Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4689

Appeal MA23-00307

The Corporation of the Municipality of Clarington

August 27, 2025

Summary: An individual made a request to a municipality under the *Municipal Freedom of Information and Protection of Privacy Act* for information relating to a specified address. The municipality withheld some of the information claiming several of the law enforcement exemptions apply (section 8(1)).

In this order, the adjudicator does not uphold the municipality's decision and orders it to disclose the information to the individual.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 8(1)(a), (b), (c).

Orders and Investigation Reports Considered: Order MO-4074.

OVERVIEW:

[1] The Corporation of the Municipality of Clarington (the municipality) received a request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) pertaining to a specified address, as follows:

1. The Municipality of Clarington's remediation plan to clean up the subject property and documentation reflecting that the remediation has been completed;

2. Documentation regarding the removal of the two (2) plastic pipes which had been discharging water onto the subject property from the Clarington Hampton Works Depot ("the Depot");

3. Records of any past spills which may have impacted the subject property and associated remediation;

4. All environmental testing data, analysis, results and reports for the subject property;

5. All documents of any kind relating to [specified Ministry of the Environment, Conservation and Parks file]; and

6. All documents relating to CLOCA [Central Lake Ontario Conservation Authority] involvement with the subject property.

[2] The municipality notified affected parties of the request and issued a decision granting partial access to the responsive records. It withheld information under sections 8(1)(a) (law enforcement matter), 8(1)(b) (law enforcement investigation), 8(1)(c) (investigative techniques and procedures), 8(2)(a) (law enforcement report), 10(1) (third party information), 12 (solicitor-client privilege), and 14(1) (personal privacy) of the *Act*. In addition, some information was withheld as not responsive to the request.

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

[4] During mediation, the appellant confirmed that they are pursuing access to 13 records, which were fully withheld under the law enforcement exemptions at sections 8(1)(a), 8(1)(b), 8(1)(c), and 8(2)(a).

[5] The municipality stated that it was no longer relying on section 8(2)(a). The municipality also stated that the basis for applying the exemptions under section 8(1) was a law enforcement investigation, which it confirmed was still on-going.

[6] 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 sought and received representations from the municipality and the appellant.

[7] The file was assigned to me to continue the adjudication of the appeal. After reviewing the file, I invited the municipality to provide an update about whether any law enforcement proceedings or investigations are ongoing, which it did.

[8] In this order, I find that the records at issue are not exempt from disclosure under sections 8(1)(a), (b) or (c). I order the municipality to disclose them to the appellant.

RECORDS:

[9] There are 13 records remaining at issue, identified in the municipality's index of records as: records 52, 69, 70, 87-95, and 100. The records consist of emails.

DISCUSSION:

[10] The issue in this appeal is whether the discretionary exemptions at sections 8(1)(a), (b), or (c) related to law enforcement activities apply to the emails.

[11] Section 8 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement.

[12] The municipality submits that the records at issue are exempt under sections 8(1)(a), (b) and (c) of the *Act*, which read:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> ….

[13] The term "law enforcement"[1] is defined in section 2(1) of the *Act*:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)[.]

[14] The IPC has found that "law enforcement" can include these situations:

---

[1] The term "law enforcement" appears in many, but not all, parts of section 8.

- a municipality's investigation into a possible violation of a municipal by-law,[2]
- a police investigation into a possible violation of the *Criminal Code*,[3]
- a children's aid society investigation under the *Child and Family Services Act*,[4] and
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997.*[5]

[15] Many of the exemptions listed in section 8 apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record.

[16] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context; care must be taken not to harm ongoing law enforcement investigations.[6]

[17] However, the exemption does not apply just because a continuing law enforcement matter exists,[7] and parties resisting disclosure of a record cannot simply assert that the harms under section 8 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 8 are self-evident and can be proven simply by repeating the description of harms in the *Act.*[8]

[18] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[9] 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.[10]

The parties' representations

[19] In its brief representations, the municipality submits that its understanding is enforcement proceedings were taking place by the Central Lake Ontario Conservation Authority (CLOCA) and the Ministry of Environment, Conservation and Parks (MECP). The municipality states that it reached out to CLOCA and MECP to confirm that law

---

[2] Orders M-16 and MO-1245.
[3] Orders M-202 and PO-2085.
[4] Order MO-1416.
[5] Order MO-1337-I.
[6] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[7] Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.
[8] Orders MO-2363 and PO-2435.
[9] *Merck Frosst Canada Ltd.* v. *Canada (Health)*, [2012] 1 S.C.R. 23.
[10] *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.

enforcement proceedings were still ongoing. According to the municipality, CLOCA confirmed that there is an open investigation associated with a potential offence under the *Conservation Authorities Act*[11] and that the records at issue are part of the investigation work and assist with prosecutorial decision-making. The municipality states that CLOCA requested that the records continue to be withheld. As a result, the municipality continues "to rely on the law enforcement exemptions in the…Act to withhold the records at issue."

[20] The appellant's position is that the records are not exempt under sections 8(1)(a), (b) and (c). They submit that section 8 "requires there to be a logical connection between the disclosure of a record and any potential harm that the authority seeks to avoid by applying the exemption." The appellant submits, as noted above, that the institution must provide detailed and convincing evidence to establish a reasonable expectation of harm.[12]

[21] With respect to section 8(1)(c), the appellant cites the following excerpt from Order MO-3192-I:

> [68] In order to meet the "investigative technique or procedure" test, the city must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public.

[22] The appellant submits that the municipality's index of records, indicating the exemptions claimed for the 13 records at issue, is vague. It states that the records were described as email correspondence between the municipality and various undefined entities, and it was therefore impossible for them to understand why or whether the emails had been appropriately withheld.

[23] The appellant submits that that the municipality's representations are also vague, and that it failed to provide any evidence or detail any harms that could reasonably be expected to result from the disclosure of the records. The appellant cites Order MO-4074 in which the adjudicator ordered a township to disclose a number of records, including a chain of emails, after finding that they were not exempt under section 8(1)(a) of the *Act.* The appellant notes that the adjudicator in that appeal found that the township had not demonstrated how these records would reasonably be expected to interfere with the law enforcement matter if they were disclosed. Further, the adjudicator found that while the emails included some information relating to the complaint and investigation, the information was general in nature.[13]

[24] The appellant further submits that the municipality has not provided any information on how the records at issue could reveal investigative techniques and

---

[11] R.S.O. 1990, c. C.27.
[12] The appellant cites Order MO-3192-I.
[13] Order MO-4074, at 44-53.

procedures that are not generally known to the public. They cite Order MO-4074, as the adjudicator determined that section 8(1)(c) did not apply to the records at issue in that appeal because the township made no submissions that would demonstrate investigative techniques or procedures would be revealed.[14]

[25] In its reply, the municipality confirms that it consulted with CLOCA, who indicated that "while they [were] still concerned with the release of the records associated with their investigative work, they [would] not be submitting anything from their legal counsel and [withdrew] their objections."

[26] The municipality submits that the index of records details correspondence between the enforcement agencies, CLOCA, MECP, the Durham Municipal Insurance Pool (DMIP), and the municipal solicitor, along with other municipal staff. In response to the appellant's argument about the vagueness of the index, the municipality submits that "the correspondence between the enforcement agencies was always about the subject property, the matter in question, the enforcement activities, the investigation and actions to be taken."

[27] The municipality submits that the withheld records include correspondence regarding law enforcement proceedings and investigations, which are still ongoing, including investigative techniques, and discussions on how to proceed with the investigation. The municipality adds that the appellant has submitted a claim to the municipality's insurance provider, who, as a result, has corresponded with the municipal solicitor and staff on actions and next steps to be taken and coverage that is provided. The municipality submits that the foregoing may be used in future litigation and insurance claim proceedings.

[28] After this file was assigned to me, I invited the municipality to provide an update on whether the law enforcement proceedings and investigations it referred to in its representations are presently ongoing. The municipality confirmed that "a claim on the property is still open / ongoing."

Section 8(1)(a): interfere with a law enforcement matter & section 8(1)(b): interfere with a law enforcement investigation

[29] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.[15] This exemption does not apply once the matter is completed, nor where the alleged interference is with "potential" law enforcement matters.[16]

[30] "Matter" has a broader meaning than "investigation" and does not always have to

[14] Order MO-4074, at 61-62.
[15] Order PO-2657.
[16] Orders PO-2085 and MO-1578.

mean a specific investigation or proceeding.[17]

[31] For section 8(1)(b) to apply, the law enforcement investigation in question must be a specific, ongoing investigation. The exemption does not apply where the investigation is completed, or where the alleged interference is with "potential" law enforcement investigations.[18] The investigation in question must actually exist or be ongoing.[19]

[32] The institution holding the record does not need to be the institution that is conducting the law enforcement matter or investigation for the exemption to apply.[20]

Analysis and finding

[33] I agree with the appellant that the records at issue are not exempt under sections 8(1)(a) and (b).

[34] For sections 8(1)(a) and (b) to apply, the municipality must provide detailed evidence explaining how disclosure of the records at issue could reasonably be expected to interfere with either a law enforcement matter or an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. As explained below, the municipality either did not provide any details, or the requisite level of detail to establish a risk of harm under sections 8(1)(a) and (b).

[35] In its initial representations, the municipality states that CLOCA confirmed the records at issue were part of an open investigation associated with a potential offence under the *Conservation Authorities Act*.[21] In its reply, the municipality states that CLOCA had withdrawn its objections. The municipality provided nothing further with respect to the CLOCA investigation. Accordingly, there is no evidence before me detailing the risk of harm in the event of disclosure. I am also unable to infer a risk of harm from a review of the records, or the surrounding circumstances.

[36] In its reply, the municipality notes that the appellant submitted an insurance claim to its provider, who then corresponded with the municipal solicitor and staff on details such as next steps and coverage. The municipality submits that the foregoing may be used in future litigation and insurance claim proceedings. In its update, the municipality confirms that "a claim on the property is still open / ongoing," with no further details.

[37] The municipality did not address whether an insurance claim would qualify as a law enforcement matter or investigation, for the purposes of sections 8(1)(a) and (b). Even if I were persuaded that an insurance claim may be considered under sections

---

[17] *Ontario (Community Safety and Correctional Services),* 2007 CanLII 46174 (ON SCDC)
[18] Order PO-2085.
[19] Order PO-2657.
[20] Order PO-2085.
[21] See footnote 11.

8(1)(a) and (b), the municipality did not provide any evidence about the risk of harm should the records be disclosed. I am unable to infer a risk of harm from a review of the records, or the surrounding circumstances. Furthermore, the municipality submits that the records may be used in "future litigation and insurance claim proceedings." As noted above, section 8(1)(a) and (b) do not apply where the alleged interference is with "potential" law enforcement matters or investigations.

[38] In its reply, the municipality broadly states that the records at issue relate to ongoing law enforcement proceedings and investigations. However, aside from its representations relating to a CLOCA investigation and an insurance claim, the municipality provides no other evidence in support of this claim.

[39] Accordingly, I find that records 52, 69, 70, 87-95, and 100 are not exempt under section 8(1)(a) or section 8(1)(b).

Section 8(1)(c): reveal investigative techniques and procedures

[40] For section 8(1)(c) to apply, the institution must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.[22]

[41] The technique or procedure must be "investigative"; that is, it must be related to investigations. The exemption will not apply to techniques or procedures related to "enforcing" the law.[23]

Analysis and finding

[42] The appellant submits that the municipality has not addressed how disclosing the records at issue could reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. I agree.

[43] The municipality does not address section 8(1)(c) at all in its initial representations. In its reply, it alludes to it in a general statement: "The withheld records include correspondence regarding the law enforcement proceedings and investigations, which are still ongoing, including investigative techniques, and discussions on how to proceed with the investigation." Otherwise, the municipality makes no representations with respect to section 8(1)(c). I am also unable to infer a risk of harm from a review of the records, or the surrounding circumstances.

[44] In the absence of any evidence to support the municipality's claims with respect to this exemption, I find section 8(1)(c) does not apply to the records at issue.

---

[22] Orders P-170, P-1487, MO-2347-I and PO-2751.
[23] Orders PO-2034 and P-1340.

[45] I have found that records 52, 69, 70, 87-95, and 100 are not exempt from disclosure under section 8(1)(a), (b) or (c). Accordingly, I order the municipality to disclose them to the appellant.

[46] Although the records at issue are not exempt from disclosure, I noted that four of the records appear to include limited personal information – specifically, a phrase which appears in records 87, 89, 90 and 100. [24] The municipality severed this phrase in record 90 but the same phrase is not severed in the other three records. Based on my review of records 87, 89, 90 and 100, this phrase might be the personal information of an identifiable individual. Accordingly, this information should not be disclosed as it may be subject to the personal privacy exemption in section 38(b).[25]

ORDER:

1. I order the municipality to disclose records 52, 69, 70, 87-95, and 100 to the appellant by **September 26, 2025**, aside from the information highlighted in records 87, 89, 90 and 100.

2. In order to verify compliance with Order provision 1, I reserve the right to require the municipality to provide me with a copy of the records disclosed to the appellant.

Original Signed by: August 27, 2025

Hannah Wizman-Cartier
Adjudicator

[24] See page 1 of record 87, page 1 of record 89, page 1 of record 90, and pages 1-2 of record 100.
[25] Whether the records at issue contain the personal information of other individuals was not an issue before me in this appeal. If the appellant wishes to pursue access to this information, he should contact the municipality to make an access request for it.