

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4808

Appeal PA23-00001

Ministry of the Solicitor General

March 31, 2026

**Summary:** An individual made a request to the Ministry of the Solicitor General under the *Freedom of Information and Protection of Privacy Act* for access to police records related to a sexual assault. The ministry granted partial access withholding information under the discretionary personal privacy exemption at section 49(b) of the *Act* claiming that disclosure would be an unjustified invasion of the personal privacy of individuals other than the appellant. The ministry also withheld information under section 49(a), which permits an institution to withhold a requester's own information, read with the section 14(1)(l) law enforcement exemption.

In this order, the adjudicator partially upholds the ministry's decision. She finds that section 49(a), read with section 14(1)(l), applies to the police operational codes because disclosure could facilitate the commission of an unlawful act, and that the discretionary personal privacy exemption in section 49(b) applies to some of the withheld information. However, she orders the ministry to disclose additional information to the appellant, which she finds is not exempt under section 49(b).

**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), 14(1)(l), 21(3)(b), 21(2)(f), 49(a), and 49(b).

### OVERVIEW:

[1] An individual made a request to the Ministry of the Solicitor-General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

...[A]ll records and information pertaining to my sexual assault and abuse case against [two named individuals]. Please assist me in obtaining these files. Police notes and any records on file. I reported to Kingston Police in the 90s, (approx. [1993]) the abuse took place in the 80s. Please advise when and how I can obtain these files. Kingston Police has confirmed it was with OPP [Ontario Provincial Police] at the time of reporting.

[2] The ministry issued a decision granting partial access to the responsive records held by the Ontario Provincial Police (OPP). The ministry withheld information under the discretionary personal privacy exemption at section 49(b) and section 49(a) (discretion to refuse requester's own information) read with section 14(1)(l) (facilitate commission of an unlawful act) of the *Act*. The ministry also withheld some information it claimed was not responsive to the request.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.<sup>1</sup>

[4] As a mediated resolution was not reached, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator previously assigned to this appeal conducted an inquiry and sought and received representations from the parties about the issues in the appeal. The appeal was then transferred to me, and I decided that I did not need to seek additional representations before making my decision.

[5] In this order, I partially uphold the ministry's decision and find that section 49(a), read with section 14(1)(l), and section 49(b) apply to exempt some of the withheld information from disclosure.<sup>2</sup> However, I order the ministry to disclose additional information to the appellant that I find is not exempt from disclosure under section 49(b).

## **RECORDS:**

[6] The information remaining at issue consists of the withheld portions of seven pages of OPP records, including occurrence reports and officers' handwritten notes.<sup>3</sup>

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<sup>1</sup> During mediation, the appellant raised the issue of reasonable search but ultimately accepted ministry's position that no further responsive records exist after the ministry conducted an additional search. Also, during mediation, the appellant confirmed that she does not seek access to the information that the ministry withheld as not responsive.

<sup>2</sup> A possible jurisdictional issue was raised by the IPC during the inquiry. Based on my review of the record, it is not necessary for me to determine the issue.

<sup>3</sup> During the inquiry, the ministry issued a supplemental access decision disclosing additional information to the appellant. Accordingly, the additional information is no longer at issue in this appeal.

## **ISSUES:**

- A. Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester’s own personal information, read with the law enforcement exemption at section 14(1)(l), apply to the information for which it was claimed?
- C. Does the discretionary personal privacy exemption at section 49(b) apply to the information for which it was claimed?
- D. Did the ministry exercise its discretion under sections 49(a) and 49(b)? If so, should the IPC uphold the exercise of discretion?

## **DISCUSSION:**

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

[7] The ministry claims that the discretionary sections 49(a) and 49(b) exemptions apply to the withheld information. For these sections to apply, the IPC must first determine that the record contains “personal information,” and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.<sup>4</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>5</sup>

[8] Section 2(1) of the *Act* gives a list of examples of personal information.<sup>6</sup> Section 2(2) states: “Personal information does not include information about an individual who has been dead for more than thirty years.”

[9] The ministry submits that the records contain the personal information of two identifiable individuals identified as suspects in an OPP investigation (the affected parties), specifically their names, addresses, residential phone numbers, and ages provided to the OPP in connection with a law enforcement investigation. The ministry submits that due to the circumstances in which the personal information was collected, even if identifying information such as their names were removed, the affected parties

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<sup>4</sup> Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>5</sup> Sections 21(1) and 49(b), as discussed below.

<sup>6</sup> The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”

would still be identifiable.

[10] The appellant submits that the records contain her and the affected parties' personal information.

[11] Based on my review of the records, I find that they contain personal information about the appellant and the two affected parties. I find that the records contain their names, addresses, residential phone numbers, sex, and ages. I also find that the records contain the appellant's views and opinions and views and opinions about the affected parties.

[12] Accordingly, as the records contain the personal information of the appellant and the affected parties, I will consider the appellant's access to the withheld information under the discretionary provisions at section 49(a) and (b) at Part III of the *Act*.

[13] While I find that the records contain both the personal information of the appellant and the affected parties, I find that some of the withheld information can be reasonably severed and disclosed to the appellant. Section 10(2) provides that the ministry "...shall disclosed as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions." I find that some of the withheld information contains the appellant's personal information only or the information can be severed in a manner where its disclosure would not reveal personal information, and therefore, section 49(b) cannot apply to it.

[14] A portion of the withheld information consists of the appellant's statement to the OPP. In my view, the affected parties' personal information in her statement can be severed from the appellant's personal information, such as her description of the assault and what happened to her. I find that without the affected parties' personal information, disclosure of these portions of the appellant's statement would not identify the affected parties.

[15] I also find that the reference to the OPP's meeting with the affected parties can be reasonably severed. To be clear, the affected parties did not provide testimony or statements to the police. The affected parties' meeting with the OPP is limited to two sentences about an OPP officer advising them about the allegations against them. Therefore, I find that this information can also be severed and disclosed because the affected parties cannot be identified from disclosure of this information.

[16] I note that the ministry withheld portions of the appellant's statement to remove references to the number of affected parties. However, in its representations that it has consented to share, the ministry has already revealed the number of affected parties. Furthermore, the appellant's request specifically refers to two named individuals. I find that disclosing the police's reference to the number of affected parties does not reveal any personal information that could identify those affected parties. Therefore, I find that this information can also be severed and disclosed to the appellant because it is not

personal information and section 49(b) cannot apply to it.

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

[17] The ministry claims that section 49(a), read with section 14(1)(l), applies to police code information contained within the records.

[18] The appellant's representations do not specifically address police code information.

[19] Although 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.

[20] Section 49(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[21] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.<sup>7</sup>

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

[23] Section 14(1)(l) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[24] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>8</sup> However, they do not have to prove that disclosure will in fact result in harm.

[25] Previous IPC orders,<sup>9</sup> including Order PO-3742, which the ministry referenced in its representations, have held that police operational codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release. I

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<sup>7</sup> Order M-352.

<sup>8</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>9</sup> Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339 and PO-2409.

agree with and adopt this reasoning in this appeal. Based on my review of the records, I am satisfied that the ministry has properly identified the police codes contained in the records, and I find they are exempt under section 49(a) read with section 14(1)(l) of the *Act*.

**Issue C: Does the discretionary personal privacy exemption at section 49(b) apply to the information for which it was claimed?**

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

[27] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

[28] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

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

[30] 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).

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

[32] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker<sup>10</sup> must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>11</sup>

***Representations, analysis and findings***

[33] The ministry argues that disclosure of the withheld personal information would be an unjustified invasion of the affected parties' personal privacy.

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<sup>10</sup> The institution or, on appeal, the IPC.

<sup>11</sup> Order MO-2954.

[34] The appellant submits that she wants her own personal information and confirmation that a specified OPP officer interviewed or spoke to the affected parties about her allegations.

[35] The parties did not argue, and from my review, I am satisfied that sections 21(1) and 21(4) do not apply in the circumstances before me.

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

[36] The ministry submits that the section 21(3)(b) presumption applies to the withheld personal information because it was compiled as part of an OPP investigation into a possible sexual assault.

[37] Section 21(3)(b) states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

[38] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. The personal information at issue relates to an OPP investigation into allegations of sexual assault. Even if no criminal proceedings were commenced against an individual, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law,<sup>12</sup> and I am satisfied that an investigation has occurred. Therefore, I find that section 21(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the affected parties' personal privacy.

[39] Under section 49(b), the presumptions in section 21(3) must be weighed and balanced with any factors in section 21(2) that are relevant.

*Section 21(2)(f): highly sensitive*

[40] The ministry argues the section 21(2)(f) (highly sensitive) factor applies to the withheld personal information. This factor weighs against disclosure, if it is found to apply.

[41] The appellant did not argue any section 21(2) factors apply.

[42] Sections 21(2)(f) states:

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<sup>12</sup> Orders P-242 and MO-2235.

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, the personal information is highly sensitive;

[43] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the personal information at issue is disclosed.<sup>13</sup>

[44] In arguing that the section 21(2)(f) factor applies, the ministry cites Order P-1618, in which the IPC held that personal information of complainants, witnesses, or suspects collected by the police was highly sensitive. The ministry also cited Order PO-3712, arguing that in that order, the IPC “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 contained in law enforcement investigation records.” The ministry further cited Order PO-4017, which found that personal information revealing an allegation of sexual assault is “highly sensitive.”

[45] Given that the withheld information contains the personal information of the affected parties related to allegations of sexual assault, I find that its disclosure to the appellant could reasonably be expected to cause significant personal distress to the affected parties to whom the personal information relates. Therefore, I find that section 21(2)(f) applies in this appeal and weighs against disclosure of the withheld personal information.

[46] I also considered whether any additional listed or unlisted factors apply to weigh against or in favour of disclosure, and I find that none apply.

### *Summary*

[47] As noted above, I am satisfied that none of the situations in section 21(1) and 21(4) apply in the circumstances of this appeal. Overall, I have found the section 21(3)(b) presumption and the section 21(2)(f) factor apply weighing against disclosure and no section 21(2) factors, listed or unlisted, apply weighing in favour of disclosure. Balancing the interests of the parties, the facts of this appeal weigh against disclosure, and I find that disclosure of the withheld personal information would constitute an unjustified invasion of the affected parties’ personal privacy under section 49(b).

### **Issue D: Did the ministry exercise its discretion under sections 49(a) and 49(b)? If so, should the IPC uphold the exercise of discretion?**

[48] The sections 49(a) and 49(b) exemptions are discretionary, meaning that the ministry can decide to disclose information even if the information qualifies for exemption. The ministry must exercise its discretion. On appeal, I may determine whether the

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<sup>13</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

ministry failed to do so.

[49] The ministry submits it has acted appropriately in exercising its discretion to not release personal and law enforcement information contained in the records at issue. The ministry submits that it considered that the records contain the personal information of both the appellant and the affected parties collected during a law enforcement investigation. The ministry also submits that its historic practice is not to disclose information of this nature.

[50] After considering the nature of the information withheld, the parties' representations and the circumstances of this appeal, I find that the ministry did not err in its exercise of discretion with respect to its decision to deny access to the withheld information under sections 49(a) and 49(b) of the *Act*. I am satisfied that the ministry considered relevant factors and did not consider irrelevant factors in its exercise of discretion. In particular, it is evident that the ministry considered the fact that the records contain the appellant's own personal information and balanced it against the privacy rights of the affected parties.

[51] Accordingly, I find that the ministry exercised its discretion in an appropriate manner, and I uphold it.

## **ORDER:**

1. I order the ministry to disclose to the appellant the highlighted portions of the records by **May 5, 2026** but not before **April 30, 2026**. For the sake of clarity, I have highlighted the portions to be disclosed in the copy of the record that accompanies the ministry's copy of this order.
2. I otherwise uphold the ministry's access decision.
3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant in accordance with provision 1.

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ March 31, 2026