Information and Privacy Commissioner,
Ontario, Canada

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

RECONSIDERATION ORDER PO-4663-R

Appeal PA22-00127

Ministry of the Solicitor General

Order PO-4462

June 6, 2025

Summary: An individual submitted a request for reconsideration of Order PO-4462. In Order PO-4462, the adjudicator upheld the ministry's decision to refuse to confirm or deny the existence of records under section 14(3) of the *Freedom of Information and Protection of Privacy Act*. In this reconsideration order, the adjudicator allows the reconsideration request on the basis that there is a fundamental defect in the adjudication process under section 18.01(a) of the IPC's *Code of Procedure*

In reconsidering Order PO-4462, the adjudicator finds that the evidence does not establish a basis for her to change her decision in Order PO-4462.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 14(3); *Canadian Charter of Rights and Freedoms*: *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, section 6.

Orders Considered: Orders PO-2358-R, PO-3062-R, PO-4044-R, and MO-4260.

Cases Considered: *Chandler v. Alberta Assn. of Architects* (1989), 62 D.L.R. (4th) 577 SCC; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 (CanLII); *Woolaston v. Canada* (*Minister of Manpower and Immigration*), 1972 CanLII 3 (SCC); *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment),* 2023 SCC 31; *Ontario* (*Public Safety and Security*) *v. Criminal Lawyers' Association,* 2010 SCC 23.

OVERVIEW:

[1] This reconsideration order arises from a request to reconsider Order PO-4462. Order PO-4462 resolves an appeal from an access decision made by the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to all information about the appellant held by the Ontario Provincial Police (OPP), including records relating to allegations of him being a member of any motorcycle clubs.

[2] The ministry issued a decision advising that it refused to confirm or deny the existence of any responsive records under section 14(3) of the *Act*.

[3] After conducting an inquiry, Order PO-4462 was issued on November 29, 2023. In that order, I upheld the ministry's decision to refuse to confirm or deny the existence of records.

[4] On December 29, 2023, the appellant filed a judicial review application of Order PO-4462 with the Superior Court of Justice (Divisional Court).[1]

[5] On February 8, 2024, the appellant submitted a request for reconsideration of Order PO-4462 to the IPC. The IPC procedure for reconsideration is set out in section 18.04(b) of the *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act* (the *Code*).[2] Under the provisions of the *Code* a request to reconsider Order PO-4462 is to be made within 21 days of the date of the decision. As that time period had passed, the appellant made a request to vary the process as prescribed by section 20 of the *Code*, together with his request for reconsideration.

[6] On February 27, 2024, I granted the appellant's request to vary the process to permit him to submit his reconsideration request beyond the prescribed 21-day period set out in the *Code*. I then sought and received representations from the ministry on the substantive issues set out in the appellant's reconsideration request. Pursuant to section 7 of the *Code* and *Practice Direction Number 7*,[3] the appellant's reconsideration request was shared with the ministry. The appellant provided representations in response to those submitted by the ministry, as well as further representations in a response to a request from me. In addition, both parties provided representations on whether the ministry considered the effect of its decision on the rights and values related to the mobility rights

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[1] Court File No.: DC-24-00000003-00JR

[2] Please note the IPC's revised *Code of Procedure* came into force on September 9, 2024. However, in this reconsideration order I will be considering its predecessor which can be accessed here: https://www.ipc.on.ca/sites/default/files/legacy/2004/10/code-nov_2021.pdf

[3] The IPC's *Code of Procedure*, *Practice Direction Number 7*. This practice direction has been revised but I will be referring to its predecessor in this reconsideration order.

provided in section 6 of *the Canadian Charter of Rights and Freedoms*[4] ("Charter").

[7] For the reasons that follow, I grant the request for reconsideration on the basis that the appellant has established grounds exist under section 18.01(a) of the *Code* because I did not consider whether the ministry properly considered a relevant factor when it exercised its discretion.

[8] After considering the appellant's reconsideration request, I find that the appellant's evidence has not established that I should rescind my decision in Order PO-4462.

ISSUES:

A. Does the appellant's request for reconsideration meet any of the grounds for reconsideration in section 18.01 of the *Code*?

B. Should Order PO-4462 be rescinded?

DISCUSSION:

Issue A: Does the appellant's request for reconsideration meet any of the grounds for reconsideration in section 18.01 of the *Code*?

[9] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18 reads, in part:

> 18.01 The IPC may reconsider an order or other decision where it is established that there is:
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> (a) a fundamental defect in the adjudication process;
>
> (b) some other jurisdictional defect in the decision; or
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> (c) a clerical error, accidental error or other similar error in the decision.
>
> 18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

[10] Ordinarily, under the common-law principle of *functus officio*, once a decision-maker has determined a matter, he or she does not have jurisdiction to consider it further.[5] The Supreme Court of Canada has said that "there is a sound policy basis for

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[4] *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Charter*).

[5] *Functus officio* is a common law principle which means that, once a decision-maker has determined a matter, he or she has no jurisdiction to consider it further.

recognizing the finality of proceedings before administrative tribunals."[6] I am *functus* unless the party requesting the reconsideration – in this case, the appellant – establishes one of the grounds in section 18.01 of the *Code*. The provisions in section 18.01 of the *Code* summarize the common law, acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain limited circumstances.[7]

[11] The reconsideration process in section 18 of the *Code* is not intended to provide parties who disagree with a decision a forum to re-argue their case[8] – whether or not they made those arguments during the inquiry.[9] In other words, even if a party disagrees with an adjudicator's interpretation of the facts or the legal conclusions drawn in a decision,[10] the reconsideration process is not meant as a chance to convince the adjudicator to make a different decision.

[12] For me to reconsider Order PO-4462, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[13] In his reconsideration request, the appellant submits that there is a fundamental defect in the adjudication process (section 18.01(a)) and/or there are jurisdictional defects in Order PO-4462 (section 18.01(b)).

[14] Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. Past orders have found that various breaches of the rules of natural justice respecting procedural fairness will qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a).[11] Examples of such breaches would include a failure to notify an affected party,[12] or failure to invite sur-reply representations where new issues or evidence are provided in reply.[13]

[15] Section 18.01(b) relates to whether an adjudicator has the jurisdiction under the *Act* to make the order in question. An example of a jurisdictional defect would be if an adjudicator ordered a body that is not an institution under the *Act* to disclose records.

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[6] *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC).
[7] Order PO-2879-R.
[8] See Order PO-2538-R. Later IPC orders followed the approach in Order PO-2538-R (see, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R).
[9] See Order PO-3602-R.
[10] See Orders PO-2538-R and PO-3602-R. Examples of legal conclusions include an adjudicator's finding that an exemption applies (or doesn't apply), or that a search was reasonable in the circumstances (or not reasonable).
[11] Order PO-4134-I.
[12] Orders M-774, R-980023, PO-2879-R and PO-3062-R.
[13] Orders PO-2602-R and PO-2590.

Representations, analysis and findings

Ministry's severed reply representations

[16] The appellant argues that he was denied procedural fairness during the inquiry and my determination in Order PO-4462 was based on severed reply representations from the ministry, portions of which he was not permitted to review.

[17] During the inquiry, the ministry was asked to provide reply representations in response to the appellant's representations. In its reply representations, the ministry stated that it did not consent to the disclosure of the final paragraph in its representations because it contains confidential law enforcement information which would be exempt under the *Act*. I considered the ministry's argument on the sharing of its representations and I decided to withhold the final paragraph when I shared the ministry's reply representations with the appellant. My decision to withhold the final paragraph was based on my determination that the information that it contains met the criteria stated in section 5(b) of *Practice Direction Number 7.*[14]

[18] In his sur-reply representations, the appellant requested that he be told of the nature (not the content) of the severed information in the final paragraph of the ministry's reply representations. In response, I explained that the severed information contains confidential law enforcement information which I determined would be exempt from disclosure under the *Act*. I note that in the appellant's sur-reply representations, he was able to address the issues and arguments raised in the ministry's reply representations.

[19] In my view, the appellant was not denied procedural fairness when he was provided with a severed version of the ministry's reply representations to respond to. In his reconsideration request, the appellant has not established how he was denied procedural fairness by not being able to know the severed portion of the ministry's reply

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[14] The criteria for withholding representations is set out, in part, in sections 5 and 6 which state:

5. The Adjudicator may withhold information contained in a party's representations where:

(a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded; or

(b) the information would be exempt if contained in a record subject to the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act; or

(c) the information should not be disclosed to the other party for another reason.

6. For the purpose of paragraph (c) above, the Adjudicator will apply the following test:

(i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party; and

(ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and

(iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and

(iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the appeal.

representations. My decision to withhold the final paragraph of the ministry's reply representations was made in accordance with the criteria established for the sharing of representations set out in section 5(b) of P*ractice Direction Number 7*. As a result, I find that the appellant has not established grounds for reconsideration on this basis.

Severability of the record

[20] The appellant also argues that in Order PO-4462 I failed to consider the severability requirement under section 10(2) of the *Act* that the ministry is to "disclose as much of the records as can be reasonably severed without disclosing the information that falls under one of the exemptions".

[21] The appellant argues that before refusing to confirm or deny the existence of a record pursuant to section 14(3), the ministry must first consider whether the record can be severed, and disclosed in part, without disclosing information that falls under an exemption pursuant to sections 14(1) or 14(2). The appellant argues that if a record can be severed to eliminate the portions of the record that would qualify for an exemption under sections 14(1) or (2) then that record no longer meets the test for section 14(3) to apply.

[22] I disagree. In my view, the question of severability is not relevant where the institution is refusing to confirm or deny the existence of records. It is not possible to sever a record whose existence has neither been confirmed nor denied. To sever would be to acknowledge that a record exists which would render any determination of the application of section 14(3) moot.[15]

Failure to consider arguments or cases raised by the appellant

[23] Additionally, the appellant argues that in Order PO-4462 I failed to consider certain submissions, including but not limited to, his argument that the time frame for the requested records could be shortened from the end date identified in his request - December 22, 2021 - to a proposed end date of March 31, 2020 to preclude interference with any ongoing police investigations. The appellant identified a specific police investigation by its code name, Project Coyote.

[24] The appellant explains that his request is for records from January 1, 2008 to December 22, 2021. The OPP announced on February 23, 2023 that it had completed a "13-month operation" called Project Coyote.[16] He submits that if Project Coyote began in January 2022, after the period for which he requested records – changing the end date to March 31, 2020 would eliminate any concern about interference with Project Coyote.

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[15] Orders PO-3481 and MO-3172.

[16] In his representations, the appellant provided the following article as an example: https://www.thestar.com/news/gta/2023/02/23/police-to-announce-results-of-project-coyote-investigation-on-thursday-afternoon.html

[25] I acknowledge that I did not make an explicit finding regarding the appellant's proposed revised end date. As I found in Order PO-4462, however, the apparent timing of Project Coyote does not preclude the possibility that confirmation or denial of the existences of responsive records from the time period before Project Coyote could reasonably be expected to compromise the effectiveness of existing law enforcement activity. Project Coyote is one investigation that was identified by the appellant as having been publicized by the OPP. There may well be other investigations or intelligence gathering activities that the OPP has not made public, some of which could have been ongoing since before December 22, 2021 or even March 31, 2020.

[26] The appellant also argues that my findings in Order PO-4462 are inconsistent with previous decisions of the IPC and the legislative objective of the *Act* and submits that my failure to address certain orders cited in support of his argument are a fundamental defect of the adjudication process under section 18.01(a). He states that in his representations he cited Orders PO-4369, P-255, PO-1656, and PO-2040 and *Ontario (Attorney General) v. Fineberg (1994)*[17] and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*[18] and notes that none of these orders were referenced in Order PO-4462.

[27] I acknowledge that, in Order PO-4462, I did not explicitly discuss Orders PO-4369, P-255, PO-1656 and PO-2040 which were referenced in two footnotes to the appellant's representations. The appellant, however, did not discuss the decisions themselves in any detail nor did he explain their relevance to his appeal.

[28] Moreover, from my review of Orders PO-4369, P-255, PO-1656 and PO-2040, in all these decisions the adjudicator found that the ministry had provided sufficient evidence to meet the two-part test under section 14(3) and upheld its decision to refuse to confirm or deny the existence of records. As such, I am unsure how they support the appellant's position that the ministry was not entitled to claim section 14(3) for the requested records.

[29] I also acknowledge that I did not discuss *Ontario (Attorney General) v. Fineberg (1994)* and *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* in any detail. I note that the appellant cited these cases for the principle that the institution must "demonstrate detailed and convincing evidence of a risk of harm that is well beyond the merely possible and speculative if the records sought were disclosed or even confirmed to exist." The appellant did not discuss these cases in any detail nor explain their relevancy. As such, I did not find that it was necessary to discuss these cases in any detail. In any event, at paragraph 16 of Order PO-4462 I cited these two cases when I set out the evidence required to substantiate the harms under section 14.

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[17] 19 O.R. (3df) 197 (Div. Ct.).
[18] 2014 SCC 31.

[30] I find that the appellant has not established a ground for reconsideration on the basis of the above arguments. The fact that I did not explicitly address these minor arguments or brief references to cases made by the appellant does not demonstrate that there was a fundamental defect in the adjudication process of Order PO-4462. As found by the Supreme Court of Canada in *Canada (Ministry of Citizenship and Immigration) v. Vavilov* ("Vavilov"):[19]

> Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (Newfoundland Nurses, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.

Potential limitations on Charter rights or values

[31] Finally, the appellant argues that in Order PO-4462 I failed to consider the impact of the ministry's refusal to confirm or deny the existence of records on the appellant's ability to address a potential breach of his section 6 of the *Charter* by other authorities. Specifically, the appellant argues that when I reviewed the ministry's exercise of discretion I did not consider, as a relevant factor, how the ministry's refusal to confirm or deny impacted his ability to address a potential breach of his section 6 *Charter* rights.

[32] In *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment) ("*Commission scolaire*")*,[20] the Supreme Court of Canada stated that administrative decision makers have an obligation to consider the values relevant to the exercise of their decision, in addition to respecting *Charter* rights.[21] Moreover, the Supreme Court of Canada stated "that discretionary decisions must 'always' take *Charter* values into consideration.[22] As such, I find that how the ministry's refusal to confirm or deny the existence of responsive records impacted the appellant's ability to address a potential breach of his section 6 *Charter* rights is a relevant factor to be considered in a review of its exercise of discretion.

[33] As previously mentioned, the threshold for reconsideration is high, and mere disagreement with an error in a decision is not a ground for reconsideration. There must be a fundamental defect in the adjudication process for the section 18.01(a) ground to be met. For example, in Reconsideration Order PO-4044-R, the adjudicator found that there was a fundamental defect in the adjudication process when she overlooked the

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[19] 2019 SCC 65 (CanLII), [2019] 4 SCR 653, at para. 128 ("Vavilov").
[20] 2023 SCC 31 ("Commission scolaire").
[21] *Ibid.*, para. 65.
[22] *Ibid.*, para 65.

material evidence of the parties on a highly relevant fact.[23]

[34] I find that a similar error occurred here. I acknowledge that, in Order PO-4462, I upheld the ministry's exercise of discretion despite not taking into account that the ministry did not consider *Charter* rights or values when exercising its discretion to refuse to confirm or deny the existence of responsive records. By not explicitly considering whether the ministry considered this relevant factor, I accept there was a fundamental defect in the adjudication process as contemplated by section 18.01(a) of the *Code*. I find, therefore, that the appellant has established grounds for me to reconsider Order PO-4462 and I will grant his request. Given this conclusion, I will determine whether Order PO-4462 should be rescinded.

Issue B: Should Order PO-4462 be rescinded?

[35] Having determined that the appellant has established one of the grounds to reconsider Order PO-4462, I will now proceed to determine whether the ministry has considered how its refusal to confirm or deny impacted the appellant's ability to address a potential breach of his section 6 *Charter* rights in exercising its discretion.

[36] In his representations submitted during the inquiry into the appeal that gave rise to Order PO-4462, the appellant states that he believes that a false allegation that he is a member of a known motorcycle club is preventing him from travelling outside Canada's borders.[24] He explains that he sought access to the requested records for the purpose of regaining his ability to leave and enter Canada, a right guaranteed by section 6 of the *Charter*.[25] He submits that the ministry's refusal to confirm or deny the existence of such records has impacted his ability to address a potential breach of his section 6 *Charter* rights.

[37] On reconsideration, the appellant submits that where actions of Canadian law enforcement personnel (in this case the OPP) restrict the ability of a Canadian citizen to leave Canada through the United States (such as by improperly sharing information with US authorities), this may constitute a violation of that citizen's *Charter* protected mobility rights. In particular, he submits that the ministry failed to consider the impact of its refusal on his ability to address a potential breach of his *Charter* rights by other authorities.

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[23] The issue in that appeal was whether the IESO had "designated" certain information under section 20(1) of the *Electricity Act*.

[24] I note that on page 2 of his representations, the appellant described the two incidents he was refused access to a flight to the United States. I also note that on pages 2 to 4 of his representations, the appellant described the incident where he was refused entry to Costa Rica.

[25] Section 6 of the *Charter* states:

1. Every citizen of Canada has the right to enter, remain in and leave Canada.
2. Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:
    a. To move and take up residence in any province; and
    b. To pursue the gaining of a livelihood in any province.

[38] As noted above, I acknowledge that the ministry did not consider the impact of its refusal on the appellant's ability to address a potential breach of his *Charter* rights by other authorities when it initially exercised its discretion to refuse to confirm or deny the existence of records responsive to his request.

[39] In response to the appellant's request for reconsideration, I requested that the ministry provided me with supplemental representations as to whether it considered *Charter* values and the impact of non-disclosure on the appellant's *Charter* rights when exercising its discretion to refuse to confirm or deny the existence of records. In addition to representations on that issue, the ministry also provided supplemental representations on whether it considered *Charter* values as a relevant factor against the other relevant factors it took into considered when it exercised its discretion.

[40] In particular, the ministry submits that it considered *Charter* values and the impact of non-disclosure on the appellant's *Charter* rights. The ministry submits that it balanced *Charter* values as a factor against other factors, such as law enforcement concerns and public interest considerations, when it exercised its discretion to refuse to confirm or deny the existence of responsive records. It submits that it continues to take the position that revealing if intelligence records existed would, given their inherently sensitive nature, harm law enforcement, and specifically intelligence-based activities.

[41] As well, the ministry submits that in exercising its discretion to refuse to confirm or deny the existence of records, it specifically considered the decision of the Supreme Court of Canada in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*,[26] where it sets out foundational principles with respect to the protection of law enforcement records in the context of the *Act*. Specifically, the Supreme Court of Canada states:

> … In that case, this Court acknowledged that certain government functions and activities require privacy. This applies to demands for access to information in government hands. Certain types of documents may remain exempt from disclosure because disclosure would impact the proper functioning of affected institutions.[27]

[42] The ministry submits that it considered that revealing the existence or non-existence of intelligence records would interfere with the proper functioning of law enforcement intelligence activities.

[43] In response, the appellant states that in *Criminal Lawyers*, the Supreme Court of Canada also states the following about an institution's obligation when exercising its discretion:

> In making this decision, the first step the head must take is to determine whether disclosure could reasonably be expected to interfere with a law

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[26] 2010 SCC 23 (CanLII) ("Criminal Lawyers").
[27] *Ibid.*, para. 40.

> enforcement matter. If the determination is that it may, the second step is to decide whether, having regard to the significance of that risk and other relevant interests, disclosure should be made or refused. These determinations necessarily involve consideration of the public interest in open government, public debate and the proper functioning of government institutions. A finding at the first stage that disclosure may interfere with law enforcement is implicitly a finding that the public interest in law enforcement may trump public and private interests in disclosure. At the second stage, the head must weigh the public and private interests in disclosure and non-disclosure, and exercise his or her discretion accordingly.[28]

[44] The appellant submits that the ministry did not weigh the public and private interests in disclosure and non-disclosure.

[45] As noted in Order PO-4462, I may review the ministry's decision to determine if the ministry erred in exercising its discretion under section 14(3). An error in the exercise of discretion could result when done in bad faith or for an improper purpose or when irrelevant factors were considered, or relevant factors were not. Where an error in the exercise of discretion is found, the IPC may send the matter back to the institution and order it to properly exercise its discretion. The IPC cannot, however, substitute its own discretion for that of the institution.[29]

[46] On my review of the parties' representations, I find that the ministry properly considered the relevant factor of how its refusal to confirm or deny the existence of records impacted the appellant's ability to identify a potential breach of his section 6 *Charter* rights in exercising its discretion. I also find that the ministry weighed relevant public and private interests. As such, I find that the ministry properly exercised its discretion to refuse to confirm or deny the existence of records responsive to the appellant's request. As a result, I refuse to rescind Order PO-4462 on this basis.

[47] I have also considered whether my interpretation and application of section 14(3) in Order PO-4462 engages values underlying section 6 *Charter* right. The appellant is not claiming that the ministry's refusal to confirm or deny the existence of responsive records violates or directly impacts his section 6 mobility rights. Rather, it appears that the appellant believes, that if such records exist, he would need access to them in order to see if they are related to why certain countries are refusing him entry. In other words, the appellant is asserting that he needs any responsive records to ascertain whether there was a violation of his *Charter* rights.

[48] The appellant's representations indicate that in the past he was denied entry into the United States and Costa Rica, and he believes that these denials were due at least in

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[28] *Ibid.*, para 48.
[29] Section 54(2).

some part to incorrect information shared by Canadian law enforcement authorities with other countries or international law enforcement agencies. The appellant has been permitted by Mexico to enter (after he obtained residency status there), and is applying to the United States authorities for a waiver allowing him to enter the United States.

[49] Even if the OPP has records regarding the appellant and even assuming that such records were shared by the OPP with law enforcement in other countries, the OPP would presumably not have the authority to require another country to grant or deny the appellant entry. As the *Charter* governs matters that are within the control of governments in Canada, this raises the question of whether *Charter* values, or rights, are engaged in this appeal. The appeal is concerned with the narrow issue of whether the ministry has satisfied the test to permit it to refuse to confirm or deny the existence of records related to the appellant.

[50] However, assuming without deciding that section 6 *Charter* values are engaged in this appeal, I would first consider how the interpretation of section 14(3) could give effect to those *Charter* values. The wording of section 14(3) states that an institution "may refuse to confirm or deny the existence of a record" if one of the law enforcement exemptions in sections 14(1) or 14(2) apply. In my view, this language is ambiguous such that I find that there is a statutory interpretation of this discretion that I could prefer in order to provide greater respect for the values underlying section 6 of the *Charter*.[30]

[51] Further, similar to the ministry's exercise of discretion, I have balanced the section 6 *Charter* values against the purpose of the *Act* and the purpose of section 14(3). Section 14(3) recognizes that there may be circumstances where disclosure of even the existence (or non-existence) of law enforcement records could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity. To the extent that there is a nexus between the ministry's refusal to confirm or deny the existence of responsive records and *Charter* rights related to the appellant's ability to enter other countries, I must balance that against the important interests that section 14(3) is intended to protect. As the ministry noted with its reference to the decision in *Criminal Lawyers*, the Supreme Court of Canada has found that a determination that disclosure of law enforcement records could reasonably be expected to compromise a law enforcement activity necessarily involves the consideration of, among other interests, the proper functioning of government institutions. Here, I find that there are compelling countervailing interests that balance against the assumed limits of the *Charter* values related to a citizen's right to enter, remain in and leave Canada. Those interests logically include the OPP's ability to effectively conduct investigations and intelligence gathering in a manner that does not undermine their covert nature nor the safety of any involved covert officers or confidential informants. I also find that these kinds of covert operations are related to the broader interests of law enforcement and safety of the public. I find that the ministry has provided representations that establish

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[30] Commission scolaire, supra note 24, at para. 76.

the existence of these interests.

[52] In conclusion, although I find that the appellant has established grounds under section 18.01(a) of the *Code* to reconsider Order PO-4462, after considering the evidence before me I decline to rescind my decision and I continue to uphold the ministry's decision.

NO RECONSIDERATION:

1. I allow the appellant's request for reconsideration of Order PO-4462 on the grounds set out in section 18.01(a) of the *Code*.

2. I decline to rescind Order PO-4462 where I dismissed the appeal and upheld the ministry's refusal to confirm or deny the existence of responsive records under section 14(3).

Original Signed by:	June 6, 2025
Lan An Adjudicator	