individuals is inextricably intertwined with the appellant's. The OIPRD submits the records do not contain discrete information relating to the appellant alone and are not easily severable.

[50] The appellant submits the factor favouring disclosure in section 21(2)(a) applies to the personal information at issue. The appellant submits the disclosure of the records will "prove the inappropriate activities of various government institutions" including the police and the OIPRD. The appellant submits the officer did not conduct their investigation properly. The appellant then reviewed the circumstances of the investigation and documents that were disclosed to him outside of this request. The appellant also makes a number of submissions regarding individuals involved in the incident and makes a number of claims unrelated to the disclosure of the records at issue. I reiterate that I cannot review the conduct of the OIPRD in investigating the appellant's complaint nor can I comment on the criminal investigation that resulted in his arrest. I can only consider whether the records before me should be disclosed to

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[18] The OIPRD refers to Orders P-1250, P-932, M-757, and MO-1288.

him.

[51] As stated above, I notified two individuals of the appeal. Both individuals responded to the notification. The first affected party agreed to the disclosure of some of their personal information, such as their name and some information regarding their involvement with the complaint and investigation. The second affected party did not consent to the disclosure of any information relating to them. The second affected party made a number of submissions on the impact disclosure of their personal information would have on them.

Analysis and findings

[52] I have reviewed the cover letter to Record 16 or records 1-4, 8-10, 13-15, and 17-19 and find the majority of the information contained in these records is exempt under section 49(b) of the *Act*.

[53] I will first address the section 21(3)(b) presumption. Even if no proceedings were commenced against any individuals, the presumption may still apply. Section 21(3)(b) only requires that there be an investigation into a possible violation of law.[19] In this case, the appellant filed a complaint under Part V of the *Police Services Act* against two officers. The OIPRD created or compiled the records at issue in response to that complaint. As stated by the OIPRD, previous orders of the IPC have held that a public complaint investigation is a law enforcement investigation which can lead to charges against the subject officers.[20] In Order PO-3341, the adjudicator found the presumption in section 21(3)(b) applied to audio recordings of interviews conducted by the OIPRD with officers who were the subject of a complaint under the *Police Services Act* as well as a paper record relating to the complaint. The adjudicator found that,

> … the public complaint investigation at issue in this appeal is an investigation that could lead to a penalty or sanction under part V of the *PSA*. I further find that the remaining personal information in the records was compiled and is identifiable as part of that investigation into a possible violation of law.

I agree with and adopt these findings for the purposes of my analysis. I accept the public complaint investigation at issue is an investigation that could lead to a penalty or sanction under the *Police Services Act*. I also find the personal information at issue was compiled and is identifiable as part of the OIPRD's investigation in response to the complaint. Given these circumstances, I find the personal information in the records is subject to the presumption at section 21(3)(b).

[54] The police raised the application of the presumptions in sections 21(3)(a)

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[19] Orders P-242 and MO-2235.
[20] For example, Order M-757, dealing with the municipal equivalent of section 21(3)(b).

(medical or psychological history), (d) (employment and educational history), and (f) (individual's finances) of the *Act* to the personal information at issue. I find these presumptions apply to discrete portions of the records, such as the brief descriptions of the officers' employment histories and one of the affected parties' financial information.

[55] In addition, I find the factor favouring non-disclosure in section 21(2)(f) applies to the personal information at issue. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[21] The records were compiled as part of an investigation into an incident that resulted in the appellant's arrest and then as part of an investigation into a complaint the appellant filed regarding two officers' conduct. One of the affected parties made a number of submissions regarding how distressed they would be if any information relating to them was disclosed to the appellant. Based on these circumstances and upon review of the records and the parties' representations, I find the personal information is inherently highly sensitive and, therefore, the factor at section 21(2)(f) weighs in favour of non-disclosure.

[56] In addition, I find the factor at section 21(2)(h) (supplied in confidence) applies, weighing against the disclosure of the personal information in the records. Based on the contents of the records and the circumstances surrounding the investigation into the complaint, I find it is reasonable to expect that the personal information at issue was communicated to the police and the OIPRD in confidence.

[57] The appellant raised the factor in favour of disclosure in section 21(2)(a), which considers whether the disclosure is desirable for the purpose of subjecting the activities of an institution, such as the police, to public scrutiny. However, the appellant's submissions on this issue make it clear that his motives in seeking access to the records are private in nature to satisfy himself regarding the conduct of the OIPRD in investigating the complaint he filed. Throughout his representations, the appellant makes a number of claims regarding other individuals involved in the incident and the officers, demonstrating the private nature of his interest in the records. Based on my review of the records and the surrounding circumstances, I find that section 21(2)(a) is not a relevant consideration and does not apply to the personal information in the records.

[58] In conclusion, I find that the presumption in section 21(3)(b) and the factors weighing against disclosure in sections 21(2)(f) and (h) apply to the personal information at issue. From my review of the records, the parties' representations and the surrounding circumstances, I find that none of the factors weighing in favour of disclosure, whether listed or unlisted, apply.

[59] To be more specific, I find records 1 to 4 of the records are exempt under

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[21] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

section 49(b) in full. These records are the audio recordings and summaries of the interviews the OIPRD conducted with the responding officer and the witness officer during its investigation. The entirety of these records contain the personal information of these officers and other identifiable individuals. Records 1 to 4 also contain the personal information of the appellant; however, I find his personal information is inextricably intertwined with the personal information of other identifiable individuals from which it cannot reasonably be severed. Therefore, I find records 1 to 4 are exempt from disclosure under section 49(b), subject to my review of the OIPRD's exercise of discretion below.

[60] Similarly, I find records 8 to 10, 13 to 15, the cover letter in Record 16, and records 17 to 19 are exempt under section 49(b) in full. These records relate to the OIPRD's investigation into the appellant's complaint and contain correspondence between the OIPRD, the police and the officers regarding the complaint, the process of the investigation and the outcome of the investigation. Based on my review, the disclosure of these records would result in an unjustified invasion of the subject officers' personal privacy. I acknowledge these records contain the appellant's personal information, but it is inextricably intertwined with the personal information of other individuals and cannot be reasonably severed. Therefore, I find these records are also exempt under section 49(b) of the *Act*.

Absurd Result

[61] The absurd result principle holds that in some instances where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 49(b), because to withhold it would be absurd and inconsistent with the purpose of this exemption.[22] The absurd result has been applied where, for example, the requester sought access to his or her own witness statement.[23] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[24]

[62] None of the parties addressed the application of the absurd result principle to the records. The appellant makes a number of claims regarding the information he is aware of, but this does not relate to the contents of the records.

[63] Nonetheless, I reviewed the records and find the absurd result principle applies to the complaint forms completed and filed by the appellant that are part of Record 8 in both clean and severed form as well as Record 18. In my view, it would be absurd to withhold the appellant's own complaint form because he populated the form and the

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[22] Orders M-444 and MO-1323.
[23] Orders M-444 and M-451.
[24] Orders M-757, MO-1323 and MO-1378.

information is clearly within his knowledge.

[64] I find the absurd result principle does not apply to the remaining personal information at issue. There is no evidence before me to establish the appellant is clearly aware of the contents of the records.

[65] In conclusion, I find that records 8 to 10, 13 to 15, the cover letter in record 16, and Records 17 to 19 are exempt under section 49(b), with the exception of the complaint forms filed by the appellant in records 8 and 18, and subject to my review of the OIPRD's exercise of discretion below. I will order the OIPRD to disclose the copies of the complaint filed by the appellant to him.

Issue D: Did the OIPRD exercise its discretion under sections 49(a) or (b)? If so, should this office uphold the exercise of discretion?

[66] The exemptions in sections 49(a) and (b) of the *Act* are discretionary and permit an institution to disclose the information subject to these exemptions despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. The IPC may find 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 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.[25] However, the IPC may not substitute its own discretion for that of the institution.[26]

[67] The OIPRD submits that it exercised its discretion in good faith, taking into account relevant considerations and did not take into account irrelevant considerations. The OIPRD submits it did not act in bad faith or for an improper purpose. It also submits it considered the purposes of the *Act*, the underlying principle of an individual's right of access to their own personal information, and the purposes of the law enforcement and personal privacy exemptions. The OIPRD states it also considered whether there was a compelling public interest in the disclosure of the records but decided there was not.

[68] The appellant did not address whether the OIPRD exercised its discretion directly. However, the appellant made a number of submissions regarding the conduct of the OIPRD and the officers who were the subject of his complaint. These submissions, suggest the appellant does not believe the OIPRD exercised its discretion properly in denying him access to the responsive records.

[69] I reviewed the parties' representations and the records subject to the OIPRD's exemption claims. Based on this review, I am satisfied the OIPRD considered relevant

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[25] Order MO-1573.
[26] Section 43(2) of the *Act*.

factors in exercising its discretion and did not take into account irrelevant factors. Specifically, I am satisfied that in exercising its discretion under sections 49(a) and (b), the OIPRD considered the sensitivity of the personal information at issue, the importance of the law enforcement exemption, and balanced the appellant's right of access to his personal information with the privacy interests of the officers and other identifiable individuals. There is no evidence before me to suggest the OIPRD took into account irrelevant considerations or that it exercised its discretion in bad faith or for an improper purpose.

[70] Accordingly, I am satisfied the OIPRD did not err in exercising its discretion to withhold the information I found to be exempt under sections 49(a), read with section 14(2)(a), and 49(b). I will not interfere with the OIPRD's exercise of discretion on appeal.

Issue E: Are records 5 to 7, 11, 12, and 20 in the custody or under the control of the OIPRD under section 10(1)?

[71] The OIPRD submits it does not have control over records 5 to 7, 11, 12, and 20. The OIPRD states that records 5, 6, 7, 11, and 12 were created by the police in response to a criminal investigation against the appellant. The OIPRD states that the police issued the decision in Record 20 to the OIPRD pursuant to the police's mandate under the *Police Services Act*.

[72] Under section 10(1), the *Act* only applies to records in the custody or under the control of an institution. Section 10(1) reads, in part,

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless…

A record will be subject to the *Act* if it is in the custody *or* under the control of an institution; it need not be both.[27] There is no dispute that the OIPRD has possession of the records at issue. The question, however, is whether this is *bare possession* only or whether the OIPRD has custody or control of the records for the purposes of the *Act*.

[73] The courts and this office have applied a broad and liberal approach to the custody or control question.[28] Based on this approach, the IPC has developed a list of factors to consider in determining whether a record is in the custody or under the control of an institution.[29] These factors include: who created the record, the intended

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[27] Order P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, 2011 ONSC 172 (Div. Ct.).
[28] *Ontario (Criminal Code Review Board) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 4072; *Canada Post Corp. v. Canada (Minister of Public Works)* (1995), 30 Admin. L.R. (2d) 242 (Fed. C.A.); and Order MO-1251.
[29] Orders 120, MO-1251, PO-2306 and PO-2683.

use of the record, whether the record relates to a core function of the institution, whether the institution has physical possession of the record, the practice of the institution in relation to the possession or control of records of this nature, and the institution's authority to use and/or dispose of the record.[30] Mere possession of a record that does not relate to the institution's mandate and functions may not amount to custody or control for the purpose of section 10(1).

[74] A finding that a record is in the custody or under the control of an institution does not necessarily mean that a requester will be provided access to it.[31] A record within an institution's custody or control may be excluded from the application of the *Act* under one of the provisions in section 65, or may be subject to a mandatory or discretionary exemption (found at section 12 through 22 and section 49).

The parties' representations

[75] Referring to the factors outlined in Order P-120, the OIPRD submits that while physical possession is the best evidence of custody, there are cases where an institution does not have custody or control of a record in its actual possession. In this case, the OIPRD submits it does not have custody or control of records 5, 6, 7, 11, and 12 because

- The records were not created by the OIPRD;
- The records were created by the police during a criminal investigation and intended to be used in criminal proceedings;
- The police were legislatively required to provide the records to the OIPRD; and
- The OIPRD does not have the authority to regulate the use of the records or the authority to dispose of the records.

The OIPRD submits it does not have custody or control of Record 20 because

- The record was not created by the OIPRD;
- The record was created by the police in the course of satisfying their legislative mandate and exercising their discretion in their decision-making powers with respect to a complaint made against the witness officer;
- The board was legislatively required to provide the record to the OIPRD; and

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[30] Orders P-120 and P-239 and *Ministry of the Attorney General v. Information and Privacy Commissioner*, cited above.
[31] Order PO-2836.

- The OIPRD does not have the authority to regulate the use of the record or the authority to dispose of the record.

[76] In light of these facts, the OIPRD submits it does not have control over records 5, 6, 7, 11, 12, and 20.

[77] The appellant did not address whether these records are in the custody or under the control of the OIPRD in his representations.

Analysis and findings

[78] Records 5 and 6 are notebook entries of two officers. Record 7 is the Arrest Booking Report created by the police when the appellant was arrested. Records 11 and 12 are the disclosure packages the police sent to the OIPRD investigator during the OIPRD's investigation into the appellant's complaint. Record 20 is a decision letter the police sent to the OIPRD regarding the complaint the appellant filed against the witness officer.

[79] Based on my review of these records and the surrounding circumstances, I find they are in the custody or under the control of the OIPRD. In this case, the OIPRD appears to argue these are records of the Shelburne Police Services Board or the Ontario Provincial Police and that on that basis, the OIPRD does not have custody or control of them. However, it is possible for more than one institution under the *Act* to have custody or control of the same record. Therefore, in this case, both the police and the OIPRD could have custody and control over the records. I find support for this principle in Order MO-3988-I, where the adjudicator considered the Toronto Police Services Board's (TPS) claim that an audio recording of a 911 call that was dispatched to the ambulance services was not in its custody or control because the police transferred the caller to the City of Toronto's (the city) ambulance services. In its representations, TPS stated they are the host agency (public safety answering point or PSAP) for the city's 911 call system and receive all 911 calls. TPS explained that the call-taker was responsible for dispatching the first responders to the scene. In this case, the call was transferred to ambulance services, but the police stayed on the line to monitor the call in case police or other agencies were required. Upon review of the parties' representations and the circumstances surrounding the record, the adjudicator found,

> It is clear to me from this explanation that the 911 dispatch system is a matter within the police's mandate and functions, irrespective of the nature of any particular call. As the municipal public safety answering point for the city, the police are responsible for dispatching the appropriate first responders and for staying on the line to coordinate all necessary responses. While the police's primary function may be law enforcement, as they submit, the PSAP function is still clearly a matter within their mandate and functions. It is my view, further, that as the PSAP, the police are responsible for the care and protection of any 911

> call tapes in their possession, and I reject their submission that their possession of the record at issue amounts to bare possession only.

The adjudicator concluded in Order MO-3988-I that the TPS had custody and control over the 911 call recording.

[80] I agree with and adopt the principles explained in Order MO-3998-I for the purposes of this analysis and for the following reasons, I find that records 5, 6, 7, 11, 12, and 20 are in the custody or under the control of the OIPRD.

[81] The OIPRD states it is responsible for receiving, managing, investigating and overseeing all complaints made in relation to allegations of police misconduct involving municipal, regional and provincial police in Ontario. Under section 59 of the *Police Services Act*, the OIPRD must review every complaint and ensure it is dealt with in compliance with the *Police Services Act*. The OIPRD will review every complaint and make a determination as to whether the complaint should proceed to an investigation under sections 59 and 60 of the *Police Services Act*. The OIPRD explains that complaints are either screened out, in which case no investigation is undertaken, or screened in, in which case an investigation ensues. The Director of the OIPRD decides whether the complaint will be investigated by the OIPRD, the police service in question, or by another service. However, even if the Director decides to refer the investigation to the police service in question or another service, the OIPRD's oversight continues.

[82] At the conclusion of an investigation, the investigating service (the police or the OIPRD) will prepare an investigative report and a determination will be made as to whether there are reasonable grounds to believe that misconduct occurred.

[83] The appellant filed a complaint with the OIPRD against two officers, who are identified as the responding officer and the witness officer. As prescribed in under the *Police Services Act*, the OIPRD states it referred the complaint about the witness officer to the police. The police reviewed the complaint and advised the OIPRD that no investigation was required. This complaint was closed.

[84] The OIPRD retained the complaint regarding the respondent officer and conducted an investigation where it interviewed the respondent officer and the witness officer. The OIPRD determined the complaint against the respondent officer was unsubstantiated.

[85] Given these circumstances, I find the OIPRD has custody or control over records 5 to 7, 11, 12, and 20. While the OIPRD did not create these records, investigating complaints against police officers and collecting evidence as part of that investigation is clearly within the OIPRD's mandate. As such, it is clear the OIPRD has more than bare possession of these records. In arriving at this finding, I refer to *City of Ottawa v.*

Ontario,[32] in which the Divisional Court considered whether an employee's personal correspondence sent via the city's email resources was in the custody or control of the city. In that case, the Divisional Court found the personal emails were not in the custody or control of the city because they were not related to the city's mandate or business even though the city had possession of them.

[86] In this case, it is clear the records relate to the OIPRD's mandate and function of investigating public complaints made in relation to allegations of police misconduct. All of the records came into the OIPRD's possession in connection with that mandate. The OIPRD collected records 5 and 6 (the officers' notes) and Record 7 (the Arrest Booking Report) as part of its investigation into the respondent officer's conduct. Records 11 and 12 are the disclosure packages the police sent to the OIPRD investigator during the OIPRD's investigation. It is clear these records contain information that would assist in the OIPRD's investigation and the OIPRD came into possession of them as part of its legislated mandate.

[87] Record 20 is a decision letter the police sent to the OIPRD relating to the investigation into the part of the complaint relating to the witness officer. In this case, the OIPRD referred the matter to the police for a determination of whether the conduct of the witness officer may constitute misconduct and whether the OIPRD should proceed with an investigation under pursuant to the *Police Services Act*. However, as the OIPRD stated in its representations, the OIPRD's oversight continued even where another agency conducted the investigation. Therefore, even though the police created Record 20, it clearly relates to the OIPRD's mandate and functions.

[88] Based on my review of the records and the manner in which the OIPRD came into possession of them, it is clear the OIPRD has more than *bare possession* of these records. The records clearly relate to the OIPRD's mandate and legislated function. In Order PO-4176, the adjudicator considered whether the institution had more than *bare possession* of records. She found that "there must be some right to deal with the records and some responsibility for their care and protection"[33] for an institution to have custody or control of them. I agree with this principle and apply it to the circumstances before me. It is clear the OIPRD has a right to collect, use and deal with the records as part of its mandate and function.

[89] Therefore, I find the OIPRD has custody or control over records 5 to 7, 11, 12, and 20 and is required to issue an access decision to the appellant for these records.

Transfer of the request

[90] In its representations, the OIPRD refers to section 25 of the *Act*, which governs

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[32] 2010 ONSC 6835.
[33] Order PO-4176 at para 136.

an institution's transferring an access request to an institution with a greater interest in the record. Section 25 of the *Act* reads, in part,

> (2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.
>
> (3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,
>
> (a) the record was originally produced in or for the other institution; or
>
> (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

[91] The OIPRD takes the position that the police have a greater interest in records 5 to 7, 11, 12, and 20. In its representations, the OIPRD directs the appellant to submit a request for these records to the police. However, the OIPRD did not formally transfer the appellant's access request to the police – not within the fifteen-day window prescribed by section 25(2) and not since that time. Rather, the OIPRD directed and advised the appellant to submit a request for these records to the police because, in the OIPRD's view, the police had a greater interest in the records. If the OIPRD had transferred the request to the police in a timely manner and had the appellant objected to the transfer, the issue before me would be whether the police had a *greater interest* in the records within the meaning of section 25(3). However, because the OIPRD did not transfer the request, I do not need to determine whether the police have the greater interest in the records.[34]

[92] I have found the OIPRD has custody of records 5 to 7, 11, 12, and 20 and did not transfer the request for these records to the police. It is not open to the OIPRD to now refuse access on the basis that the police have a greater interest in these records. The adjudicator in Order MO-2385 noted that, where a body other than the institution receiving the request has a greater interest in the record, the record is still considered to be a responsive record in the hands of the institution that received the request. I agree. Therefore, the OIPRD cannot here refuse to provide access to the records on the basis that they are of the view that the police have a greater interest in it.

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[34] See Order MO-3988-I.

[93] In any case, it is too late for the OIPRD to transfer the request to the police now. In Order P-1498, the adjudicator found that the legislature must have intended that the fifteen-day period be strictly applied in some circumstances and not others, depending on the circumstances of a particular case. The OIPRD argues I should not apply the fifteen-day period strictly in this case. However, one of the circumstances to consider is any prejudice to the parties. In my view, even if it is appropriate to extend the fifteen-day period in some cases, this is not one of those cases. Given the passage of time, there would be significant prejudice to the appellant.

[94] The OIPRD refers to a related appeal before the police involving the same matter and records, Appeal MA19-00719, and submits that the matter of access to records 5 to 7, 11, 12, and 20 should be redirected to the police to determine access to avoid inconsistent findings. However, Appeal MA19-00719 was resolved at mediation. As such, there is no risk of inconsistent findings regarding access to these records. As I stated above, the OIPRD cannot now claim that the records should be transferred to the police and is required to respond to the appellant's request by issuing an access decision.

[95] In conclusion, I find records 5 to 7, 11, 12, and 20 are in the custody or under the control of the OIPRD and I will order it to issue a decision to the appellant regarding access to them.

Issue F: Did the OIPRD conduct a reasonable search for records?

[96] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24(1).[35] If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[97] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records.[36] To be responsive, a record must be *reasonably related* to the request.[37]

[98] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[38] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate it made a reasonable effort to

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[35] Orders P-85, P-221 and PO-1954-I.
[36] Orders P-624 and PO-2559.
[37] Order PO-2554.
[38] Orders M-909, PO-2469 and PO-2592.

identify and locate all of the responsive records within its custody or control.[39]

[99] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[40]

[100] The OIPRD submits it conducted a reasonable search for responsive records. The OIPRD submits the appellant's request was specific and he clearly identified that he sought access to records relating to his criminal charges. The OIRPD conducted its search according to the parameters of the appellant's request and submits there does not appear to be any outstanding records.

[101] The appellant did not address the OIPRD's search for records responsive to his request in his representations.

[102] Based on my review of the parties' representations, I find the OIPRD conducted a reasonable search for responsive records. As stated above, an institution is not required to prove with absolute certainty that additional responsive records do not exist. Rather, institutions are required to demonstrate they made a reasonable effort to locate responsive records. Upon review of the access request, the records and the OIPRD's submissions, I am satisfied the OIPRD conducted a reasonable search. Furthermore, I find that the appellant did not provide me with any evidence to conclude there is a reasonable basis to believe that additional responsive records ought to exist. Therefore, I uphold the OIPRD's search as reasonable.

ORDER:

1. I order the OIPRD to disclose the complaint forms in records 8 and 18 to the appellant by October 4, 2021 but not before September 28, 2021.

2. I uphold the OIPRD's decision to withhold records 1 to 4, 8 (with the exception of the complaint forms), 9, 10, 13 to 16, 17, 18 (with the exception of the complaint form), and 19 from disclosure under section 49(a), read with section 14(2)(a), or section 49(b).

3. I find records 5 to 7, 11, 12, and 20 are in the custody and under the control of the OIPRD and order it to issue an access decision to the appellant regarding these records, treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*.

4. I uphold the OIPRD search for responsive records as reasonable.

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[39] Order MO-2185.
[40] Order MO-2246.

Original Signed by: August 27, 2021

Justine Wai
Adjudicator