Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER PO-4205-I

Appeal PA19-00248

Ministry of Northern Development, Mines, Natural Resources and Forestry

November 9, 2021

Summary: This interim order deals with whether a ministry wildfire investigation report and its attachments are exempt from disclosure under section 14(2)(a) (law enforcement report) of the *Freedom of Information and Protection of Privacy Act* (the *Act*). In this order, the adjudicator finds that the report is exempt from disclosure under section 14(2)(a) but that the attachments are not exempt. In addition, she does not uphold the ministry's exercise of discretion in withholding the body of the report. The ministry is ordered to disclose the attachments to the appellant and to re-exercise its discretion with respect to the body of the report.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 14(2)(a) and 14(4).

Orders and Investigation Reports Considered: Orders PO-1959, PO-1988, PO-3868-I and PO-3925-I.

OVERVIEW:

[1] This interim order disposes of most of the issues raised as a result of an appeal of an access decision made by the former Ministry of Natural Resources and Forestry[1] (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[1] Now the Ministry of Northern Development, Mines, Natural Resources and Forestry.

The access request was for the investigation report relating to a wildfire that occurred in the Parry Sound area. The fire, known as Parry Sound 33 (PS 33), was significant and garnered public attention. The requester was the owner of a property destroyed by PS 33.

[2] The ministry located a record responsive to the request, namely a Wildfire Investigation Report and its attachments, and notified four third parties of the request. In the end, the ministry issued a decision to the requester denying access to the record in full, claiming the application of the discretionary exemption in section 14(2)(a) (law enforcement report) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision to the office of the Information and Privacy Commissioner/Ontario (the IPC).

[4] During the mediation of the appeal, the ministry issued a revised decision to the appellant disclosing six pages of the attachments to the record as follows:

- an industrial fire intensity code report,
- export weather data,
- lightning data,
- a weather observation report, and
- a radio log.

[5] As a result, the above-referenced pages are no longer at issue. The appellant subsequently advised the mediator that she wished to proceed to adjudication to try to obtain access to the remaining portions of the record.

[6] The file was then transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the *Act*. The adjudicator assigned to the appeal sought and received representations from the ministry and the appellant. Portions of the ministry's representations were withheld as they met the IPC's confidentiality criteria.[2] The file was then transferred to me to continue the adjudication of the appeal.

[7] In its reply representations, the ministry referred to a separate access request that had been made for records that contributed to the record at issue in this appeal. I asked IPC staff to obtain more information about this access request. In response, the ministry advised that the access request it was referring to was not made by the

[2] Set out in Practice Direction 7 of the IPC's Code of Procedure.

appellant. However, the ministry also advised that following the appellant's submission of her sur-reply representations, she made a second access request to the ministry for information or records that contributed to the report (the record at issue in this appeal). In response, the ministry located 1,857 pages of records and disclosed them, in part, to the appellant. I then asked both the ministry and the appellant to advise me if any of the records that were disclosed as a result of her second access request were the same as the record at issue in this appeal. In response, the ministry advised the IPC that some of the records that it disclosed to the appellant as a result of her second access request are the same as some of the attachments to the record in this appeal, and were disclosed to the appellant as follows:

- GOA investigation map,
- Grid search notes,
- Photographs,
- GOA overview map, and
- Grid search diagram.

[8] The appellant advised that her second access request was for any records that contributed to the making of the report. She is of the view that the records described above may not be the same as the records forming the subject matter of this access request.

[9] Based on my review of the ministry's response to my question regarding the records disclosed to the appellant as a result of her second access request, I am satisfied that the above-referenced records are the same as the attachments in the record at issue in this appeal. As a result, I have removed these attachments from the scope of this appeal and they are no longer at issue.

[10] For the reasons that follow, I find that the body of the wildfire report is exempt from disclosure under the discretionary section 14(2)(a) exemption, while the attachments are not. I also find that the ministry did not properly exercise its discretion in deciding to withhold the body of the report. The ministry is ordered to disclose the attachments to the appellant as set out in Order provision 1, and to re-exercise its discretion with respect to the body of the report.

RECORD:

[11] The information remaining at issue consists of a Wildfire Investigation Report and two attachments. The body of the report contains a 20-page narrative portion and a 14-page investigation summary. The first attachment is a one-page photograph with notations made on it, referred to as an SAO diagram. The second attachment is a one-

page diagram with notations (symbols) also referred to as an SAO diagram.

ISSUES:

A. Does the discretionary exemption at section 14(2)(a) apply to the record?

B. Did the ministry exercise its discretion under section 14(2)(a)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Does the discretionary exemption at section 14(2)(a) apply to the record?

[12] Section 14(2) states, in part:

> (2) A head may refuse to disclose a record,
>
> > (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

[13] The term "law enforcement" is used in several parts of section 14, including section 14(2), and is defined in section 2(1) as follows:

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

[14] The term "law enforcement" has been found to include situations such as Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[3]

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

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[3] Order MO-1337-I.

context.[4]

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

1. the record must be a report,

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 that has the function of enforcing and regulating compliance with a law.[5]

[17] 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.[6]

[18] The title of a document does not determine whether it is a report, although it may be relevant to the issue.[7]

[19] There are two exceptions to section 14(2)(a), which are sections 14(4) and (5).

[20] Section 14(4) states:

> Despite section 14(2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

[21] The section 14(4) exception is designed to ensure public scrutiny of material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.[8]

[22] Generally, "complaint driven" insections are not "routine inspections".[9] The existence of a discretion to inspect or not to inspect is a factor in deciding whether an

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[4] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[5] Orders 200 and P-324.
[6] Orders P-200, MO-1238 and MO-1337-I.
[7] Order MO-1337-I.
[8] Order PO-1988.
[9] Orders P-136 and PO-1988.

inspection is "routine".[10]

[23] Section 14(5) states:

> Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Representations

[24] The ministry submits that the purpose of the exemption in section 14(2)(a) is to maintain the integrity of investigations, maintain public confidence in investigations and to further and protect public assistance in the investigative process. For example, the ministry argues, investigations may depend on assistance from individuals who do not wish to be identified. As well, it is important for investigators to be able to give advice freely and make findings or recommendations in reports without fear of reprisals or public criticism.

[25] In this case, the ministry submits that the record is a wildfire investigation report prepared by staff of the ministry employed by the Enforcement Branch and the Aviation, Forest Fire and Emergency Services Branch, following an investigation into the cause(s) of a fire that took place known as PS 33. One main purpose of the investigation, the ministry submits, was to determine whether or not charges should be laid arising from the start of PS 33 under the offence provisions in the *Forest Fires Prevention Act* (the *FFPA*). A conviction for an offence under the *FPPA* can result in a fine of up to $25,000 or three months imprisonment (or both) for an individual and a fine up to $500,000 for a corporation.

[26] Turning to the first part of the three-part test in section 14(2)(a), the ministry argues that this part of the test is met because the wildfire investigation report sets out a formal account of the investigators' findings in a manner that includes collating and considering the information and factors that were gathered, and then evaluating them in order to reach a conclusion. The ministry goes on to submit that the record is the final and formal report prepared by ministry staff into their investigation of the cause(s) of PS 33. In describing the record, the ministry states:

> It describes the processes employed in the investigation, summarizes key evidence, and sets out the analyses and expectations which led staff to their conclusion. In other words, the Report identifies the evidence and factors viewed by staff as determinative, and sets out their deliberative

[10] Orders P-480, P-1120 and PO-1988.

> processes, including the elimination of various potential causes of the fire. The record does not merely list the observations of Ministry staff and the statements made to them.

[27] The ministry also submits that parts two and three of the three-part test have been met because the record was prepared as part of an investigation into a possible violation of the *FFPA* and that the ministry in this regard is a law enforcement institution that has the function of enforcing a regulating compliance with a law, namely the *FFPA*.

[28] The ministry also argues that the fire that was the subject matter of the record was high profile and there were property and other losses experienced by members of the public. As a result, there had been a considerable amount of interest in the investigation. The ministry goes on to argue that it is therefore particularly important that ministry staff have the necessary "room" to set out their deliberations and evaluative accounts in a report without the possibility of being affected by public criticism.[11]

[29] Regarding the exceptions to section 14(2)(a), the ministry submits that neither applies. In particular, it argues that section 14(4) does not apply because the record was not the result of a "routine" inspection, but rather the result of a large fire culminating in an extensive and complex investigation. With respect to the second exception in section 14(5), the ministry submits that it does not apply because the record does not address the topic of success in the ministry's law enforcement program or activities and provides no analysis in this regard, statistical or otherwise.

[30] The appellant advises that she was the owner of a property destroyed by PS 33, which had a devastating impact on her, her family, her neighbours, her community, the wilderness forest, and the native flora and fauna.

[31] The appellant submits that a news release stated that the fire began at the location of a disabled vehicle, and there was no provincial offence committed under the *FFPA*. She also advises that contractors were building a wind farm in the area and that her community has doubts that the contractors followed proper industrial protocol. For example, the appellant submits that photographs and videos show smoke emanating from the construction site during the lengthy dry period prior to the fire.

[32] The appellant submits that the ministry has provided "merely possible or speculative" reasons for withholding the record under section 14(2)(a), which are generalizations, and do not qualify as detailed and convincing evidence. The appellant also argues that the public's right to know the contents of the record outweighs the ministry's need to protect its findings and recommendations.

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[11] See, for example, Order PO-3469.

[33] Regarding the three-part test, the appellant submits that the ministry has provided no evidence to support its claim that the record qualifies as a report.

[34] The appellant also submits that the exceptions in sections 14(4) and 14(5) apply. With respect to section 14(4), the appellant submits that routine inspections include regularly checking for fire-related matters and that section 3 of the *FFPA* gives the ministry and its appointed officers the responsibility of investigating all forest fires, whether large or small. As a result, the appellant argues, it is routine for the ministry to inspect forest fires, no matter their level of complexity and the investigation into PS 33 was a routine matter. Concerning the exception in section 14(5), the appellant submits that withholding the record has created a backlash effect in the community and the public's conclusions are not always flattering about the success of the ministry's law enforcement program or activities.

[35] In reply, the ministry submits that in order for section 14(2)(a) to apply, it is not necessary to demonstrate that harm will result from disclosure of the record. Instead, it argues, what must be demonstrated is that the record is a "report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law." With regard to the appellant's argument that the exception in section 14(4) applies, the ministry submits that the record was not the result of a routine inspection and that the investigation was what is considered to be a "Class 4 Investigation," which is the highest level investigation and involves more and higher ranking staff than other classes of investigations.

[36] In sur-reply, the appellant submits that although the ministry's claiming of section 14(2)(a) was legally and/or technically correct, the exemption was used as a convenient device for exempting the report from disclosure, and that any underlying reasons for denying access to it are apparently undisclosed and open to conjecture.

Analysis and findings

[37] I have reviewed the record at issue, which consists of a 20-page narrative report, a 14-page investigation summary and two attachments. I have also considered the representations of the parties. I find that the narrative report and the investigation summary clearly fall within the scope of the section 14(2)(a) exemption and qualify, in combination, as a law enforcement report within the meaning of section 14(2)(a), subject to my findings below under Issue B regarding the ministry's exercise of discretion. Conversely, I find that the two attachments do not qualify as being a law enforcement report for the purposes of section 14(2)(a). For ease of reference, I refer to the 20-page narrative portion and the 14-page investigation summary as the "report" or the "body of the report." I refer to the attachments as the "attachments."

[38] First, I am satisfied that the report is a "report" within the meaning of section 14(2)(a). The report is an account of an investigation of a wildfire conducted by the

ministry. It is "a formal statement or account of the results of the collation and consideration of information." It does not merely recount statements of fact, but contains an evaluation and conclusion based on the ministry's investigation.[12] I acknowledge that some of the record consists of attachments and I consider this separately below.

[39] Next, I find that the ministry prepared the report in the course of law enforcement, inspections or investigations. The report was prepared in the course of the ministry's investigation of the fire. Finally, I accept that the ministry is an agency that has the function of enforcing and regulating compliance with a law, namely the *FFPA*. Although the ministry has many other functions, the report in question was prepared by the Enforcement Branch and the Aviation, Forest Fire and Emergency Services Branch, following an investigation into the cause(s) of a fire that took place known as Parry Sound 33 (PS 33). From my review of the report, I accept the ministry's submission that one main purpose of the investigation was to determine whether or not charges should be laid under the offence provisions in the *FFPA*.

[40] As previously stated, the report consists of a narrative portion as well as an investigation summary. Upon my review of the report, I find that both sections of this report, including the investigation summary, contain a formal, evaluative account and analysis of the facts of the investigation conducted by the ministry, and not merely observations of fact, and that the investigation summary forms an integral part of the report.

[41] I further find that the exception in section 14(4) does not apply because the report was prepared at the conclusion of an investigation. It does not relate to a routine inspection and was not prepared in the course of a routine inspection.

[42] In Order PO-1988 Senior Adjudicator Sherry Liang discussed the purpose of the section 14(4) exception, stating:

> The inclusion of section 14(4) in the *Act* followed from a recommendation in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report). The drafters of that Report recommended that information gathered for regulatory enforcement purposes be treated the same as information gathered for criminal law enforcement, for the purposes of the law enforcement exemption. However, they were concerned that such an exemption not be too broadly construed:

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[12] Orders 200 and P-324.

> …if the notion of material relating to civil and regulatory enforcement is too broadly construed, much that should be made accessible under a freedom of information law would be brought within the exemption. In particular, it would be inappropriate to withhold routinely from public scrutiny all material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.
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> Under the U.S. act, it has been accepted that routine material of this kind not gathered for the purpose of investigating a particular offence is not exempt from the general rule of access merely because it relates to the enforcement of law.

Consistent with the above discussion, orders interpreting section 14(4) of the *Act* have found that "complaint driven" inspections are not "routine inspections" (see, for instance, Order 136). Other orders have concluded that the existence of a discretion to inspect or not to inspect is an important factor in deciding whether an inspection is "routine" (see, for instance, Order P-480 and P-1120).

I agree that the existence of a discretion to inspect is a factor to be considered in deciding whether an inspection is "routine" for the purpose of section 14(4) of the *Act*. Since discretion, however, takes many forms and can be of varying levels of significance in the whole scheme of regulatory enforcement, I find that it is not always a determining factor. As was noted in Order 136 by former Commissioner Sidney B. Linden, "it is the nature of the inspection itself" which is important. I turn therefore to consider the nature of the inspections which are recorded in the area inspection reports.

[43] I find that the report resulted from the investigation that originated with PS 33, the main purpose of which was to determine whether or not charges should be laid under the offence provisions in the *FFPA*. In my view, this takes it out of the realm of a report that arises out of a routine inspection. Considering the nature of the investigation underlying the creation of the report, I find that this record does not fall within the scope of the section 14(4) exception.

[44] In addition, I find that exception in section 14(5) does not apply because the report is not a record on the degree of success achieved in a law enforcement program.

[45] I find, therefore, that the body of the report is exempt under the discretionary section 14(2)(a) exemption. I will address the ministry's exercise of discretion under Issue B below.

[46] As stated above, the record has attachments to it, raising the question of whether these attachments are likewise exempt under section 14(2)(a). These attachments are directly referenced in the report and appear to have been attached to the report by the investigating officers who were involved in the investigation.

[47] Previous IPC orders have considered whether attachments to a report, or other documents contained in an investigation file, can be considered part of a report for the purpose of section 14(2)(a).

[48] In Order PO-1959, former Assistant Commissioner Sherry Liang considered whether records contained in a Special Investigations Unit (SIU) file can collectively be considered a law enforcement report within the meaning of section 14(2)(a). Assistant Commissioner Liang stated:

> Essentially, the ministry's submission is that all of the records must be considered together for the purposes of the application of section 14(2)(a). I am unable to accept this submission, and I find that section 14(2)(a) requires consideration of whether *each* record at issue falls within that exemption. . .

[49] In the end, she found that records such as incident reports and police officers' notes did not meet the definition of a "report" because they consisted of observations and recordings of facts instead of formal and evaluative accounts.

[50] In Order PO-3868-I, former Commissioner Brian Beamish found that only parts of an OPP investigation report and attachments qualified as a "report" for the purposes of section 14(2)(a). He found that the narrative of the report qualified as a report, but hat witness statements appended to the report did not form part of the report itself. He concluded that attachments to a report, such as interview notes, will not necessarily form part of the report.

[51] Conversely, in Order PO-3925-I, Senior Adjudicator Gillian Shaw distinguished the report before her from the reports at issue in the above-referenced orders and found that the record at issue in her appeal was one record with no appendices and was a "seamless account" of an SIU investigation, including its conclusions.

[52] I agree with the analyses in these orders. Applying the approaches taken in these orders and on reviewing the two attachments, I find that they do not form part of the report itself, in the circumstances. Like the attachments at issue in Order PO-3868-I, these pages do not include or describe any conclusions or analysis following the collection of the information contained therein. In my view, these attachments, which consist of a photograph and a diagram, are even less integrated with the body of the report than were the witness statements before former Commissioner Beamish in Order PO-3868-I. Moreover, they do not, on their own, qualify as a law enforcement report within the meaning of section 14(2) because they do not contain formal, evaluative

accounts but rather are solely recordings of facts.

[53] In sum, I find that the body of the report – the narrative portion of the report and the investigation summary – meets the requirements of the three-part test and qualifies as a report for the purposes of section 14(2)(a), subject to my findings regarding the ministry's exercise of discretion, but that the two attachments do not qualify as a report for the purposes of section 14(2)(a) for the reasons set out above. As the ministry has not claimed any other exemptions with respect to these attachments, and no mandatory exemptions apply to these attachments, I will order the ministry to disclose them to the appellant.

Issue B: Did the ministry exercise its discretion under section 14(2)(a)? If so, should this office uphold the exercise of discretion?

[54] The section 14(2)(a) 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 IPC may determine whether the institution failed to do so.

[55] In addition, the IPC 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.

[56] In either case, an IPC adjudicator may send the matter back to the institution for an exercise of discretion based on proper considerations.[13] I may not, however, substitute my own discretion for that of the institution.[14]

[57] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[15]

- 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 and 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,

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[13] Order MO-1573.
[14] See section 54(2).
[15] Orders P-344 and MO-1573.

- 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, and
- the historic practice of the institution with respect to similar information.

Representations

[58] The ministry submits that it exercised its discretion under section 14(2)(a) properly, taking into account the relevant considerations listed above and not taking into account irrelevant considerations or acting in bad faith or for improper purposes. The ministry also submits that the record does not contain the appellant's personal information and that it is not aware of any relationship between the appellant and any affected parties. The ministry further argues that it also took into consideration the purpose of the exemption in section 14(2)(a), which is to maintain the integrity of investigations, maintain public confidence in investigations, further and protect public assistance in the investigative process, and allow investigators to give advice and make findings without fear of reprisal or public criticism.

[59] The ministry further submits that it considered whether the contents of the record would likely influence public confidence in the ministry's operations and concluded that the record would not reveal anything that would call into question public confidence in the ministry.

[60] The ministry goes on to argue that it considered its severance obligation under section 10(2), considered every part of the record in order to determine whether or not any of the record should be disclosed and, in fact, during the mediation of the appeal, disclosed portions of the attachments to the appellant, which consisted of factual findings or observations.

[61] The ministry also argues that despite the fact that the public interest override in

section 23 cannot apply so as to override the section 14(2) exemption,[16] it took the public interest into consideration as a factor in exercising its discretion, deciding that disclosure of the record would not contribute to objectives such as open government, public debate or the proper functioning of government institutions. In addition, the ministry advises that after the investigation report was completed, it issued a news release stating that the team of investigators found that the fire originated at the location of a disabled vehicle in a specified remote area and that assistance was sought from a forensic fire expert. As well, the press release stated that while the investigation was able to determine the origin of the fire, no provincial offence under the *FFPA* was found to have been committed. The ministry submits that the record contains information/allegations supplied by members of the public who cooperated in the investigation as well as the evaluative analysis of ministry staff, both of which ought to be protected under section 14. As a result, the ministry submits that there is no compelling public interest which would outweigh the purpose of the exemption claimed. The ministry's position is also that the facts contained in the report are likely accessible separate and apart from the record by way of a request for the documents underlying or collected or made in support of the record.

[62] Lastly, in its initial representations, the ministry states:

> As well, the Ministry understands that certain request(s) may have been made by or on behalf of cottager(s) who were impacted by the fire. This may make such a request a sympathetic one, but considering the factors for the exercise of discretion as a whole, the Ministry was not persuaded that it should release the Report rather than exercise its discretion [to withhold it]. . .

[63] The appellant submits that the ministry did not properly exercise its discretion, that its denial of access was not convincingly explained and that any interests the ministry seeks to protect are outweighed by the "questions that the wording of the exemption raised." The appellant confirms that she is not seeking her personal information and that she cannot think of any of her personal information that would be in the record. However, the appellant submits that she is an affected person because she lost everything on her family's property, including her cottage, sleeping cabins, the contents of both, vegetation, wildlife (including snakes, red squirrels, deer, black bears, toads, birds and insects), as well as the scenery surrounding her property. This fire, the appellant submits, also affected over 100 members of an area association as well as more than 11,000 hectares of Crown land or land belonging to the French River Provincial Park. As such, the appellant submits, there are sympathetic and compelling

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[16] Section 14 is not listed in section 23 as one of the exemptions that may be "overridden" by the application of the public interest override.

reasons for receiving the information in the report.

[64] The appellant notes the ministry's assertion that public confidence in it would be diminished from the disclosure of the record. In the appellant's submission, this in fact is a good reason for disclosure and the ministry did not take into account the repercussions of non-disclosure. She also argues that not disclosing the record in order to avoid public criticism is inconsistent with the provincial government's aims and practices of openness and transparency. She states:

> Further, in this time of climate change when flooding and forest fires are on the rise, PS 33 could turn out to be the first of its kind – and the findings of the Ministry's investigation into the cause of it will prove to be vital as ways and means of preventing wildfires are sought.

[65] The appellant further argues that while the ministry acknowledged that the report was recently completed, it did not provide its historical practice regarding its disclosure of similar information.

[66] Regarding the partial disclosure that the appellant received, she states that it was disappointing and that there must be other factual information in the record, such as the processes employed in the investigation and well as key evidence, factual in nature, that would have been set out before being summarized and evaluated.

[67] The appellant submits many sectors of the public have an interest in the disclosure of the record, such as the following:

- the hundreds of residents inside and around the perimeter of the fire who were evacuated,
- the hundreds of campers at Grundy Lake Park who were evacuated,
- the multiple locations that were put on alert of potential evacuation, and
- the many businesses in and around the perimeter of the fire that were affected.

[68] She refers to the quantity and variety of social media posts regarding the fire, including the outpouring of sympathy on a named Facebook site and a song dedicated to the PS 33 firefighters, as well as the extensive reporting in major national and local media outlets.

[69] In response to the ministry's position that the facts about the fire may be available by other means, the appellant submits that this is a "curious and extraneous" representation and that the ministry should provide details of where such facts could be found.

[70] In reply, the ministry reiterates its position in its initial representations and

clarifies that disclosing the record would not reveal anything that would reduce the public's confidence in it – in other words, it asserts that the record would not disclose anything about the ministry's functioning that would cause public concern.

[71] The ministry goes on to state:

> . . . [I]t was found that the fire originated at the location of a disabled vehicle. The Report does not, nor is it designed to, shed light on forest fire risks generally (i.e., beyond this particular fire). The Report does not focus on the types of work that were occurring as part of the project, other than the work that was occurring at the location where the fire originated prior to the start of the fire. The Report also does not provide information that would be valuable in considering extreme weather conditions or climate change.

[72] Lastly, the ministry submits that much of the factual information the appellant seeks would be available to her, subject to other applicable exemptions, if she were to make an access request seeking the information that contributed to the making of the report and that, in fact, such a request has been made.[17]

[73] In sur-reply, the appellant submits that the ministry provided "sensitivity" to the parties who provided potentially confidential information for the report, but not to the victims of the fire. She states:

> It's still difficult to make sense of what we're left with, and it's even more difficult to come to terms with what we no longer have. It has always been our hope that the Report will shed light on some of this calamity.

Analysis and findings

[74] Based on the ministry's representations on its decision to apply the discretionary section 14(2)(a) exemption and my review of the record, I am not satisfied that it considered all of the relevant factors in exercising its discretion. While I am not suggesting that the ministry exercised its discretion in bad faith, I am not satisfied that it exercised its discretion properly and took into account all relevant considerations. In particular, relevant factors for the ministry to consider are whether there is a continuing public interest in the disclosure of the report, whether the disclosure of the record would *promote* public confidence in the ministry and whether the non-disclosure of the

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[17] As previously stated, according to the ministry, this access request was made by someone other than the appellant. Its access decision in response to the request was not appealed to the IPC. However, as previously stated after the appellant submitted her sur-reply representations to the IPC, she made the same access request that the ministry refers to above.

record would undermine public confidence in the ministry. While the ministry says it took into account its opinion that the report would not undermine confidence in the ministry, it does not appear to have taken into account these other factors. As a result, I will order the ministry to re-exercise its discretion.

ORDER:

1. I order the ministry to disclose the SAO diagrams at pages 105 and 106 to the appellant by **December 14, 2021** but not before **December 9, 2021**.

2. I reserve the right to require the ministry to provide the IPC with copies of the records it discloses to the appellant.

3. I order the ministry to re-exercise its discretion under section 14(2)(a) with respect to the body of the report and to provide the IPC with representations on its exercise of discretion within 30 days of the date of this order.

4. I remain seized of this appeal to review the ministry's re-exercise of discretion.

Original signed by: November 9, 2021

Cathy Hamilton
Adjudicator