



Order F24-68

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Rene Kimmett
Adjudicator

July 18, 2024

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Summary: An applicant made a request to the Ministry of Public Safety and Solicitor General (Ministry) for access to information about the Ministry's framework for how municipalities may change their policing model. The Ministry provided the applicant with some information but withheld other information under several exceptions to disclosure in the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found the Ministry was authorized to withhold all of the information in dispute under s. 13(1) (advice or recommendations) but none of the information in dispute under s. 16(1)(a)(ii) (harm to intergovernmental relations) of FIPPA. The adjudicator ordered the Ministry to disclose the information that it was not authorized to withhold under s. 16(1)(a)(ii).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 13(1), 13(2)(k), and 16(1)(a)(ii).

INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Public Safety and Solicitor General (Ministry) for access to information about the Ministry's framework for how municipalities may change their policing model.

[2] The Ministry disclosed some information to the applicant but withheld other information under ss. 13(1) (advice or recommendations), 16(1)(a)(ii) (harm to intergovernmental relations), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.¹

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision to withhold information. During mediation by the OIPC, the applicant clarified that they are not seeking access to the information the Ministry withheld under s. 22(1). As a result, this information is not at issue. Ultimately, mediation did not fully resolve the issues in dispute and the matter proceeded to inquiry.

[4] Prior to providing its initial submission, the Ministry reconsidered its decision and released more information to the applicant. At the same time, the Ministry also provided the applicant with an explanatory note (Explanatory Note), which says, among other things, that the Ministry does not accept or endorse any of the information in the records, particularly as it relates to the Surrey policing transition.

[5] The Ministry continued to rely on ss. 13(1) and 16(1)(a)(ii) to withhold some information in the responsive records. The applicant confirmed that the Ministry's reconsideration and further disclosure did not fully resolve the issues in dispute and the inquiry continued. Both parties provided submissions in this inquiry.

ISSUES AND BURDEN OF PROOF

[6] In this inquiry, I must decide the following issues:

1. Is the Ministry authorized to withhold the information in dispute under s. 13(1)?
2. Is the Ministry authorized to withhold the information in dispute under s. 16(1)(a)(ii)?

[7] Section 57(1) places the burden on the Ministry to prove that the applicant has no right of access to the information withheld under ss. 13(1) and 16(1)(a)(ii).

DISCUSSION

Background²

[8] The Ministry is responsible for ensuring there is an adequate and effective level of policing throughout British Columbia. Municipalities may seek approval from the Ministry to change their policing model.

² The information in this background section comes from the Ministry's initial submission and is not in dispute.

[9] In 2018, the City of Surrey (Surrey) began transitioning its policing model from the Royal Canadian Mounted Police (RCMP) to its own municipal police department, the Surrey Police Service (SPS).

[10] In March 2019, the Ministry hired a third-party company, Deloitte, to develop an evaluation framework for assessing municipalities transitions from one police model to another. Deloitte produced five documents for the Ministry. The Ministry disclosed these records to the applicant as part of its reconsideration during this inquiry.

[11] In November 2022, a newly elected Surrey Mayor and Council decided to keep the RCMP and stop Surrey's transition to SPS. The Ministry reviewed Surrey's plan to transition back to the RCMP and determined that it was not safe. In July 2023, the Ministry directed Surrey to continue its transition to SPS. Surrey opposed this direction and filed a petition to have it judicially reviewed.

Information at issue

[12] The Ministry is partially withholding seven pages of the 453-page records package.

[13] The information in dispute is contained in two draft documents respectively titled "Police Transition Evaluation Guide" (Evaluation Guide) and "Provincial Approval Process of the Surrey Transition (DRAFT)" (Surrey Document).

Advice or recommendations – s. 13

[14] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. Previous OIPC orders recognize that s. 13(1) protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations."³

[15] To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or a minister. The term "recommendations" includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.⁴ The term "advice" has a broader meaning than "recommendations."⁵ "Advice" includes an

³ Order 01-15, 2001 CanLII 21569 at para. 22.

⁴ *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at paras 23-24.

⁵ *Ibid* at para 24.

opinion that involves exercising judgment and skill to weigh the significance of matters of fact in relation to a future action or an existing set of circumstances.⁶

[16] If I find the information in dispute would reveal advice or recommendations, I must then consider if any of the categories listed in ss. 13(2) or (3) apply. Section 13(2) identifies certain types of records and information that may not be withheld under s. 13(1). Section 13(3) says a public body cannot use s. 13(1) to withhold information in a record that has been in existence for 10 or more years.

Section 13(1)

[17] The Ministry describes the information it has withheld under s. 13(1) as follows:

- a) A recommendation in a draft document about what type of police officer training is preferable.
- b) A comment box in a draft document about what should happen with respect to major case management for multi-jurisdictional cases.
- c) Advice in a draft document about the steps that should be taken in the Surrey police transition process.
- d) A comment box in a draft document containing advice about what action the Province should take with respect to a financial issue and why.
- e) Advice in a draft document about when certain financial matters should be dealt with during the Surrey police transition.
- f) Advice in a draft document about what should happen to ensure adequate emergency management during the Surrey police transition.⁷

[18] The Ministry submits that the withheld information is advice or recommendations about a future or preferred course of action, including suggested actions for the Province or Ministry to take with respect to the Surrey police transition.⁸ The Ministry emphasizes that these documents are in draft

⁶ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

⁷ Director's affidavit at para 33.

⁸ Ministry's initial submission at para 38.

form, were never finalized, and do not represent the Ministry's views regarding approval pathways for the Surrey policing transition.⁹

[19] The applicant does not make submissions on s. 13(1).

[20] While the Ministry does not explicitly say so, I am satisfied that the two partially withheld records are documents created by Ministry staff for use by the Ministry. The Evaluation Guide's cover page includes the Ministry's name and the government of British Columbia's (Province) logo. Both documents reference and appear to be written from the perspective of "PSB". I understand "PSB" to be the Policing and Security Branch within the Ministry.

[21] The information in dispute is either contained in the body of, or in comment boxes in the margins of, the two partially withheld records or has been inserted into these documents using track-changes.

[22] I am satisfied that all the withheld information relates to the Ministry's internal deliberations about Surrey's policing transition or municipal policing transitions, more generally. The withheld information includes Ministry employees' expert opinions about existing circumstances and appropriate future courses of action that could be accepted or rejected by other Ministry employees during deliberations. I find that disclosure of the information the Ministry has withheld under s. 13(1) would reveal advice or recommendations developed by or for Ministry employees.

Section 13(2)

[23] I must now consider whether the information in dispute falls under any of the categories of information listed in s. 13(2).

[24] The Ministry submits that the information in dispute does not fit into any of the categories listed in s. 13(2).

[25] The applicant submits that the information in the documents prepared by Deloitte (Deloitte Materials) is captured by s. 13(2)(k) and, therefore, cannot be withheld under s. 13(1).¹⁰

[26] Section 13(2)(k) states that the head of a public body must not refuse to disclose under s. 13(1) "a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body." The party asserting that this section applies must prove all three of the following conditions:

⁹ Ministry's initial submission at para 41.

¹⁰ Applicant's submission at paras 25-37.

1. The record in dispute is a report.
2. The report is “of a task force, committee, council or similar body”.
3. The task force, committee, council or similar body was established to consider any matter and make reports or recommendations to a public body.¹¹

[27] A “report”, within the meaning of s. 13(2)(k), is “a formal statement or account of the results of the collation and consideration of information.”¹² A task force, committee, council or similar body “has been established” under s. 13(2)(k) when it was created for the purpose of considering any matter and making reports or recommendations to a public body.¹³ A public body employee performing their normal, routine tasks and duties will generally not qualify as a task force, committee, council or similar body that has been “established” for the purposes of s. 13(2)(k).¹⁴

[28] In response to the applicant’s argument that s. 13(2)(k) applies to the Deloitte Materials, the Ministry submits that it has disclosed all the Deloitte Materials to the applicant and that the Evaluation Guide and Surrey Document do not form part of the Deloitte Materials. The Ministry points to an email from Deloitte that lists the documents Deloitte sent the Ministry. The Ministry submits that this email does not reference the two partially withheld documents at issue in this inquiry. The Ministry also submits that the Evaluation Guide document, which is dated January 2020, is obviously not part of the Deloitte Materials, which were sent August 30, 2019.¹⁵

[29] I accept the Ministry’s submissions and evidence that the Deloitte Materials are not at issue in this inquiry because they have already been disclosed. As a result, the applicant’s submissions about the Deloitte Materials do not assist them in establishing that s. 13(2)(k) applies to the actual information in dispute, which is contained in the Evaluation Guide and Surrey Document.

[30] Turning to the Evaluation Guide and Surrey Document, I find that neither of these records qualify as a “report”, within the meaning of s. 13(2)(k) because they lack the required formality. For example, the Evaluation Guide contains track-changes, comment boxes, and editorial suggestions.

¹¹ Order F24-03, 2024 BCIPC 4 at paras 86-87.

¹² Order F17-33, 2017 BCIPC 35 at para 17; Order F17-39, 2017 BCIPC 43 at paras 46-47; Order F20-37, 2020 BCIPC 43 at para 45.

¹³ Order F24-03, *supra* note 11 at para 125.

¹⁴ *Ibid* at para 121.

¹⁵ Ministry’s reply submission at para 5.

[31] I also find that these records were not created by “a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body”. As set out above, the context provided by the documents themselves satisfies me that they were created by Ministry employees for use by the Ministry. There is nothing indicating that these employees were established as a task force, committee, council, or similar body to, for example, advise the Ministry on municipal policing transitions. Instead, I find these Ministry employees created the records for internal use as part of their normal, routine duties.

[32] In conclusion, I find that s. 13(2)(k) does not apply to the records in dispute under s. 13(1). I have considered whether the information in dispute falls into any of the other categories listed in s. 13(2) and find that it does not.

Section 13(3)

[33] The Ministry’s affidavit evidence states that the information in dispute under s. 13(1) is less than 10 years old. I can see that the Evaluation Guide is dated January 2020. The Surrey Document is not dated, but the Ministry submits that it was written in 2019 or thereabouts. While the Ministry’s submissions and evidence about the age of the Surrey Document is vague, I can see that this record is about the Surrey police transition, which did not officially begin until November 2018 and was initially approved by the Ministry in February 2020.¹⁶ There is nothing before me that suggests the information in the records has been in existence for 10 years or more. I am satisfied that s. 13(3) does not apply to the information in dispute.

[34] In conclusion, I find that the Ministry is authorized to withhold all the information in dispute under s. 13(1).

Exercise of discretion

[35] Section 13(1) is a discretionary exception to disclosure and the head of a public body must properly exercise its “discretion in deciding whether to refuse access to information, and upon proper considerations.”¹⁷ If the head of the public body has failed to exercise discretion, the Commissioner can require the head to do so. The Commissioner can also order the head of the public body to reconsider the exercise of discretion where “the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account relevant considerations.”¹⁸

¹⁶ Director’s affidavit at Exhibit A, page 5, para 2.

¹⁷ Order 02-50, 2002 CanLII 43486 (BC IPC) at para 144.

¹⁸ *John Doe*, *supra* note 4 at para 52; see also Order 02-50, 2002 CanLII 43486 (BC IPC) at para 144 and Order 02-38, 2002 CanLII 42472 (BCIPC) at para 147.

[36] The applicant submits that the Ministry erred by not exercising its discretion to disclose the information it is authorized to withhold under s. 13(1).¹⁹ The applicant submits that since the Province has already decided how to proceed with the Surrey police transition, disclosure would not impede the Ministry from having full and frank discussions regarding Surrey's or any other municipality's police transition.²⁰ The applicant also submits that a full release of the information in dispute would improve transparency and accountability, as well as confidence in the government.

[37] In response, the Ministry submits that it properly exercised its discretion to withhold the information in dispute under s. 13(1) and that nothing in the evidence remotely suggests that the Ministry exercised its discretion in bad faith or for an improper purpose.²¹ It also submits that the evidence does not suggest that it considered irrelevant considerations or failed to consider relevant circumstances when exercising its discretion under s. 13(1).

[38] The Ministry submits that its extensive reconsideration and disclosure of almost all the information previously in dispute is evidence that it carefully considered its application of s. 13(1).²² It submits there are many instances where it has chosen to disclose information that it would be authorized to withhold under s. 13(1) and that, in doing so, it has demonstrated its good faith efforts to provide the applicant with more information and only withhold information that would reveal its internal deliberative process.²³

[39] Based on my review of the Ministry's submissions, evidence, and reconsideration, I am satisfied that the Ministry has adequately considered whether to disclose the information it is authorized to withhold under s. 13(1), in good faith and based on relevant considerations.

Harm to intergovernmental relations – s. 16

[40] Section 16(1) authorizes a public body to withhold information if disclosure of that information could reasonably be expected to harm intergovernmental relations. The Ministry relies on s. 16(1)(a)(ii). Section 16(1)(a)(ii) reads:

16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

¹⁹ Applicant's submission at para 38.

²⁰ *Ibid* at para 40.

²¹ Ministry's reply submission at para 18.

²² *Ibid* at para 19.

²³ *Ibid* at paras 20-21.

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

(ii) the council of a municipality or the board of a regional district;

[41] The phrase “could reasonably be expected to” means that a public body must establish there is a “reasonable expectation of probable harm”. To demonstrate a reasonable expectation of probable harm, a public body does not need to prove that disclosure will in fact result in harm or even that such harm is probable. Instead, a public body must provide evidence of a risk of harm that is “well beyond” or “considerably above” the merely possible or speculative.²⁴ The evidence must be detailed enough to establish specific circumstances under which disclosure of the information in dispute could reasonably be expected to result in the contemplated harm.²⁵

[42] A public body must also show that the disclosure of the information itself could reasonably be expected to result in the harm contemplated.²⁶ In other words, there must be a clear and direct connection between the disclosure of the information in dispute and the harm that is alleged.²⁷

[43] The Ministry is withholding the following three types of information under s. 16(1)(a)(ii):

1. Information about the Surrey police transition (Surrey Information).
2. Information about other entities that the Ministry calls “other governments” (Entity Information).
3. Information in the Evaluation Guide (Definition Information).

Ministry’s submissions

[44] The Ministry provides affidavit evidence from its Director of Police Model Transitions (Director) to support its submissions. The Ministry emphasizes the Director’s experience and expertise in intergovernmental relationships,

²⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras 52-66 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para 93.

²⁵ Order 02-50, 2002 CanLII 42486 (BCIPC) at para 137.

²⁶ *British Columbia (Minister of Citizens’ Services) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para 43-44.

²⁷ Order F19-10, 2019 BCIPC 12 at para 31; Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

particularly in the policing field.²⁸ It submits that the Director “is well-placed to assess the sensitivity of the Records and the intergovernmental harms disclosure could reasonably be expected to cause in the circumstances.”²⁹ The Ministry also submits that “there is no basis on the evidence in this inquiry for the Commissioner or his delegates to substitute their opinion or belief for that of the Ministry’s highly experienced affiant.”³⁰

[45] The Director states:

- the Surrey Information is “specific actions and requirements related to Surrey’s police transition, which may or may not have been adopted or required by the Ministry”.³¹
- the Entity Information is information related to other governments’ policing arrangements, which may require further planning, negotiation, or implementation.³²
- the Definition Information is a narrow interpretation of what adequate and effective policing means under s. 2 of the *Police Act*.³³

[46] The Director describes all the information in dispute as “sensitive”³⁴ and states that “the potential negative impacts of sharing sensitive information can include harm to partnerships, engagements, communications, and negotiations”.³⁵

[47] The Ministry submits that disclosing the information in dispute could reasonably be expected to result in harm to the Province’s relations with both Surrey and other municipalities. More specifically, the harms the Ministry contemplates are harms to the Province’s relations with:

- 1) the entities the Ministry calls “other governments”, as a result of disclosure of the Entity Information.³⁶

²⁸ Ministry’s initial submission at paras 56-57.

²⁹ Ministry’s reply submission at para 27.

³⁰ *Ibid* at footnote 19, citing *University of British Columbia v. Lister*, 2018 BCCA 139 at para 47; and *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354 at para 99.

³¹ Director’s affidavit at para 43.

³² *Ibid* at para 46.

³³ *Ibid* at paras 38 and 40; Section 2 of the *Police Act* states: “The minister must ensure that an adequate and effective level of policing and law enforcement is maintained throughout British Columbia.”

³⁴ *Ibid* at para 50.

³⁵ *Ibid* at para 49.

³⁶ *Ibid* at para 46.

- 2) Surrey, given the contentious nature of the Surrey police transition, the delays in this transition, and Surrey's reluctance to engage with the Province on the subject.³⁷
- 3) municipalities, more generally, as a result of these municipalities using the Definition Information to challenge the Ministry's interpretation of or authority under the *Police Act*³⁸ or using the information in dispute to make decisions about policing in their own jurisdictions.³⁹

[48] I provide more details about the evidence the Ministry uses to support these submissions in my analysis, below.

Applicant's submissions

[49] The applicant submits that the harms the Ministry contemplates are speculative⁴⁰ and the Ministry has vastly exaggerated the potential harm that could come from the disclosure of the information in dispute under s. 16(1).⁴¹

[50] The applicant submits the Ministry has not established a direct link between disclosure of the information withheld under s. 16(1) and harm to its relationship with Surrey. To support this point, the applicant references the Ministry's submissions that state that Surrey has already expressed significant reluctance to engage with the Province, has failed to appear at engagement sessions and negotiations, and has sought judicial review of the Minister's decision directing Surrey to continue its transition to SPS.⁴² I understand the applicant to be arguing that Surrey's reluctance to engage with the Province about its policing transition, and the corresponding delays, already exist and would not be the result of disclosure of the information in dispute.

[51] The applicant also submits that municipalities are sophisticated bodies that are watching the entire Surrey transition process, including the Minister exerting his authority, the Province amending the *Police Act*, and the judicial review and, as a result, are unlikely to look at the small amount of information currently withheld under s. 16(1) and choose a path that is adversarial and contentious as a result.⁴³

³⁷ Director's affidavit at paras 44, 45, 51, and 52.

³⁸ Ministry's initial submission at para 64; Director's affidavit at paras 39-42.

³⁹ Ministry's initial submission at paras 69-71; Director's affidavit at paras 47-48.

⁴⁰ Applicant's submission at paras 56-57.

⁴¹ *Ibid* at para 58.

⁴² *Ibid* at para 66.

⁴³ *Ibid* at para 58.

[52] The applicant submits that, even if municipalities question the Minister's interpretation of or authority under the *Police Act*, this outcome will not harm the Province's relationships with those municipalities because such disagreements are "a natural and inherent part of our political system" and ensure the Province acts reasonably.⁴⁴

Analysis

[53] For the reasons that follow, I find that the Ministry has not established that s. 16(1)(a)(ii) applies to the information in dispute.

[54] I find the information in dispute is not, on its face, sensitive and the Director's general assertion that it is sensitive, without more support or reference to specific information, is not persuasive.

[55] The Ministry repeatedly states that it did not adopt the information in dispute. It includes this qualifier in both its description of the information and its Explanatory Note. The Director states that the purpose of the Explanatory Note is to prevent or mitigate the possibility of public misunderstanding or misinterpreting the records and to address the incorrect assumptions and inaccuracies the records contain.⁴⁵

[56] The Surrey Document has the word draft in its title and a "DRAFT" watermark across every page. The Evaluation Guide contains suggested edits made using track-changes and comment boxes in the margins. In my view, these details further signal to the reader that the information contained in the document may not be representative of the Ministry's views.

[57] The Director states that disclosure of the Entity Information could harm the Province's relationships with the entities referenced in this information or disrupt these entities' policing service arrangements. However, the Ministry has not explained, and, therefore, has not established, how these entities qualify as "the council of a municipality or the board of a regional district" or their agencies, as required under s. 16(1)(a)(ii). Further, the Ministry has failed to provide sufficient detail for me to conclude that disclosing this information could reasonably be expected to harm the Province's relations with these entities.

[58] The Ministry submits that disclosing the information in dispute, all of which it considers sensitive, may harm the Province's relations with Surrey, given the contentious nature of the Surrey police transition and Surrey's reluctance to engage with the Province on the subject. I accept, based on the Director's extensive evidence, that the Province's relationship with Surrey has been strained, difficult, and highly contentious since 2022. I also accept, given the pre-

⁴⁴ Applicant's submission at para 59.

⁴⁵ Director's affidavit at para 25.

existing conflict, that disclosure of sensitive information could cause relations between the Province and Surrey to worsen. However, as I found above, the Ministry has not established that any of the information in dispute is sensitive. Other than asserting that the information is sensitive, the Ministry does not explain the connection between disclosure of the specific information in dispute and the harm the Ministry contemplates. As a result, I find that the Ministry has not established that disclosing the information in dispute could reasonably be expected to harm the conduct of relations between the Province and Surrey.

[59] The Director states that disclosure of the Definition Information “may embolden municipalities to challenge decisions by the Minister based on their own interpretation of what ‘adequate and effective’ policing means.”⁴⁶ She uses the dispute between the Province and Surrey about Surrey’s police transition as an example of a disagreement between the Province and a municipality about the interpretation of adequate and effective policing.⁴⁷ I accept that the Province and municipalities may have differing views of how to interpret the *Police Act* and that this difference of opinion ultimately resulted in strained relations between the Province and Surrey in the context of Surrey’s transition to SPS. However, in my view, the Province having a strained relationship with Surrey about policing does not support the Ministry’s conclusion that disclosure of the Definition Information, which the Ministry did not establish is sensitive and that is not representative of the Ministry’s views, could reasonably be expected to result in the Province having similarly strained relations with other, unspecified, municipalities.

[60] With respect to the Surrey Information, the Director states:

“[disclosure of the Surrey Information] could be harmful to other municipalities considering a policing model transition because it sets out expectations about policing model transition requirements [... and] could provide others with opportunities to use information in unintended ways in the context of the Surrey police transition. This, in turn, could cause ripple effects that could damage the Province’s relationships with other municipalities.

[...] municipalities are following the Surrey police model transition in the media and may use publicly available information to make decisions within their jurisdictions.”⁴⁸

[61] I find this evidence is vague and, therefore, unpersuasive. The Ministry does not identify any specific municipalities that are considering policing transitions nor elaborate on what it means by “others”, “unintended ways”, or “ripple effects”. Importantly, the Ministry has not adequately explained how municipalities using the information in dispute to make decisions about policing

⁴⁶ Director’s affidavit at para 42.

⁴⁷ *Ibid* at para 41.

⁴⁸ *Ibid* at paras 47-48.

within their jurisdictions could reasonably be expected to result in harm to the Province's relations with these, or other, municipalities or a regional district.

[62] The Ministry submits that the Explanatory Note may not be sufficient to dissuade misperceptions about the process through which municipalities can change their policing model.⁴⁹ The Director states that the Ministry is “concerned that the narrative about the Surrey transition could easily overshadow the cautions set out in the explanatory note.”⁵⁰ However, previous OIPC orders have consistently found that a public body's fears that the public or potential readers might misinterpret or fail to understand the information, if disclosed, is not a persuasive basis for withholding information under FIPPA's harm-based exceptions.⁵¹ In the specific circumstances of this inquiry, I find that the Ministry has not established that it is reasonable to expect the information in dispute to be misinterpreted, particularly since there are other indicators in the records themselves that the information in dispute is not representative of the Ministry's views.⁵² I further find that the Ministry has not sufficiently explained how the misinterpretation it contemplates could reasonably be expected to result in harm to the Province's relations with a municipality or regional district.

[63] In conclusion, I find that the Ministry has not established that s. 16(1)(a)(ii) applies to any of the information in dispute.

[64] For clarity, in making my findings I have given significant weight to the Ministry's evidence from its Director because I accept that she has expertise and experience in intergovernmental relations in the context of policing,⁵³ has reviewed the records responsive to the applicant's request, and worked on the Ministry's reconsideration.⁵⁴ However, her evidence contains several general assertions that are either vague, speculative, or not supported by her other evidence or the evidence in the records themselves. The Ministry has the burden to prove its claim that s. 16(1)(a)(ii) applies to the information in dispute and, in the circumstances, has not done so.

⁴⁹ Ministry's initial submission at para 70.

⁵⁰ Director's affidavit at para 47.

⁵¹ Order F22-35, 2022 BCIPC 39 at paras 64-77. Order F11-35, 2011 BCIPC 44 at para 7; Order F11-23, 2011 BCIPC 29 at para 40; Order F10-06, 2010 BCIPC 9 at paras 129-131.

⁵² These indicators include the draft status of the records as well as the comments and suggested changes that they contain.

⁵³ The Director states she has worked in the Policing and Security Branch of the Ministry since the early 2000s, has worked in management positions since 2014, and became director in November 2020. She states that, over her almost 25-year career, she has gained numerous colleagues, for example in the RCMP and Indigenous policing, that she regularly consults and collaborates with about intergovernmental relationships.

⁵⁴ Director's Affidavit at para 20-21.

CONCLUSION

[65] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. I confirm the Ministry's decision to refuse to disclose the information it withheld under s. 13(1).
2. The Ministry is not authorized to refuse to disclose the information it withheld under s. 16(1)(a)(ii) and is required to give the applicant access to this information.
3. The Ministry must concurrently copy the OIPC registrar of inquires on its cover letter and the records it sends to the applicant in compliance with item 2 above.

[66] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **August 30, 2024**

July 18, 2024

ORIGINAL SIGNED BY

Rene Kimmett, Adjudicator

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