

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4535

Appeal PA22-00454

Ministry of the Solicitor General

July 24, 2024

**Summary:** An individual asked the ministry for information about searches made on the Ontario Provincial Police database. The ministry initially refused access to a spreadsheet of responsive information. During the appeal, the ministry revised its position and decided to provide partial access to the spreadsheet. It did not disclose portions of the spreadsheet claiming that disclosure of that information would be an unjustified invasion of the personal privacy of another individual (section 49(b)).

In this order, the adjudicator finds some of the information that was not disclosed is not responsive to the request. She finds the other information that the ministry decided not to disclose is exempt under section 49(b) and upholds the ministry's decision. She dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended sections 2 (definition of personal information), 24, 49(b).

### OVERVIEW:

[1] This order considers whether information withheld from a record of searches made on the Ontario Provincial Police (OPP) database is either not responsive to the request or subject to the discretionary personal privacy exemption in section 49(b) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] An individual made a request under the *Act* to the Ministry of the Solicitor

General (the ministry) for a record of all searches made about them on the OPP database within a specified time period.

[3] The ministry issued a decision indicating that it did not have custody or control of responsive records. The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] During the adjudication stage of that appeal, the ministry issued a revised decision stating that it had custody or control of a responsive record, a spreadsheet. The ministry stated that it was denying access to the spreadsheet on the basis of section 49(a), read with section 14 (discretion to refuse a requester's own information/law enforcement) of the *Act*.

[5] As the sole issue in the original appeal was whether the ministry has custody or control over responsive records, the appeal file was closed. The appellant advised that he wished to pursue access to the spreadsheet and this appeal was opened to determine whether section 49(a), read with section 14 of the *Act*, applies to the responsive record.

[6] Mediation did not resolve the appeal and 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 sought and received representations from the parties.

[8] In its representations, the ministry stated that it had again revised its position and decided to grant the appellant partial access to the spreadsheet. The ministry then issued a second revised decision to the appellant, enclosing a severed copy of the spreadsheet. The ministry indicated that it withheld some information in the spreadsheet on the basis that it is not responsive to the appellant's request and it withheld a further portion under the discretionary personal privacy exemption in section 49(b) of the *Act*.<sup>1</sup> The ministry no longer claims section 49(a), read with section 14, to withhold any portion of the record.

[9] In light of the ministry's revised position, I added the late raising of the discretionary exemption in section 49(b) and the application of that exemption to the issues in the appeal. I removed the application of section 49(a), read with section 14(1), as it is no longer at issue.

[10] For the reasons that follow, I uphold the ministry's decision. I find that some withheld information is not responsive to the appellant's request and that the remainder

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<sup>1</sup> In its revised decision, the ministry cites section 21(2)(f) of the *Act*. This section is not an exemption but one of the factors weighing against disclosure in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy under section 21(1) and/or section 49(b) of the *Act*.

of the information at issue is exempt under the discretionary personal privacy exemption in section 49(b). Accordingly, I dismiss the appeal.

## **RECORDS:**

[11] The information remaining at issue is the withheld portions of an Excel spreadsheet (1 page) consisting of user details (including Workplace Identification Numbers), dates and descriptions of searches made on the OPP database.

## **ISSUES:**

- A. Is some of the withheld information responsive to the request?
- B. Should the IPC permit the ministry to claim a new discretionary exemption outside of the 35-day window for doing so?
- C. Does the record contain “personal information” as defined in section 2(1) of the *Act* and, if so, whose personal information is it?
- D. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

## **DISCUSSION:**

### **Issue A: Is some of the withheld information responsive to the request?**

[12] The ministry has withheld some information in the record on the basis that it is not responsive to the appellant’s request. To determine whether this information has been properly withheld, I have considered section 24 of the *Act*. Section 24 imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. To be considered responsive to the request, records must “reasonably relate” to the request.<sup>2</sup>

[13] The parties’ representations do not address the information that the ministry has withheld as not responsive.

[14] From my review of the record, I find that a portion of the information withheld by the ministry is not responsive to the request. The appellant’s request seeks information relating to searches concerning him conducted on the OPP database. A portion of the record relates to searches of the OPP database concerning individuals other than the appellant. I am satisfied that this information does not reasonably relate

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<sup>2</sup> Orders P-880 and PO-2661.

to the appellant's request.

[15] Accordingly, I uphold the ministry's decision to withhold information in the Excel spreadsheet on the basis that it is not responsive to the appellant's request.

**Issue B: Should the IPC permit the ministry to claim a new discretionary exemption outside of the 35-day window for doing so?**

[16] The ministry did not claim the exemption in section 49(b) in a timely manner and I have considered whether it should still be permitted to rely upon it.

[17] The IPC *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals at the IPC. Section 11 of the *Code* addresses the situation when an institution raises a new discretionary exemption during an appeal.

[18] Section 11.01 gives an adjudicator discretion not to consider a new discretionary exemption claim made more than 35 days after an institution is notified of an appeal. The purpose of the 35-day rule is to provide an opportunity for institutions to raise a new discretionary exemption without compromising the integrity of the appeal process.

[19] In deciding whether to allow the ministry to claim a new discretionary exemption outside the 35-day period, I must balance the relative prejudice to the parties<sup>3</sup> and consider the specific circumstances of the appeal.<sup>4</sup>

[20] In his representations, the appellant expresses his frustration at the way the ministry has responded to his request and its further revised position. The appellant states that he believes that a former employer treated him unfairly when he became aware of information obtained from the OPP database. The appellant states that he is pursuing this appeal to access the information in the record to make a complaint to the Human Rights Commission. The appellant submits that he has been waiting two years to obtain the information in the record and make a complaint.

[21] I have considered the prejudice resulting from the ministry's late raising of the discretionary exemption and the specific circumstances of this appeal. As I have noted in the Overview section above, this is not the first appeal arising from the appellant's request. The ministry's first response to the request was that the information sought was not within its custody or control. At the adjudication stage of the appeal arising from that decision, the ministry revised its position and claimed the law enforcement exemption to withhold the record in full. In this appeal, the ministry's position has been revised further. I acknowledge the appellant's frustration.

[22] In my view, the ministry's response to the appellant's request has caused considerable delay in the appellant accessing the information in the record.

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<sup>3</sup> Order PO-1832.

<sup>4</sup> Orders PO-2113 and PO-2331.

Notwithstanding this delay, I find that it is outweighed by the benefit of the access to the information in the record that the ministry's revised position affords the appellant. Accordingly, given the circumstances of this appeal, I permit the ministry to rely on the discretionary exemption in section 49(b).

[23] I am satisfied that the ministry's late raising of the discretionary exemption has not compromised the integrity of the appeal process. Notwithstanding the fact that the ministry revised its position during my inquiry, the appellant has had an opportunity to provide representations in response and to address the application of the discretionary exemption. Furthermore, the information being claimed exempt under section 49(b) is information that the ministry has withheld since the start of the appeal.

[24] Ultimately, the ministry's revised position has provided the appellant greater access to the information sought in his request. I find that it would serve no useful purpose not to permit the ministry to rely upon the discretionary exemption.

[25] For these reasons, I will consider the application of the discretionary exemption in section 49(b) to the remaining information at issue in the spreadsheet. Notwithstanding this finding, I remind the ministry to use its best efforts to raise new discretionary exemption claims within 35 days of being notified of an appeal.

**Issue C: Does the record contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?**

[26] The ministry submits that disclosure of the information at issue would be an unjustified invasion of the personal privacy of an individual other than the appellant and is exempt pursuant to the discretionary personal privacy exemption in section 49(b).

[27] To determine whether section 49(b) applies, it is first necessary to decide whether the record contains "personal information" and, if so, whose personal information. Previous IPC orders have taken a record-by-record approach to determine this issue; that is, it is the record as a whole that must be examined to determine whether it contains personal information and not just the portion of the record that is at issue.<sup>5</sup>

[28] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[29] 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.<sup>6</sup> In some situations, even if information relates to an individual in a professional, official or business capacity, it may

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<sup>5</sup> Order M-352.

<sup>6</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

still be “personal information” if it reveals something of a personal nature about the individual.<sup>7</sup>

[30] 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.<sup>8</sup>

[31] “Personal information” is defined in section 2(1) of the *Act*, in part, as follows:

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

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[32] 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.”<sup>9</sup>

[33] It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>10</sup> Also, if the record contains the personal information of other individuals,

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<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

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

<sup>9</sup> Order 11.

<sup>10</sup> Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

one of the personal privacy exemptions might apply.<sup>11</sup>

[34] The parties' representations do not address whether the record as a whole contains personal information and, if so, whose personal information it is. The ministry's representations focus on the withheld information and it submits this is the personal information of OPP employees consisting of their Workplace Identification Number (WIN). The appellant's representations do not address the issue of personal information at all.

[35] From my review of the whole record, I find that it contains the personal information of both the appellant and other identifiable individuals.

[36] Regarding the appellant, I find that the record contains his name together with his age, address and other information relating to his history. I find that this information qualifies as the appellant's personal information within the meaning of paragraphs (a), (b), (d) and (h) of the definition in section 2(1) of the *Act*.

[37] Regarding other individuals, I find that the record contains their names together with corresponding WIN numbers. The IPC has previously held that WIN numbers qualify as personal information.<sup>12</sup> Individuals are identifiable from WIN numbers when they appear with corresponding names in employment records. Although individuals may be identified by their WIN numbers in the context of their employment, I am satisfied that in the context of the record before me these numbers reveal something of a personal nature. I find that this information qualifies as the personal information of OPP employees within the meaning of paragraphs (c) and (h) of the definition in section 2(1) of the *Act*.

[38] As I have found that the record contains the personal information of the appellant and other identifiable individuals, I will consider the application of the discretionary personal privacy exemption in section 49(b) to the remaining information at issue.

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

[39] When a record contains the personal information of the appellant and other identifiable individuals, I must consider the appellant's access rights under section 47(1) of the *Act*.

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

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<sup>11</sup> See sections 21(1) and 49(b) of the *Act*.

<sup>12</sup> See Orders PO-3742 and PO-3993.

[41] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[42] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of another individual's personal privacy.

[43] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b). Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[44] If any of the exceptions in paragraphs (a) to (e) of 21(1) or if any of the circumstances in section 21(4) apply, disclosure of personal information is not an unjustified invasion of personal privacy under section 49(b). When these provisions apply, the information is not exempt from disclosure under section 49(b). From my review of the record and the circumstances of this appeal, these paragraphs do not apply in this case.

[45] Sections 21(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). In deciding whether the disclosure of the information at issue would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>13</sup>

[46] The information remaining at issue is the personal information of OPP employees, specifically their WIN numbers.

[47] The ministry submits that the factor in section 21(2)(f) applies and weighs against the disclosure of the withheld information. The ministry submits that the OPP employees' WIN numbers are highly sensitive information. The ministry states that disclosure of this information would be expected to be significantly distressing because it would reveal something of a personal nature about the employees, given that their names have already been released in the portion of the record that has been disclosed to the appellant. The ministry states that someone could use the names and WIN numbers to obtain additional human resources information about the employees. The ministry cites Orders PO-3742 and PO-4336 in support of its submissions.

[48] The appellant's representations do not address the factors and presumptions in sections 21(2) and (3). The appellant focuses on the background to his request and the reasons for seeking access to the information from the searches on the OPP database.

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<sup>13</sup> Order MO-2954.



### ***Analysis and findings***

[49] I do not agree with the ministry that the OPP employees' WIN numbers are "highly sensitive" so that the factor in section 21(2)(f) applies. Orders PO-3742 and PO-4336 cited by the ministry support the proposition that WIN numbers qualify as personal information, as I have found. However, I am not persuaded that WIN numbers are more sensitive than other types of personal information that, by its very definition, reveals something of a personal nature about the individual to whom it belongs.

[50] Notwithstanding that I do not find this information is highly sensitive, I accept the ministry's evidence about the risks associated with its disclosure in the circumstances of this appeal.

[51] Similar personal information was considered by the adjudicator in Order MO-2134. In that appeal, the information at issue was the employee numbers of firefighters contained in an incident report. The adjudicator found that, if disclosed, the employee numbers could be used to access other highly sensitive and confidential personal information. In the absence of any factors in favour of disclosure of the employee numbers, the adjudicator concluded that their disclosure would constitute an unjustified invasion of personal privacy of the firefighters.

[52] I agree with this approach and adopt it in this appeal. I accept the ministry's submission that the disclosure of the WIN numbers presents a risk that additional human resources information can be accessed. This risk is greater when the names of the corresponding OPP officers have already been released. In my view, this risk is a non-listed factor weighing against the disclosure of the WIN numbers in this appeal.

[53] In conclusion, I find none of the presumptions in section 21(3) nor the factors in section 21(2) are present in this appeal. However, I find that an unlisted factor weighs against disclosure, namely the risks associated with the disclosure of the WIN numbers of the OPP employees. Accordingly, I find that the disclosure of the WIN numbers of OPP employees would be an unjustified invasion of their personal privacy and that this information is exempt from disclosure under section 49(b), subject to my review of the ministry's exercise of discretion.

### ***Exercise of discretion***

[54] The exemption in section 49(b) is discretionary meaning that the ministry can decide to disclose the information withheld even if it qualifies for exemption. In applying this exemption, the institution must exercise its discretion. On appeal, the IPC may determine whether an institution failed to do so. In addition, the IPC may find that an institution erred in exercising its discretion. The IPC may send the matter back to the institution for an exercise of discretion based on proper considerations<sup>14</sup> but cannot

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<sup>14</sup> Order MO-1573.

substitute its own discretion for that of the institution.<sup>15</sup>

[55] For the reasons that follow, I am satisfied that the ministry exercised its discretion in deciding to withhold the WIN numbers in the Excel spreadsheet and that it did so properly.

[56] I have noted above the appellant's frustration with the ministry's response to his request. In his representations, the appellant also expresses concern that the ministry has decided to withhold information to protect someone who has accessed the OPP database for an improper purpose.

[57] While I acknowledge the appellant's frustration, there is no reasonable basis for me to find that the ministry exercised its discretion for an improper purpose. I note that the information in the record released to the appellant includes the names of OPP employees who accessed the OPP database. Accordingly, I am not persuaded that the ministry decided to withhold the WIN numbers for the reasons suggested by the appellant.

[58] Based on the ministry's overall representations, I am satisfied that it properly exercised its discretion in deciding to withhold its employees' WIN numbers from the record. I find that the ministry exercised its discretion based on considerations that are consistent with the purposes of the *Act*. It is evident from the ministry's decision to withhold only the WIN numbers of the OPP employees that it considered the appellant's right of access to his own personal information and the exemption was applied to limited and specific information relating to OPP employees. Finally, I am satisfied that the ministry took into account its historical practice with respect to employee WIN numbers and that this is a relevant consideration.

[59] There is no basis for me to find that the ministry failed to take account of relevant considerations or took into account irrelevant considerations or that it exercised its discretion for an improper purpose. Accordingly, I uphold the ministry's exercise of discretion.

[60] For these reasons, I uphold the ministry's revised decision and dismiss the appeal.

**ORDER:**

I uphold the ministry's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Katherine Ball  
Adjudicator

July 24, 2024 \_\_\_\_\_

<sup>15</sup> See section 54(2) of the *Act*.