

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4667

Appeal PA23-00400

Ministry of the Solicitor General

June 13, 2025

Summary: An individual made a request to the Ministry of the Solicitor General under the *Freedom of Information and Protection of Privacy Act* for records pertaining to an alleged theft by his landlord of his property, which included firearms.

The ministry denied access to the information in part, refusing to disclose some of the requester's own information due to the application of a law enforcement exemption (section 49(a), read with section 14(1)(l)) and because disclosure of some information would be an unjustified invasion of personal privacy (section 49(b)). The appellant appealed the ministry's decision and also raised the issue of the reasonableness of the ministry's search for responsive records.

In this order, the adjudicator upholds the ministry's decision to withhold certain information under section 49(b) but finds that other information that the ministry has withheld under that section is not exempt as it is not personal information. She also finds that the information that the ministry has withheld under section 49(a), read with section 14(1)(l), is not exempt as disclosure could not reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. The adjudicator orders the ministry to disclose the information that she finds is not exempt to the appellant.

However, as the appellant did not address the issue of reasonable search in his representations, therefore he did not provide a reasonable basis for his belief that additional responsive records may exist. Accordingly, the adjudicator makes no finding on the ministry's search for responsive records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of "personal information"), 14(1)(l), 21(2)(f), 21(3)(b), 24, 49(a), and 49(b).

Orders Considered: Orders PO-3712, and PO-3742.

OVERVIEW:

[1] This order considers an individual's right of access to records related to a specific Ontario Provincial Police (the OPP) file number pertaining to an alleged theft by this individual's landlord of his property, which included firearms.

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

[3] The ministry issued a decision granting partial access to the responsive records, withholding portions under section 49(a) (discretion to refuse requester's own information), read with the law enforcement exemption at section 14(1)(l) (facilitate commission of an unlawful act), and section 49(b) (personal privacy) of the *Act*.²

[4] The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to attempt to reach a mediated resolution between the parties.

[5] During mediation, the appellant confirmed that he was not seeking access to police codes, which the ministry withheld pursuant to section 49(a), read with section 14(1)(l), of the *Act*. However, he confirmed that he continues to seek access to the remaining non-police code information the ministry withheld under that exemption. He also confirmed that he continues to seek access to the information the ministry withheld under section 49(b).

[6] Also, during mediation, the appellant stated that he believes that additional records responsive to his request should exist. Accordingly, the reasonableness of the ministry's search was added as an issue in this appeal.

[7] As a mediated resolution was not reached, the appeal was moved to the adjudication stage where an adjudicator may conduct an inquiry.

[8] I decided to conduct an inquiry and sought and received representations from the ministry, an affected party and the appellant. The parties' representations were shared

¹ The OPP is part of the ministry.

² The ministry also indicated that some information, such as printing information, was removed as it was deemed non-responsive to the request. During mediation, the appellant confirmed that he is not seeking access to the information that the ministry identified as non-responsive to the request.

in accordance with the IPC's *Code of Procedure*.

[9] In its representations, the ministry stated that it was no longer claiming that section 49(a), read with section 14(1)(l), applies to certain information in the records. The ministry issued a supplemental decision letter disclosing portions of page 8 to the appellant. Therefore, this information is no longer at issue in this appeal.

[10] In this order, I uphold the ministry's decision to withhold some information under section 49(b). However, I find that other information that the ministry withheld under section 49(b) is not exempt as it is not personal information but information about an individual in a business capacity.

[11] I also find that the information that the ministry has withheld under section 49(a), read with section 14(1)(l), is not exempt as disclosure could not reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[12] I order the ministry to disclose the information that is not subject to either section 49(a), read with section 14(1)(l), or section 49(b), to the appellant.

[13] However, as the appellant did not address the issue of reasonable search in his representations, he did not provide a reasonable basis for his belief that additional responsive records may exist. Accordingly, the adjudicator makes no finding on the ministry's search for responsive records.

RECORDS:

[14] The records responsive to the appellant's request are records that were generated by the OPP in response to a dispute between the appellant and his landlord. Remaining at issue is the information that the ministry has withheld from OPP reports (pages 1, and 3 to 8) and OPP officers' notes (pages 26 to 36).

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 personal privacy exemption at section 49(b) apply to the personal information at issue at page 1 of the records?
- C. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?
- D. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the law enforcement

exemption at section 14(1)(l), apply to the information for which it has been claimed?

E. Did the ministry conduct a reasonable search for records?

DISCUSSION:

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

[15] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates.

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

[17] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.³

[18] 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.⁴ See also sections 2(3) and 2(4) of the *Act*, which state:

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

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[19] 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.⁵

[20] 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

³ See the definition of “record” in section 2(1).

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

information.⁶

[21] 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

(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.

[22] 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.”⁷

[23] It is important to know whose personal information is in the record. If the record

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁷ Order 11.

Sections 2(2), (3) and (4) of the *Act* exclude some information from the definition of personal information. Sections 2(3) and (4) are described above. Section 2(2) states that personal information does not include information about an individual who has been dead for more than thirty years.

contains the requester's own personal information, their access rights are greater than if it does not.⁸ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁹

Representations

[24] The ministry states that the records relate to a specific incident investigated by the OPP, which concerns a contentious dispute between the appellant and his landlord.

[25] The ministry submits that the records contain the following types of personal information:

- Identifying information which would, for example, reveal the home address, age, gender and phone number of the landlord's representative;
- Information which would reveal communications between the police and affected third parties, as well as opinions or factual statements, provided by, or about affected third parties; and,
- A Workplace Identification Number (WIN) belonging to an OPP employee on page 1.

[26] The ministry submits that due to the subject matter of the records, specifically, an OPP investigation where the appellant can be expected to know the identity of affected third parties whose information might appear in the records, severing identifying information such as names cannot reasonably be expected to remove personal information from the records.¹⁰

[27] To support its position that the WIN number on page 1 is personal information, the ministry relies on Order PO-3742. In that order, the adjudicator found that a WIN number was the employee's personal information because it is an assigned number which, when linked to the name of the employee that is already known or has been disclosed, would reveal something of a personal nature about the employee to whom that number relates.

[28] In his representations, the appellant did not specifically comment on whether the records might contain his own personal information or that of other identifiable individuals.

⁸ 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.

⁹ See sections 21(1) and 49(b).

¹⁰ The ministry relies on Order PO-2955.

Analysis and findings

[29] From my review of the records and my consideration of the ministry's representations, I find that the records contain the personal information of the appellant and an OPP employee. As well, the records contain the personal information of the landlord's representative, who provided information to the OPP on behalf of the corporate landlord.

[30] The records contain the personal information of the appellant. This personal information includes his name, age, home address, personal phone number, date of birth, and views or opinions about him or by him that are not about another individual, which is his personal information in accordance with paragraphs (a), (d), (e), (g), and (h) of the definition in section 2(1). I note that the ministry has disclosed this information to the appellant, other than certain views or opinions of the landlord's representative about the appellant.

[31] The records also contain the personal information of other identifiable individuals. Specifically, the personal information of the appellant's landlord's representative and an OPP employee.

[32] As indicated above, page 1 of the records contains the WIN number of an OPP employee. I agree with and adopt the reasoning in Order PO-3742, which was relied upon by the ministry. I find that the OPP employee's assigned WIN number on page 1 of the records qualifies as that employee's personal information. I find that if the WIN number was disclosed together with the employee's name which has already been disclosed, it would reveal something of a personal nature about that employee. As indicated in Order PO-3742 relied upon by the ministry, a WIN number provides a link to other personal information of the employee, i.e., human resources information about that employee. Therefore, I find that it qualifies as the OPP employee's personal information.

[33] The records also contain, on page 1, the appellant's landlord's representative's personal information, specifically his age, home address, and date of birth.¹¹ I find that this information qualifies as personal information in accordance with paragraphs (a) and (d) of the definition of that term in section 2(1).

[34] The records also contain other information that I find is not personal information but information about individuals in their professional or business capacity.

[35] The phone number of the landlord's representative in the records is a business not a personal phone number as evidenced by the disclosed portions of the records and is not the landlord's representative's personal information. The phone number does not reveal something of a personal nature about him.

¹¹ Although the records contain the landlord's representative's gender, this information has been disclosed to the appellant as is apparent from the disclosed portions of the records.

[36] The records contain the landlord's representative's statement to the OPP about the landlord's business dealings with the appellant and the rental unit occupied by the appellant. From my review, this information is not personal information as it identifies the landlord's representative in a business capacity and does not reveal anything of a personal nature about him.

[37] The records also contain the name and business phone number of a law enforcement official on page 32. In my view, this is not personal information but information about that individual in their official capacity. From my review, the name and business phone number do not reveal something of a personal nature about the law enforcement official.

[38] As the remaining information about the landlord's representative and the information of the law enforcement official does not qualify as personal information, the personal privacy exemption in section 49(b) cannot apply to it. As the ministry has not claimed any other exemptions apply to this information, I will order the ministry to disclose it to the appellant.

[39] As I have found that the records contain the personal information of both the appellant and other identifiable individuals, therefore, I will consider whether the discretionary exemptions at section 49(a), read with section 14(1), and section 49(b) applies to the personal information that the ministry has withheld.

Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the personal information at issue at page 1 of the records?

[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.

[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 other 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).

[44] Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion

of another individual's personal privacy.¹²

[45] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[46] If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b). None of these exceptions apply.

[47] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply.

[48] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker¹³ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.¹⁴

Representations

[49] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b). The ministry claims that section 21(3)(b) applies to the personal information that it has withheld. This section reads:

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

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.

[50] The ministry states that all the records fall within the scope of this presumption, because OPP officers created the records on the belief that an offence may have been committed, due to, or in relation to the dispute between the appellant and the landlord. It states that if the OPP officers had found, as a result of their investigation, that an offence had in fact been committed, they could have, as police officers, laid charges.¹⁵

¹² Order PO-2560.

¹³ The institution or, on appeal, the IPC.

¹⁴ Order MO-2954.

¹⁵ The ministry relies on orders relating to personal information contained in similar kinds of law enforcement investigative records (i.e., records about property disputes involving law enforcement in which records were withheld for privacy reasons are reported in Orders PO-2327, PO-3023, and PO-3766).

[51] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹⁶ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[52] The list of factors under section 21(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 21(2).¹⁷

[53] The factors found in sections 21(2)(a) to (d), if established, support disclosure of the personal information in question, while the factors found in sections 21(2)(e) to (i), if established, support non-disclosure of that information.

[54] In this case, the ministry claims that the factor at section 21(2)(f), weighing against disclosure, is relevant to its determination that disclosure of the information remaining at issue would be an unjustified invasion of personal privacy. This section states:

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,

the personal information is highly sensitive;

[55] In support of its position that the factor at section 21(2)(f) applies, the ministry relies on Order P-1618. In that order, the IPC found that the personal information of individuals who are "complainants, witnesses or suspects" provided as part of their contact with the OPP is "highly sensitive" for the purpose of section 21(2)(f).

[56] The ministry further relies upon Order PO-3712, where the IPC upheld the application of section 21(2)(f) where consent had not been provided by affected third-party individuals in respect of the disclosure of their personal information contained in law enforcement investigation records.

[57] Specifically, with respect to the employee's WIN number, the ministry submits that disclosure would be expected to be distressing because it would reveal something of a personal nature about the employee, given that their name has already been released. The ministry submits that, as was found in Order PO-3742, someone who has both the name and WIN number of an employee might be able to obtain additional human resources information about the employee.

Analysis and findings

[58] As mentioned above, the records responsive to the appellant's request relate to a

¹⁶ Order P-239.

¹⁷ Order P-99.

landlord and tenant dispute where the OPP investigated allegations made by the appellant that his landlord stole his belongings, including two firearms. The records discuss the whereabouts of the appellant's property, including his firearms.

[59] The only personal information that remains at issue is the landlord's representative's age, home address, and date of birth, and the OPP employee's WIN number. I must determine whether disclosure of that personal information would be an unjustified invasion of the appellant's landlord's representative under section 49(b). As I have indicated, to make that determination I must consider the relevant presumptions at section 21(3) and factors at section 21(2).

[60] The ministry claims that the presumption at section 21(3)(b) applies. Based on my review of the records, I agree with the ministry that the presumption against disclosure section 21(3)(b) applies to weigh against disclosure of the personal information of the appellant's landlord's representative.

[61] The records relate to a law enforcement investigation conducted by the OPP into a landlord-tenant dispute regarding alleged stolen property. As a result, I accept that the records were compiled and are identifiable as part of an investigation into a possible violation of law. This presumption requires only that there be an investigation into a possible violation of law.¹⁸ So, even if criminal proceedings never arose from the investigation, section 21(3)(b) may still apply.¹⁹ Accordingly, I find that section 21(3)(b) is relevant and weighs against the disclosure of the personal information at issue.

[62] The ministry also claims that the factor at section 21(2)(f) which weighs against disclosure, is a relevant consideration because 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.²⁰ Previous IPC decisions have found that personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²¹

[63] In Order P-1618, the IPC found that the personal information of individuals who are witnesses provided to the OPP as part of an investigation is "highly sensitive" for the purpose of section 21(2)(f). I agree with this approach and adopt it in the circumstances of this appeal. Based on my review of the records and the parties' representations, I find that given the circumstances surrounding the landlord-tenant dispute to which the information relates, the factor in section 21(2)(f) applies to the landlord's representative's personal information. His personal information appears in the context of a contentious OPP investigation into the alleged disappearance of the appellant's property and is

¹⁸ Orders P-242 and MO-2235.

¹⁹ 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).

²⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²¹ Order MO-2980.

therefore, "highly sensitive".

[64] As well, I agree with the ministry that, as found in Order PO-3712 which it relied upon in its representations, section 21(2)(f) applies to weigh against the disclosure of the landlord's representative's personal information as he has explicitly not consented to the OPP disclosing his personal information to the appellant.

[65] I also find that the factor in section 21(2)(f) applies and weighs against disclosure of the OPP employee's WIN number, as this information is highly sensitive information of this employee. Disclosure of the WIN number could provide a link to human resources information about that employee. There is a reasonable expectation of significant personal distress to the OPP employee if this information is disclosed.

[66] 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 factors and presumptions in sections 21(2) and (3) and balance the interests of the parties. In doing so, I have found that the presumption in section 21(3)(b) and the factor in section 21(2)(f) apply and that they weigh in favour privacy protection and against disclosure of the personal information in the records. I find that no factors, either listed in section 21(2) or unlisted, that favour disclosure apply.

[67] Therefore, I find that disclosure of the personal information remaining at issue in the records would be an unjustified invasion of personal privacy of the individuals to whom that information relates. Specifically, I find that disclosure of the landlord's representative's age, home address, and date of birth, would be an unjustified invasion of the landlord's representative's privacy. I also find that disclosure of the OPP employee's WIN number would be an unjustified invasion of their personal privacy. As a result, I find that all the personal information that remains at issue is exempt under section 49(b), subject to my review of the ministry's exercise of discretion below.

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

[68] I will now consider whether the ministry exercised its discretion to withhold the personal information remaining at issue under section 49(a) in a proper manner.

[69] The section 49(b) exemption is discretionary (the institution "may" refuse to disclose), 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.

[70] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;

- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[71] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.²² The IPC cannot, however, substitute its own discretion for that of the institution.²³

Representations

[72] The ministry submits that it has exercised its discretion to withhold the personal information at issue under section 49(b) properly and that its exercise of discretion is based on the following considerations:

- The public policy interest in safeguarding the privacy of affected third party individuals, and in particular those who are involved in a law enforcement investigation; and,
- The concern that the disclosure of the records would jeopardize public confidence in the OPP, especially in light of the public's expectation that information the public provides to the police during the course of a law enforcement investigation will be kept confidential.

Analysis and findings

[73] I found above that section 49(b) applies to:

- the WIN number on page 1 of the records; and,
- the landlord's representative's age, home address, and date of birth.

[74] Considering the specific information that has been withheld and the entirety of the ministry's representations, I find that the ministry's exercised its discretion under section 49(b) appropriately.

[75] From its representations, it is clear that the ministry considered the contents of the records, specifically the nature of the information remaining at issue, and balanced the right of the appellant to access his own information against the right of the employee whose WIN number is at issue and the landlord's representative, whose personal information is at issue, to have their privacy protected.

[76] Therefore, I find that in exercising its discretion to withhold the personal information of other identifiable individuals under section 49(b), the ministry took into account relevant considerations and did not take into account irrelevant considerations.

²² Order MO-1573.

²³ Section 54(2).

I find that the ministry exercised its discretion in good faith and for a proper purpose. Accordingly, I uphold the ministry's exercise of discretion to withhold the personal information at issue under section 49(b).

Issue D: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the law enforcement exemption at section 14(1)(l), apply to the information for which it has been claimed?

[77] The ministry claims that section 49(a), read with section 14(1)(l), applies to some of the information that it has withheld from the records because its disclosure would facilitate the commission of an unlawful act.

[78] 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. [Emphasis added]

[79] The discretionary nature of section 49(a) ("may" refuse to disclose) 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.²⁴

[80] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[81] In this case, the institution relies on section 49(a) read with section 14(1)(l). Section 14(1)(l) states:

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

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

[82] Many of the exemptions listed in section 14, including section 14(1)(l), apply where a certain event or harm "could reasonably be expected to" result from disclosure of the

²⁴ Order M-352.

record.

[83] 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.²⁵ However, a law enforcement exemption does not apply just because a continuing law enforcement matter exists,²⁶ and 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 assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²⁷

[84] Parties resisting disclosure, in this case, the ministry, must show that the risk of harm is real and not just a possibility.²⁸ 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.²⁹

Representations

[85] The ministry submits that the records are operational records that were created during an OPP law enforcement investigation and that it has applied the law enforcement exemption at section 14(1)(l) to certain information to protect the integrity of the confidential communications and partnership between the OPP and the CFO.

[86] The ministry submits that it is concerned that if the information that it withheld under section 14(1)(l) was disclosed, members of the OPP will be less likely to record such information in their notes and reports and less likely to communicate candidly with the CFO. The ministry submits, therefore, that this outcome would have the subsequent result of negatively affecting the activities of the CFO, thereby facilitating crime or hampering its control.

[87] The appellant did not make any specific representations on the possible application of section 49(a), read with section 14(1)(l), to the information withheld under that exemption.

²⁵ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

²⁶ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

²⁷ Orders MO-2363 and PO-2435.

²⁸ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

²⁹ *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 findings

[88] The ministry claims that section 49(a), read with section 14(1)(l), applies to the information that it withheld on page 4 (next to 'notifications'), page 6 (bottom paragraph), page 30 (last five lines of an OPP officer's notes), and page 31 (top 9 lines of an OPP officer's notes) of the records.

[89] 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.

[90] As indicated in the ministry's representations, the information it has withheld would reveal information gathered by the OPP during its investigation into the landlord-tenant dispute and then communicated by the OPP to the CFO regarding the firearms that the appellant reported to the OPP as being lost or stolen.

[91] According to the OPP's website,³⁰ the CFO is an OPP officer and administers the licencing provisions of the *Firearms Act*³¹ and Regulations. The CFO:

- determines the eligibility of Ontario licence applicants to obtain or keep a firearms licence;
- issues, refuses to issue, renews and revokes firearms licences; and
- sets firearms licence conditions.

[92] The CFO is responsible for the administration and delivery of these key components of the *Firearms Act*:

- licencing individuals and businesses
- approving transfers of restricted and prohibited firearms
- approving shooting clubs and shooting ranges
- issuing Authorizations to Carry
- issuing Authorizations to Transport
- designating Firearms Officers
- designating firearms safety course instructors

[93] The CFO is staffed by a combination of civilian employees and police officers. The

³⁰ <https://www.opp.ca/index.php?lng=en&id=115&entryid=576bf4e08f94ac1c15355e0f>

³¹ Firearms Act, S.C. 1995, c. 39.

police officers are drawn from the existing ranks of the OPP and several other Ontario municipal police services.

[94] According to the information on the CFO's website, the overall goal of the CFO is the protection of public safety through partnerships, as well as the professional, rigorous enforcement and administration of the *Firearms Act* and Regulations.

[95] The ministry submits that disclosure of the information that it has withheld, notification information to the CFO by the OPP, could reasonably be expected to make it easier for someone to commit an unlawful act or get in the way of the control of crime. The ministry submits that this is because disclosure of the information could reasonably be expected to result in the OPP being less likely to record information and to communicate candidly with the CFO.

[96] Based on my review of the information at issue which relates to the whereabouts of the appellant's firearms, I find that disclosure of the information for which section 49(a), read with section 14(1)(l), has been claimed could not reasonably be expected to result in members of the OPP being less likely to record or communicate information to the CFO, a fellow OPP officer, or the CFO's office, which is staffed in part by OPP officers. In my view, as the CFO is responsible for determining the eligibility of Ontario licence applicants to keep a firearms licence, an OPP officer would be required to notify the CFO when a licensed firearm is lost or stolen, as alleged by the appellant in this appeal. It is not credible that OPP officers would refuse to communicate information of the type withheld by the ministry to the CFO.

[97] In making this finding, I have considered the actual information in the records that has been withheld and the ministry's representations. I also note that the ministry did not make the evidentiary connection between the disclosure of the actual information in each of the four severances at issue and the reasonable expectation that such disclosure would result in the harm set out in section 14(1)(l). The ministry did not explain how disclosure of this specific information would result in OPP officers failing to provide such information to the CFO and, in turn, how that failure to disclose such information could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[98] Accordingly, I find that section 49(a), read with section 14(1)(l), does not apply to the information for which it has been claimed, being the information that the ministry has severed from page 4 (next to 'notifications'), page 6 (bottom paragraph), page 30 (last five lines of an OPP officer's notes), and page 31 (top 9 lines of an OPP officer's notes) of the records. As this information is not exempt under section 49(a), read with section 14(1)(l), and the ministry has not claimed that any other exemptions apply to it, I will order the ministry to disclose this information to the appellant.

Issue E: Did the ministry conduct a reasonable search for records?

[99] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.³² If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[100] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.³³

[101] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³⁴ that is, records that are "reasonably related" to the request.³⁵

[102] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.³⁶ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.³⁷

[103] If the requester failed to respond to the institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to the request were reasonable.³⁸

Representations

[104] The ministry states that neither the person who conducted the original search for records, nor the person who was contacted at mediation who confirmed the search results, is still with the OPP. However, the OPP's current Detachment Administrative Clerk for the Northeast Region of the OPP explained that for this type of access request, what would typically occur is that:

... a search would be conducted of Niche, the OPP police records data base, using the incident number...

³² Orders P-85, P-221 and PO-1954-I.

³³ Order MO-2246.

³⁴ Orders P-624 and PO-2559.

³⁵ Order PO-2554.

³⁶ Orders M-909, PO-2469 and PO-2592.

³⁷ Order MO-2185.

³⁸ Order MO-2213.

The person conducting the search would retrieve records that were responsive to the search and would consult any officers who were involved and obtain their notes.

[105] The appellant did not provide any representations in response to those of the ministry and did not even mention the search issue in his representations.

Analysis and findings

[106] Based on my review of the ministry's representations, I find that it has not conducted a reasonable search, as it has not provided enough evidence to show that it has made a reasonable effort to identify and locate responsive records.

[107] Although the ministry provided evidence as to what searches it speculates would have been undertaken by the individual who actually conducted the search, in my view, this information is not enough for me to determine what actual searches were conducted to locate records that are reasonably related to the request and therefore, whether such searches were reasonable.

[108] The ministry has not provided any information about whether the person who conducted the search was an experienced employee knowledgeable in the subject matter of the request, nor have they provided any evidence of any reasonable steps taken by this individual to search for records reasonably related to the request. In my view, the ministry's representations about any search conducted is speculative and does not address the actual search conducted for responsive records.

[109] However, as the appellant did not address the issue of reasonable search in his representations, therefore he did not provide a reasonable basis for his belief that additional responsive records may exist. Accordingly, I make no finding on the ministry's search for responsive records.

ORDER:

1. I uphold the ministry's decision not to disclose the following information under section 49(b):
 - the WIN number on page 1 of the records; and,
 - the landlord's representative's age, home address, and date of birth, found on page 1 of the records.
2. I order the ministry to disclose the remaining responsive information at issue in pages 1, 3 to 8, and 26 to 36 of the records to the appellant by **July 21, 2025** but not before **July 14, 2025**.

3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant in accordance with order provision 2.

Original Signed by: _____

Diane Smith
Adjudicator

June 13, 2025