

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4409

Appeal PA21-00109

Ministry of the Solicitor

General June 23, 2023

Summary: This order deals with a request made to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the revocation of the requester's firearms licence. The ministry located responsive records and granted access to the requester, in part. The ministry denied access to portions of the records, claiming the discretionary exemptions in section 49(a) (discretion to refuse requester's own information), read with sections 14(1)(c) (reveal investigative techniques and procedures), 14(1)(i) (security), 14(1)(l) (facilitate commission of an unlawful act) and 19 (solicitor-client privilege) as well as section 49(b) (personal privacy) of the *Act*. In this order, the adjudicator upholds the ministry's decision, finding that all of the withheld information is exempt from disclosure under sections 49(a) and 49(b). The adjudicator also upholds the ministry's exercise of discretion in withholding the information she has found to be exempt. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 14(1)(c), 14(1)(i), 14(1)(l), 19, 49(a) and 49(b).

Orders Considered: Orders MO-2456, MO-2871, PO-2582 and PO-4310.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Ministry of the Solicitor General (the ministry) under the *Freedom*

of Information and Protection of Privacy Act (the Act). The access request was for all records located in the Chief Firearms Office (the CFO) relating to the revocation of the requester's firearms licence. The requester stipulated that the records should include any handwritten notes and records of phone calls made and received by four named staff of the CFO.

[2] The ministry located records responsive to the request and issued a decision to the requester granting partial access to the records.¹ The ministry denied access to other information in the records, claiming the application of the discretionary exemptions in section 49(a) (discretion to refuse requester's own information) read with sections 14(1)(c) (reveal investigative techniques and procedures), 14(1)(i) (security), 14(1)(l) (facilitate commission of an unlawful act) and 19 (solicitor-client privilege) and section 49(b) (personal privacy). The ministry also advised the requester that certain information in the records was not responsive to his access request.

[3] The requester (now the appellant) filed an appeal of the ministry's decision to the Information and Privacy Commissioner (the IPC).

[4] During the mediation of the appeal, the appellant informed the mediator he was not taking issue with the information the ministry withheld on pages 68, 106, and 129. As a result, these pages are no longer at issue. The appellant also informed the mediator that he was not taking issue with information the ministry withheld as non-responsive to the request. As a result, all of the information the ministry deemed as non-responsive in the records is no longer at issue in the appeal.

[5] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I conducted an inquiry by seeking and receiving representations from the ministry and the appellant.

[6] The appellant's representations do not address the exemptions that the ministry has claimed or whether the ministry properly exercised its discretion. The appellant's position is that his firearms licence was improperly revoked and as a result, he seeks the reasons and justification for the revocation of the licence which requires the full disclosure to him of all of the information remaining at issue contained in the records. These issues are not relevant to the issues before me and I do not discuss them further in this order.

[7] For the reasons that follow, I uphold the ministry's decision, and find that all of the withheld information is exempt from disclosure under either section 49(a) or 49(b). I also uphold the ministry's exercise of discretion in withholding the information I have found to be exempt, and I dismiss the appeal.

¹ The ministry disclosed approximately 200 pages of records in their entirety to the requester.

RECORDS:

[8] There are 56 pages of records at issue consisting of handwritten Firearms Officers' notes, an email, Client Applications,² Police Occurrence details,³ a Crown Brief synopsis, the willsay of a Firearms Officer, and Firearms Reference Hearing records. The two-page email was withheld in its entirety. The remaining pages were withheld in part.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption in section 49(b) apply to the information at issue?
- C. Does the discretionary exemption at section 49(a) read with the sections 14(1)(c), 14(1)(i) and 14(1)(l) law enforcement exemptions apply to the information at issue?
- D. Does the discretionary solicitor-client privilege exemption at section 19 of the *Act* apply to the information?
- E. Did the ministry exercise its discretion under sections 49(a) and 49(b)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Background

[9] The ministry provided background information that is relevant to the access request. The Chief Firearms Office (the CFO) is established under the federal *Firearms Act*⁴ and reports to both the Ontario Provincial Police (the OPP) and the ministry. The head of the CFO is a member of the OPP whose authority is delegated by the ministry. The CFO has a broad statutory mandate to administer the licensing requirements of the *Firearms Act* for the purpose of protecting public safety. For example, the CFO authorizes who can possess and acquire a firearm in circumstances that would otherwise constitute an offence under the *Criminal Code of Canada*.⁵ In addition, the *Firearms Act* authorizes the CFO to conduct investigations of suspected offences under

² These are RCMP records.

³ There are records from the OPP and a municipal police service.

⁴ S.C. 1995, c.39.

⁵ For example, section 91 of the *Criminal Code of Canada* makes it an offence to possess a firearm unless the person holds a licence and a registration certificate.

the *Firearms Act*, and to revoke licences that it has issued.

Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[10] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the records contain “personal information,” and if so, to whom the personal information relates. Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[11] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁶ Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁷

[12] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁸

[13] Section 2(1) of the *Act* gives a list of examples of personal information:

“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,

⁶ See the definition of “record” in section 2(1).

⁷ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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 if 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.

Representations

[14] The ministry submits that the records contain the personal information of individuals who were associated with the decision to revoke the appellant's firearm licence. The personal information, the ministry argues, includes their names and other identifying information about them, such as their telephone numbers, dates of birth, employment histories, and opinions about them that were expressed by others.

Analysis and findings

[15] I have reviewed the records at issue. I find that all of the records reveal the circumstances leading to the revocation of his firearms licence. They also contain the appellant's name with other personal information about him. This information qualifies as the appellant's personal information because it reveals something of a personal nature about the appellant and because of paragraph (h) of the definition of "personal information" set out in section 2(1) of the *Act*.

[16] I also find that pages 18, 42, 47, 50, 55, 90, 92, 95, 96, 98, 99, 100, 104, 105, 121, 122, 124, 125 and 127 of the records contain the personal information of 13 other individuals, as defined in section 2(1) of the *Act*, including their telephone numbers [paragraph (d) of the definition], family status and gender [paragraph (a)], their names with other personal information about them [paragraph (h)] and, in two cases, their employment history [paragraph (b)]. All of this information, I find, qualifies as their personal information as defined in section 2(1). I also note that the amount of personal information in these pages is limited in quantity.

[17] Having found that all of the records contain the appellant's personal information, and that some of the records contain the personal information of other individuals, the issue of whether the personal information of the other individuals is exempt from disclosure is properly considered under the discretionary personal privacy exemption in section 49(b).

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

[18] The ministry is claiming the application of section 49(b) to pages 18, 42, 47, 50, 55, 90, 92, 95, 96, 98, 99, 100, 104, 105, 121, 122, 124, 125 and 127 of the records. Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this right.

[19] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.⁹ The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

[20] Sections 21(1)(a) to (e) and 21(4) provide guidance in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). I find that none of the exceptions in section 21(1)(a)-(e) apply in the circumstances of this appeal.

[21] Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. If any of the section 21(4) situations is present, sections 21(2) and need not be considered. None of the situations in section 21(4) apply to the circumstances of the present appeal and I will therefore not consider them any further in this order.

[22] Otherwise, 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-maker¹⁰ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in deciding whether the disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.¹¹

[23] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹² Some of the factors weigh in favour of disclosure, while others weigh against disclosure. Each of the first four factors, found in sections 21(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the

⁹ However, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy; Order PO-2560.

¹⁰ The institution or, on appeal, the IPC.

¹¹ Order MO-2954.

¹² Order P-239.

remaining five factors found in sections 21(2)(e) to (i), if established, would tend to support non- disclosure of that information.

[24] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[25] In this appeal, the ministry is claiming that the presumptions in sections 21(3)(b) (investigation into a possible violation of law) and 21(3)(d) (educational history) apply, as well as the factor in section 21(2)(f) (highly sensitive).

Sections 21(2)(f), 21(3)(b) and 21(3)(d) read:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

(d) relates to employment or educational history;

Representations, analysis and findings

Section 21(3)(b)

[26] The ministry submits that the presumption in section 21(3)(b) applies to all of the withheld personal information because the records were collected for the purpose of conducting an investigation under the *Firearms Act*, which led to the decision to revoke the appellant's firearms licence. This investigation, the ministry argues, qualifies as a law enforcement investigation for the purpose of section 21(3)(b) because the *Firearms Act* creates a series of offences which can result in charges.¹³

[27] To establish that the presumption in section 21(3)(b) is applicable, I must be satisfied only that there be an investigation into a *possible* violation of law.¹⁴ So, even if criminal proceedings were never started against the individual, section 21(3)(b) may

¹³ The ministry refers to Orders PO-3218, PO-3544, PO-3712, PO-3766 and PO-3897 to support its position regarding the application of section 21(3)(b) to the personal information at issue.

¹⁴ Orders P-242 and MO-2235.

still apply.¹⁵ The presumption can apply to different types of investigations, including those relating to by-law enforcement,¹⁶ and enforcement of environmental laws,¹⁷ occupational health and safety laws,¹⁸ or violations of the Ontario *Human Rights Code*.¹⁹

[28] I am satisfied that the information for which the ministry claims the application of section 49(b) was compiled and identifiable as part of an investigation by the CFO into a possible violation of law under the *Firearms Act*, which authorizes the CFO to conduct investigations of suspected offences under the *Firearms Act*, and to revoke licences that it has issued. In the circumstances of this case, the CFO's investigation led to the revocation of his firearms licence. Because the presumption can apply to different types of investigations into a possible violation of law, I find that the type of investigation carried out by the CFO in this circumstance falls within the ambit of the presumption in section 21(3)(b). Therefore, I find that the presumption against disclosure in section 21(3)(b) is relevant to all of the personal information at issue.

Section 21(3)(d)

[29] The ministry submits that the presumption in section 21(3)(d) applies to portions of pages 121 and 127 because these portions contain the start and end dates of OPP staff members' employment with the OPP.

[30] This presumption covers several types of information connected to employment history, including the number of years of service as well as the start and end dates of service.

[31] Based on my review of the withheld portions of pages 121 and 127, I am satisfied that they contain the number of years of service and start dates of service of two OPP staff members, and the end date of service of one of the two OPP staff members. As a result, I find that the presumption in section 21(3)(d) applies to this personal information.

Section 21(2)(f)

[32] The ministry submits that the personal information in the records is highly sensitive because its disclosure could be expected to cause significant distress to the affected individuals, particularly given that the ministry did not notify them of this appeal. The ministry goes on to argue that the disclosure of this personal information will cause individuals to permanently lose control over personal information in which they have an interest and that disclosure of this information to the appellant would, in

¹⁵ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹⁶ Order MO-2147.

¹⁷ Order PO-1706.

¹⁸ Order PO-2716.

¹⁹ R.S.O. 1990, c. H19; Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

effect, constitute disclosure to the world, which can be expected to be distressing.²⁰

[33] This section is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered “highly sensitive,” there must be a reasonable expectation of significant personal distress if the information is disclosed.²¹ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²²

[34] I find that the factor in section 21(2)(f) is relevant to most of the personal information at issue because it is highly sensitive and I find that the disclosure of this sensitive personal information could reasonably be expected to cause significant personal distress to the individuals involved. Conversely, I find that some of the personal information is not highly sensitive and therefore the factor in section 21(2)(f) is not relevant to this particular personal information.²³

Balancing the interests

[35] As set out above, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.²⁴ In this appeal, I found that the section 21(3)(b) presumption applies to all of the withheld personal information and the section 21(3)(d) presumption applies to some of the withheld personal information. I also found that the 21(2)(f) factor applies to most, but not all, of the personal information. These sections all weigh in favour of withholding the information. I note that the appellant has not raised any section 21(2) factors weighing in favour of disclosure.

[36] Without any factors weighing in favour of disclosure, when I weigh the presumptions and the factor that favour withholding with the interests of the appellant and the other eight individuals, I conclude that disclosure of the information at issue would constitute an unjustified invasion of the personal privacy of the eight individuals and the section 49(b) exemption applies to their personal information, subject to my findings regarding the ministry’s exercise of discretion.

Issue C: Does the discretionary exemption at section 49(a) read with the sections 14(1)(c), 14(1)(i) and 14(1)(l) law enforcement exemptions apply to the information at issue?

[37] The ministry is claiming the application of the exemption in section 49(a) read

²⁰ The ministry relies on Order PO-2582, where it was found that CFO records were “highly sensitive” for the purpose of section 21(2)(f).

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

²² Order MO-2980.

²³ I am unable to provide further details about this personal information as that would reveal the content of the information at issue.

²⁴ Order MO-2954.

with sections 14(1)(c), (i) and (l) to pages 16, 22, 41, 43, 45, 46, 48, 51, 56, 57, 59, 77, 78, 89, 90-96, 100, 104, 105, 107, 111, 114-117, 121, 123 and 125 of the records. As previously stated, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49(a) provides some exemptions from this general right of access to one's own personal information.

Section 49(a) of the *Act* 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, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[38] The discretionary nature of section 49(a) ("may" refuse to disclose) 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 own personal information.²⁵ If an institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[39] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. The subsections of section 14(1) relevant in this appeal state:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required; or

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

The term "law enforcement"²⁶ is defined in section 2(1):

"law enforcement" means,

(a) policing,

²⁵ Order M-352.

²⁶ The term "law enforcement" appears in many, but not all, parts of section 14.

(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)

[40] Many of the exemptions listed in section 14 apply where a certain event or harm “could reasonably be expected to” result from disclosure of the record. The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.²⁷ However, the exemption does not apply just because a continuing law enforcement matter exists,²⁸ and parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²⁹

[41] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.³⁰ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.³¹

Representations, analysis and findings

[42] The ministry submits that the records were collected and used by the CFO which, as previously stated, operates under and reports to the OPP.³² The records were used for a law enforcement purpose, which in this case is to protect public safety by investigating suspected offences under the *Firearms Act* and revoking a firearms licence in accordance with it.

[43] First, past IPC orders have found that the CFO qualifies as an agency conducting law enforcement as set out in the definition of “law enforcement” in section 2(1) of the

²⁷ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

²⁸ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

²⁹ Orders MO-2363 and PO-2435.

³⁰ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

³¹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

³² The ministry relies on Order PO-2582, which recognized CFO records as being law enforcement records for the purpose of section 14.

Act,³³ and I agree with and adopt that finding in this appeal.

Section 14(1)(c)

[44] With respect to section 14(1)(c), the ministry has applied this exemption to “eligibility checklists” at pages 41, 43, 48, 51, 56 and 57. The ministry submits that the checklists are used to assist the CFO in determining whether applicants are eligible to obtain a firearms licence. The ministry further submits that the disclosure of this information would hinder the CRO’s ability to carry out its responsibilities in relation to the *Firearms Act* because it would enable firearms licence applicants to find out the types of checks that are conducted on a licence application or renewal, and that these checks qualify as an investigative technique not well known to the public for the purpose of section 14.³⁴

[45] The ministry also applied this exemption to the results of police records checks set out on pages 77, 78 and 121. The ministry submits that the types of checks conducted in this instance comprise an investigative technique used to determine whether a licence should be revoked and this technique is not known to the public. The ministry submits that it is concerned that disclosing the technique could reveal the types of checks CFO officers can conduct, thereby undermining the inherent confidentiality of the process.

[46] For section 14(1)(c) to apply, the ministry must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.³⁵

[47] The technique or procedure must be “investigative”; that is, it must be related to investigations. The exemption will not apply to techniques or procedures related to “enforcing” the law.³⁶

[48] In Order PO-2582, Adjudicator Diane Smith found that the techniques used by the CFO for checking the eligibility to obtain a firearms licence qualified for exemption under section 14(1)(c). I agree with and adopt this approach in this appeal. I find that disclosure of the undisclosed portions of pages 41, 43, 48, 51, 56 and 57 which contain the techniques for checking eligibility to obtain or maintain a firearms license could reasonably be expected to reveal law enforcement investigative techniques currently in use. In my view, disclosure of these techniques could reasonably be expected to hinder or compromise their effective utilization as it would enable individuals to modify their behaviour and activities in order unlawfully obtain or retain firearms. As such, I

³³ See, for example, Order PO-2582.

³⁴ The ministry relies on Order PO-2582, where the IPC found that certain checklists would reasonably be expected to reveal a law enforcement investigative technique currently in use.

³⁵ Orders P-170, P-1487, MO-2347-I and PO-2751.

³⁶ Orders PO-2034 and P-1340.

conclude that disclosure of this information would hinder the ability of the CFO to carry out its responsibilities in relation to the *Firearms Act* and I find that this information is exempt from disclosure under section 49(a) read with section 14(1)(c), subject to my findings regarding the ministry's exercise of discretion.

[49] Similarly, I find that the results of police records checks set out on pages 77, 78 and 121 of the records are also exempt from disclosure under section 49(a) read with section 14(1)(c), subject to my findings regarding the ministry's exercise of discretion. I find that the disclosure of this information would reveal an investigative technique used to determine whether a firearms licence should be revoked and that this technique is not known to the public, qualifying it for exemption from disclosure.

Section 14(1)(i)

[50] The ministry has applied section 14(1)(i) to page 89 and submits that it is an IP address, which is a numerical label connected to a computer network that uses the Internet for communication. The ministry submits that the identification of an IP address could be used by hackers to compromise the security of a system.³⁷

[51] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[52] The withheld information is an OPP IP address. I am satisfied that disclosure of this IP address could reasonably be expected to cause the type of harm such as a security breach to its computer system. I find Order MO-2456 instructive in this regard. In that order, Adjudicator Jennifer James found IP addresses in records exempt from disclosure under the municipal equivalent of section 14(1)(i) on the basis that their disclosure could reasonably be expected to lead to a security breach. I agree with and adopt the findings of Adjudicator James in Order MO-2456 to the circumstances of this appeal. As a result, I am satisfied that the disclosure of the IP address on page 89 of the records could reasonably be expected to lead to a security breach of the OPP computer system and therefore qualifies for exemption under section 49(a) read with section 14(1)(i), subject to my findings regarding the ministry's exercise of discretion.

Section 14(1)(l)

[53] The ministry claims that the exemption at section 14(1)(l) applies to information contained in pages 16, 22, 41, 43, 45, 46, 48, 51, 56, 57, 59, 77, 78, 89, 90-96, 100, 104, 105, 107, 111, 114-117, 121, 123 and 125.

[54] The ministry submits that it has applied this exemption to police codes, including area and patrol zone codes, codes associated with police record checks and other codes

³⁷ The ministry relies on Order MO-2456 to support its position regarding the IP address.

that are used by the police to routinely communicate with one another using terminology or coded language that would not be expected to be known to the general public. The ministry further submits that a long line of IPC orders has found that police operational codes qualify for exemption under section 14(1)(l) because of the reasonable expectation of harm were they to be released.

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

[56] Numerous orders issued by the IPC have considered the application of the law enforcement exemption in section 14(1)(l) to police-code information,³⁸ including Order PO-4310, in which I considered Order MO-2871, where Adjudicator Diane Smith found that the disclosure of ten-codes could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. She stated:

This office has issued numerous orders with respect to the disclosure of police codes and has consistently found that section 8(1)(l)³⁹ 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" 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...

[57] For the purposes of this appeal, I agree with and adopt these findings that "police ten-code" information is subject to the exemption at section 14(1)(l) of the *Act*.⁴⁰ I have reviewed the information at issue and find that the information clearly contains law enforcement code information recorded by CFO officers, OPP officers, a municipal police force officer and the RCMP. In my view, the IPC findings regarding "police code" information is equally applicable to the law enforcement code information employed by municipal police forces, the OPP, the RCMP and the CFO.

[58] I accept that disclosure of this type of information has consistently been found to

³⁸ The equivalent to section 14(1)(l) in the *Municipal Freedom of Information and Protection of Privacy* is section 8(1)(l).

³⁹ Section 8(1)(l) of the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal *Act*) is the equivalent of section 14(1)(l) of the *Freedom of Information and Protection of Privacy Act*.

⁴⁰ See also Orders MO-3640, MO-3682, MO-3773, MO-4073 and PO-4017 in which similar findings were made with regard to police ten-codes.

reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. I also accept that the disclosure of this information could reasonably be expected to compromise the ability of RCMP, OPP, CFO and municipal police officers to provide effective policing services by enabling individuals engaged in illegal activities to conduct such activities. As a result, I find that this law enforcement code information is exempt from disclosure under section 49(a), read with section 14(1)(l) of the *Act*, subject to my findings regarding the ministry's exercise of discretion.

[59] In sum, I find that all of the information the ministry withheld under sections 14(1)(c), 14(1)(i) and 14(1)(l) is exempt from disclosure under section 49(a). I will address the ministry's exercise of discretion in Issue E, below.

Issue D: Does the discretionary solicitor-client privilege exemption at section 19 of the *Act* apply to the information?

[60] The ministry is claiming the application of section 19(a) to pages 24 (in whole), and 25 and 44 (in part) of the records. Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege,

(b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation or

[61] Section 19 contains three different exemptions, which the IPC has referred in previous decisions as making up two "branches." The first branch, found in section 19(a), ("subject to solicitor-client privilege") is based on common law. The institution must establish that at least one branch applies. At common law, solicitor-client privilege encompasses two types of privilege, including solicitor-client privilege, which the ministry claims applies.

Representations, analysis and findings

[62] The ministry submits that it withheld page 24 in its entirety and part of page 25, which is an email communication, because the information in it is subject to solicitor-client communication privilege. It submits that this record was created by a Crown Attorney at the Ministry of the Attorney General for the purpose of communicating to an OPP employee in the course of a solicitor-client relationship. The ministry also submits that it withheld a portion of page 44 because the information in it is subject to solicitor-client privilege. The ministry submits that page 44 contains a communication between the same Crown Attorney and an OPP staff in the context of a solicitor-client relationship. In making this argument, the ministry relies on the Divisional Court's

decision in *Ministry of Community and Social Services v. Ontario*,⁴¹ in which the Court stated:

The legal advice covered by solicitor-client privilege is not confined to a solicitor telling his or her client the law. The type of communication that is protected must be construed as broad in nature, including advice on what should be done, legally and practically. . .

[63] Lastly, the ministry submits that there has been no waiver of this solicitor-client privilege by the OPP.

[64] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.⁴² This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.⁴³ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.⁴⁴

[65] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.⁴⁵

[66] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege, and voluntarily demonstrates an intention to waive the privilege.⁴⁶

[67] Having reviewed the ministry's representations and the records, I find that all of the information at issue in pages 24, 25 and 44 is subject to solicitor-client communication privilege under the common law privilege at section 19(a). Pages 24-25 consist of an email communication between a Crown Attorney and an OPP officer. The withheld portion of page 44 is a summary of a direct communication between a Crown Attorney and an OPP officer.

[68] The solicitor-client communication privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.⁴⁷ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer

⁴¹ [2004] O.J. No. 1854.

⁴² Orders PO-2441, MO-2166 and MO-1925.

⁴³ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

⁴⁴ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

⁴⁵ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

⁴⁶ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

⁴⁷ *Descôteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860.

and client aimed at keeping both informed so that advice can be sought and given.⁴⁸ I accept the ministry's evidence that the email at pages 24-24 is a direct communication of a confidential nature made between a Crown Attorney and an OPP staff member and that the summary on page 44 contains the substance of a direct communication between a Crown Attorney and an OPP officer for the purpose of obtaining or giving legal advice and thereby form part of the "continuum of communications" between the Crown Attorney and two employees of his client, the OPP. I am satisfied that this information qualifies for exemption under section 19(a).

[69] In addition, there is no evidence before me to suggest that the OPP has waived the privilege attached to these records. Having found that the records fall within the solicitor-client privilege exemption in section 19, I am satisfied that they qualify for exemption under section 49(a), subject to my findings regarding the ministry's exercise of discretion.

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

[70] The sections 49(a) and 49(b) exemptions are discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[71] 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.

[72] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.⁴⁹ The IPC cannot, however, substitute its own discretion for that of the institution.⁵⁰

[73] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:⁵¹

- 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,

⁴⁸ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

⁴⁹ Order MO-1573.

⁵⁰ Section 54(2).

⁵¹ Orders P-344 and MO-1573.

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

Representations, analysis and findings

[74] The ministry submits that it properly exercised its discretion in withholding information from the appellant under sections 49(a) and 49(b). The ministry further submits that it took the following factors into consideration in exercising its discretion:

- the protection of privacy of individuals other than the appellant,
- the importance of the law enforcement exemption in protecting the integrity of techniques and processes used by the CFO to regulate firearms and to protect public safety,
- its historic practice with this type of information is consistent with the approach taken with this request,
- the importance of confidentiality in the solicitor-client relationship, and
- the fact that it has disclosed most of the records to the appellant, including detailed information as to why the firearms licence was revoked, withholding limited information.

[75] Based on the ministry's representations, I am satisfied that it properly exercised its discretion because it took into account relevant considerations and did not take into account irrelevant considerations. I am satisfied that the ministry balanced the appellant's interests in the disclosure of the records with the importance of the law enforcement, solicitor-client and personal privacy exemptions. I also note that the ministry disclosed the majority of the information contained in the records to the appellant, including his own personal information. In doing so, I find that the ministry took into consideration the purposes of the *Act*, such as the principle that exemptions from the right of access should be limited and specific. Consequently, I uphold the ministry's exercise of discretion under sections 49(a) and 49(b) to the information that I

have found to be exempt from disclosure under sections 14(1)(c), 14(1)(i), 14(1)(l) and 19, as well as the personal information of other individuals I have found to be exempt under section 49(b).

ORDER:

1. I uphold the ministry's access decision and find that the information at issue is exempt from disclosure under sections 49(a) and 49(b).
2. I uphold the ministry's exercise of discretion under sections 49(a) and 49(b).
3. I dismiss the appeal.

Original Signed by _____
Cathy Hamilton
Adjudicator

_____ June 23, 2023