

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-4370-I

Appeals PA21-00153 and PA22-00048

Ministry of Natural Resources and Forestry

March 27, 2023

Summary: The Ministry of Natural Resources and Forestry (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records about a third party report (and related documents) on the appropriateness of a ministry investigation into a hunting related incident. The ministry denied access to the records relying on the section 65(6)3 employment or labour relations exclusion.

In this order, the adjudicator finds that the records are not excluded from the application of the *Act* by reason of the exclusion at section 65(6)3. The records relate to an investigation into ministry employees' actions or inactions where their conduct may give rise to liability on the part of the ministry. Since the communications reflected in the records are not about employment- related matters, the section 65(6)3 exclusion does not apply.

The adjudicator orders the ministry to issue another access decision to the appellant on the records, without relying on the section 65(6)3 exclusion and taking into account the written consents from the appellant and four other individuals.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 65(6)3.

Cases Considered: *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

OVERVIEW:

[1] A group of hunters were charged and prosecuted for certain hunting-related offences by the enforcement branch of the Ministry of Natural Resources and Forestry (the ministry). After the charges were resolved, another ministry undertook an independent review of the investigation and prosecution.

[2] The ministry then received two requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information about a review of an investigation that resulted in charges for hunting-related offences being laid against a group of four hunters (the group). The group included the appellant. The first request sought:

A copy of the review completed by [a named] Manager, Inspection Operations Support, Food Safety Inspection Delivery Branch, Ministry of Agriculture, Food and Rural Affairs, which was sent to [an identified individual at the] Enforcement Branch, Ministry of Natural Resources and Forestry, on 2021/01/04, in an email with the subject line "Re: Moose file review update". Time period of the records: 2020/08/11 to 2021/01/04.

[3] By way of background, after the group of hunters were charged, they evaluated the evidence the ministry proposed to rely on in their prosecution. The group then had the audio recordings of certain witness interviews tested for authenticity. This testing resulted in a finding that these audio recordings had been tampered with.

[4] After the charges were withdrawn, the group wrote a letter of complaint to the ministry alleging incompetent and malicious investigation and prosecution of the group by the conservation officers and managers at the ministry's Enforcement Branch (EB).

[5] Given that the group's allegations were related to the handling and outcome of the ministry's investigation and the conduct of its EB employees, the ministry retained the Manager of Inspection Operations Support for the Food Safety Inspection Delivery Branch (the manager) of the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) as an external party to investigate the complaint.

[6] The ministry informed the group that the matter had been referred for a third-party review of the group's complaint by the manager at OMAFRA and that the purpose and scope of the manager's review would be to determine whether:

- the investigative processes followed, and conclusions reached were appropriate given the facts and circumstances;
- any inappropriate motivations existed that may have influenced the investigative process and conclusions reached; and
- appropriate steps were taken to mitigate any potential biases in the investigative process.

[7] In response to the access request, the ministry issued a decision denying access to the requested record, the 16-page investigation report, pursuant to the exclusion at section 65(6)3 of the *Act* (employment or labour relations).

[8] The appellant appealed this access decision to the Information and Privacy Commissioner of Ontario (the IPC). Appeal PA21-00153 was opened and a mediator was assigned to explore the possibility of resolution.

[9] In discussions with the mediator, the appellant indicated that he believed additional records should exist in response to this request. He noted that a similar request he submitted to OMAFRA had resulted in over 100 pages of responsive records and questioned why there were only 16 pages responsive to this request.

[10] The ministry responded that the request the appellant made to OMAFRA was broader in scope and that scope of the request made in Appeal PA21-00153 was relatively narrow. The appellant then submitted a broader request to the ministry.

[11] The appellant's second broader request to the ministry stated:

Would like to have all information and notes gathered by [the manager/investigator named in the first request] in regards to an investigation into potential wrong doing of conservation officers [COs] that led to a charge against me that was finally withdrawn. Specific to conversations or emails with the following [two named conservation] officers [various districts] between the dates of August first 2020 to the end of January 2021...¹

[12] The ministry issued a decision in response to the appellant's second request, denying access to the records identified as responsive, also relying on section 65(6)3 of the *Act*.

[13] Upon appeal of this access decision to the IPC, Appeal PA22-00048 was opened and the same mediator was assigned to it as in Appeal PA21-00153.

[14] No further mediation of the two appeals was possible and both were moved to the adjudication stage where an adjudicator may conduct an inquiry. The adjudicator formerly assigned to the appeals decided to conduct a joint inquiry into the two appeals, and sought the ministry's representations on the exclusion in section 65(6)3.

[15] The appeal was then assigned to me to continue the inquiry. I sought further representations from the parties, which were shared in accordance with the IPC's

¹ The request also contained the name, title and contact information for the identified manager who conducted the investigation. Additionally, below the written part of the request, the form indicates a different start date for the time period than the one written above; i.e., July 1, 2020, rather than "August first".

Practice Direction 7. Portions of the ministry's representations were withheld from the appellant due to confidentiality concerns.

[16] I asked the ministry to state its alternative exemption claims if I decided that the exclusion did not apply. In the alternative to its claim that the exclusion applies, the ministry stated that it intends to rely on the section 21(1) personal privacy exemption for large portions of the records as they contain the personal information of the group (and the spouse of one of the group's members).

[17] I asked the appellant and these individuals whether they consent to disclosure of their personal information; each of them provided their consent.

[18] In this order, I find that the records are not excluded from the application of the *Act* by reason of the exclusion at section 65(6)3. The records relate to an investigation into the actions or inactions of ministry employees where their conduct may give rise to a civil action in which the ministry may be held responsible. They do not contain the necessary relation to employment matters for section 65(6)3 to apply.

[19] In light of my findings, I order the ministry to issue another access decision to the appellant with respect to the records, without relying on the exclusion, and taking into account the five written consents from the appellant, his spouse, and the three other members of the hunting group.

RECORDS:

[20] The record at issue in Appeal PA21-00153 is a 16-page report (the report) that was prepared for management in the ministry's Enforcement Branch by the manager at OMAFRA after the receipt of the complaint.

[21] The records at issue in Appeal PA22-00048 consist of the information and notes gathered by the manager at OMAFRA related to her creation of the report. These records consist of emails and attachments, interview notes, notebooks, photos and documents totaling 297 pages, as well as five audio files.

DISCUSSION:

Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to the records?

[22] Section 65(6) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose

it outside of the *Act's* access scheme.²

[23] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.³

[24] The ministry relies on section 65(6)3, which states:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest...

[25] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) apply, the records are excluded from the scope of the *Act*.

[26] The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.⁴

[27] Section 65(6) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions.⁵

[28] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the subjects mentioned in this section, there must be "some connection" between them.⁶

[29] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.⁷

² Order PO-2639.

³ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

⁴ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.) (*Goodis*). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."

⁵ *Ministry of Correctional Services*, cited above.

⁶ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

⁷ Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).

[30] The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.⁸

[31] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[32] In *Ministry of Community and Social Services*,⁹ the Ontario Divisional Court distinguished the operational role an institution plays in discharging its institutional mandate from its role as employer, as follows:

Accordingly, a purposive reading of the *Act* dictates that if the records in question arise in the context of a provincial institution's operational mandate, such as pursuing enforcement measures against individuals, rather than in the context of the institution discharging its mandate qua employer, the s. 65(6)3 exclusion does not apply. *Excluding records that are created by government institutions in the course of discharging public responsibilities does not necessarily advance the legislature's objective of ensuring the confidentiality of labour relations information. However, it could have the effect of shielding government officials from public accountability, an effect that is contrary to the purpose of the Act.* The government's legitimate confidentiality interests in records created for the purposes of discharging a government institution's specific mandate may be protected under exemptions in the *Act*, but not under s. 65(6).

[33] I will now consider the three part test under section 65(6)3 referred to above.

Part 1 and part 2 of the test

[34] As indicated, the records consist of the manager's report and related records.

[35] Regarding the report, the ministry states that although it did not create the report itself, the report was prepared on the ministry's behalf and it subsequently used the report.

⁸ Order PO-2157.

⁹ *Ministry of Community and Social Services v Doe*, 2014 ONSC 239 (Div. Ct.), upheld in *Ontario (Community and Social Services) v. John Doe*, 2015 ONCA 107.

[36] The ministry divided the remaining records into two categories.

[37] It describes category 1 records as records that were created prior to the report's creation, which were provided to the manager to help in the creation of the report. These records include emails, summons, witness statements, general reports and audio statements.

[38] The ministry states that category 2 includes records that were created at the time that the manager was preparing the report and include emails, interview scheduling, interview notes, and additional information required by the manager that was collected, prepared and used by her in order to create the report on behalf of the ministry.

[39] The ministry states that all these records were used in the context of creating the report. It states that the ministry then used the report for an employment-related matter.

[40] The appellant indicates that he is unable to provide representations on parts 1 and 2 of the test, due to the extensive redactions of the ministry representations.

Findings re part 1 and part 2

[41] Based on my review of the records and the ministry's representations, I accept that the records were collected, prepared and used in relation to meetings, consultations, discussions or other communications in connection with the preparation of the report, which was a review by the third party manager at OMAFRA as to how the ministry conducted the investigation into the hunting charges against the group. Therefore, parts 1 and 2 of the test under section 65(6)3 have been met. As I explain below, however, these communications are not about employment-related matters.

Part 3: about labour relations or employment-related matters in which the institution has an interest

[42] For section 65(3)3 to apply, the communications in question must be about labour relations or employment-related matters in which the institution has an interest.

[43] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition;¹⁰
- an employee's dismissal;¹¹
- a grievance under a collective agreement;¹²

¹⁰ Orders M-830 and PO-2123.

¹¹ Order MO-1654-I.

- disciplinary proceedings under the *Police Services Act*;¹³
- a “voluntary exit program;”¹⁴
- a review of “workload and working relationships”;¹⁵ and
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.¹⁶

[44] The phrase “labour relations or employment-related matters” has been found not to apply in the context of:

- an organizational or operational review;¹⁷ or
- litigation in which the institution may be found vicariously liable for the actions of its employee.¹⁸

[45] The phrase “in which the institution has an interest” means more than a “mere curiosity or concern,” and refers to matters involving the institution’s own workforce.¹⁹

[46] The records are excluded only if the meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. As I explain in further detail below, matters related to the actions of employees for which an institution may be responsible are not necessarily employment-related matters for the purpose of section 65(6).²⁰

Representations re part 3

[47] The ministry states that the report was created to respond to a complaint and that the Divisional Court has recognized that investigations into complaints brought by third parties which may result in disciplinary action may be employment-related depending on the record itself.²¹

[48] The ministry submits that OMAFRA’s review was clearly undertaken to evaluate how the investigation and prosecution of the group was conducted, and to identify any

¹² Orders M-832 and PO-1769.

¹³ Order MO-1433-F.

¹⁴ Order M-1074.

¹⁵ Order PO-2057.

¹⁶ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

¹⁷ Orders M-941 and P-1369.

¹⁸ Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

¹⁹ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

²⁰ *Ministry of Correctional Services*, cited above.

²¹ The ministry relies on *Ontario (Ministry of Correctional Services) v. Goodis*, (cited above).

errors or omissions in the investigation. It, therefore, submits that the subject-matter of the review, for this reason, was clearly employment-related and the ministry, as the conservation officers' employer had the requisite level of interest in the review for the record to qualify for the exception under section 65(6)3.²²

[49] The ministry states that records created as a result of complaints filed by third parties with respect to the actions or inactions of an institution's employees have been found to be sufficiently "employment-related"²³ for the purposes of section 65(6).

[50] The ministry states that the hunting group alleged incompetence, malice, and systemic issues within ministry's enforcement branch (EB), and that given the severity of the allegations against ministry employees which resulted in the ministry requesting an independent third-party investigation, it is clear that the ministry has an interest in the report that is more than a "mere curiosity or concern."

[51] The ministry states that while the category 1 supporting records were not prepared for an employment-related matter as defined above, they were collected and used in such a matter. EB gave the records to the manager so that she could produce the report; without the records, the manager would not have been able to produce the report. The records were then used in the creation of the report.

[52] The ministry states that the report was based on the information from the category 2 supplementary records, and for both categories of records, it notes that the request in PA22-00048, the appellant specifically requested access to records gathered "in regards to an investigation into potential wrong doing of conservation officers." Based on the wording of the request, it submits that the records must be considered in the context of the identified employment-related review.

[53] In this context, the ministry states that the category 1 and 2 records were used in relation to meetings and communications about an employment-related matter since if the report is excluded under section 65(6)3, then the information that formed the basis for the decision and subsequent discussions should also be excluded as it appears in the context of the preparation of the report.

[54] The appellant submits that OMAFRA's review concerned the conduct of the ministry's investigation and the investigative process more generally. He submits that contrary to the ministry's position, the review and related records did not constitute a performance review of the conservation officers' actions. He relies on the Ontario Divisional Court's decision in *Ontario (Ministry of Correctional Services) v. Goodis*²⁴ and submits that section 65(6) does not exclude all records concerning actions or inactions of employees simply because conduct may give rise to a review of their performance, discipline, and/or vicarious liability. He submits that:

²² The ministry relies on Orders PO-2211, PO-4186, and PO-2074-R.

²³ The ministry relies on Order PO-2658.

²⁴ Cited above.

The ministry cannot uphold its statutory mandate without its conservation officers, whose appointment and powers are also provided for under applicable legislation. If the results of complaints regarding the conduct of investigations, especially those that result in charges against members of the public, especially those that are of a level of importance that a third-party review is necessitated, are excluded from the *Act*, this would as the Court stated in *Goodis*, "undermine the public accountability purpose of the *Act*."

[55] The appellant also submits that to the extent that the report and related records are found to be akin to a form of organizational or operational review, such reviews have often been found not to attract exclusion under section 65(6).²⁵ He submits that regardless of how they are classified, the report and related records were not created to address matters in which the ministry was acting as an employer, and the terms and conditions of employment or human resources questions were at issue, in the sense intended by section 65(6).

[56] The appellant states that, contrary to the ministry's discussion of the decision in *Goodis*, this is a situation where the ministry is claiming the application of section 65(6)3 to "shield the Crown from potential vicarious liability through the actions of its employees." He states:

On September 8, 2022, the ministry was served with a Notice of Action claiming malicious prosecution, negligent investigation, and misfeasance in public office. These causes of action directly relate to the actions of the investigating officers that are the subject of the report and related records sought.²⁶

[57] I will describe the Notice of Action in more detail below.

[58] In reply, the ministry submits that *Goodis* does not state that the exclusion in section 65(6) cannot apply if civil action has been commenced. It submits that it is not clear how notice of a civil action commenced months after the ministry claimed the exclusion under section 65(6) would have any bearing on whether the records claimed are "about labour relations or 'employment-related' matters in which the institution has an interest". It states information relevant to the action commenced by the group will be provided to them as part of the court-mandated disclosure and discovery process. The ministry indicated that it is not taking a position on whether the records at issue in this appeal would be provided to the group as part of the court disclosure process related to the civil action.

[59] In response, the appellant states that his position is not that the decision in

²⁵ The appellant refers to Orders M-941 and P-1369.

²⁶ A copy of the Notice of Action and related correspondence were enclosed with the appellant's letter to me.

Goodis stands for the proposition that section 65(6) is automatically inapplicable to records related to litigation giving rise to vicarious liability. Rather, he submits that a case-by-case determination must be made as to whether the records are, in fact, "employment related" and, in matters like the present, litigation and the nature of the allegations therein may be information useful to the IPC in making such a determination.

Findings re part 3

[60] I will first determine whether the report meets part 3 of the test under section 65(6)3. I will then determine whether the remaining records, which the ministry describes as supporting or supplementary records to the report, meet part 3 of the test under section 65(6)3.

[61] The Notice of Action was commenced in the Ontario Superior Court of Justice by the four members of the hunting group (which includes the appellant) against the two COs who conducted the investigation into the hunting incident and against the ministry itself. This Notice of Action seeks damages in the amount of \$200,000 for negligent investigation, malicious prosecution, and misfeasance in public office arising out of wrongful charges against the group under the *Fish and Wildlife Conservation Act* (the *FWCA*).

[62] The Notice of Action was served on the Crown Law Office of the Ministry of the Attorney General (the Crown, the ministry's legal representative) and on the two COs by the group's lawyer. Accompanying this Notice of Action sent to the Crown was a letter from the group's lawyer to the Crown that included "Background and Supporting Information."

[63] This letter indicates that, after a moose hunt, the group was charged under section 36(2) of the *FWCA*, which reads:

A person who possesses game wildlife that is not a furbearing mammal and that was hunted or trapped shall not permit its flesh to become unsuitable for human consumption.

[64] Ultimately, the prosecutor withdrew these charges citing to the Court that his reason for doing so was that it was not in the public's best interest to proceed. The group advised the Crown in this letter that it believed that the records at issue in this appeal would have a direct bearing on the ministry's potential liability for the investigation against it.

[65] The purpose of section 65(6)3 of the *Act* is to exclude from the application of the *Act* records about labour relations or employment-related matters in which the institution has an interest as employer. This is confirmed in *Goodis*, which provides that section 65(6)3 excludes records relating to matters in which the institution has an interest as an employer and does not exclude records where the ministry is sued by a

third party in relation to actions taken by government employees.

[66] As set out in *Goodis*, "employment-related matters" are distinct from matters related to employees' actions. In *Goodis*, the Divisional Court stated:

...the words of subclause 3 of 65(6) make it clear that the records collected, prepared, maintained or used by the Ministry in relation to meetings, consultations or communications are excluded only if those meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions.

[67] The Divisional Court in *Goodis* found that the exclusion in section 65(6) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees. It also found that whether or not a particular record is "employment-related" will turn on an examination of the particular document.

[68] Applying the Divisional Courts' reasoning in *Goodis* to the facts of this appeal, and based on my review of the report, I find that the report is a third party review about how the entire investigation of the hunting group was conducted by ministry employees. In my view, the information in the report has a direct bearing on the ministry's potential liability for the investigation about the hunting incident.

[69] Moreover, the report is not about the ministry's relationship with the conservation officers as their employer. The complaint of the group to the ministry was about the conduct of the investigation overall by the ministry's EB branch, not just the COs' actions, and included a complaint about tampering of audio recordings.

[70] The purpose of the report was to determine whether the ministry, through its employees, properly investigated the hunting incident before proceeding to lay charges against the group. It was commissioned in order to determine whether the ministry had conducted the investigation properly.

[71] I find that the report is not about matters in which the ministry is acting as an employer and the terms and conditions of employment or human resources questions are at issue. The report relates to ministry employees' actions surrounding the entire investigation into the circumstances surrounding the hunting incident involving the group. All institutions act through their employees, and the report is simply an examination into whether the ministry (through its employees) properly conducted its investigation and its decision to prosecute of the hunters. Importantly, as stated above, the report concerns not only the two conservation officers, but a review of the entire ministry investigation related to the hunting incident.

[72] Therefore, I find that the report is not excluded by reason of section 65(6)3.

[73] I have also reviewed the remaining records, the records described above by the ministry as category 1 and category 2 records. In respect of section 65(6)3 and the requirement that the communications reflected in the records be "about labour relations or employment-related matters," I find that the ministry has not provided sufficient representations to establish that the 297 pages of records and the five audio records at issue are about "employment-related matters."

[74] The IPC has consistently taken the position that the application of section 65(6) is record-specific and fact-specific. This means that when determining whether the exclusion applies, I must examine the record as a whole rather than looking at individual pages, paragraphs, sentences or words. This whole record method of analysis has also been described as the "record by record approach".²⁷

[75] This lack of detailed representations on the specific records at issue within the factual context of this appeal, supports a finding that the ministry has not satisfied the test for the application of the section 65(6)3 exclusion for the category 1 and category 2 records, which it describes as supporting (category 1) and supplementary (category 2) records to the report.

[76] Based on my independent review of these records, taking into account the context in which they were collected, prepared, maintained or used, I find that they are not about employment-related matters but about potential liability on the part of the ministry in respect of a negligent investigation and/or prosecution. Importantly, as with the report, the records concern not only the two conservation officers, but a review of the entire ministry investigation related to the hunting incident.

[77] Therefore, I find that part 3 of the test under section 65(6)3 is not met for the category 1 and category 2 records because the communications reflected in these records are not about labour relations or employment-related matters in which the ministry has an interest as an employer. Therefore, these records are not excluded from the application of the *Act* by reason of section 65(6)3.

The application of exemptions in the alternative to the exclusion claim

[78] As I explained above, during the inquiry, I asked the ministry to claim any exemptions claims in the alternative to its exclusion claim. The ministry stated that it intends to rely on the section 21(1) and/or 49(b) personal privacy exemptions for large portions of the records as they contain the personal information of the group (and the spouse of one of the group's members). All of these five individuals' information is contained in the records.

[79] I then obtained, and provided to the ministry, the written consents to the disclosure of information in the records from all members of the group which includes the appellant, as well as from the appellant's spouse. The ministry advised that if I

²⁷ See, for example, Orders M -352, MO-3798-I, MO-3927, MO-3947, MO-4071, PO-3642 and PO-3893-I.

determine that the exclusion in section 65(6)3 does not apply, then it is prepared to disclose to the appellant information from the records in consideration of the five consents.

[80] However, the records also contain a limited amount of personal information of other individuals. As a result, the ministry has applied the personal privacy exemptions in sections 49(b) or 21(1) to certain limited portions of the records that concern individuals other than the five who provided consents to disclosure of their information in the records. It has also applied the section 19 solicitor-client privilege exemption or the section 14 law enforcement exemption to a few sentences or words in the records.

[81] Because I have found the exclusion in section 65(6)3 does not apply, it appears to me that the appellant will now receive access to significant portions of the records. Because of this, and because I do not have detailed submissions on the exemption claims, I have decided to not adjudicate upon the exemptions at this time. Instead, I will order the ministry to issue another access decision to the appellant, without relying on the exclusion, and taking into account the five written consents referred to above. The appellant can then decide if he wishes to pursue access to the remaining information in the records.

ORDER:

1. I order the ministry to issue another access decision to the appellant by **April 28, 2023** without taking into account the section 65(6)3 exclusion and taking into account the written consents provided by the appellant and four of the other individuals listed in the records.
2. I order the ministry to copy me on the access decision referred to in order provision 1.
3. I order the appellant to advise me, within 30 days of his receipt to the disclosure contemplated by order provision 1, whether he wishes to pursue access to any information the ministry continues to withhold in its next access decision.
4. I remain seized to address the ministry's exemption claims should the appellant pursue access to any remaining withheld information.

Original Signed by: _____
Diane Smith
Adjudicator

March 27, 2023 _____