

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4243

Appeal PA19-00547

Ministry of the Solicitor General

March 8, 2022

Summary: The appellant sought access to records related to his incarceration at two correctional centres from the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act*. The ministry denied access to the responsive records, in part, relying on the discretionary exemptions in sections 49(a) (discretion to refuse requester's own information), in conjunction with 14 (law enforcement), and 49(b) (personal privacy). In this order, the adjudicator partially upholds the ministry's decision and finds that some of the responsive information at issue in the records is exempt by reason of section 49(a), in conjunction with section 14(1), or section 49(b).

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(1)(l), 21(2)(f), 49(a), and 49(b).

Orders Considered: Order MO-2871.

OVERVIEW:

[1] The appellant seeks access to records related to his incarceration in two correctional centres.

[2] Specifically, the appellant¹ sought the following information from the Ministry of

¹ The appellant was represented by counsel throughout this appeal.

the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*):

...any and all notes and records, particularly medical and psychological notes and records, as well as any documentation related to the conditions of detention, related to [the appellant] that were taken while he was detained at [two] Correctional Centre[s] between the dates of June 1, 2016 to February 4, 2017. We also require any notes in your possession that relate to the circumstances of [the appellant]'s detention, which include who he was specifically sharing a cell with...

[3] In the request, the appellant explained that:

The notes and records may appear under [his] legal name, [appellant's name], or under [another named person's name (the other person)], an identity falsely presumed by the CBSA [Canada Border Services Agency] to have been [the appellant's]. For clarity, [the appellant] was arrested and detained on the mistaken belief that he was in fact [the name the appellant was arrested under] ...who was believed to have illegally entered Canada and assumed the identity of [this other person]; that belief is since known to be wrong. When it was established by the CBSA that [the appellant] is [not the other name], he was released from detention.

[4] The ministry issued a decision denying access to 71 pages of records in full. The records were withheld based on the discretionary exemptions in sections 49(a) (discretion to refuse requester's own information), in conjunction with section 14(1) (law enforcement), 49(b) (personal privacy), and 49(e) (correctional records) of the *Act*.

[5] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to seek a resolution of this appeal.

[6] The parties were unable to resolve the issues in this appeal. Accordingly, the file was moved to adjudication, where an adjudicator may conduct an inquiry.

[7] I decided to conduct an inquiry and I sought the ministry's representations initially. In its representations, the ministry indicated that it was no longer relying on the exemption in section 49(e); therefore, this exemption is no longer at issue in the appeal. I shared the ministry's representations with the appellant and received representations in response. I then sought and received the ministry's reply representations.

[8] In its reply representations, the ministry asked that I notify the Canada Border Services Agency (the CBSA) and seek its representations on the appellant's identity, to

ensure that the person referred to in the records is the appellant, as different names were used. It advised that once the appellant's identity was confirmed by the CBSA it would disclose additional information from the records. The ministry also asked that I obtain the CBSA's representations on the application of the claimed exemptions to the records.

[9] I notified the CBSA and received the CBSA's representations, in which it confirmed that the appellant and the person identified in the records are the same person. Concerning the records themselves, the CBSA advised that it did not believe that its interests were affected by the disclosure of the records and did not provide representations on the application of the claimed exemptions to the records.

[10] I then sought representations in reply to the CBSA's representations from the ministry and the appellant. Neither of these parties provided further representations.

[11] Subsequent to providing its representations and after receiving the CBSA's representations, the ministry issued a supplemental decision letter to the appellant, disclosing the information from portions of 67 of the 71 pages of the records that it agreed to disclose if the appellant's identity was confirmed by the CBSA. The ministry maintained its reliance on the exemptions at sections 49(a), with section 14(1), and 49(b) for the remaining information at issue in the records.

[12] Accordingly, considering the CBSA's undisputed position, which was based on fingerprint evidence, that the appellant and the other individual named in the records are about the same person, I am satisfied that the appellant's request is for records related to himself.

[13] After receiving this disclosure during adjudication, the appellant was asked for his position on the information in the records that the ministry marked and withheld as non-responsive. The appellant did not indicate that the information marked as non-responsive is at issue, and I have therefore concluded that it is not. Accordingly, I will order the information marked in the records as non-responsive withheld.

[14] As well, neither the ministry, nor the appellant, provided representations in response to the reasonableness of the ministry's search issue that was raised by the appellant at mediation and was set out in the Notices of Inquiry sent to both parties. Therefore, the reasonableness of the ministry's search is no longer at issue in this appeal.

[15] In this order, I partially uphold the ministry's decision that the withheld portions of the records at issue are exempt by reason of section 49(a), in conjunction with section 14(1)(l) (facilitate commission of an unlawful act), or section 49(b), and I order disclosure of the records in part.

RECORDS:

[16] The records that remain at issue following the ministry's supplemental decisions during adjudication are from two correctional facilities, as set out in the following index of records:

Record No.	Description of Record	Page(s) at issue	Exemptions
4	Chart of cell assignments	18	49(b)
5	Checklist of databases listed in Inmate Release Checklist form	29	49(a) with 14(1)(j), (k) and (l)
6	Offender Tracking Information System (OTIS) Client Profile forms	33-34, 52-53, 62-65 and 69	49(a) with 14(1)(j), (k) and (l), 49(b)
7	Canadian Police Information Centre (CPIC) print-out	35-38	49(a) with 14(1)(j), (k) and (l), 49(b)

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) (discretion to refuse access to requester's own personal information) in conjunction with the section 14 law enforcement exemption apply to the information at issue?
- C. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- D. Did the ministry exercise its discretion under sections 49(a) and (b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

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

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

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[18] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.²

[19] 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.³

[20] Even if information relates to an individual in a professional, official or business

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁴

Representations

[21] The ministry states that portions of pages 18, 34-38, 53, 63, 65, and 69 (which are one-page OTIS Client Profile forms) of the records contain information of identifiable individuals other than the appellant.

[22] It states that page 18 (chart of cell assignments) contains the names, dates of birth and other identifying information of individuals who shared a correctional centre cell with the appellant while he was incarcerated.

[23] It states that pages 34, 53, 63, 65, 69 (OTIS Client Profile forms) contain the name and contact information of the named other person in the request.

[24] It further states that pages 35-38 (CPIC print-out) contain the names and criminal records of third-party individuals who may have been associated with the appellant.

[25] The appellant did not provide representations on this issue or the exemptions.

Analysis/Findings

[26] I agree with the ministry that page 18, which is a chart detailing the appellant's cellmates' incarceration details, and pages 35-38, which contain details about the criminal histories of individuals other than the appellant, contain the personal information of other individuals.

[27] The information at issue on pages 18, and 35-38 consists of individuals other than the appellant's dates of birth, addresses, criminal histories, and their names, which appear with other personal information about them in accordance with paragraphs (a), (b), (d) and (h) of the definition of personal information in section 2(1). These pages also contain the personal information of the appellant. I will consider below whether the discretionary personal privacy exemption in section 49(b) applies to the personal information of individuals other than the appellant.

[28] The issue of the appellant's multiple identities has been resolved (see above). The ministry has claimed the application of the law enforcement exemption at sections 49(a), with 14(1)(l), for the fingerprint synopsis (FPS) numbers in all of the OTIS Client Profile forms in the records, which exemption I will deal with below.⁵

[29] The OTIS Client profile form at page 69 of the records has been disclosed in full

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ The OTIS Client Profile forms are found at pages 33-34, 52-53, 62-65 and 69 of the records.

to the appellant, other than the FPS number.⁶ Therefore, only the FPS number is at issue on this page and I will consider that application of section 49(a), with 14(1), to this number.

[30] The ministry claims that the information at issue in the OTIS Client Profile forms, other than the FPS numbers, found at pages 34, 53, 63, and 65 of the records is personal information of other individuals. Its representations were provided to the IPC before the CBSA confirmed that both of the individuals named in these pages is information about the appellant.

[31] I find that all of the OTIS Client Profile forms contain the appellant's information, as they refer to one of the appellant's identities.

[32] As the OTIS Client Profile forms at pages 34, 53, 63, and 65 contain only the appellant's personal information, the personal privacy exemption in section 49(b) cannot apply to the personal information at issue in these pages. As no other discretionary exemptions have been claimed for this information and no mandatory exemptions apply, I will order the personal information of the appellant on pages 34, 53, 63, and 65 disclosed, except for the FPS numbers.

[33] The OTIS Client Profile form at page 52 is not referred to in the ministry's representations on personal information, however, the personal privacy exemption at section 49(b) is marked on this one-page record. There is one severance on page 52 that is not an FPS number. I find that this information is not personal information and section 49(b) cannot apply to it. As well, no mandatory exemptions apply to this information. Therefore, I will order the information in this one severance on page 52 disclosed.

[34] The OTIS Client Profile form at page 33 of the records is not marked with the section 49(b) exemption but it has the same severance (that is not a FPS number) as in page 52. This information is also not personal information and section 49(b) cannot apply to it. As well, no mandatory exemptions apply to this information. Therefore, I will order the information in this one severance on page 33 disclosed.

[35] Accordingly, I will consider below whether section 49(a), with section 14(1), applies to FPS numbers on the all of the OTIS Client Profile forms in the records, including those at pages 34, 53, 63, and 65 for which I have ordered the appellant's personal information to be disclosed by the ministry.

⁶ I will consider the application of the law enforcement exemption in section 49(a), with section 14(1), to the FPS numbers in all of the OTIS Client Profile forms in the records.

Issue B: Does the discretionary exemption at section 49(a) (discretion to refuse access to requester's own personal information) in conjunction with the section 14 law enforcement exemption apply to the information at issue?

[36] The ministry has withheld the checklist of databases listed in Inmate Release Checklist form at page 29, the FPS numbers from the OTIS Client Profile forms at pages 33-34, 52-53, 62-65, and 69, and the CPIC coded information at pages 35-38 of the records.

[37] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[38] 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.

[39] 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 grant requesters access to their personal information.⁷

[40] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[41] In this case, the ministry relies on section 49(a) in conjunction with sections 14(1)(j), (k) and (l), which read:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention; or

(l) facilitate the commission of an unlawful act or hamper the control of crime.

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

⁷ Order M-352.

context.⁸

[43] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.⁹ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁰

Representations

[44] The ministry states that sections 14(1)(j), (k) and (l) are related in that they permit the Minister to exempt records where disclosing them would cause various harms in respect of the operations of the ministry's correctional institutions. It states that the records that are at issue in this appeal are held by a correctional institution, and describe operational processes and procedures in addition to containing internal communications.

[45] The ministry further submits that disclosure of the records could permit individuals to draw accurate references about what was not mentioned in the records, thereby jeopardizing the security of a correctional institution by highlighting its vulnerabilities.¹¹

[46] The ministry states that:

The highlighted portion of page 29 describes the procedures associated with releasing an inmate from a correctional institution and disclosure could be used by other inmates to identify vulnerabilities regarding the release process;

Pages 35-38 contains coded information communicated as a result of the CPIC searches, which are part of an internal system for communicating information associated with the CPIC checks; and,

Pages 33-34, 52-53, 62-65, and 69 contain the fingerprint synopsis number (the FPS number) at the top left-hand side of the page. The ministry relies on past orders, which have upheld withholding these

⁸ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

⁹ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁰ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹¹ The ministry relies on Order PO-2332.

numbers for the same reasons that police codes (ten codes) are withheld.¹²

Analysis/Findings

[47] For section 14(1)(j) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the escape from custody of a person who is under lawful detention.

[48] For section 14(1)(k) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could reasonably be expected to jeopardize the security of a centre for lawful detention.

[49] For section 14(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[50] Page 29 of the records is titled "Inmate Release Checklist" and it is a one-page record authorizing the release of the appellant from a correctional centre. At issue on page 29 is a checklist of databases that were reviewed prior to the appellant's release being authorized by correctional centre officials.

[51] The ministry argues that the information at issue on this checklist on page 29 could be used by other inmates to identify vulnerabilities regarding the release process. The ministry has not elaborated on how this checklist could be so used. Nor can I ascertain that from this record. As well, the ministry has not identified which of sections 14(1)(j), (k) and/or (l) it believes should apply to the checklist and how any or if all these exemptions apply to the information at issue in the checklist.

[52] I find that sections 14(1)(j), (k) or (l) do not apply to exempt the information at issue on the Inmate Release Checklist form at page 29 of the records. As no other discretionary exemptions have been claimed for this information and no mandatory exemptions apply, I will order the information at issue in this page disclosed.

[53] At issue in pages 35-38 is CPIC coded information related to criminal histories of the appellant and other individuals. This information was obtained as part of an internal system for communicating information associated with CPIC checks. The OTIS Client Profile forms at pages 33-34, 52-53, 62-65 and 69 contain FPS numbers. Previous orders have found these types of information to be the equivalent of police operational codes, which are exempt by reason of section 14(1)(l).

[54] Many past IPC orders have considered the application of section 14(1)(l) to police operational code information. In Order MO-2871, I found that the disclosure of police operational codes, also known as ten-codes, could reasonably be expected to

¹² The ministry relies on Order MO-3952 at paragraph 58.

facilitate the commission of an unlawful act or hamper the control of crime. I stated:

[The IPC] has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l)¹³ applies to "10- codes" (see Orders M-93, M-757, MO-1715 and PO-1665), as well as other coded information such as "900 codes" (see Order MO-2014). These orders adopted the reasoning of Adjudicator Laurel Cropley in Order PO-1665:

In my view, disclosure of the "ten-codes" [police operational codes] would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space...

[55] I remain of the view that police operational code information is subject to the law enforcement exemption at section 14(1)(l) of *FIPPA*, and I adopt the approach taken to this information in the orders mentioned above.

[56] The information that the police have severed from pages 33-38, 52-53, 62-65 and 69 (FPS numbers and CPIC coded information) pursuant to section 49(a), in conjunction section 14(1)(l), consists of police operational code information. I accept that its disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime because the information could reasonably be expected to compromise the ability of police officers to provide effective policing services by enabling individuals engaged in illegal activities to more easily carry out such activities.

[57] Therefore, I find that section 49(a), with section 14(1)(l), applies to the police operational codes, being the FPS numbers and the CPIC coded information, in pages 33- 38, 52-53, 62-65 and 69 of the records.

[58] Accordingly, subject to my findings on the ministry's exercise of discretion, below, I find that the CPIC coded information and FPS numbers that have been withheld from the appellant are exempt under section 49(a), in conjunction with section 14(1)(l), of the *Act*.

Conclusion

[59] I have found that section 49(a), with sections 14(1)(j), (k) or (l), do not apply to the information at issue in the Inmate Release Checklist on page 29, and I am ordering this information disclosed.

¹³ Section 8(1)(l) of the *Municipal Freedom of Information and Protection of Privacy Act* is the municipal equivalent of section 14(1) of *FIPPA*.

[60] I have also found that section 49(a), with section 14(1)(l), apply to the FPS numbers and CPIC codes in the OTIS Client Profile forms and that the CPIC coded information at pages 33-34, 35-38, 52-53, 62-65 and 69 is exempt by reason of section 49(a) with section 14(1)(l), subject to my review of the ministry's exercise of discretion.

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

[61] As I stated above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution, while section 49 provides a number of exemptions from this right.

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

[63] I have found that the chart of cell assignments at page 18 and the CPIC print-out at pages 35-38 of the records contain the personal information of other individuals, as well as that of the appellant. I will consider whether section 49(b) applies to the information at issue in these pages.

[64] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[65] If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). In this appeal, the information does not fit within these paragraphs.

[66] Sections 21(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[67] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the IPC will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.¹⁴

[68] If any of the presumptions that weigh against disclosure in paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). The ministry does not rely on any of the presumptions in section 21(3) to deny access to the records. I agree, and I find that

¹⁴ Order MO-2954.

none of the presumptions in section 21(3) apply.

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

[70] The ministry submits that the factor favouring privacy protection in section 21(2)(f) applies, as the personal information at issue is "highly sensitive." This section reads:

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,

the personal information is highly sensitive.

[71] The ministry submits that the records are correctional records. The ministry submits that, by their very nature, records revealing the identities of people who have been incarcerated should be treated as highly sensitive. The ministry also submits that the other individuals named in the records are not aware of this appeal, or the possibility that their personal information is subject to disclosure.

[72] The ministry submits that these individuals would not expect that personal information collected from, and about them, and contained in correctional records, would subsequently be disclosed in the manner contemplated by this appeal. Accordingly, the ministry submits that any disclosure without notifying and providing these individuals with an opportunity to be heard could be expected to cause significant distress, particularly because once disclosed, the personal information in the records is not subject to any privacy protection, and is in effect, a disclosure to the world.

Analysis/Findings

[73] The appellant did not provide representations that addressed the application of section 49(b) to the information at issue in pages 18, and 35-38 of the records, which are a chart of cell assignments and a CPIC print-out.

[74] Sections 21(2)(a) to (d),¹⁷ if established, would tend to support disclosure of the

¹⁵ Order P-239.

¹⁶ Order P-99.

¹⁷ Sections 21(2)(a) to (d) read:

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,

personal information in question.

[75] I do not have any representations from the parties arguing that any of the factors in section 21(2) that may favour the disclosure to the appellant of the personal information of individuals other than the appellant apply in this appeal. Nor can I ascertain that the factors that favour disclosure in sections 21(2)(a) to (d) apply from my review of the records at issue.

[76] The ministry has provided representations on the factor in section 21(2)(f) that favours protection of privacy in respect of the "highly sensitive" personal information of individuals other than the appellant.

[77] In order for the personal information of other individuals to be considered highly sensitive under section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.

[78] At issue on page 18, which is a chart of cell assignments, are the names, dates of birth, OTIS numbers, and dates of incarceration of the appellant's cell mates in 2016. The appellant's information on page 18 has been disclosed to him.

[79] I agree with the ministry that this personal information of other individuals, which is the only information remaining at issue in the chart of cell assignments, is highly sensitive information. This information is about these individuals' incarceration in a correctional centre and reveals information about their criminal history.

[80] I find that the factor in section 21(2)(f) applies to and weighs against disclosure of the personal information of other individuals in the chart of cell assignments on page 18. There is a reasonable expectation of significant personal distress to these cell mates if their names, dates of birth, OTIS numbers, dates of incarceration, and other details regarding their criminal history were disclosed to the appellant. Disclosure of these individuals' incarceration-related information to the appellant is in effect, a disclosure to the world, since once in the public domain, there is no way of limiting or controlling the use of this information.¹⁸

[81] I found above that the coded CPIC information in the CPIC print-out at pages 35-38 was exempt under section 49(a), in conjunction with section 14(1)(l). The remaining information in pages 35-38 reveals the personal information of other individuals

-
- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
 - (b) access to the personal information may promote public health and safety;
 - (c) access to the personal information will promote informed choice in the purchase of goods and services;
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request.

¹⁸ A party receiving disclosure under the *Act* may do what they wish with the records, subject to any restrictions imposed by law, other than the *Act*. See Orders MO-3730-R, PO-2018 and others.

consisting of their criminal history, names, dates of birth, and identifying numbers. I also find that this personal information of other individuals is highly sensitive and that the factor in section 21(2)(f) applies to weigh against its disclosure in the circumstances of this appeal.

[82] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker¹⁹ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.²⁰

[83] In this appeal, none of the presumptions in section 21(3) apply. I have found that the factor favouring privacy protection in section 21(2)(f) applies, but that no other section 21(2) factors, listed or unlisted, apply. Therefore, considering the application of section 21(2)(f) and balancing the interests of the parties, I find that the personal information at issue found in pages 18, and 35-38 is exempt under section 49(b), subject to my review of the ministry's exercise of discretion.

[84] As I have found that section 49(b) applies to the remaining information in the CPIC print-out at pages 35-38, these pages are exempt in their entirety under section 49(a) in conjunction with section 14(1)(l), or section 49(b), subject to my review of the ministry's exercise of discretion.

Issue D: Did the ministry exercise its discretion under sections 49(a) and (b)? If so, should the IPC uphold the exercise of discretion?

[85] The sections 49(a) and 49(b) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[86] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[87] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²¹ The IPC may not, however,

¹⁹ The institution or, on appeal, the IPC.

²⁰ Order MO-2954.

²¹ Order MO-1573.

substitute its own discretion for that of the institution.²²

[88] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²³

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

Representations

[89] The ministry submits it has exercised its discretion appropriately in accordance with the purposes of the *Act* and the exemptions at issue.

[90] The appellant did not provide representations on this issue.

²² Section 54(2).

²³ Orders P-344 and MO-1573.

Analysis/Findings

[91] I have found that the CPIC coded information and the FPS numbers in the OTIS Client Profile forms and the CPIC print-out in pages 33-34, 35-38, 52-53, 62, 63, 64, 65 and 69 are exempt under the discretionary law enforcement exemption of section 49(a), with section 14(1)(l).

[92] I have found that the personal information of other individuals in the chart of cell assignments and the CPIC print-out at pages 18, and 35-38 is exempt under the discretionary personal privacy exemption in section 49(b).

[93] Based on my review of the ministry's representations and the information that I found above to be exempt, I find that the ministry exercised its discretion under sections 49(a) and (b) in a proper manner in denying access to it.

[94] I find that the ministry has taken into account relevant considerations and I am satisfied that it did not take any irrelevant considerations into account.

[95] The records at issue are correctional centre records. I find that the ministry properly considered the purposes of the law enforcement exemption at sections 49(a), with 14(1)(l). Specifically, I find that it considered that disclosure of the FPS numbers and CPIC coded information in the records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[96] I also find that the ministry properly considered the purpose of the personal privacy exemption at section 49(b), being the protection of the personal privacy of the other individuals in the records at issue.

[97] Therefore, I am upholding the ministry's exercise of discretion and find that:

- the CPIC coded information and FPS numbers in the OTIS Client Profile forms and the CPIC print-out at pages 33-34, 35-38, 52-53, 62, 63, 64, 65 and 69 are exempt by reason of section 49(a), with section 14(1)(l), and
- the personal information at issue in pages 18, and 35-38 in the chart of cell assignments and the CPIC print-out is exempt by reason of section 49(b).

ORDER:

1. I order the ministry to disclose to the appellant **by April 7, 2022**, the information remaining at issue in pages 29, 33, 34, 52, 53, 63, and 65 of the records, other than the FPS numbers on pages 33, 34, 52, 53, 63, and 65.
2. I uphold the ministry's decision to deny access to the remaining withheld portions of the records.

Original Signed by: _____

Diane Smith
Adjudicator

March 8, 2022 _____