Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4799

Appeal PA22-00478

Ministry of the Solicitor General

March 19, 2026

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* to the ministry for records related to a specified and related occurrences. The ministry disclosed to the individual some information in the records held by the OPP. The ministry withheld the remaining information because it was not responsive to the request; contained solicitor-client privileged information (section 49(a), read with section 19); and its disclosure could reasonably be expected to interfere with a law enforcement matter (section 49(a), read with section 14(1)) and would result in an unjustified invasion of other individuals' personal privacy (section 49(b)). The ministry claimed that the records held by the OPP's Office of Professionalism, Respect, Inclusion and Leadership were excluded in full under the labour and employment relations exclusion in section 65(6)3.

In this order, the adjudicator orders the ministry to disclose some information and otherwise upholds the ministry's decision. She also finds that the ministry conducted a reasonable search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information" and "law enforcement"), 14(1)(c), 14(1)(l), 19, 21(1), 21(2)(a), 21(2)(b), 21(2)(d), 21(2)(f), 21(3)(d), 24, 49(a), 49(b) and 65(6)3.

Orders Considered: Orders MO-1433-F, P-624, PO-2559, PO-3742, PO-4535, M-41, PO-2412, MO-2019, P-16, P-300, M-430, M-84, PO-4535, PO-1731, PO-1750, MO-4324, PO-2518, PO-2617, MO-2262, MO-2344, MO-1786, PO-3013, PO-3650, MO-4330, PO-4450 PO-4559, MO-3622, MO-3815, MO-3977, MO-4439, PO-3662, PO-3765 and PO-4580.

Cases Considered: *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to investigation records pertaining to a specified occurrence and any other related occurrences.[1]

[2] The ministry denied access to the responsive records in full under the discretionary exemption at section 14(1) (law enforcement)[2] and the mandatory exemption at section 21(1) (personal privacy) of the *Act* stating that the records concern a matter under police investigation.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC) and asserted that the police investigation was closed. The IPC attempted to resolve the matter at mediation. During mediation, the ministry confirmed that the police investigation had concluded and issued two supplementary decisions.

[4] The first supplementary decision dealt with the responsive records held by the OPP (the OPP records). These records relate to an investigation pertaining to the specified occurrence, in which the appellant was identified as a victim of crime. The ministry granted the appellant partial access to the OPP records, withholding some information under the discretionary exemption at section 49(a) (discretion to refuse the requester's own information), read with the law enforcement exemptions at sections 14(1)(a) (law enforcement matter)[3], 14(1)(c) (reveal investigative techniques and procedures) and 14(1)(l) (facilitate commission of an unlawful act), and the discretionary exemption at section 49(b) (personal privacy) of the *Act*. In addition, some information was withheld on the basis that it was not responsive to the request.

[5] The second supplementary decision dealt with the records held by the Office of Professionalism, Respect, Inclusion and Leadership (OPRIL) (the OPRIL records). These records relate to a public complaint against the appellant, a member of the OPP, which resulted in a disciplinary investigation of the appellant's conduct. The ministry denied the appellant access in full to the OPRIL records on the basis that they were excluded from

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[1] Specifically, the appellant sought access to "all statements, reports, affidavit(s), police notes and any/all associated documents that arose during the course of the investigation in its entirety. I am further requesting that any communication with the OPP's [Office of Professionalism, Respect, Inclusion and Leadership] (formerly [Police Standards Board]) and person(s)/officers involved in the investigation be included in the documents requested."

[2] The ministry relied on the following law enforcement exemptions: 14(1)(a), 14(1)(b), 14(1)(f) and 14(1)(l).

[3] The ministry withheld its reliance on the exemption is section 49(a), read with section 14(1)(a), during the inquiry.

the *Act* under section 65(6) (employment or labour relations).

[6] During mediation, the appellant asserted that records exist in addition to those identified by the ministry, and, therefore, the issue of the reasonableness of the ministry's search was added to the appeal.

[7] As a mediated resolution was not reached, the file moved to adjudication, where an IPC adjudicated decided to conduct an inquiry under the *Act*. The adjudicator received the parties' representations and shared them in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. The appeal was then transferred to me to continue the inquiry. After reviewing the appeal file and the parties' representations, I decided that I did not need further representations from the parties to make my decision.

[8] For the following reasons, I partially uphold the ministry's decision. I find that some information withheld under sections 49(a) and (b) is not exempt, and I order the ministry to disclose it to the appellant. I uphold the decision of the ministry to withhold the remaining information and find that the ministry conducted a reasonable search.

RECORDS:

[9] There are two sets of records at issue: the OPP and OPRIL records. The OPP records contain 27 pages and were partially withheld. The OPRIL records contain 323 pages and were withheld in full.

ISSUES:

A. Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to the OPRIL records?

B. What is the scope of the request for records? Which information is responsive to the request?

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

D. Do the OPP records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

E. Does the discretionary personal privacy exemption at section 49(b) apply to the withheld information in the OPP records? Did the ministry exercise its discretion under section 49(b)?

F. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the sections 14(1)(c) and (l) law enforcement exemptions, apply to the withheld information in the OPP

records? Did the ministry exercise its discretion under section 49(a), read with sections 14(1)(c) and 14(1)(l)?

G. Should the IPC permit the ministry to claim a new discretionary exemption outside of the 35-day window for doing so?

H. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 19 exemption, apply to the withheld information in the OPP records? Did the ministry exercise its discretion under section 49(a), read with section 19?

DISCUSSION:

Issue A: Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to the OPRIL records?

[10] Section 65(6) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.[4] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[5]

[11] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) apply, the records are not subject to the access scheme in the *Act*, although the institution may choose to disclose them outside of the *Act*'s access scheme.[6] If section 65(6) applied at the time the records were collected, prepared, maintained or used, it does not stop applying at a later date.[7]

[12] The ministry claims that the OPRIL records are excluded under section 65(6)3, which states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

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[4] *Ontario* (*Ministry of Correctional Services*) *v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."
[5] *Ontario* (*Ministry of Community and Social Services*) *v. John Doe*, 2015 ONCA 107 (CanLII).
[6] Order PO-2639.
[7] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*) (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509 [*Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*)].

> 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest….

The parties' representations, analysis and findings

[13] I find that section 65(6)3 applies to exclude the OPRIL records from the scope of the *Act*.

[14] For section 65(6)3 to apply, the ministry must establish all three parts of the following test:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Parts 1 and 2: collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications

[15] The ministry submits, and I accept, that OPRIL is part of the ministry,[8] and that its mandate is to conduct investigations into allegations of misconduct involving members of the OPP with the goal of enforcing the professional standards of its members.[9] I also accept the ministry's submission that OPRIL conducted a disciplinary investigation into the appellant's conduct, which resulted in a hearing, and that it collected or prepared the records. Having reviewed the records, I confirm that they relate to the OPRIL's investigation into the appellant's conduct. Given the evidence before me, I find that the OPRIL records were collected, prepared, maintained or used by OPRIL on the ministry's behalf to investigate, pursuant to its mandate, an OPP officer's misconduct. Accordingly, part 1 of the test under section 65(6)3 has been met.

[16] The ministry submits, and I accept, that during the OPRIL's investigation into the appellant's conduct, meetings, consultations, discussions and/or communications occurred. Having reviewed the records, I confirm that they were collected, prepared, maintained or used in relation to these meetings, consultations, discussions and/or

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[8] OPRIL is a unit within the OPP.

[9] OPRIL conducts investigations into allegations of misconduct involving members of the OPP that are specifically contrary to the *Code of Conduct* established, at the time of the occurrence, under the *Police Services Act*, R.S.O. 1990, c. P. 15. The purpose of the *Code of Conduct* is to prescribe professional standards, which members of the OPP must uphold. The failure to do so is a disciplinary matter, which can result in a hearing. The *Police Services Act* has been replaced by the *Community Safety and Policing Act*, 2019, S.O. 2019, c. 1, Sched. 1.

communications. Accordingly, part 2 of the test under section 65(6)3 has also been met.

Part 3: labour relations or employment-related matters in which the institution has an interest

[17] The records are excluded only if the meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest.

[18] The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[10] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern" and refers to matters involving the institution's own workforce.[11]

[19] Based on the parties' representations and the nature of the records, I find that the OPRIL records were collected, prepared, maintained or used by OPRIL in relation to meetings, consultations, discussions or communications about employment-related matters in which the ministry has an interest.

[20] The ministry submits that it has a strong employment-related interest in the records because they were created in relation to the conduct of an OPP employee who may, depending on the outcome of the OPRIL investigation, be subject to disciplinary action. The ministry relies on prior IPC orders that it says held that disciplinary matters involving police officers qualify as "employment-related matters" for the purpose of section 65(6)3.[12] The ministry also submits that allegations made by a member of the public about an OPP officer's conduct must be dealt with in accordance with the process set out in the *Police Services Act (*the *PSA)*.[13]

[21] As I have found above, the OPRIL records were collected, prepared, maintained or used by OPRIL in relation to meetings, consultations, discussions or communications related to an investigation under the *PSA* into the appellant's conduct as an OPP officer. I agree with the ministry that prior IPC orders have found that disciplinary matters under the *PSA* are "employment-related matters" for the purpose of section 65(6)3 of the *Act* (or section 52(3)3 in the municipal statute).[14] I accept the analysis in those orders and apply it in this appeal. Further, I find that the ministry has an interest in the OPRIL records within the meaning of section 65(6)3 because they relate to its own workforce. Since disciplinary matters are employment-related matters in which the ministry has an interest, the third part of section 65(6)3 has also been met.

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[10] Order PO-2157.
[11] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), *supra*, note 7.
[12] The ministry relies on Orders M-931, PO-2426, PO-2499, PO-2628, PO-2658, PO-2678 and PO-2982.
[13] R.S.O. 1990, c. P. 15. Discipline is now regulated under the *Community Safety and Policing Act, 2019.*
[14] For example, see Order MO-1433-F.

[22] The appellant's representations on the application of the exclusion at section 65(6)3 focus on one record – an affidavit of a specified OPP officer. The appellant says that the specified OPP officer informed him that he authored the affidavit and provided it to OPRIL during its investigation of the appellant's misconduct. The appellant submits that the affidavit does not meet the test for section 65(6)3 because the specified OPP officer is not an employee of OPRIL and the affidavit contains investigative analysis related to the OPP criminal investigation pertaining to the specified occurrence. I have reviewed the OPRIL records, and it does not appear that the affidavit or a similar document forms part of the OPRIL records. Therefore, the appellant's representations are not relevant to determining whether the records that form part of the OPRIL records are excluded from the *Act*. However, I have considered the appellant's assertion that the affidavit exists in determining whether the ministry conducted a reasonable search for responsive records in Issue C, below.

Exceptions in section 67(7)

[23] Neither party argues that any of the exceptions at section 65(7)[15] apply to the OPRIL records, and I find that none of them apply in the circumstances of this appeal.

[24] Since all three parts of the section 65(6)3 test have been met, and none of the exceptions at section 65(7) apply, I find that the OPRIL records are excluded from the scope of the *Act*. Therefore, the appellant has no right of access to them under the *Act*.

Issue B: What is the scope of the request for the records? Which information is responsive to the request?

[25] The ministry withheld some information on pages 1-5 and 22-28 of the OPP records on the basis that it is not responsive to the request.

[26] To be considered responsive to the request, records must "reasonably relate" to the request.[16] To best serve the purpose and spirit of the *Act*, institutions should interpret requests generously.

[27] The ministry submits that the request is for records related to an OPP law

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[15] Section 65(7) states that the *Act* applies to the following records:

> 1. An agreement between an institution and a trade union.
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
> 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
> 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

[16] Orders P-880 and PO-2661.

enforcement investigation and an investigation by OPRIL. The ministry argues that the request was sufficiently detailed to identify the responsive records because it contained the appellant's name. As such, the ministry says, it responded literally to the request and did not require additional clarification. In its supplementary decision that deals with the OPP records, the ministry notes "some information, such as computer-generated text associated with the printing of the report, has been removed from the records."

[28] In response to the ministry's assertion that it did not require clarification from the appellant about the scope of the request, the appellant says that the ministry contacted him several times suggesting that he narrow the request. The appellant confirms that he did not narrow his request.

[29] In its representations, the ministry asserts that it does not consider page 26 of the OPP records to be at issue because only a small portion on this page is withheld, the portion is withheld on the basis that it is not responsive, and responsiveness is not at issue in this appeal. I disagree that page 26 is not at issue. Both the Mediator's Report and the Notice of Inquiry identify responsiveness as an issue in this appeal. Therefore, the withheld information on page 26 is at issue.

[30] I agree with the ministry that the request is sufficiently clear. The appellant seeks access to records related to two investigations – one conducted by the OPP and the other one by OPRIL. Based on my review of the information withheld as non-responsive, I am satisfied that it does not reasonably relate to the OPP or OPRIL investigations. The withheld information on pages 1-5 and 22-26 contains computer-generated text associated with the printing of the reports. The withheld information on pages 27-28 contains references to other police matters entirely unrelated to the OPP and OPRIL investigations. Therefore, I find that the ministry appropriately withheld portions on pages 1-5 and 22-28 as non-responsive, and the appellant has no right of access to them.

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

[31] The appellant claims that the affidavit of the specified OPP officer exists, and the ministry has not provided it to him. Therefore, the appellant raises the issue of whether the ministry has conducted a reasonable search for records as required by section 24 of the *Act*.[17]

[32] 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.[18] 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.[19]

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[17] Orders P-85, P-221 and PO-1954-I.
[18] Orders M-909, PO-2469 and PO-2592.
[19] Order MO-2246.

[33] The ministry submits that it conducted a reasonable search for responsive records. The ministry has provided two affidavits to support its submission. The first affidavit is from an OPRIL Intake Officer. The OPRIL Intake Officer describes her employment history and asserts that she is knowledgeable about the requirements and procedures for responding to requests for records under the *Act* and about the record-holdings that were searched to respond to the request. The OPRIL Intake Officer says that she searched the OPRIL file manager database using the appellant's name and badge number as keywords. She explains that the OPRIL file manager database is the only location where she would expect the responsive records to be located. She does not believe that any responsive records were destroyed.

[34] The second affidavit is from the Freedom of Information Coordinator for the Central Region of the OPP (the OPP Coordinator). She describes her employment history with the OPP and asserts that she is knowledgeable about the requirements and procedures for responding to access requests under the *Act* and is familiar with the OPP's record-holdings that were searched to respond to the request. The Coordinator says that the request is for specified occurrence records. The Coordinator attests that a Detachment Administrative Clerk (the Clerk) in the specified detachment searched on Niche – the OPP records database – using the appellant's name and date of birth as keywords. The Coordinator confirms that the Clerk retrieved all responsive records and provided them to her.

[35] The appellant submits that the ministry has not disclosed to him the affidavit of the specified OPP officer. The appellant says that the specified OPP officer informed him that the affidavit exists. The appellant also says that when he requested the affidavit during the OPRIL investigation, the OPP did not deny its existence. The appellant speculates that the affidavit must have been included in the OPRIL records, over which the ministry claimed the exclusion at section 65(6)3, because it was not disclosed to him as part of the OPP records.

[36] I am satisfied that the ministry has conducted reasonable searches for responsive records held by the OPP and OPRIL, as required by section 24 of the *Act*. The ministry describes the individuals involved in the searches, locations that were searched and the results of the searches. In my view, the ministry's searches were logical and comprehensive. I am satisfied that the individuals who oversaw or conducted the searches – the OPP Coordinator, the Clerk and the OPRIL Intake Officer – have requisite knowledge and experience to carry out the searches to identify records responsive to the appellant's request. I am also satisfied that they made reasonable efforts to locate the responsive records. Given the nature of the request, I find it reasonable that the searches were conducted on Niche and OPRIL file manager database, using the appellant's identifiers, such as name, date of birth and badge number.

[37] The appellant argues that the ministry did not locate the affidavit of the specified OPP officer. And because the affidavit was not located, the appellant argues that the ministry's searches were unreasonable. However, the appellant does not identify how the

ministry's searches were deficient. Even if I were to accept that the affidavit exists, the *Act* does not require the ministry to prove with certainty that the affidavit does not exist.[20] The ministry must only provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records.[21] As outlined above, I am satisfied that the ministry has provided sufficient evidence to show that it conducted reasonable searches, in accordance with section 24 of the *Act*.

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

[38] To decide which sections of the *Act* may apply to the OPP records, I must first decide whether the OPP records contain "personal information," and if so, to whom the personal information relates.

[39] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. 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.[22]

[40] Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[23] However, 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.[24]

[41] Section 2(1) of the *Act* gives a list of examples of personal information. However, the list is not complete, and other kinds of information could be "personal information."[25] Section 2(1) states, in part:

> "personal information" means recorded information about an identifiable individual, including,
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> > (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

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[20] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[21] Orders P-624 and PO-2559.
[22] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[23] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[24] Orders P-1409, R-980015, PO-2225 and MO-2344.
[25] Order 11.

> (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,
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> (c) any identifying number, symbol or other particular assigned to the individual,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) […]
>
> (f) […]
>
> (g) the views or opinions of another individual about the individual, and
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> (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.

The ministry's representations

[42] The ministry submits that it withheld portions of the OPP records because they contain information that qualifies as affected parties' personal information. It says that the affected parties' personal information includes: the affected parties' identifying information (such as home address, age, gender and phone numbers), information which would reveal communications between the OPP and the affected parties, and opinions and factual statements provided by or about the affected parties. The ministry submits that due to the subject matter of the records and the fact that the appellant and the affected parties appear from the records to know each other, the affected parties can reasonably be expected to be identifiable even if their names and other identifying information is removed. The ministry relies on Order PO-2955 to support its position. The ministry says that the affected parties' personal information is inextricably linked to that of the appellant, such that any further disclosure would inevitably reveal the affected parties' personal information.

[43] The ministry further submits that Workplace Identification Numbers (WIN) of OPP employees qualify as "personal information."[26] It says that in Order PO-3742, the IPC held that WIN numbers qualify as "personal information" because they are an assigned number and when linked to the name of the employee, which has been disclosed, would reveal something of a personal nature about the employee.

[26] The ministry withheld WIN numbers on pages 1, 2 and 24 of the OPP records.

The appellant's representations

[44] The appellant does not make representations on whether the withheld information constitutes "personal information." The appellant's representations focus on the issue of whether the affected parties' personal information should be disclosed to him. I will address the appellant's arguments in Issue E, below.

Analysis and findings

[45] I find that the OPP records contain personal information of the appellant and various affected parties. The records relate to an investigation involving the appellant and the affected parties. They contain the following "personal information", in accordance with the definition of "personal information" in section 2(1) of the *Act*: age, sex, marital and family status [paragraph (a) of the definition], criminal history [paragraph (b)], identifying number [paragraph (c)], address and telephone number [paragraph (d)], views and opinions of another individual about the individual [paragraph (g)], and names where they appear with other personal information relating to the individuals or where their disclosure would reveal other personal information about the individuals [paragraph (h)]. Regarding the information that qualifies as "personal information" within the meaning of paragraph (h), this information includes relationships between the parties, the fact of involvement in the investigation, capacity in which the parties were involved in the investigation, interactions with police officers, and statements made during the investigation.

[46] In one instance, while the information is about the individual in their professional capacity, I find that it reveals something of a personal nature about them and, therefore, qualifies as "personal information."

[47] For clarity, I find that the following pages contain the affected parties' personal information: 1-5, 7-12, 15-25 and 27-28. Regarding the record at pages 7-12, I find that only the answers to questions constitute an affected party's personal information.

[48] I have considered whether the appellant's personal information that remains withheld can be severed and disclosed to him. The appellant's personal information is mixed with the affected parties' personal information. Given the nature of the events and the withheld information, I find that the appellant's personal information in these portions cannot be severed from the affected parties' personal information. I have also considered whether any information can be severed without revealing the affected parties' personal information. I agree with the ministry that, given the subject matter of the records, the withheld information cannot be severed in a manner that would not disclose the affected parties' personal information.

[49] Regarding WIN numbers, I agree with the ministry and find that the WIN numbers of OPP employees qualify as "personal information" in accordance with paragraph (c) of

the definition of "personal information" at section 2(1) of the *Act*.[27]

[50] However, some information on pages 16-17 does not qualify as "personal information." This includes an occurrence number, the name of an OPP unit, and the name of an OPP officer. Prior IPC orders have held that occurrence numbers do not constitute "personal information,"[28] and I apply the same approach in this appeal. Personal information, as defined in section 2(1) of the *Act*, can only relate to natural persons.[29] Therefore, the name of an OPP unit does not qualify as "personal information." Section 2(3) of the *Act* confirms that "personal information" does not include the name, title and contact information or a designation of an individual that identifies the individual in a professional capacity. Section 2(3) applies to the withheld name of an OPP officer because it appears in a professional context and does not reveal something of a personal nature about the officer.

[51] The ministry does not claim any discretionary exemption to withhold this information, aside from the personal privacy exemption at section 49(b), and there is no evidence before me that any mandatory exemption applies. Since I have found that this information does not qualify as personal information and, therefore, cannot be exempt under section 49(b), I will order the ministry to disclose it to the appellant.

[52] The appellant seeks access to all the withheld personal information, his own and that of other individuals. Therefore, I will next determine whether a personal privacy exemption applies to the withheld personal information. Since all the records contain the appellant's personal information, I will assess any right of access that the appellant may have to the withheld information under the discretionary personal privacy exemption at section 49(b) of the *Act.*

Issue E: Does the discretionary personal privacy exemption at section 49(b) apply to the withheld information in the OPP records? Did the ministry exercise its discretion under section 49(b)?

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

[54] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy. 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). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal

[27] Orders PO-3742 and PO-4535.
[28] Orders M-41, PO-2412 and MO-2019.
[29] Orders P-16, P-300 and M-430.

privacy. There is no evidence before me to suggest that the exceptions at section 21(a)[30] to (e) or situations in section 21(4) apply to the withheld information.

[55] If sections 21(1)(a) to (e) and 21(4) do not apply, the decision-maker,[31] in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), must consider and weigh the factors and presumptions at sections 21(2) and (3) and balance the interests of the parties.[32]

The ministry's representations

[56] The ministry submits that disclosure of the affected parties' personal information would constitute an unjustified invasion of their personal privacy. The ministry says that the affected parties' information appears in law enforcement records, and that they have not consented to the disclosure of their personal information.

[57] The ministry submits that disclosure of the affected parties' personal information is presumed to be an unjustified invasion of their personal privacy under section 21(3)(b). It says that the records relate to an investigation of a dispute which could have resulted in charges under the *Criminal Code,* and that OPP officers created the records on the belief that an offence was possibly committed.

[58] The ministry also submits that the affected parties' personal information is "highly sensitive" within the meaning of section 21(2)(f). The ministry says that the affected parties are identified, expressly or implicitly, as suspects or witnesses in the investigation,[33] and they have not provided consent to the disclosure of their personal information.[34] In addition, the ministry argues that WIN numbers are highly sensitive because their disclosure would be expected to be distressing to OPP employees as it would reveal something of a personal nature about them, given that their names have already been released.[35] The ministry says that someone who has an OPP employee's WIN number and name might be able to obtain additional human resources information about the employee, which would be significantly distressing.

[59] The ministry submits that the fact that the affected parties have not been notified of the appeal and given an opportunity to participate raises concerns about the distress and other harms that could potentially occur to them if their personal information were

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[30] The parties made arguments about notification of the affected parties, and I will address those arguments below.
[31] The institution or, on appeal, the IPC.
[32] Order MO-2954.
[33] The ministry says that in Order P-1618, the IPC held that information of individuals who are "complainants, witnesses or suspects" during a police investigation is "highly sensitive" within the meaning of section 21(2)(f).
[34] The ministry relies on Order PO-3712 to argue that the IPC has upheld the application of section 21(2)(f) where consent had not been provided by affected parties in respect of the disclosure of their personal information in law enforcement investigation records.
[35] The ministry relies on Order PO-3742.

disclosed. Further, the ministry says that disclosing the affected parties' personal information without prior notification is contrary to jurisprudence.[36]

[60] Regarding its exercise of discretion, the ministry submits that it exercised its discretion properly. It says that it considered the public policy interest in safeguarding the privacy of affected parties, specifically those involved in a law enforcement investigation. It also considered that failure to do so would jeopardize public confidence in the OPP, especially given the public's expectation that the information it provides to police during a law enforcement investigation will be kept confidential. Further, the ministry says that it acted in accordance with its usual practices to withhold affected parties' personal information.

The appellant's representations

[61] The appellant confirms that he knows "many" of the affected parties and they know him, and questions concerns about releasing the affected parties' personal information to him. The appellant also says that he is a victim of crime and has not committed any criminal acts.

[62] The appellant submits that the ministry did not adequately weigh the presumption at section 21(3)(b) against the factors at section 21(2) that weigh in favour of disclosing the affected parties' personal information. First, the appellant argues that the disclosure of the affected parties' personal information is necessary to subject the OPP's actions to public scrutiny (factor at section 21(2)(a)). The appellant says that he has questions and concerns about the integrity of the decisions regarding the OPP investigation. In addition, he says that there were concerns about inappropriate involvement of some OPP employees in the investigation. The appellant asserts that, without having access to the information received from the affected parties, he cannot scrutinize or ask questions about the investigation. Further, he asserts that the disclosure of WIN numbers will subject the actions of the OPP to scrutiny.

[63] Second, the appellant argues that to protect the affected parties' privacy, the ministry compromises his safety and health (factor at section 21(2)(b)). The appellant says that the concerns about his safety that were brought to the OPP's attention were dismissed. The appellant also says that the events that are the focus of the investigation have caused him financial, familial and mental health strain, which is contrary to promoting public health.

[64] Third, the appellant submits that without the access to the information in the affidavit of the specified OPP officer, he might not be able to challenge allegations made against him in court proceedings, disciplinary hearings and other proceedings (factor at section 21(2)(d)). The appellant says that if the information in the affidavit is not helpful

[36] The ministry relies on *Northstar Aerospace v Ontario* (*Information and Privacy Commissioner*), *2011 ONSC 2956*.

to him, there is no harm in releasing it.

[65] The appellant agrees that certain identifying information should be protected but argues that the right of the affected parties should not supersede his right to fair and reasonable disclosure of the facts that were presented to the OPP. The appellant asserts that the affected parties' goal, which is documented in the OPP records, is to cause him as much distress and damage to his reputation as possible.

[66] In response to the ministry's assertion that the affected parties have not been notified of the request or appeal, the appellant asks if the affected parties could be notified and provided with an opportunity to respond. Otherwise, he asserts, the absence of the notification should not be a barrier to the disclosure of their information. The appellant specifically speaks about one individual who might consent to the disclosure of their personal information.

[67] In response to the ministry's submission on its exercise of discretion, the appellant argues that unless informer privilege is extended to all witnesses, suspects and victims, it is expected or required that some information provided to police be disclosed during court proceedings and to maintain integrity and transparency of police investigations.

Analysis and findings

Notice to the affected parties

[68] Pursuant to section 28(1) of the *Act*, an institution must notify a person to whom the information relates about the request if the institution intends to grant access to the record, the information at issue is personal information, and there is a reason to believe that the disclosure of the information might constitute an unjustified invasion of personal privacy. The ministry decided to withhold the affected parties' personal information, so it did not give notice to the individuals. Furthermore, section 21(1)(a) permits disclosure of individual's personal information with a prior written consent of the individual. The consent must be in writing and must be given in the specific context of the access request, meaning that the individual must know that their personal information will be disclosed in response to an access request under the *Act*.[37] There is no evidence before me that the affected parties provided the required consent, and, therefore, the exception at section 21(1)(a) does not apply.

The presumption at section 21(3)

Section 21(3)(b): an investigation into a possible violation of law

[69] Having reviewed the records, I find that the presumption at section 21(3)(b), which only requires that there be an investigation into a *possible* violation of law,[38] applies

[37] Order PO-1723.
[38] Orders P-242 and MO-2235.

to the affected parties' personal information in the OPP records. It is evident that the affected parties' personal information was gathered during an OPP investigation into a possible violation of law. Previous IPC orders have confirmed that the section 21(3)(b) presumption may apply even if no criminal proceedings were started following the investigation.[39] The presumption at section 21(3)(b) weighs against the disclosure.

The factors at section 21(2)

21(2)(a): public scrutiny of government activities

[70] I find that the appellant has not established that the disclosure of the affected parties' personal information is desirable to subject the OPP's activities to public scrutiny.

[71] Section 21(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[40] It promotes transparency of government actions. For section 21(2)(a) to apply, a requester must provide evidence demonstrating that the activities of an institution have been publicly called into question, and that disclosure of personal information at issue is necessary to subject the institution's activities to public scrutiny.[41]

[72] Having considered the appellant's representations, I find that the appellant's concerns about the OPP's conduct are private in nature and are not sufficient to establish that the factor at section 21(2)(a) applies.[42] Given my finding, section 21(2)(a) is not a relevant factor.

21(2)(b): public health and safety

[73] This section is intended to weigh in favour of disclosure where disclosure of the personal information would promote *public* health and safety. The appellant's argument is about the impact of the events that resulted in the OPP investigation on *his* health and safety. Since the appellant's heath and safety concerns are of private nature, the factor at section 21(2)(b) does not apply. Therefore, it is not a relevant factor.

21(2)(d): fair determination of rights

[74] The factor at section 21(2)(d) weighs in favour of allowing requesters to obtain another individual's personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. All four parts of this test must be met for the section 21(2)(d) factor to apply:

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[39] 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).
[40] Order P-1134.
[41] Order M-84.
[42] Order M-84.

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?

2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?

3. Does the personal information have some bearing on or is significant to the determination of the right in question?

4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?[43]

[75] The appellant says that he seeks access to the affidavit of the specified OPP officer because it will support his position in a legal proceeding. The appellant does not identify a specific legal proceeding that is ongoing or might be brought. Therefore, the second part of the test is not met. Since all four parts of the test must be met, I find that the factor at section 21(2)(d) does not apply. As such, it is not a relevant factor.

21(2)(f): highly sensitive information

[76] I find that the affected parties' withheld information, other than OPP employees' WIN numbers, is highly sensitive. The OPP gathered the affected parties' personal information during an investigation into a possible criminal offence. Aside from the personal information of OPP employees, the personal information is that of suspects and witnesses. Given the context in which the information was collected, the status of the affected parties, and the content of the records, I find that there is a reasonable expectation that disclosure of the affected parties' personal information would cause the affected parties significant personal distress.[44] The factor at section 21(2)(f) weighs against disclosure.

[77] With respect to WIN numbers of OPP employees, I do not consider them highly sensitive information within the meaning of section 21(2)(f). The adjudicator in Order PO-4535 found that WIN numbers are not more sensitive than other type of personal information, which, by definition, reveals something of a personal nature about the individual to whom it belongs. While the adjudicator did not find WIN numbers to be highly sensitive, she accepted the ministry's evidence about the risk associated with the disclosure of WIN numbers and viewed the risk as a non-listed factor weighing against the disclosure. I agree with this approach and adopt it in this appeal.

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[43] See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario* (*Minister of Government Services*) *v. Ontario* (*Information and Privacy Commissioner*) (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).
[44] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

21(2): unlisted factor

[78] The appellant asserts that, as a matter of fairness, he is entitled to know what information the affected parties provided to the OPP about him because the affected parties' goal is to cause him distress and damage his reputation. Prior IPC orders have held that individuals who face accusations are entitled to know the case which has been made against them.[45] I accept that the appellant's submission raises inherent fairness issues and find that they are a relevant factor, weighing in favour of disclosure.

Balancing of the presumptions and factors

[79] I find that the disclosure of the withheld information would constitute an unjustified invasion of the affected parties' personal privacy and, therefore, the withheld information qualifies for exemption under section 49(b). I have found that the presumption at section 21(3)(b) applies to the records, the factor at section 21(2)(f) applies to the personal information of the affected parties other than OPP employees, and an unlisted factor applies to the personal information of OPP employees – all of which weigh in favour of privacy protection. While I found that one unlisted factor weighs in favour of disclosure, I am satisfied that, balancing the interests of the parties as required under section 49(b), the presumption and two factors are sufficient to establish that the disclosure of the withheld personal information would be an unjustified invasion of the affected parties' personal privacy. The appellant has been granted access to his personal information that could be severed from the affected parties' personal information and, therefore, his right of access must yield to the privacy interests of the affected parties.

The absurd result

[80] The IPC has held that an institution might not be able to rely on the section 49(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In that situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.[46] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.[47]

[81] Neither party addressed the application of the absurd result principle. However, I have considered whether it applies because some records contain the information that the appellant provided to the OPP. I find that the absurd result principle does not apply because the disclosure of the withheld information, which consists of the affected parties' personal information, would be inconsistent with the purpose of the personal privacy exemption. The personal information was collected during an OPP investigation into a possible criminal offence. As I have found, it is reasonable to conclude that, given the context in which the personal information was collected, its disclosure would cause

[45] Orders PO-1731, PO-1750, and MO-4324.
[46] Orders M-444 and MO-1323.
[47] Orders M-757, MO-1323 and MO-1378.

significant personal distress to the individuals to whom it belongs.

The ministry's exercise of discretion

[82] The section 49(b) exemption is discretionary, which means that the ministry can decide to disclose information even if the information qualifies for exemption. The ministry must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so or whether, in exercising its discretion, it did so in bad faith or for an improper purpose; it took into account irrelevant considerations; or it failed to take into account relevant considerations.

[83] I uphold the ministry's exercise of discretion. It considered the interests the personal privacy exemption seeks to protect, the significance of the information to the affected parties, whether disclosure would increase public confidence in its operation, and its historic practices. There is no evidence before me that the ministry acted in bad faith or for an improper purpose; that it took into account irrelevant considerations; or that it failed to take into account relevant considerations.

Issue F: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 14(1)(c) and 14(1)(l) law enforcement exemptions, apply to the withheld information in the OPP records? Did the ministry exercise its discretion under section 49(a), read with sections 14(1)(c) and 14(1)(l)?

[84] 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 general right of access to one's own personal information.

[85] In this case, the ministry relies on section 49(a), read with sections 14(1)(c) and 14(1)(l).

[86] Sections 14(1)(c) and (l) state:

> (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

[87] The term "law enforcement"[48] is defined in section 2(1):

[48] The term "law enforcement" appears in many, but not all, parts of section 14.

"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).

[88] The exemptions at sections 14(1)(c) and 14(1)(l) apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Parties resisting disclosure of a record must show that the risk of harm is real and not just a possibility.[49] To do so, they must provide detailed evidence about the risk of harm if the record is disclosed. 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.[50] While harm can sometimes be inferred from the record itself and/or the surrounding circumstances, parties should not assume that the harms under section 14(1) are self-evident and can be proven simply by repeating the description of harms in the *Act.*[51] They cannot simply assert that the harms under section 14(1) are obvious based on the record.

[89] It is not disputed that the OPP is a law enforcement agency within the meaning of section 14(1) of the *Act*. It is also not disputed that the OPP records are records created in the course of law enforcement, namely an OP investigation into a possible violation of the *Criminal Code*.

Section 14(1)(c): investigative techniques and procedures

[90] The ministry submits that it applied the exemption in section 14(1)(c) to a checklist of risk factors that the OPP (and possibly other law enforcement agencies) uses to evaluate the threat posed by domestic violence and a checklist that the OPP uses to manage the threat.[52] The ministry says that, to its knowledge, the checklists are not publicly available. The ministry asserts that disclosure of the checklists would harm the OPP's attempts to evaluate the threat posed by domestic violence. It is concerned that if the checklists are in the public domain, individuals who are questioned by police might have access to them and might prepare for the questions posed by police or the position the police might take in response to the questions, thereby interfering with the integrity

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[49] *Merck Frosst Canada Ltd.* v. *Canada* (*Health*), [2012] 1 S.C.R. 23.
[50] *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.
[51] Orders MO-2363 and PO-2435.
[52] The checklists are located at pages 9-14 of the OPP records.

of the answers given and potentially harming victims of domestic violence. In addition, the ministry asserts that the disclosure of the checklists could be harmful to other law enforcement agencies who may rely on the same or similar checklists and that are not aware of this appeal. The ministry says that in Orders PO-3013 and MO-1786, an evaluative checklist was withheld because of the concern that its disclosure could reasonably be expected to reveal investigative techniques and procedures.

[91] The appellant submits that domestic violence questionnaires, such as the checklist of risk factors, are widely used, do not constitute a technique or procedure under section 14(1)(c), and their disclosure would not undermine the integrity of police investigations. The appellant says that domestic violence questionnaires are routinely disclosed during court proceedings, which makes them publicly available. Further, the appellant says that his Google search of the checklist of risk factors lead him to a federal government website that contains information about domestic violence tools.

[92] For section 14(1)(c) to apply, the ministry 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.[53] 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.[54]

[93] I find that the exemption at section 14(1)(c) applies to the checklist of risk factors at pages 9 to 13 of the OPP records. The checklist contains a list of risk factors to assess the threat posed by domestic violence and an officer's assessment as it pertains to an affected party. The assessment contains the affected parties' personal information and, as I have found above, it is exempt under the personal privacy exemption in section 49(b). Remaining at issue are the questions in the checklist.

[94] I accept that the checklist pertains to an "investigative" technique or procedure currently in use because it was used during an investigation. I also accept the ministry's submission that the checklist is not available to the public. The fact that domestic violence checklists are widely used, as asserted by the appellant, does not mean that they are available to the public. While the appellant submits that domestic violence checklists are routinely disclosed during court proceedings, there is no evidence before me that this particular checklist has been disclosed. I have reviewed the document containing domestic violence tools that the appellant says he located as a result of his Google search. I agree with the appellant that the document contains domestic violence tools, including questionnaires. However, my review confirms that the checklist at issue in this appeal is not in the document.

[95] I agree with the ministry that prior IPC orders have specifically held that checklists

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

of risk factors or questions used to assess the threat posed by domestic violence qualify for exemption under section 14(1)(c).[55] I agree with the analysis in these orders and apply it to the checklist of risk factors. I find that the disclosure of the checklist could reasonably be expected to hinder or compromise its effective use. Therefore, the checklist of risk factors at pages 9-13 is exempt from disclosure.

[96] However, I find that the checklist that the OPP uses to manage the threat at page 14 does not qualify for exemption at section 14(1)(c) because it relates to enforcing the law. Based on my review of the checklist, I understand that it is used after an investigation concludes that the occurrence at issue involves domestic violence. As stated above, the exemption will not apply to techniques or procedures related to "enforcing" the law. The ministry claims the application of section 14(1)(l) to the checklist, and I will consider below if the exemption in section 14(1)(l) applies.

Section 14(1)(l): facilitate commission of an unlawful act

[97] The ministry claims the application of the exemption at section 14(1)(l) to the information on pages 1-5, 7-14, 19-21, 24-25 and 28. Given my findings above on the issues of scope, section 49(b) and section 49(a), read with section 14(1)(c), and my finding below on the issue of section 49(a), read with section 19, the only pages remaining at issue are 1, 5, 7-8,[56] 14, and 28.

[98] The ministry submits that it applied the exemption at section 14(1)(l) to operational codes, such as flags, area location and ten codes, on pages 1 and 28 because the OPP officers widely use the codes to communicate important information with one another. The ministry relies on prior IPC orders that have found that police codes qualify for exemption at section 14(1)(l).[57] The ministry says that it withheld the police codes in accordance with its usual practice because the disclosure of the codes could jeopardize the security of law enforcement systems and the safety of OPP staff. The ministry says that the disclosure of the codes would make it easier for individuals carrying out criminal activities to have internal knowledge of how members of the OPP communicate with each other using the codes.

[99] Regarding the remaining information it withheld under the section 14(1)(l) exemption, the ministry submits that it relates to individuals identified as being either potentially a suspect or a witness to the investigation. The ministry says that members of the public cooperate with the police on an understanding that the information they provide would not be disclosed because it is highly sensitive. The ministry is concerned that if the confidentiality of the information members of the public provide is not safeguarded, they might be discouraged from seeking police assistance or cooperating with the police, thereby facilitating the commission of crime or hampering its control.

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[55] Orders MO-1786, PO-3013, PO-3650, MO-4330, PO-4450 and PO-4559.
[56] The information at issue on these pages only relates to questions on the checklist.
[57] The ministry relies on Order PO-2409, which cites Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209 and PO-2339.

Further, the ministry says that members of the OPP will be less likely to record candidly information in the records they create if the records could be disclosed, thereby facilitating the commission of crime or hampering its control.

[100] The appellant disagrees that the disclosure of the operational codes could reasonably be expected to cause harms asserted by the ministry. The appellant asserts that members of the public are aware of police codes from the use of police scanners and TV shows, and some members of the public know area locations of their residences. Further, the appellant says that general police codes are disclosed on case-by-case basis, and the networks that the police use to communicate are only now being made secure. The appellant argues that courts consider it unreasonable to withhold information when it is generally known to the public.

[101] Regarding the ministry's broader submission on the application of section 14(1)(l), the appellant submits that some information provided to the police by members of the public must be disclosed, for example during court proceedings or to maintain integrity and transparency of an investigation. The appellant argues that the disclosure of the affected parties' statements, with their identifying information removed, would not result in harms contemplated by section 14(1)(l). He says that if the ministry is concerned that the disclosure of the affected parties' statements would result in civil liability, it is not a harm contemplated by section 14(1)(l). Further, the appellant argues that the ministry's position that the possibility of disclosure could result in less candid police records undermines the mechanism of policing.

[102] I agree with the ministry that the IPC has consistently upheld the application of the section 14(1)(l) exemption to police operational codes. Prior IPC orders have held that the use of operational codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning, and that if the public were to learn these codes and their meanings, the effectiveness of the codes would be compromised. This could result in the risk of harm to police personnel and members of the public with whom the police engage, such as victims and witnesses.[58] I apply the same reasoning to uphold the ministry's decision to withhold the police codes on pages 1, 5 and 28.

[103] The appellant asserts that, in his experience, some members of the public are aware of police operational codes. Even if some members of the public are aware of some police operational code, in reaching my decision I considered that 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.[59]

[104] Regarding the ministry's second argument, I find that the scope of the application

[58] Orders MO-3622, MO-3815, MO-3977 and MO-4439.
[59] *Ontario* (*Attorney General*) *v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

of section 14(1)(l) suggested by the ministry is far too broad. The ministry argues that the disclosure of the information it withheld under section 14(1)(l) would discourage members of the public from seeking police assistance or being cooperative with police out of concern that the confidentiality of the information they provide would not be safeguarded; and would discourage members of the OPP from being candid in the records they create. Taken to its logical conclusion, the ministry's argument would mean that the exemption at section 14(1)(l) would apply to most, if not all, information provided in criminal investigations – a result that could not have been contemplated or intended by the legislature in enacting this statutory provision.[60] Further, I find that the evidence provided by the ministry regarding the OPP record-keeping practices is highly speculative. I agree with the appellant that the keeping of candid written records is an integral part of policing, and I am not satisfied that disclosing the portions the ministry seeks to withhold under section 14(1)(l), aside from police operational codes, would interfere with that practice.

Conclusion on the application of section 49(a), read with sections 14(1)(c) and (l)

[105] In conclusion, I find that the exemption at section 49(a), read with section 14(1)(c), applies to the checklist of risk factors to assess domestic violence at pages 9-13. Further, I find that the exemption at section 49(a), read with section 14(1)(l), applies to police operational codes on pages 1, 5 and 28 but does not apply to the questions on pages 7-8 and to the checklist to manage the threat of domestic violence on page 14. Since none of the discretionary exemptions claimed by the ministry apply to this information, and there is no evidence before me that any mandatory exemption applies, I will order the ministry to disclose it to the appellant.

[106] Having found that the discretionary exemptions at section 49(a), read with sections 14(1)(c) and (l), apply to the withheld information on pages 1, 5, 9-13 and 28, I will now turn to the issue of the ministry's exercise of discretion. As stated above, when an exemption is discretionary, an institution must exercise its discretion.

The ministry's exercise of discretion

[107] The ministry submits that it is concerned that the disclosure of the checklist used to evaluate domestic violence and to manage the threat posed by it would reveal investigative techniques and procedures, harming the ongoing use of the checklists as an evaluative and enforcement tool. The ministry further says that the OPP has acted in accordance with its usual practice when it withheld police codes and evaluative checklists.

[108] The appellant relies on a Supreme Court of Canada case[61] to argue that the ministry should have disclosed anything of evidentiary value to him.

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[60] Orders PO-3662, PO-3765 and PO-4580.
[61] *R v. Stinchcombe*, [1991] 3 S.C.R. 326.

[109] I uphold the ministry's exercise of discretion. It considered the interests the law enforcement exemptions seek to protect and its historic practice. There is no evidence before me that the ministry acted in bad faith or for an improper purpose; that it took into account irrelevant considerations; or that it failed to take into account relevant considerations. I have no jurisdiction to consider whether the ministry is obligated to disclose information to the appellant outside the *Act* and find this is not relevant to my consideration of the ministry's exercise of discretion.

Issue G: Should the IPC permit the ministry to claim a new discretionary exemption outside of the 35-day window for doing so?

[110] In its representations, the ministry claims the section 19 solicitor-client privilege exemption to a portion of page 25 of the OPP records.

[111] The ministry did not claim the application of the section 49(a), read with section 19, exemption in a timely way, and the first question that I need to answer is whether the ministry should be permitted to rely on it. Section 11 of the IPC's *Code of Procedure* in effect at the time of the inquiry permits an institution to make a new discretionary exemption claim only within 35 days after it was notified of the appeal. The purpose of the 35-day rule is to provide an opportunity for institutions to raise a new discretionary exemption without compromising the integrity of the appeal process.

[112] In deciding whether to allow the ministry to claim the discretionary exemption in section 49(a), read with section 19, outside the 35-day period, I must balance the relative prejudice to the ministry and to the appellant[62] and consider the specific circumstances of the appeal.[63]

[113] The ministry submits that the late raising of the exemption does not cause prejudice to the appellant or the integrity of the appeal process. First, the ministry says that the exemption applies to a very small portion of page 25 – two lines. Second, the ministry says that it initially withheld the two lines under section 49(a), read with section 14(1)(l) but, upon further consideration, determined that the exemption at section 49(a), read with section 19, is more applicable. The ministry argues that it is not in the interest of the appeal process to rely on one exemption when another one is more applicable. Third, the ministry says that its failure to identify the application of the exemption at section 49(a), read with section 19, was due to an unfortunate oversight, specifically due to the overall number of records and the location of this information. Finally, the ministry argues that due to the importance of the solicitor-client privilege exemption in the circumstances of this appeal, the balance favours allowing it to claim it.

[114] The appellant does not provide representations on the issue of whether the ministry should be permitted to claim the application of the section 49(a), read with

[62] Order PO-1832.
[63] Orders PO-2113 and PO-2331.

section 19, exemption.

[115] There is no evidence before me that allowing the ministry to raise the section 49(a), read with section 19, exemption would compromise the appeal process. Further, the appellant has not identified any prejudice to him in permitting the ministry to rely on the exemption. The ministry claims the exemption only to two lines of the OPP records. This information was already being withheld under section 49(a), read with section 14(1)(l), and the additional exemption claim does not further delay the appellant's access to the record. In addition, given the nature of the information protected by the solicitor-client privilege exemption, the ministry would be prejudiced if it cannot rely on it to protect communications between the OPP and its solicitor. Given the above, I allow the ministry to claim the section 49(a), read with section 19, exemption outside the 35-day window for doing so.

Issue H: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with the section 19 exemption, apply to the withheld information in the OPP records? Did the ministry exercise its discretion under section 49(a), read with section 19?

[116] As stated above, the ministry relies on section 49(a), read with section 19, to withhold two lines on page 25 of the OPP records.

[117] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege,
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation or
>
> (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[118] Section 19 contains three different exemptions, which the IPC has referred in previous decisions as making up two "branches." The first branch, found in section 19(a), is based on common law. The second branch, found in sections 19(b) and (c), contains statutory privileges created by the *Act*. The institution must establish that at least one branch applies.

[119] The ministry submits that the two lines it withheld under section 49(a), read with section 19, contain communications between a police officer and a Crown Attorney during

which legal advice was sought and provided. The ministry asserts that these communications fall squarely within the protected continuum of communications between a solicitor and a client. The ministry relies on Order PO-2203 to support its submission that communications between a police officer and a Crown Attorney qualify for solicitor-client privilege. The ministry says that there is no indication that anyone other than the police officer and the Crown Attorney was present during the discussion or that the contents of the discussion were disclosed or that the privilege was waived.

[120] The appellant does not dispute that communications between an OPP officer and a Crown Attorney about decisions regarding investigations are subject to solicitor-client privilege exemption. The appellant speculates that the withheld information contains a discussion about specified evidence. He asserts that while the communications could be privileged, the evidence would exist somewhere else. The appellant says that he is seeking the officer's analysis of the specified evidence.

[121] I find that the solicitor-client communication privilege applies to the withheld two lines on page 25, and they are exempt from disclosure under section 49(a), read with section 19. The solicitor-client communication privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.[64] The privilege covers not only the legal advice itself and the request for advice but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.[65] The two lines reveal legal advice provided by a Crown Attorney to a police officer about an investigation. As such, they are subject to the protection of the solicitor-client communication privilege. Further, I am satisfied by the evidence before me that the solicitor-client privilege was not expressly or implicitly waived.

ORDER:

1. I order the ministry to disclose to the appellant page 14 and the information that I have highlighted in purple on a copy of the pages of the records that I have provided to the ministry together with a copy of this order. The ministry is to send the information to the appellant by **April 20, 2026**.

2. In order to ensure compliance with paragraph 1, I reserve the right to require the ministry to send me a copy of the pages of the records disclosed to the appellant.

3. In all other respects, I uphold the ministry's decision and find that it conducted a reasonable search.

Original Signed by: March 19, 2026

[64] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[65] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada* (*Ministry of Public Safety and Emergency Preparedness*) *v. Canada* (*Information Commissioner*), 2013 FCA 104.

Anna Kalinichenko
Adjudicator

APPENDIX

Pages of the OPP records	Withheld in whole or in part	Exemptions applied by the ministry	Exemptions upheld
1	In part	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(a), read with 14(1)(l) (to police codes) 49(b)
2	In part	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(b)
3	In part	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(b)
4	In part	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(b)
5	In full	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(a), read with 14(1)(l) (to police codes) 49(b)
6	Disclosed in full	N/A	N/A
7	In part	49(a), read with 14(1)(l) 49(b)	49(b) (to answers)
8	In part	49(a), read with 14(1)(l) 49(b)	49(b) (to answers)
9	In full	49(a), read with 14(1)(c) and (l) 49(b)	49(a), read with 14(1)(c) (to questions) 49(b) (to answers)
10	In full	49(a), read with 14(1)(c) and (l) 49(b)	49(a), read with 14(1)(c) (to questions) 49(b) (to answers)
11	In full	49(a), read with 14(1)(c) and (l) 49(b)	49(a), read with 14(1)(c) (to questions) 49(b) (to answers)
12	In full	49(a), read with 14(1)(c) and (l) 49(b)	49(a), read with 14(1)(c) (to questions) 49(b) (to answers)

13	In full	49(a), read with 14(1)(c) and (l) 49(b)	49(a), read with 14(1)(c)
14	In full	49(a), read with 14(1)(c) and (l) 49(b)	None
15	In part	49(b)	49(b)
16	In part	49(b)	49(b)
17	In part	49(b)	49(b)
18	In part	49(b)	49(b)
19	In full	49(a), read with 14(1)(l) 49(b)	49(b)
20	In full	49(a), read with 14(1)(l) 49(b)	49(b)
21	In full	49(a), read with 14(1)(l) 49(b)	49(b)
22	In full	Not responsive 49(b)	Not responsive 49(b)
23	In full	Not responsive 49(b)	Not responsive 49(b)
24	In full	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(b)
25	In full	Not responsive 49(a), read with 14(1)(l) 49(a), read with 19 49(b)	Not responsive 49(a), read with 19 49(b)
26	In part	Not responsive	Not responsive
27	In full	Not responsive 49(b)	Not responsive 49(b)
28	In full	Not responsive 49(a), read with 14(1)(l) 49(b)	Not responsive 49(a), read with 14(1)(l) (to police codes) 49(b)