Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4459

Appeal MA22-00299

The Greater/Grand Sudbury Police Services Board

November 6, 2023

Summary: The appellant filed a request under the *Act* with the police for records relating to the manner in which the police conduct investigations and execute search warrants, including but not limited to the investigations of two identified individuals. The police located responsive records and granted the appellant partial access to them. The police withheld portions of records under sections 14(1) (personal privacy) and 8(2)(a) (law enforcement report). The police also withheld records in full under the solicitor-client privilege exemption in section 12. The appellant appealed the police's decision to the IPC and raised the application of the public interest override in section 16. In this order, the adjudicator orders the police to disclose certain records and information that she finds not exempt under section 14(1) or section 8(2)(a). She upholds the police's decision to withhold the remainder of the information and records under sections 12 and 14(1).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of *personal information*), 8(2)(a), 12, 14(1), 14(1)(a), 14(1)(c), 14(1)(f), 14(2)(a), 14(2)(e), 14(2)(f), 14(2)(h), 14(3)(b), and 16.

Orders and Investigation Reports Considered: Orders MO-2019, MO-4403.

Cases Considered: *R v. Campbell*, [1999] 1 SCR 565.

OVERVIEW:

[1] The appellant, a member of the media, submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Greater/Grand

Sudbury Police Services Board (the police) for:

> All records including reports, emails, memos and training documents related to constitutional violation concerns regarding the interviewing of suspects, bail appearance deadlines and the execution of deadlines and the execution of search warrants and the training courses to correct such concerns, including but not limited to the investigations of [two named individuals].

The two individuals identified in the appellant's request were the subjects of investigations relating to serious crimes. The police's conduct during these investigations was the subject of media scrutiny, particularly in relation to their searches and the manner in which they executed search warrants. Some of the police's actions were found to be unconstitutional and one court proceeding was dismissed due to that finding.

[2] The appellant clarified that he seeks access to records for the period from January 1, 2018 to March 1, 2022.

[3] The police located records and issued an access decision granting the appellant partial access to the records. The police withheld portions of the records under sections 8 (law enforcement), 12 (solicitor-client privilege), and 14(1) (personal privacy) of the *Act*.

[4] The appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the appellant raised the possible application of the public interest override in section 16 of the *Act*. As a result, section 16 was added to this appeal as it relates to the information withheld by the police pursuant to section 14(1) of the *Act*. I confirm section 16 cannot be applied to override the application of sections 8 and 12.

[6] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the appeal decided to conduct an inquiry. The adjudicator sought and received representations from the police and appellant. Representations were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*.

[7] The appeal was then transferred to me to complete the inquiry and issue a decision. I reviewed the file and the parties' representations. I decided to notify two individuals as affected parties because the disclosure of the records could affect their interests. One affected party, a police officer, responded and consented to the disclosure of information relating to them. The other affected party did not respond.

[8] In the discussion that follows, I uphold the police's decision in part. I uphold the police's decision to withhold some information and records under sections 12 and 14(1). However, I order the police to disclose the information I find not exempt under section 14(1) or section 8(2)(a).

RECORDS:

[9] There are seven records at issue in this appeal. The police described them in the Index of Records as follows:

Record Number	Description	Decision/Exemptions claimed
1	Police Training Precis	Withhold in part under sections 8(2)(a) (law enforcement report) and 14(1) (personal privacy)
2	Briefing Note in response to media article	Withhold in full under sections 8(2)(a) and 14(1)
3	Email	Withhold in full under section 12 (solicitor-client privilege)
4	Email	Withhold in full under section 12
5	Email	Withhold in full under section 12
6	Presentation	Withhold in full under section 12
7	Presentation	Withhold in full under section 12

ISSUES:

A. Do records 1 and 2 contain *personal information* as defined in section 2(1) and, if so, whose personal information is it?

B. Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in records 1 and 2?

C. Is there a compelling public interest in the disclosure of records 1 and 2 that clearly outweighs the purpose of the section 14(1) exemption?

D. Does the discretionary law enforcement exemption at section 8(2)(a) of the *Act* apply to Record 2?

E. Does the discretionary solicitor-client privilege exemption at section 12 of the *Act* apply to records 3 to 7?

DISCUSSION:

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

[10] Record 1 is a Training Precis prepared by the police regarding an investigation and related court decision. Record 2 is a Briefing Note relating to a media article about the investigation that was also the subject of record 1. The police rely on the mandatory personal privacy exemption at section 14(1) of the *Act* to withhold portions of record 1 and all of record 2. Given this exemption claim, it is necessary to decide whether records 1 and 2 contain *personal information* and, if so, to whom it relates. The term *personal information* is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[11] 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* an individual.[1] However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[2]

[12] To qualify as personal information, it must be reasonable to expect an individual may be identified if the information is disclosed.[3]

[13] The police submit records 1 and 2 contain an individual's full name (considered to be *personal information* under paragraph (h) of section 2(1)), and criminal and employment information in relation to criminal allegations and their criminal history (paragraph (b)). The police submit that while some of the information belonging to this individual relates to them in an official capacity, the information relates to criminal charges filed against them and therefore reveals something of a personal nature about the individual.

[14] In his representations, the appellant confirmed he does not seek any information revealing "names, investigative details or criminal allegations" that have not already been made public through the court system or otherwise. The appellant states these types of personal information can be redacted from the records.

[15] I reviewed records 1 and 2 and find they contain the personal information of an identifiable individual who is not the appellant, specifically, an individual who was the subject of a police investigation and charged with serious crimes. I find both the

---

[1] See sections 2(2.1) and (2.2) of the Act and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO2225.
[2] Orders P-1409, R-980015, PO-2225 and MO-2334.
[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Training Precis and Briefing Note contain personal information relating to this individual, including their employment information, information relating to the criminal investigation into this individual, and their name in conjunction with other information relating to them, which is considered to be personal information under paragraphs (b) and (h) of section 2(1) of the *Act*. In addition, I find the information to fit under the introductory wording of section 2(1) as "recorded information about an identifiable individual."

[16] With regard to record 2, the Briefing Note, I find portions of the record contains personal information relating to the identified individual referenced above. The Briefing Note contains the individual's name, employment information and information concerning serious criminal allegations pertaining to that individual. I find this information to fit under the introductory wording of the section 2(1) definition of personal information as well as paragraphs (b) and (h) of the definition. I find some of the record qualifies as personal information of the identifiable individual and cannot reasonably be severed without disclosing their personal information.

[17] In addition, I find a discrete portion of record 2[4] contains information relating to another identifiable individual, who was the subject of an investigation for similar crimes.

[18] I also find record 2 contains the names, occupations and professional views and opinions of various professionals including police officers and lawyers. These individuals worked on the investigation or prosecution of the individual identified in the appellant's request; as such, the information relating to these individual's concerns them in a professional, official or business capacity. I find the information that identifies these individuals or that is about them in the context of their work is not their personal information. Rather, it is information about them acting in a business or professional capacity. I am satisfied the disclosure of these individuals' information, such as their names and options, or comments regarding the investigation or police protocols relating to investigations, would not reveal anything of a personal nature about them. As this information is not personal information as it is defined in section 2(1), it is not exempt and cannot be withheld under section 14(1) of the *Act*.

[19] There is one exception to my finding above. I find paragraph 13 of record 2 contains information relating to a police officer in their personal capacity. Specifically, it contains this officer's views and opinions that are of a personal nature. I will consider whether this portion is exempt under section 14(1) of the *Act*, below.

[20] I find records 1 and 2 do not contain personal information relating to the appellant. Accordingly, I will consider access to the records under Part I of the *Act*.

[21] In conclusion, I find that some of the withheld information in records 1 and 2 is

[4] Specifically, paragraph 10 of Record 2.

the personal information of identifiable individuals and I will consider whether this information is exempt under section 14(1). I find the remainder of the information in record 2 does not contain personal information and can therefore not be withheld from disclosure under section 14(1). I will consider whether this information is exempt under section 8(2)(a), below.

Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in records 1 and 2?

[22] The police withheld portions of a Training Precis (record 1) and the entire Briefing Note (record 2) under section 14(1) of the *Act*. I note above that some of the information in record 2 does not relate to the individual under investigation, such as the information containing general comments about police protocol and procedures or investigations. In addition, there is information relating to police officers and lawyers acting in their professional capacities in record 2. This information is also not personal information within the meaning of section 2(1). Section 14(1) can only apply to the personal information relating to an identifiable individual in records 1 and 2, a second identifiable individual in record 2, and a police officer in record 2.

[23] The mandatory personal privacy exemption in section 14(1) creates a general rule prohibiting an institution from disclosing personal information about another individual to a requester. This general rule is subject to the exceptions in section 14(1)(a) to (f). If any of those exceptions exist, the institution is required to disclose the information. The police submit none of the exceptions in section 14(1). However, the appellant submits that section 14(1)(c) applies. In addition, an affected party, a police officer whose personal information is found in record 2, consented to the disclosure of records relating to them, thereby raising the application of section 14(1)(a).

Section 14(1)(a): Prior Written Consent of the Individual

[24] For this exception to apply, the individual whose personal information is contained in the record must have consented to the release of their personal information. This consent must be in writing. The consent must be given in the specific context of the access request, which means the consenting individual must know their personal information will be disclosed in response to an access request under the *Act*.[5]

[25] During the inquiry, I notified two individuals as affected parties. One affected party, a police officer, consented to the disclosure of the information relating to them in writing. The personal information relating to this affected party is found in paragraphs 11 and 13 of record 2, a Briefing Note. Given this consent, the personal information relating to this individual can be disclosed.

[26] Section 14(1)(a) does not apply to any other personal information at issue in the

[5] Order PO-1723.

records.

Section 14(1)(c): Record Available to the General Public

[27] Section 14(1)(c) reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > Personal information collected and maintained specifically for the purpose of creating a record available to the general public[.]

[28] In order for section 14(1)(c) to apply, the information in question must have been collected and maintained for the purpose of creating a public record.

[29] The appellant submits that "some of the personal information contained in these documents was indeed 'collected and maintained specifically for the purpose of creating a record available to the general public' through the justice system." The appellant submits any information pertaining to any active investigations or allegations should be excluded, but any personal information already made public by the police or through court proceedings should continue to be available to the public and serve a public interest in enriching their understanding of what occurred.

[30] The police claim the appellant interpreted section 14(1)(c) incorrectly. They submit the exception in section 14(1)(c) is specific to personal information collected and compiled for the sole purpose of public disclosure, such as annual statistics. The police submit the personal information in records 1 and 2 was not collected for the purpose of creating a record available to the general public. Rather, the personal information at issue was collected as a result of police investigations which subsequently led to court proceedings. The police take the position that the expectation of privacy should be maintained as the personal information was collected in confidence and is not for public consumption. The police submit they are obligated to protect information obtained through the course of an investigation into a possible violation of law despite the fact that the information led to a court proceeding.

[31] The police submit the personal information in records 1 and 2 contain information about criminal allegations of a highly sensitive nature. Even though the matters may have been identified in a court proceeding, the police submit this does not mean the personal information at issue was collected and maintained for the purpose of creating a record available to the general public.

[32] In response, the appellant submits the police's interpretation of section 14(1)(c) gives them total discretion to determine if the information they gathered is for a public purpose. The appellant submits the information gathered by the police is made public in a variety of ways, including through the court system, press releases and media interviews. The appellant submits the police have the discretion to decide what to

reveal to the public and why, which can be counter to the public interest. Ultimately, the appellant submits the information at issue is gathered for the purpose of creating a public record, where the police decides to make the information public. The appellant submits section 14(1)(c) should give the public the right to access the information at issue in records 1 and 2, "so long as it doesn't infringe on any other rights in the *Act*, including active investigations and personal privacy."

[33] I reviewed both parties' representations and find section 14(1)(c) has no application in this case. I agree the appellant misinterpreted section 14(1)(c). As stated above, section 14(1)(c) allows for the disclosure of personal information where that information was "collected and maintained *specifically* for the purpose of creating a record available to the general public." The word *specifically* in this section means the information must have been collected and maintained for the sole purpose of creating a record available to the general public. It does not mean personal information that may have been disclosed or publicly available otherwise should be disclosed pursuant to this section.

[34] I acknowledge some of the personal information at issue in these records may be publicly available. However, this does not mean the personal information in these records was collected and maintained specifically for the purpose of creating a record available to the public. Based on my review of the records, I find record 1 was created as a training document for police officers, not for public dissemination. Similarly, I find record 2, a briefing note, was created by the police in response to a media article. Both records are clearly internal police documents and the personal information contained therein was not collected and maintained specifically for the purpose of creating a record available to the general public. Given these circumstances, I find section 14(1)(c) does not apply the personal information at issue in records 1 and 2.

[35] I find none of the exceptions in sections 14(1)(b), (d) or (e) apply to the personal information in records 1 and 2 and will now consider the application of section 14(1)(f).

Section 14(1)(f): unjustified invasion of personal privacy

[36] Section 14(1)(f) requires the institution to disclose another individual's personal information to a requester if this would not be an *unjustified invasion of personal privacy*. Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 14(1)(f). Section 14(4) sets out certain circumstances in which the disclosure of the personal information would not be an *unjustified invasion of personal privacy*. I find none of them are relevant here.

[37] Section 14(3) should generally be considered first. This section outlines several situations in which disclosing information is presumed to be an unjustified invasion of personal privacy. If one of these situations applies, disclosure is presumed to be an

unjustified invasion of personal privacy and the personal information cannot be disclosed unless there is a *compelling public interest* under section 16 requiring that the information be disclosed despite section 14(1).[6]

Representations of the parties

[38] The police submit the presumption in section 14(3)(b) applies to all of the personal information at issue. The police claim the personal information in the records was compiled and is identifiable as part of a criminal investigation into a possible violation of law. While not required for the application of the presumption, the police state criminal proceedings followed the investigation at issue. The police submit records 1 and 2 reference specific investigations and information relating to court proceedings and that this information is intermingled with personal information and case specific information.

[39] In addition, the police submit the factors in favour of non-disclosure of the personal information in sections 14(2)(e) (exposure to harm), (f) (highly sensitive) and (h) (supplied in confidence) apply to the personal information in the records. The police submit the information at issue in records 1 and 2 could, if disclosed, cause harm to the reputation and employment of the individuals identified. The police submit the records relate to serious crimes and, as such, the information contained in them is inherently highly sensitive per section 14(2)(f), and the disclosure could result in harm to those whose personal information is contained therein. The police also submit the information was supplied to the police for the purpose of the investigation in confidence, as per section 14(2)(h). The police submit individuals who provide information during a criminal investigation have a reasonable expectation that the information will be protected.

[40] The appellant submits the disclosure of the personal information at issue will not result in an unjustified invasion of personal privacy because it is already public. Similarly, the appellant submits that the disclosure of the personal information at issue would not expose the individuals to whom the information relates to pecuniary or other harm or that it is highly sensitive "anymore than it already was during the public court process." The appellant also submits the police provided insufficient information regarding their investigation protocols and procedures and how they may have been changed after the result of the court proceeding that is referred to in records 1 and 2. The appellant also submits the integrity of how the police conducts its business is in question in this case because they were not forthcoming with the public regarding their investigative techniques and execution of search warrants. These arguments raise the possible application of both the factor favouring disclosure in section 14(2)(a) and the public interest override.

---

[6] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.). See Issue C, below for a discussion of the public interest override in section 16.

[41] In response, the police submit the sensitivity of personal information does not decrease or is not eliminated by virtue of charges being put before the court. The police reiterate the information in records 1 and 2 contain information about criminal allegations of a highly sensitive nature and even though the matters may have been identified in court proceedings, releasing additional information could negatively impact those involved in the investigations.

[42] The affected party who consented to the disclosure of information relating to them takes the position that there is a public interest in the information at issue because it calls the integrity of the criminal justice system into question.

Analysis and findings

[43] I reviewed records 1 and 2 and the parties' representations and for the reasons that follow, I find the majority of the personal information in the records is not exempt under section 14(1) of the *Act*.

Section 14(3)(b)

[44] The police claim the application of the presumption in section 14(3)(b), which states,

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > 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.

[45] The presumption against disclosure in section 14(3)(b) for personal information gathered during an investigation requires only that there be an investigation into a *possible* violation of law.[7] So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.[8]

[46] The police acknowledge records 1 and 2 were prepared after court proceedings were concluded. Record 1 is a Training Precis prepared by the police regarding an investigation and related court decision. Record 2 is a Briefing Note relating to a media article about the investigation that is also the subject of record 1. Both records relate to the investigation, subsequent court proceedings, and the police's reaction or response to these events. Therefore, the personal information contained in these records was not compiled nor is it identifiable as part of investigations into possible violations of law.

---

[7] Orders P-242 and MO-2235.

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

[47] I find support for this finding in Order MO-4403, in which the adjudicator considered the application of the presumption in section 14(3)(b) to a list prepared by the Kingston Police Services Board (the Kingston Police) that identified four homicides by date and location, sets out the names of each victim and accused, the outcome (i.e. whether cleared by charges or death of the accused), and whether or not there was a peace bond in place at the time of the murder. The adjudicator found that the police had created the list to respond to an access request and after the fact of the investigations and not for use in them.[9] The adjudicator in Order MO-4403 relied on the analysis in Order MO-2019 to support her finding. In that case, the adjudicator found section 14(3)(b) did not apply to summaries of police involvement with grow labs because the records were summaries of investigations and "are clearly not for use in any particular investigation nor were they compiled as part of any specific investigation."[10]

[48] I agree with and adopt this line of reasoning. As stated above, records 1 and 2 include summary personal information regarding an investigation and the subsequent court proceeding. The records were created after the investigation and not for use in them. The records are not investigatory in nature; they contain summaries of the investigations and how the police intend to proceed in light of the investigations and court proceeding. Therefore, I find the presumption against disclosure in section 14(3)(b) does not apply to the personal information at issue.

[49] Having found that the presumption in section 14(3)(b) does not apply, I must consider whether there are factors in section 14(2) that apply to the withheld personal information.

Section 14(2)

[50] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[11] The listed factors relevant to this appeal are:

> (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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

[9] Order MO-4403 at paragraph 42.
[10] Order MO-2019 at page 21.
[11] Order P-239.

> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence.

The factor in section 14(2)(a) generally weighs in favour of disclosure, while the factors in sections 14(2)(e), (f) and (h) weigh against it. I must also consider whether there are any unlisted factors that weigh for or against disclosure.

[51] The purpose of section 14(2)(a) is to promote transparency of government actions. It contemplates disclosure of information where it is desirable for the purpose of subjecting the activities of the government (as opposed to the views or actions of private individuals) and its agencies to public scrutiny.[12] An institution should consider the broader interests of public accountability when considering whether disclosure is *desirable* or appropriate to allow for public scrutiny of its activities.[13]

[52] Section 14(2)(e) is intended to weigh against disclosure when the evidence shows that financial damage or other harm from disclosure is either present or foreseeable, and that this damage or harm would be *unfair* to the individual whose personal information is in the record.[14]

[53] With regard to section 14(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed for that information to be considered *highly sensitive*.[15] For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.[16]

[54] Section 14(2)(h) weighs against disclosure if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is *reasonable*.[17]

[55] For the reasons that follow, I find the factor in section 14(2)(f) applies to the personal information and weigh against disclosure. However, in the circumstances, I also find that the factor in section 14(2)(a) applies and outweighs the factors in section 14(2)(f) to some of the information at issue because disclosure is desirable for subjecting the activities of law enforcement agencies to public scrutiny. Therefore, I find that portions of records 1 and 2 are not exempt under section 14(1).

---

[12] Order P-1134.
[13] Order P-256.
[14] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).
[15] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[16] Order MO-2980.
[17] Order PO-1670.

[56] The police submit records 1 and 2 contain the personal information of two identifiable individuals, both of whom were charged with and investigated for serious crimes. Given the serious nature of the crimes these individuals were charged with, the police submit the disclosure of this information could expose them to pecuniary or other harm. The police note the appellant is a member of the media. As such, the information could be published publicly and could expose these individuals to scrutiny and impact their life negatively and cause significant personal distress.

[57] I agree that disclosure of information relating to an individuals' alleged crimes can be expected to cause these individuals significant personal distress. However, one of the individuals is only mentioned briefly in record 2. Further, the personal information relating to the other identifiable individual is of a summary nature and focuses more on their legal defence, the procedures followed by the police and the police's response to the outcome of a court proceeding. I also note some of the information relating to the alleged crimes is already in the public realm. Given these circumstances and the nature of the information, I am not satisfied the disclosure of the personal information that is already in the public realm or relates more generally to the police's investigation would cause significant personal distress. In addition, I am not satisfied the disclosure of the information that relates to the police's investigations would result in undue pecuniary or other harm. Therefore, I find the factor in section 14(2)(e) does not apply to the personal information at issue. However, I find the factor in section 14(2)(f) applies to the personal information, but do not give it significant weight due to the nature of the information.

[58] I find the factor weighing against disclosure in section 14(2)(h) does not apply to the personal information at issue. The information, which is summary information relating to identified individuals and the investigations into their alleged crimes, was not supplied by these individuals to the police with an expectation of confidentiality. Rather, as the police submit, the information was *collected* through the course of their investigations. The information at issue is not like the information provided by an individual in a witness statement, for example. Therefore, I find section 14(2)(h) does not apply.

[59] However, I find the factor in section 14(2)(a), which favours disclosure where it is desirable for subjecting the activities of the police to public scrutiny, applies and it outweighs the factors in section 14(2)(f) favouring privacy protection for the majority of the personal information at issue in records 1 and 2.

[60] The appellant has explained how the information at issue could provide insight into how the police conducts its business. Specifically, the appellant submits the information in records 1 and 2 will provide information regarding the police's investigation protocols and procedures in relation to the investigations of the individuals identified in his request and how they may have changed as a result of the court proceeding referred to in the records. The appellant also notes the police have not been forthcoming with this information and the integrity of how they conduct their business

is at issue. As stated above, the individuals identified in the appellant's request were the subjects of investigations into serious crimes. The police's conduct during these investigations was the subject of media scrutiny, particularly in relation to their searches and the manner in which they executed search warrants. After these investigations and related court proceeding, the police changed some of their protocols in relation to conducting searches and executing warrants.

[61] In their representations, the affected party submits the information at issue should be disclosed to the public because it calls the integrity of the criminal justice system into question.

[62] The police take the position that a "significant amount" of information has been disclosed publicly concerning these matters. However, they do not provide evidence to demonstrate this claim. The police also submit it is important to weight the privacy interests of the individuals who were the subject of these investigations.

[63] I have reviewed the parties' representations and the records. In my view, I find the information at issue in records 1 and 2 provides key information that would, if disclosed, subject the activities of the police to public scrutiny. As discussed above, the records do not contain detailed personal information regarding the identifiable individuals or their crimes. Rather, the records focus on the manner in which the police conduct their searches during an investigation and execute warrants. The records will, if disclosed, shed light on the manner in which the police's protocols relating to investigations and executing search warrants have changed. There was media scrutiny into these issues in relation to the investigations into the serious crimes allegedly committed by the individuals identified in the request. Given these circumstances and the information in the records that summarize the police's investigations, the court proceeding, and the subsequent changes in protocol, I find that the factor in section 14(2)(a) weighs heavily in favour of disclosure of the information that relates to these issues.

[64] I find support for this finding in discussed in Order MO-2019, in which adjudicator relied primarily on the "desirability of promoting both public health and safety and public scrutiny of the Police activities in relation to illegal grow operations" in his finding that the balance tipped in favour of disclosure of high-level statistical and demographic information compiled from police investigations into illegal grow-ops. The adjudicator confirmed that the primary objective of section 14(2)(a) is to assist in facilitate an appropriate degree of scrutiny of law enforcement institutions and their activities by the public. The adjudicator further stated, "One of the vehicles for this scrutiny is the provision of the greatest amount of information about law enforcement activities possible."

[65] I agree with and adopt these principles in my analysis. Similar to police activities in relation to illegal grow operations, I find it is important to submit the police's activities and the manner in which they conduct searches and execute warrants in their

investigation of serious crimes to public scrutiny.

[66] Further, as discussed above, the personal information at issue is summary in nature and is not detailed. Rather, the withheld personal information relates to the police's protocols regarding investigations and searches, and how those protocols changed in light court proceeding at issue in the records. Given this context, I find disclosure of the majority of the information in records 1 and 2 would assist in facilitating scrutiny of the police's activities into how its protocols in relation to investigations and searches have changed. I find the disclosure of this information will assist in instilling public confidence by informing the public of the police's protocols in relation to searches and executing warrants in relation to serious crimes. Therefore, I find section 14(2)(a) weighs strongly in favour of the disclosure of the information that would assist public scrutiny of the police's protocols in relation to investigations and their execution of search warrants.

[67] I also find section 14(2)(a) outweighs the factor in section 14(2)(f) favouring privacy protection where the personal information offers insight into the police's protocols in relation to investigations and their execution of search warrants. The majority of the information at issue in records 1 and 2 relate to the police's investigation. However, there are discrete portions in records 1 and 2 that relate solely to the identifiable individuals and their alleged crimes or their legal counsel's strategy in relation to their defence. I find this information is not subject to the factor in section 14(2)(a).

[68] The parties did not raise any unlisted factors weighing either for or against disclosure. I have considered whether there are any such factors and find there are none.

[69] In conclusion, for the above reasons, I find that disclosure of the majority of records 1 and 2 would not constitute an unjustified invasion of personal privacy because the desirability of public scrutiny over the police outweighs the factors favouring privacy protection. Therefore, I find the majority of the records is not exempt under section 14(1) and will consider whether it is subject to section 8(2)(a) below. However, the portions of the record that relate solely to the identifiable individuals and their legal defence is exempt under section 14(1) and I will consider whether these portions are subject to the public interest override in section 23, below.

Issue C: Is there a compelling public interest in the disclosure of records 1 and 2 that clearly outweighs the purpose of the section 14(1) exemption?

[70] The appellant argues the public interest override in section 16 of the *Act* should apply to the information I found exempt under section 14(1).

[71] Section 16 of the *Act* provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states,

> An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[72] For section 16 to apply, it must be established that there is a compelling public interest in disclosure of the record *and* that this interest clearly outweighs the purpose of the exemption.

[73] The only information subject to the section 14(1) exemption relates solely to the identifiable individuals and their legal defence. In his representations, the appellant claims there is a public interest in the manner in which the police conduct investigations and executes search warrants. I have already found the information relating to these issues is not exempt from disclosure under section 14(1). The appellant did not make submissions on whether there is a compelling public interest in the disclosure of the remainder of the personal information at issue that outweighs the privacy interests of the identifiable individuals. Based on my review, I find there is not. The personal information that remains at issue relates solely to identifiable individuals, their alleged crimes, and their legal defence. This information does not reveal anything about the police's conduct during their investigations or execution of search warrants. Accordingly, I find section 23 does not apply to override the application of section 14(1) to this personal information and I uphold the police's decision to withhold it from disclosure.

Issue D: Does the discretionary law enforcement exemption at section 8(2)(a) of the *Act* apply to record 2?

[74] The police claim section 8(2)(a) to withhold records 1 and 2. As I have found record 1 to be exempt from disclosure, I only consider the application of section 8(2)(a) to record 2. Section 8(2)(a) of the *Act* states,

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

[75] For a record to be exempt under section 8(2)(a), it must be:

> 1. A report,
>
> 2. prepared in the course of law enforcement, inspections or investigations, and

> 3. prepared by an agency that has the function of enforcing and regulating compliance with a law.[18]

[76] The term *law enforcement* is defined in section 2(1) of the *Act* as policing, 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 the conduct of those proceedings. The IPC has found that *law enforcement* can include a police investigation into a possible violation of the *Criminal Code*.[19]

[77] A *report* is a formal statement or account of the results of the gathering and consideration of information. *Results* do not generally include mere observations or recordings of fact.[20] The title of a document does not determine whether it is a report although it may be relevant to the issue.[21]

[78] The police submit section 8(2)(a) applies to records 1 and 2 because the records were prepared in the course of law enforcement or investigations, by an agency which ahs the function of enforcing and regulating compliance with the law. The police submit the records include details as to how the investigation led to the arrest of the accused. The police further submit that record 2 captures a review of the investigation and interrogation process and captures the communications between the Crown and the relevant police unit regarding interrogations.

[79] The appellant acknowledges records 1 and 2 were prepared in the course of law enforcement. However, he notes that records 1 and 2 were not prepared in the course of investigations, but submits they were created to ensure officers conduct their investigations lawfully. The appellant confirmed he does not seek any access regarding active investigations or allegations.

[80] I have reviewed records 1 and 2 and the parties' representations. I find neither record is a law enforcement report and are therefore not exempt under section 8(2)(a). I agree the records are law enforcement records. Records 1 and 2 were created by the police in relation to its investigations into serious crimes. However, I find the records are not *reports*. Record 1 is a Training Precis prepared by the police that summarizes a particular legal case, the key issues identified by that case, and provides some guidelines to the police in light of that case. Record 2 is a Briefing Note prepared in response to a news articles and summarizes the police's investigation in relation to a specific case and its communications with the Crown and relevant police staff regarding the manner in which the police conduct interrogations. In my view, neither record contains a formal, evaluative account of the investigations or the police's response and changes to its investigatory protocols.

---

[18] Orders P-200 and P-324.
[19] Orders M-202 and PO-2085.
[20] Orders P-200, MO-1238 and MO-1337-I.
[21] Order MO-1337-I.

[81] Therefore, I find section 8(2)(a) does not apply to records 1 and 2. I will order the police to disclose them to the appellant with the information I found exempt under section 14(1) redacted.

Issue E: Does the discretionary solicitor-client privilege exemption at section 12 of the Act apply to records 3 to 7?

[82] Section 12 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. Section 12 states,

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[83] Section 12 contains two different exemptions, referred to in previous IPC decisions as *branches*. The first branch (*subject to solicitor-client privilege*) is based on common law and encompasses two types of privilege: (i) solicitor-client communication privilege and (ii) litigation privilege. The second branch (*prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation*) is a statutory privilege created by the *Act* that is similar but not identical to the common law privilege in branch 1. The institution must establish at least one branch applies.

[84] The police submit both branches of section 12 apply to the records. The police submit email records 3 and 4 are written communication of a confidential nature between police (as the client) and a legal advisor (Crown counsel), and they were prepared to discuss a criminal investigation and potential court proceedings. In addition, the police submit records 3 and 4 were prepared by Crown counsel to provide legal advice to police. The police note the subject line of records 3 and 4 clearly indicates that *advice* is sought. The police submit email record 5 also constitutes the written communication of a confidential nature between the police and Crown counsel. Finally, the police claim branch 2 of section 12 apply to records 6 and 7 because they were prepared by Crown counsel and distributed to investigators for use and immediate implementation for police investigations.

[85] The appellant claims the Crown Attorney is the solicitor of the citizenry and not the police. The appellant submits the Crown serves the people and, in this case, ensures the police follow the law. The appellant submits that, in this case, the Crown is serving as an educator to the police and teaches them what the law says, how they should conduct themselves and why previous investigations were improper and how to better serve the public. The appellant submits this alters the relationship between the Crown and police from solicitor and client to educator and student.

[86] The police state a number of IPC orders clearly identify the unique relationship between the police and the Crown and find that any discussions concerning investigations or advice, instruction, recommendations, suggestions or counsel is subject to the solicitor-client privilege exemption. The police also note the Crown has provided explicit direction that any records containing communications between the police and the Crown should be protected and not disclosed to the public. The police submit this direction applies to all law enforcement agencies.

[87] In addition, the police submit their relationship with the Crown does not change when advice is being sought or education is being provided. The police affirm that even though the criminal proceedings my have concluded, communications between the police and the Crown are not subject to disclosure and the privilege continues to apply.

[88] The appellant maintains the records "describe an attempt to improve the public service and goes outside of the regular solicitor client privilege relationship the police have with the Crown."

[89] I have reviewed records 3 to 7 which are email correspondence between the police and the Crown and two PowerPoint presentations presented by the Crown to the police. I find all of the records are subject to solicitor-client communication privilege. I agree with the police; that the solicitor-client relationship between the police and the Crown is reflected in these records. In *R v. Campbell*,[22] the Supreme Court of Canada found that a consultation by an officer of the Royal Canadian Mounted Police (the RCMP) with a Department of Justice lawyer over the legality of a proposed *reverse sting* operation by the RCMP fell squarely within the definition of solicitor-client privilege. The Court emphasized that it is not everything done by a government (or other) lawyer that attracts solicitor-client privilege, stating that,

> [w]hether or not solicitor-client privilege attaches in any of these situations depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered.

R v. Campbell has been followed by the IPC. Specifically, the IPC has found a solicitor-client communication privilege on the basis that the police (either a municipal police service or the Ontario Provincial Police) sought legal advice from Crown counsel in a number of orders.[23] In these cases, all communications within the framework of this relationship were found to qualify for solicitor-client privilege under either section 12 of the *Act*.[24]

[90] I agree with this analysis and adopt it for the purposes of this appeal. I reviewed the records 3 to 7 and find they all relate to seeking or giving legal advice. I acknowledge the PowerPoint presentations offer educational information regarding the

---

[22] [1999] 1 S.C.R. 565
[23] See Orders PO-1779, PO-1931 and MO-1241, among many others.
[24] Or section 19 in the provincial *Act*.

manner in which the police conduct investigations into serious crimes. However, it is clear the information in these records would be considered to be advice from Crown counsel to police regarding the manner in which they conduct these investigations. Furthermore, the email records clearly contain specific communications that are part of the seeking of legal advice by the police from the Crown and the provision of that advice from the Crown to the police. Overall, I find records 3 to 7 qualify for solicitor-client privilege because they contain communications of a confidential nature between lawyer (the Crown) and client (the police) made for the purpose of obtaining or giving legal advice.

[91] I do not accept the appellant's submission that the educational natural of some of the records (I assume he refers to the PowerPoint presentations) alters the relationship between the police and the Crown in this case. The PowerPoint presentations clearly contain legal advice, whether it serves as educational information or not.

[92] The police claimed that more than one privilege applies to records 3 to 7. However, I have found that solicitor-client communication privilege applies to the information. As such, there is no need to discuss if they are also privileged under the other branches of section 12.

Exercise of Discretion

[93] The section 12 exemption is discretionary, meaning that an 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 it failed to do so.

[94] The IPC may find the institution erred in its exercise of discretion where, for example, it does so in bad faith or for an improper purpose, considers irrelevant considerations, or fails to take into account relevant ones.

[95] The appellant claims the police exercised their discretion in bad faith to "avoid negative publicity and to protect the corporate image of the police service."

[96] The police submit the records are being withheld under the specific and limited solicitor-client privilege exemption and not as a result of fear or avoidance of negative publicity. The police agree with the appellant that non-exempt information should be disclosed to the public, regardless of the scrutiny that may accompany its disclosure. However, in this case, the police submit they provided the appellant with as much information as possible and states "it does not benefit us to withhold information to prevent negative publicity." The police confirm its position that the information withheld from disclosure under section 12 was properly withheld.

[97] There is no evidence before me that the police exercised their discretion inappropriately under section 12. I have reviewed records 3 to 7 and the parties'

representations. I find that, in exercising its discretion under section 12, the police considered relevant considerations regarding the purpose of solicitor-client privilege. I find the police did not consider irrelevant considerations in exercising its discretion. The police disclosed some information to the appellant in response to his access request; this fact and the information disclosed to the appellant contradicts his claim they wish to avoid negative publicity and protect their corporate image. The information I have found exempt under section 12 of the *Act* clearly contains confidential communications between a lawyer and their client and there is no evidence to support the appellant's claim the police exercised their discretion to withhold it in bad faith. Accordingly, I uphold the police's exercise of discretion in denying access to records 3 to 7 on the basis of solicitor-client communication privilege as contemplated by section 12 of the *Act*.

ORDER:

1. I uphold the police decision to withhold some of the information in records 1 and 2 under section 14(1) of the *Act*. However, I find the remainder of these records is not exempt under sections 14(1) or 8(2)(a) and will order the police to disclose them to the appellant by **December 12, 2023.** For clarity, I enclose a highlighted version of these records with this order. I have highlighted the information the police is to redact from the records prior to disclosure.

2. I uphold the police's decision to withhold records 3 to 7 from disclosure under section 12 of the *Act*.

3. In order to verify compliance with order provision 1, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

Original Signed By: November 6, 2023

Justine Wai
Adjudicator