Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4669

Appeal PA23-00687

Ministry of Economic Development, Job Creation and Trade

June 24, 2025

Summary: An individual made a request to a ministry under the *Freedom of Information and Protection of Privacy Act* for records of communication between the ministry and several companies. The ministry withheld some of the information because its disclosure could reasonably be expected to endanger the security of a system (section 14(1)(i)) or result in an unjustified invasion of personal privacy (section 21(1)).

In this order, the adjudicator agrees with the ministry's decision to withhold the information at issue and dismisses the appeal. She also finds that the ministry has conducted a reasonable search.

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)(i), 21(1) and 24.

Orders Considered: MO-4428, MO-2456, PO-1736 and PO-4409.

OVERVIEW:

[1] The Ministry of Economic Development, Job Creation and Trade (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act)*. The ministry contacted the requester and clarified the request as follows:

> Records of all communication between the Ministry of Economic Development, [named college], [named company #1], [named company #2] and [named company #3], including the following:
>
> -funding inquiries, funding requests, funding proposals, business cases, Memorandums of Agreement and any supplementary documents related to the above.
>
> -including, but not limited to, the Records that were deemed to be non-responsive to MEDJCT-20-17
>
> Timeframe requested is from January 1st 2002 to August 8th 2023

[2] The ministry issued a decision granting partial access to the responsive records. The ministry withheld information pursuant to sections 14(1)(i) (security) and 21(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant confirmed that he is pursuing access to all the withheld information in the responsive records and that he also believes further records exist. The ministry maintained its decision.

[5] As mediation did not resolve the appeal it was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator originally assigned to this appeal decided to conduct an inquiry and invited and received representations from the appellant and the ministry.

[6] The file was assigned to me to continue the adjudication of the appeal. I determined that it was not necessary for me to seek further representations from the parties.

[7] For the reasons that follow, I uphold the ministry's decision to withhold the information at issue under sections 14(1)(i) and 21(1). I also find that the ministry conducted a reasonable search for records responsive to the appellant's request in compliance with its obligations under section 24 of the *Act*. I therefore dismiss the appeal.

RECORDS:

[8] There are 22 records remaining at issue consisting of 41 pages. They include emails and other information logged into a ministry database.

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 mandatory personal privacy exemption at section 21(1) apply to the information at issue?

C. Is there a compelling public interest in disclosure of the exempt personal information that clearly outweighs the purpose of the section 21(1) exemption?

D. Does the discretionary exemption at section 14(1)(i) related to law enforcement apply to the records?

E. Did the ministry exercise its discretion under section 14(1)(i)? If so, should the IPC uphold the exercise of discretion?

F. 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?

[9] In order to decide if the information the ministry withheld under the mandatory personal privacy exemption at section 21(1) is exempt under that section, I must first decide whether the records contain "personal information," and if so, whose personal information it is.

[10] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.[1]

[11] 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.[2]

[12] 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.[3]

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[1] See the definition of "record" in section 2(1).
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.

[13] 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.[4]

[14] Section 2(1) of the *Act* gives a list of examples of personal information. It reads in part:

> "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.

[15] 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."[5]

[16] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.[6] Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.[7]

Representations, analysis and finding

[17] The ministry submits that Records 6, 7, 8, 10, 12, 14, 15, 18 and 21 contain personal information about an identifiable individual who worked for the ministry's Business Advisory Services Branch. Specifically, the ministry submits that this personal information relates to this individual's employment history, as indicated in the definition

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[4] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[5] Order 11.
[6] 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.
[7] See sections 21(1) and 49(b).

of personal information in the *Act*, under section 2(1)(b). According to the ministry, this information is implicitly private and reveals something of a personal nature about this individual. The ministry also makes confidential representations elaborating on the nature of the withheld information.

[18] The appellant does not dispute the ministry's representations about whether the above-noted records contain personal information.

[19] Based on the ministry's representations and my review of the records listed above, I find that they contain personal information relating to an individual's employment history, as defined under section 2(1)(b). As I have found that the records do contain the personal information of an identifiable individual other than the appellant but not that of the appellant, I must consider the appellant's right of access to the withheld information under the mandatory personal privacy exemption at section 21(1).

Issue B: Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[20] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 21(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[21] The section 21(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 21(1)(a) to (e) exist, the institution must disclose the information. The appellant claims that the exceptions at sections 21(1)(c) and (d) apply to the personal information at issue.

[22] Sections 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[23] Sections 21(3)(a) to (h) should generally be considered first.[8] These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. The ministry claims that the presumption at section 21(3)(d) applies to the personal information at issue.

[24] If this presumption applies, the personal information cannot be disclosed unless:

- there is a reason under section 21(4) that disclosure of the information would **not** be an "unjustified invasion of personal privacy," or

[8] If any of the section 21(3) presumptions are found to apply, they cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established.

- there is a "compelling public interest" under section 23 that means the information should nonetheless be disclosed (the "public interest override").[9]

[25] If the personal information being requested does not fit within any presumptions under section 21(3), one must next consider the factors set out in section 21(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 21(4) is present, then section 21(2) need not be considered. Neither party raises factors under section 21(2) or situations under 21(4) and from my review, none appear to be relevant.

[26] I will first consider whether, as claimed by the appellant, the personal information at issue must be disclosed further to the exceptions at section 21(1)(c) or 21(1)(d), which read:

> 21 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
> >
> > (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

21(1)(c): record available to the general public

[27] In order for section 21(1)(c) to apply, the information in question must have been collected and maintained for the purpose of creating a public record.[10]

[28] In support of his position that the personal information at issue should be disclosed under sections 21(1)(c) and (d), the appellant submits two affidavits that he received from the ministry in the course of a different IPC appeal. The appellant highlights excerpts in each of these affidavits relating to the individual whose personal information is at issue. The appellant submits that these excerpts relate to the same information withheld by the ministry under section 21(1).

[29] Specifically, regarding section 21(1)(c), the appellant submits that because the affidavits were shared within the context of an appeal with the IPC they qualify as public records, accessible to whomever would like to view them or rely on them within the justice system. In the appellant's view, materials he received as part of an IPC appeal are made publicly available the moment they were provided to him.

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[9] *John Doe v. Ontario* (*Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767 (Div.Ct.).
[10] Section 14(1)(c) of the *Municipal Freedom of Information and Protection of Privacy Act.*

Analysis and findings on 21(1)(c)

[30] I disagree with the appellant and find that the personal information withheld under section 21(1) was not collected and maintained specifically for the purpose of creating a record available to the general public.

[31] In the present case, the personal information at issue appears in the context of email threads between a ministry business advisor and one of the companies listed in the request.

[32] In Order PO-1736, former Assistant Commissioner Goodis made the following comments about the application of the section 21(1)(c) exception:

> In previous orders this office has stated that in order to satisfy the requirements of section 21(1)(c), the information must have been collected and maintained specifically for the purpose of creating a record available to the general public (for example, Order P-318). Section 21(1)(c) has been found to be applicable where, for example, a person files a form with an institution as required by a statute, and where that statute provides any member of the public with an express right of access to the form (Order P-318, regarding a Form 1 under the *Corporations Information Act*). On the other hand, this office has found that where information in a record may be available to the public from a source other than the institution receiving the request, and the requested information is not maintained specifically for the purpose of creating a record available to the general public, section 21(1)(c) does not apply.

[33] In Order MO-4428, the adjudicator considered whether personal information in an email chain must be disclosed under the municipal equivalent of the section 21(1)(c) exception:[11]

> [31] In my view, the evidence before me does not demonstrate that the email chain was collected and maintained specifically for the purpose of creating a record available to the general public. Rather, it is an email chain between the affected party and the township staff and the Committee of Adjustment (COA) staff. Even if I were persuaded that the email chain was not intended to be confidential, more evidence would be required before I could conclude that the email was collected with an intention of creating a record available to the general public as required under section 14(1)(c).

[34] I agree with and adopt the reasoning in Orders PO-1736 and MO-4428.

[35] The appellant does not submit that the information at issue in this appeal was

[11] Section 14(1)(c) under the *Municipal Freedom of Information and Protection of Privacy Act* is the municipal equivalent of section 21(1)(c) of the *Act.*

collected and maintained specifically for the purpose of creating a record available to the general public. His argument, as I understand it, is he received affidavits from the ministry in a different IPC matter, which contain information he has deduced is the same or similar to the information the ministry withheld under section 21(1). The appellant submits that these affidavits were made public once they were shared with him.

[36] As I found above, the withheld personal information relates to an individual's employment history. From my review of the records, this information appears as an aside, in an email exchange with a company about ministry services. I find that this information was neither collected nor maintained to create a publicly available record as contemplated by the exception at section 21(1)(c).

21(1)(d): another act that (law) expressly authorizes the disclosure

[37] In order for section 21(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in a regulation.[12]

[38] For example, the Ontario *Public Sector Salary Disclosure Act, 1996*[13] authorizes the disclosure of certain salary and benefit amounts. This authorization allows for disclosure of this type of information.[14]

[39] The appellant submits that section 52(10) of the *Act* allows for the disclosure of the type of personal information at issue. Section 52(10) reads:

> (10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

[40] As noted above, in support of his argument under section 21(1)(d), the appellant submits two affidavits that he received in the course of a different IPC appeal. He highlights excerpts in these affidavits which he claims also relate to the personal information at issue – that is, information relating to the employment history of a specified individual. The appellant submits that section 52(10) would permit the disclosure of the personal information at issue, in the event that the affiants are on trial for perjury. According to the appellant, section 52(10) would allow such disclosure if it is alleged that the affiants' sworn statements about the employment history of this specified individual contradict the personal information at issue in this appeal about the same individual's

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[12] Orders M-292, MO-2030, PO-2641 and MO-2344.
[13] S.O. 1996, c.1, Sched. A.
[14] Orders PO-2641 and MO-2344.

employment history, leading to the affiants' trial for perjury.

Analysis and findings on 21(1)(d)

[41] The section 21(1)(d) exception applies where an Act of Ontario or Canada expressly authorizes or allows for the disclosure of the personal information. I do not agree that section 52(10) of the *Act* specifically authorizes the disclosure of the personal information at issue.

[42] Section 52(10) of the *Act* generally prohibits the admissibility of statements made in the course of an IPC inquiry as evidence in other proceedings. It provides an exception for those on trial for perjury with respect to their own testimony. As noted above, the personal information at issue in this case relates to employment history and appears in email chains between ministry staff and a company. I find that section 52(10) of the *Act* does not expressly authorize or allow the disclosure of this information.

[43] Therefore, I find that the exception at section 21(1)(d) does not apply to permit disclosure of the personal information.

21(3)(d): employment or educational history

[44] Having determined that sections 21(1)(c) and (d) do not apply in this case, I will now consider whether disclosure of the personal information at issue would be a presumed unjustified invasion of privacy under section 21(3)(d).

[45] The presumption at section 21(3)(d) covers several types of information connected to employment or education history, including:

- dates on which former employees are eligible for early retirement,
- start and end dates of employment,
- number of years of service,
- the last day worked,
- the dates upon which the notice period commenced and terminated,
- the date of earliest retirement,
- entitlement to sick leave and annual leave,
- the number of sick leave and annual leave days used, and

- restrictive covenants in which individuals agree not to engage in certain work for a specified duration.[15]

[46] Information contained in resumes[16] and work histories[17] also falls within the scope of section 21(3)(d).

[47] A person's name and professional title alone do not constitute "employment history" and are not covered by the presumption.[18]

[48] The ministry claims that the mandatory personal privacy exemption at section 21(1) applies to the personal information at issue. The ministry submits that the disclosure of this personal information would be a presumed unjustified invasion of personal privacy under section 21(3)(d) of the *Act* because it relates to the individual's employment history. The ministry adds that the presumption is not rebutted as none of the situations listed in section 21(4) are present.

[49] I agree with the ministry. Based on my review of the records, I find that the personal information at issue relates to an individual's employment history and its disclosure is presumed to be an unjustified invasion of personal privacy. As noted in the list of examples above, the section 21(3)(d) presumption covers a wide range of personal information related to employment history. I am satisfied that the information at issue here is analogous to the examples provided in the list. I also agree that the situations described in section 21(4) do not apply here.

[50] Accordingly, I find that disclosure of the withheld personal information would be an unjustified invasion of personal privacy. Subject to my findings below on the possible application of the public interest override at section 23, I find that this information is exempt under section 21(1).

Issue C: Is there a compelling public interest in disclosure of the exempt personal information that clearly outweighs the purpose of the section 21(1) exemption?

[51] The appellant raises the application of the public interest override at section 23 which states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

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[15] Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.
[16] Orders M-7, M-319 and M-1084.
[17] Orders M-1084 and MO-1257.
[18] Order P-216.

[52] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[53] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[19] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[20]

[54] A "public interest" does not exist where the interests being advanced are essentially private in nature.[21] However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.[22]

[55] The appellant makes brief representations with respect to the public interest override alongside his argument that the personal information at issue should be disclosed under section 21(1)(d) as it is expressly authorized under section 52(10) of the *Act*. The appellant submits that "such perjury investigation and trial automatically places the records in the league of records where the public interest outweighs the purpose of the exemption."

[56] I do not agree that there is a compelling public interest in the disclosure of the information at issue – that is, an individual's personal information relating to employment history. The information appears as an aside in the context of an email exchange with a company about ministry services. I find that disclosure of this information would only advance private interests. I further find that such disclosure would not serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, nor add in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

[57] Accordingly, I find there is no public interest in the disclosure of the personal information at issue and section 23 does not apply to override.

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[19] Orders P-984 and PO-2607.
[20] Orders P-984 and PO-2556.
[21] Orders P-12, P-347 and P-1439.
[22] Order MO-1564.

Issue D: Does the discretionary exemption at section 14(1)(i) related to law enforcement apply to the record?

[58] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. The ministry claims that the information redacted in records 6, 8, 9, 11, 13, 16, 17, 20, 23-28, and 30 is exempt from disclosure under section 14(1)(i).

[59] Section 14(1)(i) reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required

[60] Section 14(1)(i) applies where a certain event or harm "could reasonably be expected to" result from disclosure of the record.

[61] The law enforcement exemption at section 14(1)(i), like other law enforcement exemptions, 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.[23]

[62] However, the exemption does not apply just because a continuing law enforcement matter exists,[24] 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.*[25]

[63] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[26] 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.[27]

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[23] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[24] Order PO-2040 and *Ontario* (*Attorney General*) *v. Fineberg*, cited above.
[25] Orders MO-2363 and PO-2435.
[26] *Merck Frosst Canada Ltd.* v. *Canada* (*Health*), [2012] 1 S.C.R. 23.
[27] *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.

[64] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

[65] Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those things are not connected to law enforcement.[28]

Representations

[66] The ministry submits that disclosure of the information withheld under section 14(1)(i) could reasonably be expected to endanger the security of information stored in its electronic Client Relationship Management System (eCRM). This ministry submits that eCRM is an internal database used primarily to manage client correspondence and records in a strategic and coordinated manner. The ministry explains that the withheld information is URLs to eCRM.

[67] The ministry submits that section 14(1)(i) is not restricted to law enforcement situations, and can cover any building, vehicle, system or procedure for which protection of items is reasonably required. In her affidavit, the acting Freedom of Information Coordinator of the Service Management and Facilities Branch (FOIC) explains that eCRM holds highly confidential third-party information supplied by businesses seeking advice, funding and considering investing with the province. She affirms that a draft eCRM record schedule has been rated "medium sensitivity" according to the Corporate Policy on information sensitivity classification, which would result in the following harm if disclosed: "…in serious personal or enterprise injury, loss of competitive advantage, loss of confidence in a government program, moderate financial loss, or damage to partnerships or reputations".

[68] The ministry describes the risks of harm in the following way:

> …[d]isclosing the redacted information to the public could reasonably be expected to enable hackers to coordinate attacks, including phishing attacks, to gain access to [the ministry]'s eCRM, which may compromise [its] communications system or render it ineffective…
>
> Hackers could also utilize the redacted information to formulate a more compelling phishing attack through social engineering (i.e. the use of deception to exploit human nature, our habits and our trust in order to gain information or access information system). For example, hackers may be able to send a targeted phishing email to those employees who are

[28] Orders P-900 and PO-2461.

> responsible for administering the database by adding elements in the URL to make it look like a legitimate email.[29]
>
> …a phishing attack, if successful, could open the door for ransomware attacks, which could disable public institution's IT systems, for example, most recently, on February 15, 2024, a ransomware attack disabled some of the City of Hamilton's IT systems and disrupted services to the public. While the City of Hamilton has restored many of their services, a timeline for full recovery is not yet known.

[69] The ministry submits generally that disclosure of the information at issue could enable hackers to gain a better understanding of the system it argues reasonably requires protection.

Analysis and findings

[70] I am satisfied that the ministry provided a reasonable basis for concluding that disclosure of the information at issue could reasonably be expected to endanger the security of the eCRM database established for the protection of items, for which protection is reasonably required.

[71] In Orders PO-4409 and MO-2456, the IPC found IP addresses in records exempt under 14(1)(i) on the basis that their disclosure could reasonably be expected to lead to a security breach. In my view, these orders are instructive as the information and potential harm at issue here are analogous to the information and potential harms in these orders.

[72] I accept the ministry's submission that disclosure of eCRM URLs could reasonably be expected to leave the ministry open to the risk of cyber security incidents. I also accept that disclosure of eCRM URLs could reasonably be expected to help create more compelling phishing attacks targeted to ministry staff responsible for eCRM administration.

[73] Lastly, based on the ministry's representations and the FOIC's affidavit, I am satisfied that the protection of eCRM is required due to the sensitive nature of the business information it stores, as outlined in the draft eCRM record schedule described by the FOIC.

[74] As a result, I find that the eCRM URLs are exempt from disclosure under section 14(1)(i).

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[29] The Ministry cites: "Social Engineering," Cybersecurity Ontario, online: https://cybersecurityontario.ca/mod/page/view.php?id=219&lang=en#social-eng-link

Issue E: Did the ministry exercise its discretion under section 14(1)(i)? If so, should the IPC uphold the exercise of discretion?

[75] The ministry submits that it correctly exercised its discretion in its application of section 14(1)(i) of the *Act*.

[76] The section 14(1)(i) 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.

[77] 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.

[78] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[30] The IPC cannot, however, substitute its own discretion for that of the institution.[31]

Representations, analysis and finding

[79] The ministry submits that it took several factors into account in withholding information under section 14(1)(i).[32] Firstly, the ministry submits that the information at issue is a URL to an internal database it uses to manage client correspondence and records in a strategic and coordinated manner. The ministry specifies that this system contains a great deal of highly confidential third-party information supplied by the business seeking business advice, funding and considering investing within the province.

[80] The ministry submits that it considered the potential detrimental effect on Ontario's economy, as prospective investors to the province would have their confidence shaken if they found out that the direct URL to the electronic database system which stores and protects their sensitive business information was released.

[81] The ministry adds that it considered the relevance of the URL with respect to the appellant's request. The ministry submits that the URL does not relate to the subject matter of the request and that it is therefore not responsive. The ministry specifies that it is an internal URL to an internal database, where the responsive records are stored.

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[30] Order MO-1573.
[31] Section 54(2).
[32] The ministry cites the FOIC's affidavit at paras 18-19.

[82] The appellant did not address the ministry's exercise of discretion in his representations.

[83] I find that the ministry took into account relevant considerations in withholding the information at issue under section 14(1)(i). In making its decision, the ministry considered whether disclosure will increase public confidence in the operation of the institution, and the relevance of the information. In my view, the ministry properly balanced the access and privacy purposes of the *Act*, in granting the appellant access to the majority of the information at issue, and withholding discrete portions to protect the security of the ministry's eCRM database.

[84] There is no evidence before me to suggest that the ministry took into account irrelevant considerations or that it exercised its discretion in bad faith. Accordingly, I uphold the ministry's exercise of discretion in the circumstances.

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

[85] 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*.[33] 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.

[86] 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.[34]

[87] The *Act* does not require the institution to prove with certainty that further records do not exist.[35] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[36] that is, records that are "reasonably related" to the request.[37]

[88] 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.[38] 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.[39]

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[33] Orders P-85, P-221 and PO-1954-I.
[34] Order MO-2246.
[35] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[36] Orders P-624 and PO-2559.
[37] Order PO-2554.
[38] Orders M-909, PO-2469 and PO-2592.
[39] Order MO-2185.

Representations

[89] The ministry submits that it conducted a reasonable search for records related to the request as required by section 24 of the *Act*. For the reasons outlined below, I agree with the ministry.

[90] Along with its representations, the ministry submits three sworn affidavits relating details of the ministry's searches.

[91] The appellant does not submit representations addressing the issue of reasonable search, although he indicated this was an issue during mediation.

[92] The ministry submits an affidavit from the FOIC, who has been in her role since November 2022. The FOIC affirms that she processed, coordinated and oversaw the present request. She specifies that she also has experience processing requests for information with the former FOIC in her role as program assistant.

[93] The FOIC affirms that based on her knowledge of previous requests, she knew that the ministry's Business Advisory Services Branch (BASB) had custody and control of records pertaining to named company #1 and that the ministry did not have records about the named college, and named companies #2 and #3. She affirms that she contacted the BASB to conduct a search.

Business Advisory Services Branch search

[94] The ministry submits an affidavit from the director of the Business Advisory Services Branch, Small Business and Program Delivery Division (director). In her affidavit, the director explains that she was responsible for overseeing the search conducted by a student intern. She affirms that she asked the student to conduct a preliminary search of the ministry's eCRM. She specifies that eCRM is the official records repository for all engagement with external entities and the BASB, including emails, descriptions of phone calls and meetings. She explains that each external entity that BASB works with has a lead contact person who updates the interactions with that entity within eCRM on a regular basis.

[95] The director affirms that the preliminary search indicated some records of communication between BASB and named company #1 had not yet been provided through previous related requests including MEDJCT-20-17. She affirms that the student told her the search involved identifying and searching for keywords (including business name, business contacts, and other entities named in this request) within the relevant time period in the eCRM database. She further affirms that 20 responsive records were located.[40]

[40] An email from the director to the FOIC outlining the results of the search is included as Exhibit A of the director's affidavit.

Scale-up Programs Unit search

[96] The FOIC affirms that she conducted an internet search to see if there may have been any connection between named company #1and the ministry that was not apparent. She explains that as a result of her search, she reached out to the Scale-up Services Branch to discuss a search for records within the appropriate unit. She affirms that the Scale-up Programs Unit (SPU) then conducted a search.

[97] The ministry submits an affidavit from the manager of the SPU (manager). In her affidavit, the manager explains that she was responsible for overseeing the search conducted by two senior policy advisors within her unit. She affirms that she met with the FOIC, the Freedom of Information office and the advisors, to discuss the wording of the request and explained that if the unit had responsive records they would be minimal. She further affirms that two responsive records were located, and that the advisors told her they searched keywords within the relevant timeframe in their Microsoft Outlook software and the unit's shared drive.

[98] Both the director and manager affirm that to the best of their knowledge, their staff searched all locations where responsive records could exist within the BASB and SPU.

Database search for paper records

[99] The FOIC explains that due to the time span of the request, there was a possibility that paper records preceding the use of eCRM had been sent to the Information, Storage and Retrieval's record warehouse (IS&R). She affirms that she reviewed BASB and SSB's record holdings in IS&R's Automated Record Management System (ARMS), a database that tracks information related to each box in storage. She affirms that she reviewed the relevant records schedules and determined there are no responsive records at IS&R under these schedules.[41]

Analysis and findings

[100] Having reviewed the ministry's representations and affidavits, I am satisfied that experienced employees, knowledgeable in the subject matter of the request, oversaw and carried out the searches described therein. In particular, the FOIC has several years of experience in processing requests for information, including requests related to the present one.[42] I note that the FOIC led the search for responsive records. She identified where to search, coordinated with the appropriate parties, and carried out her own searches.

[101] I am also satisfied that the ministry made reasonable efforts to locate records responsive to the appellant's request. As outlined above, ministry staff searched the

[41] The records schedules are included as Exhibits C and D of FOIC's affidavit.
[42] FOIC's affidavit at para 9.

BASB, which yielded 20 records. As a result of the FOIC's internet research, ministry staff also searched the SPU, which yielded two records. The FOIC then carried out her own search for paper records through the relevant database and confirmed none exist.

[102] In his clarified request, the appellant specified that he is seeking records "that were deemed to be non-responsive to MEDJCT-20-17." I note that in her affidavit, the director affirms that the preliminary eCRM search identified some records that had not yet been provided through previous related requests including MEDJCT-20-17.

[103] Based on my review of the ministry's representations and its three affidavits outlining details of its searches, I am satisfied that the ministry conducted a reasonable search for records responsive to the appellant's request.

[104] I note that the appellant did not provide a reasonable basis for concluding that additional records exist, as he did not submit representations on the issue of reasonable search.

[105] The ministry is held to a standard of reasonableness. As noted above, the *Act* does not require the institution to prove with certainty that further records do not exist in order to satisfy its duty under the *Act*.

[106] In light of the above, I find that the ministry has met its duty under section 24 the *Act* and has conducted a reasonable search for records responsive to the appellant's request.

ORDER:

I uphold the ministry's decision and its search for responsive records as reasonable.

Original Signed by: June 24, 2025

Hannah Wizman-Cartier
Adjudicator