

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4580

Appeal PA21-00453

Ministry of the Solicitor General

December 3, 2024

Summary: In a request made under the *Freedom of Information and Protection of Privacy Act*, an individual asked the ministry for records of the Ontario Provincial Police that relate to him. The ministry provided access to the records in part. It did not disclose some information saying that it contained the personal information of the appellant (section 49(a)), that, if disclosed could facilitate the commission of an unlawful act (section 14(1)(l)). It also said that disclosure would result in an unjustified invasion of the personal privacy of individuals other than the appellant (section 49(b)). In this order, the adjudicator finds that some of the information the ministry did not disclose should be provided to the appellant. However, he upholds the decision of the ministry not to disclose the remaining information to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 2(3), 14(1)(l), 21(2)(f), 21(3)(b), 49(a) and 49(b).

Order Considered: MO-3649.

OVERVIEW:

[1] This order considers the extent of an individual's right of access to records with the Ontario Provincial Police (OPP) relating to incidents involving him.

[2] The individual made a request to the Ministry of the Solicitor General (the ministry)¹ under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for

¹ The OPP is part of the Ministry of the Solicitor General.

access to the following information, which the ministry characterizes as relating to an ongoing domestic dispute:

...any and all records of any kind and in any format (including drafts, deleted and double deleted records and/or backups of any records); including, but not limited to records of any and all telephone calls to or from the telephone number of the Applicant [specified telephone number], texts, BBMs, iMessages, instant messaging messages and the like, faxes, notes in any format, reports accessed by any individuals re: the Applicant, reports, letters, emails, summaries, assessments, comments of any kind, internal messaging messages of any kind involving the following OPP officers and OPP call centre employees: [named officers and specified OPP call centre employee]. For the time period June 1, 2020 to the present (April 30, 2021).

For additional clarity, please include any type of correspondence (in any format - such as email, text, iMessage and the like to or from each named individual above (on pgs. 1 and 2) and/or the Applicant and/or involving the Applicant/Requester (no matter how the Applicant/Requester may be referred and/or referenced in any such records and/or correspondence (of any and all kind)). Please also include OPP occurrence report numbers of any kind that may have been generated by the OPP staff from any Ontario location (or other) involving the Applicant/Requester for the above noted time period - please exclude any occurrence reports that were previously requested on April 16, 2021 (request # [specified request]) as I do not wish for there to be any overlap.

[3] The ministry identified responsive records and granted partial access to them. It relied on section 49(a) (discretion to withhold requester's own information) read with sections 14(1)(l) (facilitate commission of an unlawful act) and 15(b) (relations with other governments) as well as section 49(b) (personal privacy) to deny access to the portions it withheld. The ministry also took the position that some information in the records was not responsive to the request.²

[4] The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeal process where an adjudicator may decide to conduct an inquiry under the *Act*.

[5] I began the inquiry by seeking representations from the ministry. In its representations the ministry advised that it was no longer relying on section 15(b) of the *Act* to withhold any information. Accordingly, the section 15(b) is no longer at issue in the appeal. The appellant did not provide any representations when invited to do so.

² Some of the records at issue contain entries unrelated to the matters at issue in this appeal. This order does not address that unresponsive information.

[6] In this order, I partially uphold the ministry's decision. I find that some of the information withheld under sections 49(a) and 49(b) is not exempt and I order the ministry to disclose it to the appellant. I uphold the decision of the ministry to withhold other information.

RECORDS:

[7] At issue in this appeal is the undisclosed information sought by the appellant in the responsive records which include police officers' notes and emails as well as audio recordings of 911 calls.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own personal information), read with section 14(1)(l) (facilitate commission of an unlawful act) of the *Act*, apply to the information at issue?
- C. Does the discretionary personal privacy exemption at section 49(b) of the *Act* apply to the information at issue?
- D. Did the ministry exercise its discretion under section 49(b)? If so, should I uphold the exercise of discretion?

DISCUSSION:

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

[8] The ministry withheld information on the basis that it is exempt from disclosure under section 49(b) and/or under section 49(a), read with the law enforcement exemption in section 14(1)(l). For sections 49(a) and (b) to apply the records must contain the "personal information" of the appellant. For section 49(b) to apply the records must contain the "personal information" of both the appellant and another individual.

[9] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their

professional, official or business capacity is not considered to be "about" the individual.³

[10] 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.⁴

[11] 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.⁵

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

"personal information" means recorded information about an identifiable individual, including,

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

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

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

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

(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

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(3) and 2(4).

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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.

[13] 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."⁶

Representations

[14] The ministry submits that the records at issue were created by the OPP in the context of an ongoing domestic dispute.

[15] The ministry says that the records contain personal information about individuals who are identified as witnesses, a complainant or a victim (either expressly or by implication) involved in an OPP investigation of a domestic incident.

[16] The ministry submits that due to the subject matter of the records, the appellant's personal information is so intertwined with that of other individuals that they can expect to be identified if the information is disclosed, even after removing their identifying information.

Analysis and findings

[17] Based on my review of the records, I find that all of them contain the personal information of the appellant, as they relate to incidents involving him and reveal other personal information about him (paragraph (h) of the definition of "personal information") in section 2(1). I also find that the records contain the personal information of other identifiable individuals, including their addresses and telephone numbers (paragraph (c)), their personal views and opinions (paragraph (e)) and their names, along with other personal information relating to them (paragraph (h)). I find that in many instances, the personal information of the appellant and other identifiable individuals is so intertwined that it can not be separated.

[18] According to section 2(3) of the *Act*, personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a professional capacity. The ministry severed the names of certain police officers involved in various incidents relating to the appellant. As set out above, although professional information can consist of personal information if it reveals something of a personal nature about an individual, this information does not. I therefore find that it is professional information and not personal information.

[19] In summary, I find that the records contain the personal information of the appellant and other identifiable individuals. I also find that the records contain professional information. In most instances, the personal information of the appellant and

⁶ Order 11.

other identifiable individuals is so intertwined that it cannot be separated.

[20] In accordance with the above, I find that the information that I have highlighted in green on pages 39, 40 and 161 is either the personal information of the appellant alone or is information about the appellant alone together with information about an individual in their professional capacity, only. As this information does not qualify as another identifiable individual's personal information, unless it falls within the scope of another exemption, I will order the ministry to disclose it to the appellant.

Issue B: Does the discretionary exemption at section 49(a), read with section 14(1)(l) of the *Act*, apply to the information at issue?

[21] The ministry claims that information at issue in the records qualifies for exemption under section 49(a) read with the law enforcement exemption at section 14(1)(l).

[22] Section 49(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[23] The discretionary nature of section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.⁷

[24] In this case, the ministry relies on section 49(a) read with section 14(1)(l) of the *Act*, which provides:

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

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

[25] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.⁸

[26] The parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not

⁷ Order M-352.

⁸ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.⁹

Section 14(1)(l): facilitate commission of an unlawful act or hamper the control of crime

[27] Section 14(1)(l) applies where a certain event or harm “could reasonably be expected to” result from disclosure of the record. Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹⁰ 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.¹¹

[28] 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.

Representations

[29] The ministry submits that it applied section 49(a) read with section 14(1)(l) of the *Act* to information in the records in order to protect the integrity of its law enforcement investigations and the working relationships with other law enforcement agencies.

[30] The ministry submits that the records at issue were created or collected by the OPP during an OPP law enforcement investigation, which could have resulted in charges.

[31] The ministry submits that members of the public would be reluctant to seek the assistance of, or cooperate with the police, if they suspected that the information they provided would be disclosed in the manner contemplated by this appeal. It says that it is concerned that the disclosure of the records would discourage members of the public from being cooperative with the police out of concern that the confidentiality of their information will not be safeguarded. The ministry submits that such an outcome could be expected to hamper the control of crime.

[32] The ministry also takes the position that the records contain law enforcement information obtained from another police service. The ministry states that it is concerned that disclosure of the information at issue would result in other law enforcement agencies being hesitant to share information with the OPP, thereby hampering the control of crime.

⁹ Orders MO-2363 and PO-2435.

¹⁰ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹¹ *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.

Analysis and finding

[33] The ministry argues that information at issue falls within the scope of section 14(1)(l) because if it is disclosed, members of the public, including victims of crime, would be discouraged from seeking police assistance or being cooperative with the police out of concern that the confidentiality of their information will not be safeguarded. The ministry is also concerned that disclosure of the information at issue would result in other law enforcement agencies being hesitant to share information with the OPP.

[34] With respect, I find that the scope of the application of section 14(1)(l) suggested by the ministry is far too broad. Taken to its logical conclusion this would mean that this exemption would apply to most, if not all information provided in a criminal investigation, a result that could not have been contemplated or intended by the legislature in enacting this statutory provision.¹²

[35] I also find that the evidence tendered by the ministry in this appeal with respect to the application of section 14(1)(l) is highly speculative. The keeping and exchange of written records is an integral part of policing, and I am not satisfied that disclosing the specific portions of the records at issue in this appeal that I have found should be disclosed would interfere with that practice.

[36] Finally, I note that the highlighted information on pages 39, 40 and 161 relates only to the appellant, was provided by the appellant himself or would be within his knowledge. In my view, the ministry has not provided sufficient evidence to establish that disclosure of this limited information would dissuade public cooperation with the OPP, or otherwise facilitate the commission of unlawful acts or hamper the control of crime. Accordingly, I find that section 49(a) read with section 14(1)(l) does not apply to this information.

[37] In summary, I have found that section 49(a) read with section 14(1) does not apply to any of the information at issue in this appeal.

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

[38] Under the section 49(b) exemption, if a record contains the personal information of both the appellant and another individual, the institution may refuse to disclose the other individual's personal information to the appellant if disclosing that information would be an "unjustified invasion" of that individual's personal privacy. 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).¹³

¹² I find support for my conclusion in Orders PO-3662 at paragraph 132 and PO-3765 at paragraph 64.

¹³ 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

[39] Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met:

- if the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b);
- section 21(2) lists “relevant circumstances” or factors that must be considered;
- section 21(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3).

[40] There is no evidence before me to suggest that the exceptions in section 21(1)(a) to (e) or the circumstances in section 21(4) apply to the personal information in the records. I find that none of these provisions is applicable in the circumstances of this appeal and will not consider them.

[41] The ministry claims section 49(b) over information in the records at issue. It submits that the presumption against disclosure at section 21(3)(b) and the factor at section 21(2)(f), weighing against disclosure, are applicable in the circumstances.

[42] Those sections of the *Act* read:

21(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

21(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

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

The representations

[43] The ministry submits that records fall within the section 21(3)(b) presumption

invasion of other individual's personal privacy. The ministry's exercise of discretion is addressed in Issue D, below.

because OPP officers collected or created the records as part of an investigation into a possible violation of law, which could have led to charges under the *Criminal Code*.¹⁴

[44] The ministry submits that some of the records were generated by the OPP through its own law enforcement activities, but others contain references to police investigations in another jurisdiction involving the appellant.

[45] The ministry also submits that the factor set out at section 21(2)(f) is a relevant consideration because there is a reasonable expectation that the individuals whose personal information is contained in the records would experience significant personal distress if the personal information in the records is disclosed.

[46] Finally, the ministry relies on Order MO-3649¹⁵ in support of its position that it is reasonable to expect that significant personal distress would arise if 911 calls were disclosed because of an expectation that 911 calls are only used for a law enforcement purpose.

Analysis and Findings

[47] The section 21(3)(b) presumption against disclosure requires only that there be an investigation into a possible violation of law.¹⁶ So, even if criminal proceedings were never started, section 21(3)(b) may still apply.¹⁷

[48] The ministry submits that it withheld information in the records on the basis that its disclosure would presumptively constitute an unjustified invasion of personal privacy under section 21(3)(b). Based on my review of the records, the withheld personal information was compiled and is identifiable as part of investigations into possible violations of the law. I find the section 21(3)(b) presumption applies to the personal information of other individuals contained in these records and weighs against its disclosure.

[49] Section 21(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁸ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.¹⁹

[50] The ministry submits that the disclosure of other individuals' personal information

¹⁴ RSC 1985, c C-46.

¹⁵ The ministry specifically references paragraph 25.

¹⁶ Orders P-242 and MO-2235.

¹⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹⁸ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹⁹ Order MO-2980.

contained in the records could be expected to cause them significant distress.

[51] I agree with the ministry that the disclosure of the personal information of these individuals could reasonably cause them significant distress based on the context in which their information was collected. Although the records also relate to the appellant, the withheld information is highly sensitive personal information of others that was compiled as part of police investigations into possible violations of law. Based on the context in which this information was gathered and on the fact that some of the individuals in question interacted with the police agencies as complainants or witnesses, I find that section 21(2)(f) applies in favour of non-disclosure.

Weighing the presumption and factor

[52] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the applicable section 21(2) factors and section 21(3)(b) presumptions and balance the interests of the parties.²⁰

[53] I have found that the factor at section 21(2)(f) weighs in favour of non-disclosure, as does the presumption at section 21(3)(b). None of the parties have claimed, nor do I find that any of the factors favouring disclosure apply. Weighing the factor and presumption, and balancing the interests of the parties, I find that disclosure of the information at issue would amount to an unjustified invasion of privacy of the identifiable individuals other than the appellant. Furthermore, I find that in the circumstances of this appeal and based on the nature and content of the records the absurd result principle does not apply to the information at issue.²¹

[54] Accordingly, subject to my consideration of the ministry's exercise of discretion below, I find that the personal information for which section 49(b) has been claimed is exempt from disclosure under that section.

Issue D: Did the ministry exercise its discretion under section 49(b)? If so, should I uphold the exercise of discretion?

[55] The exemption in section 49(b) is discretionary and permit the ministry to disclose information, despite the fact that it could be withheld. On appeal, the IPC may review the ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.²²

[56] The ministry provided submissions in support of its decision to exercise discretion

²⁰ Order MO-2954.

²¹ An institution might not be able to rely on the section 49(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In this appeal withholding the information would not be absurd and inconsistent with the purpose of the exemption. See in this regard the discussion in Order PO-3013.

²² Order PO-2129-F.

not to disclose the information which is exempt under section 49(b) to the appellant. It states that in properly exercising its discretion it considered the public's expectation that information they provide to the police during a law enforcement investigation will be kept confidential, and its usual practices.

[57] In considering all of the circumstances surrounding this appeal, I am satisfied that the ministry has taken the appropriate factors into consideration in exercising its discretion and has not erred in the exercise of its discretion in deciding not to disclose the unhighlighted information in the records under section 49(b) of the *Act*.

[58] Finally, I have also considered whether the information that I have found to be subject to section 49(b) can be severed and portions of the withheld information be provided to the appellant. Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can be reasonably severed without disclosing information which is exempt. In my view, the records cannot be further severed without disclosing information that I have found to be exempt. Furthermore, an institution is not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless" or "meaningless" information, which any other severance would result in here.²³

ORDER:

1. I order the ministry to disclose to the appellant the information that I have highlighted in green on a copy of the pages of the records that I have provided to the ministry together with a copy of this order by sending it to him by **January 10, 2025**, but not before **January 6, 2025**.
2. In order to ensure compliance with paragraph 2, I reserve the right to require the ministry to send me a copy of the pages of records as disclosed to the appellant.
3. In all other respects I uphold the ministry's decision.

Original Signed by: _____
Steven Faughnan
Adjudicator

December 3, 2024 _____

²³ Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).