

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4551

Appeal PA21-00416

Ministry of Agriculture, Food and Rural Affairs

September 24, 2024

Summary: A person asked the ministry for specific information contained in inspection reports of animal research and related supply facilities. The ministry denied access to some information. The ministry said, in part, that the disclosure of the withheld information might endanger the life or physical safety of an individual or the security of a building [sections 14(1)(e) and (i)]. The appeal was narrowed to specific information in one record.

In this order, the adjudicator agrees with the ministry's decision to withhold the information at issue and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, *as amended*, section 14(1).

Orders Considered: P-169, P-557, P-1537, PO-3626, and PO-4393.

Cases Considered: *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)*, 1999 CanLII 19925 (ON CA).

OVERVIEW:

[1] This order determines whether the information in an inspection report of an animal research facility about types of species in the facility is exempt from disclosure under sections 14(1)(e) and (i) (law enforcement) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted an access request under the *Act* to the Ministry of Agriculture, Food and Rural Affairs (the ministry) for inspection reports of animal research and related supply facilities. The appellant specifically sought access to information that had been previously withheld from these reports in response to her prior access request. The appellant also noted that she was not seeking information that would identify facilities or their personnel.

[3] After notification of affected parties, the ministry issued a decision providing the appellant with partial access to responsive records. The ministry denied access to parts of the records under the discretionary law enforcement [sections 14(e) and (i)] and danger to health or safety (section 20) exemptions, and the exclusion related to records respecting or associated with research or teaching [section 65(8.1)].

[4] The appellant sought access to the withheld information and appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). (None of the affected parties appealed the ministry's decision.)

[5] There were a number of records, exemptions and an exclusion at issue in the appeal. The ministry also deemed some information in the records to be non-responsive. Through mediation and the inquiry, the appeal was narrowed to the withheld information in section "species in facility" in one record. (The ministry released to the appellant some information in the section "species in facility" during the inquiry.)

[6] During the inquiry, an IPC adjudicator who started the inquiry and later I received parties' representations and shared them in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7* in effect at the time of the inquiry. I also invited affected parties to provide representations but did not receive their representations.

[7] For the following reasons, I uphold the ministry's decision to withhold the remaining information in the section "species in facility" under law enforcement exemptions. Given my finding, I do not need to determine the application of danger to health or safety exemption.

RECORD:

[8] The information remaining at issue in this appeal is withheld information in the section "species in facility" in one inspection report.

PRELIMINARY ISSUE:

[9] In its initial representations, which preceded the narrowing of the scope of the appeal to the information at issue, the ministry submits that while it only deemed certain information non-responsive, it could have claimed the other withheld information, including the information at issue, to be non-responsive because the information could

identify or allow an experienced requester to make accurate inferences about the identities of animal research facilities. The ministry relied on the language of the request and the appellant's statement during the mediation in support of its claim that the information that identifies animal research facilities and their personnel was non-responsive. In its reply representations, when addressing the narrowed scope of the appeal, the ministry pointed to the argument in its initial representations that it could have deemed non-responsive the information at issue.

[10] I did not consider whether the information at issue was non-responsive because the ministry did not rely on that claim to withhold the information. The ministry withheld the information at issue under law enforcement and danger to health or safety exemptions. Given my finding that law enforcement exemptions apply to the information at issue, I will focus my discussion below on my reasons for upholding the exemptions and will not address the application of the danger to health or safety exemption.

DISCUSSION:

[11] The sole issue in this appeal is whether the law enforcement exemptions, in particular sections 14(e) or (i), apply to the information at issue.

[12] Section 14 contains several exemptions from a requester's right of access. Sections 14(1)(e) and (i) state:

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

(e) endanger the life or physical safety of a law enforcement officer or any other person;

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

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

[14] The exemptions in sections 14(1) (e) and (i) apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure of a record must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14(1) are self-evident and can be proven simply by repeating the description of harms in

¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

the *Act*.²

[15] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.³ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁴

[16] For section 14(1)(e) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger someone's life or physical safety. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own to establish this exemption.⁵ The term "person" is not necessarily limited to a specific individual. It can include the members of an identifiable group or organization.⁶

[17] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required. Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.⁷

Ministry's representations

[18] The ministry submits that the disclosure of the information at issue could reasonably be expected to result in the animal research facility in question and individuals associated with it being targeted by violence, threats of violence and harassment by extremists in animal rights movement because the information will reveal the identity of the animal research facility or allow to make accurate inferences about the identity of the animal research facility. I have considered the ministry's representations in their totality but will refer in my order only to non-confidential portions of the representations.

[19] The ministry disclosed to the appellant information about one species from the section "species in facility." With respect to the remaining species, the ministry submits that the specific combination of species could allow an experienced requester, such as the appellant, to identify the animal research facility in question or make accurate

² Orders MO-2363 and PO-2435.

³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

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

⁵ Order PO-2003.

⁶ Order PO-1817-R.

⁷ Orders P-900 and PO-2461.

inferences as to the identity of the animal research facility. In its confidential representations, the ministry explains how this information could lead to the animal research facility being identified.

[20] The ministry urges the IPC to consider that, if disclosed, the information at issue might become known to the general public. The ministry says that while it is not aware that the appellant's organization engages in or endorses acts of vandalism, harassment and threats against animal research facilities or individuals associated with them, the appellant's organization advocates against the use of animals for research and disseminates information it receives through access requests. Therefore, the ministry says, it is reasonable to conclude that the information at issue could come to the attention of extremists in animal rights movement who might use it to justify harming the animal research facility in question or those associated with it.

[21] The ministry says that the risk of harm is not speculative and to support its position provides examples of recent activities of animal rights groups that choose to use acts of violence and harassment to promote their cause, such as protests, demonstrations, death threats, and harassment.

[22] The ministry also relies on a report released by a federal ministry in July 2022 that notes that low-level violence exists in Canada from issue-based groups, such as animal rights groups.⁸ The ministry says that the above-mentioned examples build upon the evidence of harm that was accepted as persuasive in other IPC orders.

[23] The ministry further submits that even if a particular animal research facility has not been directly targeted, animal rights activists assert their hostility towards all animal research facilities by targeting some of them. The ministry notes that prior IPC orders have accepted information about threats of violence and harassment to animal research facilities and those associated with the facilities as detailed and convincing evidence even where those incidents might not have been directed at a particular animal research facility in question or even where the incidents occurred abroad.⁹

Appellant's representations

[24] The appellant disagrees with the ministry's submission that the disclosure of the information at issue could reasonably be expected to endanger the lives and physical safety of individuals associated with the animal research facility in question and the security of the facility. First, the appellant says that the animal research facility in question cannot be identified because the record is not an investigative or surveillance record. Second, the appellant says that the ministry's submission that the disclosure of the information at issue would endanger lives and physical safety of individuals associated with the animal research facility in question or security of the facility is unreasonable. The

⁸ The report was published by Public Safety Canada and is titled "Building Resilience Against Terrorism: Canada's Counter-Terrorism Strategy."

⁹ The ministry relied on Orders PO-3626 and PO-4393.

appellant says that much is already known about locations of animal research facilities. The appellant adds that the information about species in an anonymous facility will not lead to harms set out in law enforcement exemptions. In addition, the information is over five years old.

[25] Further, the appellant disagrees that, if disclosed, the information could come to the attention of animal rights groups who might use it to justify harming the animal research facility in question or individuals associated with it. The appellant says that she is seeking information at issue to better understand the state of animal research in Canada, which she says has become increasingly opaque.

[26] Finally, the appellant submits that the ministry's reliance on law enforcement and danger to health or safety exemptions adds a chilling effect on the right to access.

Analysis and finding

[27] I find that the disclosure of the information at issue could reasonably be expected to endanger lives or physical safety of individuals associated with the animal research facility in question and the security of the facility.

[28] I accept the ministry's representations and find that the disclosure of the combination of species in the animal research facility in question will allow an informed party to either identify the facility or make accurate inferences about the identity of the facility. In my finding, I rely on the principle that disclosure of a record must be viewed as disclosure to the public generally.¹⁰ Even if the appellant is unable to identify the animal research facility in question from the information at issue, there might be other individuals who are familiar with animal research that could identify it. I also rely in my finding on the type of information at issue and disagree with the appellant that the facility can only be identified if a specific type of record (for example, investigative or surveillance) is at issue. I am further supported in my conclusion by the confidential representations made by the ministry.

[29] Bearing in mind the difficulty predicting future events, I further find that the disclosure of the information that can identify the animal research facility in question could reasonably be expected to endanger lives or physical safety of individuals associated with the facility and the security of the facility. Given the principle that disclosure of a record must be viewed as disclosure to the public, in determining whether the law enforcement exemptions apply, I considered not only the appellant's purpose of seeking access to the information at issue, but also the consequences of the information at issue being disclosed to the public. With respect to the latter, I accept the ministry's assertion that animal rights groups that elect to use acts of violence and harassment to promote their cause, knowing the identity of the animal research facility in question, could use this information to target the facility or individuals associated with the facility.

¹⁰ Orders P-169, P-557, P-1537, PO-3626, and PO-4393.

[30] The ministry provided detailed evidence that some animal rights groups target animal research facilities and individuals associated with them by engaging in harassment, intimidation, hostilities and violence. The examples that the ministry provided included a recent death threat, other threatening communications, and harassment at a private residence of an individual associated with animal research. I agree with and adopt the analysis in prior IPC orders that accepted evidence about the risk of violence and harassment towards facilities as detailed evidence even when those facilities were not facilities in question.¹¹ I am also mindful of the interests protected by section 14(1)(e), namely personal safety and bodily integrity.¹² As a result, I find that the ministry's evidence establishes that activities of some animal rights groups could endanger lives or physical safety of individuals associated with the animal research facility in question and security of the facility. Further, I find that the risk of harm is real.

[31] I have considered the appellant's argument that the information that she is seeking is over five years old. On the basis of the ministry's confidential representations, I do not find that the age of the information impacts my determination as to whether the law enforcement exemptions apply. I also do not find the appellant's argument that the harm is not reasonable because much is already known about locations of animal research facilities convincing. Given the appellant's general statements about the publicly available information regarding animal facilities, I cannot give weight to the appellant's arguments in this regard.

[32] Accordingly, I find the withheld information exempt under sections 14(1)(e) and (i).

Exercise of discretion

[33] The section 14(1) exemptions are discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[34] In addition, the IPC may find that the institution erred in exercising its discretion where it does so in bad faith or for an improper purpose; takes into account irrelevant considerations; or fails to take into account relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹³ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁴

¹¹ Orders PO-3626 and PO-4393.

¹² *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)*, 1999 CanLII 19925 (ON CA).

¹³ Order MO-1573.

¹⁴ Section 54(2).

Parties' representations

[35] The ministry submits that it exercised its discretion in good faith, for a proper purpose, and taking into account relevant factors, including the following:

- The importance of transparency and of applying exemptions in a limited and specific manner, balanced against the need to guard safety and security of animal research facilities;
- The evidence of harassment and intimidation tactics against animal research facilities and individuals associated with them;
- The risk of placing animal research facilities in a vulnerable position by releasing information that could expose them or individuals associated with them to harm;
- Ministry's historical practices of not publicizing or disclosing information that could identify animal research facilities;
- The negative impact that the disclosure of information can have on the field of animal research, including the ability of research facilities to engage researchers to continue to do the work that has yielded and continues to yield medical and scientific breakthroughs without the fear of interference; and their ability to foster frank and open discussions of ethics and care issues;
- The fact that the appellant received access to portions of records and the information at issue is very limited;
- The appellant's prior multiple requests for information and the type of information that was released as a result of those prior requests; and
- The information at issue can only be used to identify the animal research facility in question or narrow down/make accurate inference as to the identity of the facility. This information could then be used to target the facility.

[36] The appellant describes her purpose of seeking the information at issue. She says that the information at issue will assist her with understanding the state of animal research in Canada. The appellant notes that the information at issue is more than five years old. The appellant says that the disclosure of the information about animals used in research is not proactive, and it takes years to obtain such information through appeal process. In addition, the appellant submits that the ministry applied the law enforcement exemptions overly broadly.

Analysis and finding

[37] I am satisfied that the ministry exercised its discretion properly. The ministry considered the purpose of the *Act*, including the principles that the information should be

available to the public and exemptions from the right of access should be limited and specific. The ministry also considered the nature of the information, the sensitivity of the information to animal research facilities, and the consequence of disclosing the information. Finally, the ministry took into account its historical practices, appellant's prior access requests, and the information that was released to the appellant both as part of current access request and as part of prior access requests.

[38] There is no evidence before me that the ministry exercised its discretion in bad faith or for improper purpose or took into account irrelevant considerations.

[39] My reasons on the application of law enforcement exemptions address the appellant's submission that the ministry applied the exemptions broadly.

ORDER:

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

Original Signed by: _____
Anna Kalinichenko
Adjudicator

_____ September 24, 2024