

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4496

Appeal PA21-00073

Ministry of the Solicitor General

March 7, 2024

Summary: The Ministry of the Solicitor General (the ministry) received a request for records relating to a specified incident attended by the OPP. The requester, a township, clarified that it was seeking records sufficient to answer questions into the circumstances of an affected party's possible attendance at the incident. The ministry identified responsive records and denied access to them citing the exemption in section 21(1) (personal privacy) of the *Act*. For some of the records, it identified the exemption in section 14(1) (law enforcement), in the alternative. The requester appealed the ministry's decision.

In this order, the adjudicator upholds the ministry's decision in part. She finds that, except for information about the OPP officers and other information that does not qualify as personal information, the records are exempt under the personal privacy exemption in section 21(1) and, in respect of police codes that appear in the records, under the law enforcement exemption in section 14(1). The adjudicator orders the ministry to disclose identifying information of three individuals that she finds does not qualify as personal information.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 10(2), 14(1)(l), 21(1), 21(3)(b) and 24.

Orders Considered: Orders MO-2285, MO-2097 and PO-1665.

OVERVIEW:

[1] This appeal considers the Ministry of the Solicitor General's (the ministry's) decision

to refuse access to records relating to the attendance of Ontario Provincial Police (OPP) officers and other individuals at a specified incident. The Township of Faraday (the township) sought access to the records to determine whether a named individual attended at the incident and, if so, in what circumstances.

[2] The township made a request to the ministry for access to OPP records under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The township seeks access to the following:

All records relating to [OPP] attendance at [specified location] in connection to the death of [named individual] in or about October 2015, including but not limited to any occurrence summaries, incident and investigation reports, witness statements, officers' notes, call logs and 911 call recordings or transcripts, as applicable. The request does not seek particulars of the deceased, including [the] manner of death and any reports to that issue. The request is for information pertaining to any individual(s) who attended at the deceased's residence on the date in question and any recorded information relating to why, and by whom, those individuals were asked to attend.

[3] By way of background, the township explained that it made the request in connection with a claim made under the *Workplace Safety and Insurance Act 1992* (the WSIA claim). The township stated that the information was needed in relation to benefit eligibility.

[4] The ministry identified responsive records that included occurrence reports and summaries, officers' notes, statements and recordings from a 911 audio call and OPP dispatch. The ministry issued a decision denying access to responsive records pursuant to sections 14(1)(l) (law enforcement) and 21(1) (personal privacy) of the *Act*.

[5] The township appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution. During mediation, the township advised that it was seeking records relevant to a named individual's attendance at the specified incident. The mediator identified the individual as an affected party and contacted them to seek consent for the ministry to release any records containing their personal information. Consent was not obtained.

[6] As a mediated resolution was not possible, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[7] I decided to conduct an inquiry and sent a Notice of Inquiry to the ministry setting out the background to the appeal and inviting representations addressing the facts and issues to be determined. In its response, the ministry raised concerns regarding the scope of the township's request and which records remained at issue in the appeal.

[8] The ministry indicated that disclosure of the information sought by the township

may be authorised under Part III of the *Act*,¹ which could resolve the appeal. The ministry requested that I place my inquiry on hold. With the township's agreement, I placed my inquiry on hold for three months for the parties to explore the possibility of disclosure, independently of the IPC. I notified the parties that during the period of the hold the township's substantive and procedural rights respecting the appeal would be preserved.

[9] The ministry then provided the township with the names, titles and badge numbers of the attending OPP officers. Upon receipt of this information, the township advised that the ministry's disclosure did not resolve the appeal and requested that the inquiry proceed.

[10] I proceeded with my inquiry by inviting and receiving representations from the ministry and the township.

[11] The ministry's representations, including its concerns regarding the scope of the appeal and the records at issue, were shared with the township. I asked the township to clarify whether it is pursuing access to any personal information in the responsive records and, if so, whose personal information. In light of the ministry's concerns and the township's response, I address the scope of the request and the records remaining at issue as preliminary matters below.

[12] For the reasons that follow, I uphold the ministry's decision to deny access to the responsive records, in part. I find that except for the information identifying the OPP officers and other information identifying individuals in their professional capacity, the records contain personal information that is exempt under the personal privacy exemption in section 21(1). In addition, I find that information consisting of police codes is exempt pursuant to the law enforcement exemption in section 14(1). As the ministry has already disclosed information identifying the attending OPP officers, I make no order in relation to this information. Otherwise, I order the ministry to disclose information in the records that identifies other individuals in their professional capacity and for which the ministry has not made an alternative exemption claim.

RECORDS:

[13] The records at issue comprise the following:

Record	Title	Pages	Section(s) applied
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¹ In the circumstances of the township's request, where access to information in records is being sought for the purpose of responding to a WSIA claim, the ministry indicated that it may be authorised to disclose personal information to the township outside of the access provisions of the *Act*. Disclosure of personal information is permitted in specified circumstances in the provisions of Part III of the *Act*. The provisions of Part III operate independently of the access regime in Part II and the appeal process in Part IV of the *Act*.

1	Occurrence Summary	1-2	14 and 21
2	Homicide/Sudden Death Report	3-5	14 and 21
3	Supplementary Occurrence Report	6-7	21
4	LE135a Property Report - Firearm	8	14 and 21
5	Occurrence Notes	9	21
6	Test Fire and Request for Disposal Instructions	10	21
7	Supplementary Occurrence Report	11	21
8	Officers' Notes	12-50	14 and 21
9	Statements	51-56	21
10	CAD Event Details	57-64	14 and 21
11	Audio statements x 2	n/a	21
12	911 audio call	n/a	21
13	Dispatch recordings x 2	n/a	14 and 21

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 mandatory personal privacy exemption at section 21(1) apply to the information at issue?
- C. Does the discretionary exemption at section 14(1)(l) related to law enforcement activities apply to the records?
- D. Did the ministry exercise its discretion under section 14(1)(l)? If so, should the IPC uphold the exercise of discretion?

DISCUSSION:

Preliminary matters

[14] In its representations, the ministry identifies a preliminary matter to be addressed. It asks "which records are at issue in the appeal?" The ministry states that this question arises from a lack of clarity around the scope of the township's request and the information remaining at issue.

Scope of request

[15] As noted in the overview, the background to the township's request is a WSIA claim made by an affected party following the specified incident. The township explains that it wishes to "probe" the benefit entitlement under the claim and states in the request that it seeks access to "information pertaining to any individual(s) who attended at the deceased's residence on the date in question and any recorded information relating to why, and by whom, those individuals were asked to attend."

[16] During mediation, the township advised that it is seeking information relating to the affected party. However, when consent was not obtained for the disclosure of any personal information of the affected party that may be contained in the records, the township confirmed that it was pursuing access to all records responsive to its request.

[17] In the Notice of Inquiry, I asked the township to clarify whether it was pursuing access to any personal information in the records and, if so, whose personal information. The township responded as follows:

For the avoidance of doubt, the township is seeking records sufficient to confirm whether [the affected party] attended at the deceased's residence on the relevant date in October 2015. If the affected party did attend, the township seeks to determine whether the affected party was asked to attend by any person with the local detachment of the OPP, and, if so, by whom and for what purpose.

[18] The township submits that "satisfaction of its request would involve, *at a minimum*, the disclosure of names" [my emphasis]. However, the scope of the request has not been narrowed to a list of names of those individuals who attended at the specified incident. Instead, the township states that the disclosure of names alone is the "minimum" required in response to its request.

[19] In my view, the township is using the access regime under the *Act*, to obtain answers to a series of questions. Rather than providing a direct response to my request for clarification about the type of information that it is seeking, the township has elaborated on the nature of the questions it wants to answer.

[20] For the reasons that follow, I am not persuaded that the *Act* requires the ministry

to answer the township's questions nor that this order can, or should, decide which information should be disclosed on the basis that it is "relevant" to those questions. The ministry has identified responsive records. The issues to be decided in this appeal concern the township's right of access to the responsive records and the application of the claimed exemptions in light of the ministry's decision to deny access.

[21] Previous IPC orders have considered the kinds of information or documents to which access should be given in response to requests made under the *Act*. In Order MO-2285, the adjudicator discussed the *Williams Commission Report* and Order 17, which established that:

A right to "information" does not embrace the right to require the government institution to provide an answer to a specific question; rather, it is generally interpreted as requiring that access be given to an existing document on which information has been recorded.

[22] In Order MO-2097, the adjudicator determined that there is no requirement under the *Act* that an institution answer questions that might arise from the contents of records. Rather, the issue is whether there are records in existence that might provide an answer to a requester's questions. I agree with this approach and adopt it in this appeal.

[23] The township seeks information "sufficient" to answer its questions regarding circumstances surrounding a named individual's possible attendance at and involvement in a specified event. There is no requirement under the *Act* that the ministry answer the township's questions whether the affected party attended at the incident specified in the request and, if so, in what circumstances. The issue is whether there are records in existence that might provide answers to the township's query.

[24] The IPC has previously considered an institution's duty when it receives an access request in the form of a question under section 24 of the *Act*.² In these situations, institutions must determine what records they have that may be responsive to the question and provide an access decision based on those records. Where there are concerns about the clarity of the request, section 24 compels an institution to contact the requester to seek clarification.³

[25] As the township has not seen the records that the ministry has identified as responsive, it cannot know whether the information in the records is sufficient to answer its questions. Accordingly, the township may not consider itself in a position to clarify which information within the records it should pursue access to in this appeal.

[26] The ministry has provided me with copies of the 13 records it has identified as responsive to the township's request. From my review of the records, I am satisfied that

² See Orders M530, MO-2285 and MO-3590, which considered an institution's duty under the equivalent provision in the municipal version of the *Act*.

³ Order MO-2285.

they contain information that may provide answers to the township's questions.

[27] To clarify; this order cannot, and does not, answer the township's query into whether the affected party attended at the specified incident and, if so, upon whose request and/or for what purpose. However, I am satisfied that the township has clarified the scope of its request by stating its underlying query. I am also satisfied that the ministry has responded adequately to the request by identifying records that contain information that might answer the township's questions, if disclosed.

[28] Accordingly, the scope of the township's request is not an issue to be addressed in this appeal.

Information remaining at issue

[29] Regarding the ministry's concern about which records remain at issue, as noted above, the township advises that it is pursuing access to all the responsive records. The responsive records identified by the ministry are set out in the index above.

[30] When mediation did not resolve the appeal, this index was provided to both parties. The ministry did not raise any concerns with these records being identified as the "records remaining at issue" at that stage. After the period of the hold, the township advised that the disclosure of the attending OPP officers' information did not resolve the appeal and that it wishes to pursue access to all records responsive to its request. Accordingly, the 13 records identified in the index remain at issue.

[31] However, in light of the township's representations, I have removed some information from the scope of this appeal. The request states that the township is not seeking any particulars of the deceased named in the request. In response to the Notice of Inquiry, the township's representations confirm that it is "not interested in personal information about the deceased". Accordingly, I have removed any information relating to the deceased individual named in the request from the scope of this appeal.

[32] In addition, the township's representations confirm that the ministry has released the names, titles and badge numbers of the OPP officers who attended the specified event. The township has confirmed that it has received this information in respect of eight OPP officers and the names and ranks of two other OPP officers who were involved in the investigation. The township states that this disclosure renders the question of whether this information is their personal information to be moot. As this information has already been released to the township, I have removed the names, titles and/or badge numbers of these 10 OPP officers, from the scope of this appeal.

[33] I now consider the issues arising from the ministry's application of the claimed exemptions to the remaining information at issue in the responsive records.

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

[34] The ministry has withheld the responsive records relying primarily on the mandatory personal privacy exemption in section 21(1). To decide if this exemption applies, I must first determine whether the records contain “personal information,” and if so, whose personal information it is.

[35] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁴

[36] Section 2(2) of the *Act* provides that personal information does not include information about an individual who has been dead for more than thirty years.

[37] 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 them. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁵ Section 2(3) of the *Act* states that:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[38] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.⁶

[39] 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.⁷

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

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

⁴ See the definition of “record” in section 2(1).

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

[41] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁸

Representations

[42] The ministry's position is that all the records contain personal information belonging to multiple identifiable individuals. The ministry submits that the personal information in the records includes individuals' home addresses, ages, gender and phone numbers and information that would reveal their communications with the police, their opinions and/or factual statements about them.

[43] The ministry's position is that due to the subject matter of the records, being an OPP investigation where the township knows the identity of some individuals in relation to the specified event, severing identifying information such as names cannot reasonably be expected to remove personal information from the records. In support of this

⁸ Order 11.

submission, the ministry cites Order PO-2955 where the adjudicator applied the same reasoning in relation to similar police records.

[44] The township acknowledges that the "records relevant to its request may include the names of individuals, including those of the affected party and other persons present at the deceased's residence in connection with the OPP's attendance."

[45] The township states:

Contrary to the representations of the Ministry, however, [records containing the names of individuals present at the deceased's residence] would not necessarily include (or could readily have severed from them) identifying information that would reveal the home addresses, ages, genders and/or phone numbers of third parties. Further, such records would not necessarily include (or could readily have severed from them) opinions or factual statements irrelevant to the Township's request (i.e., opinions or factual statements relating to any matter apart from the affected party's attendance).

[46] The township submits that names and/or professional designations ought not to be considered "personal information" in the context of the records sought. As noted, the township states that the information already disclosed by the ministry identifying the OPP officers renders moot the issue of whether the names and official designations of these individuals is their "personal information."

[47] The township submits that any identification of individuals from the information at issue in the records would be limited to that which is ordinarily possible through knowledge of a name and/or a name and professional designation. The township states that disclosure of other personal characteristics is not required to satisfy its request. Regarding the affected party, the township states that it is already aware of their identity.

[48] On the question of the capacity of identifiable individuals whose information is in the records, the township submits that information about OPP officers is information about these already identified individuals in their professional, official or business capacity. The township states that it wishes to ascertain whether other individuals also attended in their professional capacity.

Analysis and findings

[49] From my review of the records, I find they contain information that qualifies as "personal information" as defined in section 2(1) of the *Act*. I find that the personal information in the records belongs to the deceased individual named in the request and other identifiable individuals.

[50] I have carefully reviewed the records, which all relate to the OPP attendance at and investigation into a sudden death incident following a 911 call. The information in

the records includes a recording of the 911 call and recordings of the subsequent dispatch conversations concerning the attendance of individuals, including OPP officers, at the deceased's residence and corresponding officers' notes. The occurrence reports summarise all the information gathered by the investigating officers in relation to the sudden death incident, the circumstances of the death and the information provided to/by a coroner, a physician and a forensic pathologist. The information in the records also designates individuals as witnesses or next of kin and includes recording and transcripts of statements.

[51] I find that the records include identifiable individuals' names together with their ages, sex, addresses, telephone numbers, family status, their opinions and, in some cases, information relating to their medical or employment history and the views or opinions of others about them. I find that this information qualifies as personal information of identifiable individuals as contemplated by paragraphs (a), (b), (d), (e), (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[52] I find that the names alone of the individuals who attended at the deceased's residence is personal information, even if other identifying information is removed. In the circumstances of this appeal, the disclosure of names alone in the records would reveal other personal information about those individuals, specifically their involvement in a police investigation. Accordingly, I disagree with the township and find that the names alone would constitute personal information within paragraph (h) of the definition in section 2 of the *Act*.

[53] I note that two of the individuals whose personal information is contained in the records at issue are deceased. Section 2(2) of the *Act* states that personal information does not include information of individuals who have been deceased for more than 30 years. From my review of the records, I am satisfied that the two deceased individuals died less than 30 years ago so this information still qualifies as their personal information. As already noted, the personal information of the deceased individual named in the request has been removed from the scope of this appeal.

[54] Section 2(3) of the *Act* provides that personal information does not include information about individuals that identifies them in a business, professional or official capacity. From my review of the records, I find that they contain information of identifiable individuals in their professional or official capacities.⁹

[55] In addition to the information relating to the OPP officers, the records contain the names and contact information of a coroner, a physician and a forensic pathologist. I find that these individuals' names, designations, and contact information identifies them in their professional capacity and is therefore not their personal information. This

⁹ Information identifying 10 attending OPP officers has already been disclosed to the township and I do not consider it in this discussion. I agree with the township that the OPP officers who attended the incident did so in their professional capacity.

information appears in records 1 and 2.

[56] The records also contain other information that is not personal information, for example, details such as titles and headings of the records and dates relating to the creation of the records and police codes. I find that this information also does not qualify as "personal information" under the *Act* and the personal privacy exemption therefore cannot apply to it. This information appears in records 1, 2, 4, 8, 10 and 14. The ministry has claimed the law enforcement exemption in section 14(1)(l) as an alternative basis for withholding these records and I will therefore consider the application of this exemption to this information below.

[57] In summary, I find that all the records at issue contain the personal information of identifiable individuals. The township is not seeking particulars of the deceased individual named in the request. Accordingly, I now consider whether the mandatory personal privacy exemption in section 21(1) of the *Act* applies to the remaining personal information in the records.

[58] In Issue C below, I consider the application of the alternative exemption claim in section 14(1)(l) to the information in records 1, 2, 4, 8, 10 and 14 that I have found does not qualify as personal information.

Issue B: Does the mandatory personal privacy exemption in section 21(1) apply to the information at issue?

[59] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. The ministry cites the mandatory personal privacy exemption in section 21(1) as the primary basis for denying the township access to the responsive records.

[60] Section 21(1) creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions listed in sections 21(1)(a) to (e). If any one of these five exceptions exist, an institution must disclose the information.

[61] Section 21(1)(f) is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 21 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy. Under section 21(1)(f), if disclosure of the personal information would not be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

[62] Sections 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Sections 21(3)(a) to (h) should generally

be considered first.¹⁰ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[63] If one of the presumptions in section 21(3) applies, the personal information cannot be disclosed unless:

- there is a reason under section 21(4) that disclosure of the information would not be an “unjustified invasion of personal privacy” or
- there is a “compelling public interest” under section 23 that means the information should nevertheless be disclosed (the “public interest override”).¹¹

Representations

[64] In its decision, the ministry relies upon the presumptions against disclosure in sections 21(3)(a), which applies to information relating to medical history or conditions, and 21(3)(b), which applies to information compiled as part of an investigation into a possible violation of law, to deny access to the records under section 21(1). The ministry’s representations address the presumption in section 21(3)(b) only. The ministry’s position is that the records at issue were compiled as part of an investigation into the sudden death of the deceased individual named in the request, which was investigated in relation to the possible laying of charges under the *Criminal Code*.

[65] The ministry submits that, if none of the presumptions against disclosure in section 21(3) are found to apply, the factor in section 21(2)(f) relating to highly sensitive information is relevant to the determination of whether the disclosure of the personal information at issue constitutes an unjustified invasion of personal privacy.

[66] In support of its position, the ministry relies on Order P-1618 in which the personal information of individuals who were identified as “complainants, witnesses or suspects” as part of their contact with the OPP was found to be highly sensitive. The ministry also relies upon Order PO-3712 in which the factor in section 21(2)(f) was found to weigh against disclosure of personal information of affected individuals in law enforcement investigation records where consent to do so had not been given.

[67] The township’s position is that none of the presumptions in section 21(3) apply to the information at issue so that its disclosure is not presumed to constitute an unjustified invasion of personal privacy. The township submits that in this appeal, the application of the presumption related to medical history or conditions in section 21(3)(a) could only relate to the deceased individual named in the request and it is not interested in their personal information.

¹⁰ If any of the section 21(3) presumptions are found to apply, they cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established.

¹¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

[68] In addition, the township submits that it is prejudiced in addressing whether the information at issue was compiled as part of an investigation into a possible violation of law because the ministry has only provided the titles of the responsive records in the index. The township submits that the information it seeks is not personal information and that any personal information could be severed from the records.

[69] As the township's position is that none of the presumptions in section 21(3) apply, its representations focus on the factors in section 21(2). The township submits that the factors in section 21(2)(d) (fair determination of rights) and 21(2)(e) (unfair pecuniary or other harm) apply in this appeal and both weigh in favour of disclosure. The township does not agree with the ministry that the factor weighing against disclosure in 21(2)(f) applies and states that the information should not be considered highly sensitive. The township submits that none of the other factors weighing against disclosure in section 21(2) apply.

Analysis and findings

[70] I am satisfied that the personal information in the records is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) because its disclosure would constitute an unjustified invasion of personal privacy.

[71] I find that the presumption in section 21(3)(b) applies to the information at issue. I acknowledge that, without reviewing the records, the township is at a disadvantage in addressing this issue. However, pursuant to section 53 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proving that the record falls within one of the specified exemptions in the *Act* lies upon the institution. I am satisfied that the ministry has discharged that burden in respect of the personal information in the records.

[72] From my review of the records, I find that the personal information in them was compiled and is identifiable as part of an investigation into a possible violation of law. I am satisfied that the information was compiled by the OPP as part of an investigation into a sudden death and a possible violation of the *Criminal Code*. The presumption in section 21(3)(b) requires only that there be an investigation into a *possible* violation of law.¹² So, even if no charges were laid nor criminal proceedings ever started, section 21(3)(b) may still apply.

[73] As I find that the presumption in section 21(3)(b) applies to all the records, it is not necessary for me to consider the application of the presumption in section 21(3)(a) and whether the personal information relates to medical history or conditions, as claimed by the ministry in its access decision.

[74] As already noted, if any of the section 21(3) presumptions are found to apply, it cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether

¹² Orders P-242 and MO-2235.

the section 21(1)(f) exception to the mandatory exemption in section 21(1) applies. Accordingly, I find that the disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of the individuals to whom it belongs under section 21(1)(f) and is therefore exempt from disclosure.

Issue C: Does the discretionary exemption at section 14(1)(l) related to law enforcement activities apply to the records?

[75] The records contain information that does not qualify as personal information so that the personal privacy exemption in section 21(1) cannot apply. As noted above, this information includes the titles and headings of the records and dates relating to the creation of the records and police codes, which appear in records 1, 2, 4, 8, 10 and 14.

[76] The ministry claims the law enforcement exemption in section 14(1)(l) as an alternative basis for refusing access to these records. I now consider whether the discretionary law enforcement exemption in section 14(1)(l) applies to the information that does not qualify as personal information.

[77] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. The relevant part of section 14(1)(l) states:

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

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

[78] The law enforcement exemptions in section 14(1) must be approached in a sensitive manner, because it is hard to predict future events in a law enforcement context.¹³

[79] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.¹⁴ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁵

[80] 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.

¹³ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)

¹⁴ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras 52-54.

[81] The ministry states that the police codes in the records are widely used by the OPP to communicate important information. The ministry cites Order PO-2409 in support of its submission that the IPC has held that police codes qualify for exemption under section 14(1)(l) because of the reasonable expectation of harm from their release.

[82] The ministry states that disclosure of these operational codes would give individuals carrying out criminal activities knowledge of how OPP officers communicate. The ministry submits that this could jeopardize the security of the law enforcement system and the safety of the OPP staff associated with the codes.

[83] The township's representations do not address the application of the exemption in section 14(1)(l) specifically to police codes in response to the ministry's position. The township states that there is no basis to believe that the disclosure of "relevant records" could reasonably be expected to make it easier for someone to commit an unlawful act or interfere with the control of crime.

[84] The township's position is that the reasons for the request and the "limited use that will be made of the records" are known to the parties and that the ministry has not "seriously argued" that disclosure to the township is likely to give rise to the types of issues contemplated by section 14(1)(l).

Analysis and findings

[85] For the reasons that follow, I find that the law enforcement exemption in section 14(1)(l) applies to the police codes found in records 1, 2, 4, 8, 10 and 14.

[86] I agree with the ministry's submission that previous orders of the IPC, including Order PO-2409, have held that the disclosure of police operational codes could reasonably be expected to facilitate the commission of an unlawful act.

[87] In Order PO-1665, the adjudicator explained that the disclosure of the types of police codes that are at issue in this appeal, used by officers to communicate over publicly accessible radio transmission space, would leave officers more vulnerable and compromise their ability to provide effective policing services. I agree with this reasoning and adopt it in this appeal to find that the police codes in the records qualify for exemption under section 14(1)(l), subject to my finding on the ministry's exercise of discretion.

[88] Regarding the other information at issue in records 1, 2, 4, 8, 10 and 14, such as the titles and headings of the records and dates relating to the creation of the records and their retrieval in response to the township's request, I find that this information does not qualify for exemption under section 14(1)(l).

[89] Having found that the claimed exemptions do not apply to the information consisting of the titles and headings in some records and dates relating to the creation and retrieval of the records, I now consider section 10(2) of the *Act*, which states:

If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

[90] Section 10(2) of the *Act* obliges an institution to disclose as much of the records as can *reasonably* be severed without disclosing information that is exempt. The IPC has previously held that it is not reasonable to sever a record if doing so would result in the disclosure of only disconnected snippets of information or worthless, meaningless or misleading information.¹⁶ Severance is also not considered reasonable where an individual could ascertain the content of the withheld information from the portions of the records disclosed.

[91] In this appeal, the ministry decided to withhold the records in their entirety, except for the information relating to the 10 OPP officers, which it has already released to the township. The ministry's position is that it cannot sever the records without releasing information that is subject to the exemptions.

[92] The township submits that if one or more of the exemptions relied upon by the ministry are found to apply to the information in the records, these portions of the records should be severed and the remaining portions of the records released.

[93] I have carefully reviewed the records in light of my findings. In my view, the contents of the records are almost entirely exempt from disclosure.

[94] I am not persuaded that the obligation under section 10(2) of the *Act* requires a surgical severance process that would result in disclosure of disconnected "snippets" of information that may be meaningless when taken out of context. In the circumstances of this appeal, where the township's request is framed as a series of questions, I find there is a serious risk that the disclosure of heavily redacted records might lead the township to draw inaccurate inferences from the released information.

[95] Accordingly, I find that the information that I have determined is exempt from disclosure cannot reasonably be severed from the records.

Issue D: Did the ministry exercise its discretion under section 14(1)(l)? If so, should the IPC uphold the exercise of discretion?

[96] The exemption in section 14(1)(l) is discretionary, meaning that the ministry can decide to disclose the police codes, even if they qualify for exemption. When deciding to apply the exemption and refuse access to this information, the ministry must exercise its

¹⁶ PO-1663.

discretion.

[97] On appeal, the IPC may determine that an institution failed to exercise its discretion. In addition, the IPC may find that an institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose, it fails to take account of relevant considerations, or it takes account of irrelevant considerations.

[98] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁷ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁸

[99] The ministry submits that it exercised its discretion properly in deciding to withhold the records. The ministry states that in exercising its discretion, it considered the public policy interest in safeguarding the privacy of identifiable third parties. The ministry also considered the concern that disclosure of the records would jeopardize public confidence in the police if information provided in confidence were released and its usual practice in relation to the application of the law enforcement exemption to records containing police codes.

[100] The township does not agree that the ministry exercised its discretion properly. It does not argue that the ministry exercised its discretion in bad faith or for an improper purpose. The township's position is that the ministry took account of irrelevant considerations and has failed to take into account relevant considerations regarding the "nature and scope of the request and the information actually responsive thereto."

[101] The township submits that the ministry failed to consider whether the information sought is "personal information" within the meaning of the *Act* and "whether the request could be satisfied, in whole or in part, through disclosure of records with appropriate severances."

[102] The township states that the ministry also failed to take account of the fact that the township requested the information for a clear and limited purpose, being related to legal proceedings involving the affected party. The township submits that these facts "relieve many of the risks and concerns articulated by the ministry."

[103] Finally, the township submits that the ministry failed to take account of the fact that the township has a "sympathetic and compelling need to receive the information, being unable to do so through other means." The township states that the ministry failed to take into account the sensitivity of the responsive information in the context of its interaction with the affected party in relation to the WSIA claim.

[104] My review of the ministry's exercise of discretion is limited to its decision to apply the discretionary law enforcement exemption in section 14(1)(l) to the police codes. In

¹⁷ Order MO-1573.

¹⁸ Section 54(2) of the Act.

the circumstances of this appeal, where the records do not contain the personal information of the party making the request, the application of the personal privacy exemption in section 21(1) is mandatory.

[105] I find that the ministry properly exercised its discretion in deciding not to disclose the police codes. The ministry took account of its usual practice in the application of the law enforcement exemption to this type of police operational information, which I am satisfied is a relevant consideration.

[106] I disagree with the township's submission that the ministry failed to take account of the considerations outlined in its representations and summarised above. In my view, these considerations are not relevant to the ministry's exercise of discretion in relation to the application of the discretionary exemption in respect of the specific type of information to which it applies, namely the police operational codes.

[107] Accordingly, I uphold the ministry's exercise of discretion under section 14(1)(l).

Summary of findings

[108] In summary and for the reasons set out above, I find the records at issue are exempt under the mandatory personal privacy exemption in section 21(1) and, in relation to the police codes in records 1, 2, 4, 8, 10 and 14, under the discretionary law enforcement exemption in section 14(1)(l), except the information identifying the coroner, a physician and a forensic pathologist, which appears in records 1 and 2. I will order the ministry to disclose this information to the township.

[109] As the names, titles and/or badge numbers of 10 OPP officers have already been released to the township, I make no order in relation to this information.

ORDER:

1. I order the ministry to disclose to the township the name and contact information of the coroner, the physician and the forensic pathologist that appear in records 1 and 2 by no later than **April 11, 2024** but not before **April 8, 2024**.
2. I otherwise uphold the ministry's decision.
3. To confirm compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the information as disclosed to the township.

Original Signed by: _____
Katherine Ball
Adjudicator

_____ March 7, 2024