

# INTERPRETATION BULLETIN

## Law Enforcement

This interpretation bulletin outlines the factors for determining whether the law enforcement exemption applies to a record as set out in section 14 of the *Freedom of Information and Privacy Protection Act* (FIPPA) and section 8 of the *Municipal Freedom of Information and Privacy Protection Act* (MFIPPA). This document defines the key aspects of the exemptions. It also includes details about exceptions to the exemptions.

### Sections 14(1) and (2) of FIPPA and 8(1) and (2) of MFIPPA state:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
- (a) interfere with a law enforcement matter;
  - (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
  - (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
  - (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
  - (e) endanger the life or physical safety of a law enforcement officer or any other person;
  - (f) deprive a person of the right to a fair trial or impartial adjudication;



- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
  - (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
  - (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
  - (j) facilitate the escape from custody of a person who is under lawful detention;
  - (k) jeopardize the security of a centre for lawful detention; or
  - (l) facilitate the commission of an unlawful act or hamper the control of crime.
- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
  - (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
  - (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
  - (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

## What is the purpose of these exemptions?

Sections 14(1) and (2) of FIPPA and 8(1) and (2) of MFIPPA enable institutions to withhold access to certain documents and information connected to a law enforcement matter where a specified event or harm could reasonably result from its disclosure. The potential harm must relate to effective conduct of law enforcement activities or the personal security, rights or liabilities of particular individuals.

The exemptions are discretionary, and intended to be limited and specific.<sup>1</sup> The institution bears the responsibility to show that the exemption applies and that the head or delegate has exercised their discretion to apply it. The institution holding the record does not need to be the institution conducting the law enforcement matter for the exemption to apply.<sup>2</sup>

<sup>1</sup> *Ontario (Attorney General) v. Fineberg* (1994) CanLII 10563 (ONSC).

<sup>2</sup> Order [PO-2085](#).

An institution may be found to have erred in exercising its discretion where for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.<sup>3</sup>

## Law Enforcement

The term law enforcement<sup>4</sup> is defined in section 2(1) of FIPPA and MFIPPA as:

- (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)

Law enforcement proceedings can be criminal or regulatory in nature.

The Office of the Information and Privacy Commissioner of Ontario (IPC) has found that law enforcement can include:

- regulatory investigations of human rights complaints under the *Ontario Human Rights Code*;<sup>5</sup>
- a municipality's investigation into a possible violation of a municipal by-law;<sup>6</sup>
- a police investigation into a possible violation of the *Criminal Code*;<sup>7</sup>
- a children's aid society investigation under the *Child and Family Services Act*;<sup>8</sup>
- investigations of alleged wrongdoing pursuant to complaints made under the *Gaming Control Act*;<sup>9</sup>
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act*.<sup>10</sup>

In contrast, the IPC has found the following not to be law enforcement:

- internal employee investigations by an institution acting as employer and not in the course of enforcing and regulating compliance with a law;<sup>11</sup>

3 Order [PO-3560-I](#).

4 The term "law enforcement" appears in many, but not all, parts of sections 14 of FIPPA and 8 of MFIPPA.

5 Order [P-363](#), affirmed in [Ontario \(Human Rights Commission\) v. Ontario \(Information and Privacy Commissioner\)](#), Toronto Doc. 721/92 (Div. Ct.). See also: Orders [P-89](#) and [MO-2007](#).

6 Orders [M-16](#) and [MO-1245](#).

7 Orders [M-202](#) and [PO-2085](#).

8 Order [MO-1416](#).

9 Order [PO-2891](#).

10 Order [MO-1337-I](#).

11 Orders [P-157](#) and [P-192](#).

- student disciplinary investigations;<sup>12</sup>
- a Coroner’s investigation or inquest under the *Coroner’s Act*, which lacked the power to impose sanctions or penalties.<sup>13</sup>

Involvement or interest of police in alleged offences does not transform an internal investigation into a law enforcement investigation.<sup>14</sup>

If an investigation is conducted into potential breaches of the *Criminal Code*, this would be considered law enforcement. For example, an investigation that was conducted by an institution with a view to laying charges for provincial offences, was considered law enforcement.<sup>15</sup>

However, if no charges were laid and an investigation to lay charges was not continued, it would no longer be law enforcement.<sup>16</sup>

## Reasonable expectation of harm

Many of the law enforcement exemptions listed in sections 14 of FIPPA and 8 of MFIPPA apply when a certain event or harm could reasonably be expected to result from disclosure of the record. The exemptions should be approached in a sensitive manner because it is hard to predict future events in the law enforcement context. Care must be taken not to harm ongoing law enforcement investigations through disclosure of the requested record.<sup>17</sup> However, the exemption does not apply just because a continuing law enforcement matter exists.<sup>18</sup>

Parties resisting disclosure of a record cannot simply assert that harms described in sections 14 of FIPPA and 8 of MFIPPA are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. Harm can sometimes be inferred from the records themselves and/or the circumstances. However, parties should not assume that the harms under section 14 of FIPPA and 8 of MFIPPA are self-evident and can be proven simply by repeating the description of harms in the act.<sup>19</sup>

Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>20</sup> They do not, however, need to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>21</sup> To be reasonable, there must be some logical

12 Orders [MO-1753](#) and [PO-2967](#).

13 Order [P-1117](#).

14 Order [M-258](#).

15 Order [PO-1838](#).

16 Order [PO-2967](#).

17 [Ontario \(Attorney General\) v. Fineberg](#) (1994) CanLII 10563 (ONSC).

18 Order [PO-2040](#) and [Ontario \(Attorney General\) v. Fineberg](#), cited above.

19 Orders [MO-2363](#) and [PO-2435](#).

20 [Merck Frosst Canada Ltd. v. Canada \(Health\)](#), 2012 SCC (CanLII).

21 [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.

connection between disclosure and the potential harm.<sup>22</sup> The connection need not be established on a balance of probabilities or be a causal link but merely a connection.<sup>23</sup>

## Sections 14(1) of FIPPA and 8(1) of MFIPPA exemptions

The exemptions under sections 14(1) FIPPA and 8(1) MFIPPA will apply where the institution can successfully demonstrate that the harms enumerated under paragraphs (a) to (l) could reasonably be expected to occur.

### Sections 14(1)(a) of FIPPA and 8(1)(a) of MFIPPA: interfere with a law enforcement matter

For sections 14(1)(a) of FIPPA and 8(1)(a) of MFIPPA to apply, the institution must demonstrate that disclosure would reasonably be expected to interfere with a law enforcement matter that exists or is ongoing.<sup>24</sup> This exemption does not apply once the matter is completed, nor where the alleged interference is with potential law enforcement matters.<sup>25</sup> In certain cases, completed may mean the time for appealing any penalty has expired or the appeal process is concluded.<sup>26</sup>

Matter has a broader meaning than investigation or proceeding and does not have to mean a specific investigation or proceeding.<sup>27</sup>

### Sections 14(1)(b) of FIPPA and 8(1)(b) of MFIPPA: interfere with a law enforcement investigation

For sections 14(1)(b) of FIPPA and 8(1)(b) of MFIPPA to apply, the institution must show that disclosure could reasonably be expected to interfere with a law enforcement investigation. Similar to sections 14(1)(a) of FIPPA and 8(1)(a) of MFIPPA, the law enforcement investigation must be a specific, ongoing investigation that exists or is continuing.<sup>28</sup> Investigations that last for many years or decades may be considered ongoing for the purposes of these sections.<sup>29</sup>

The exemption does not apply where the investigation is completed, or where the alleged interference is with potential law enforcement investigations.<sup>30</sup>

22 Order **P-948**.

23 *Liquor Control Board of Ontario v. Ontario (Information and Privacy Commissioner)*, 2024 ONCA 803 (CanLII).

24 Order **PO-2657**.

25 Orders **PO-2085** and **MO-1578**.

26 Order **P-482**.

27 *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC)

28 Order **PO-2657**.

29 Order **MO-2909-I**.

30 Order **PO-2085**.

## Sections 14(1)(c) of FIPPA and 8(1)(c) of MFIPPA: reveal investigative techniques and procedures

For sections 14(1)(c) of FIPPA and 8(1)(c) of MFIPPA to apply, the institution must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use.<sup>31</sup> The exemption normally will not apply where the technique or procedure is generally known to the public<sup>32</sup> or already accessible in publicly available documents.<sup>33</sup>

The exemption has been found to apply to some techniques used in responding to domestic violence,<sup>34</sup> the process for obtaining a search warrant,<sup>35</sup> methods used to investigate child pornography,<sup>36</sup> a city's red light camera program,<sup>37</sup> and techniques used to investigate unlawful activity involving wildlife.<sup>38</sup>

The technique or procedure must be investigative; that is, it must be related to investigations. The exemption does not apply to enforcement-related techniques or procedures. For example, it has been found not to apply to descriptions of police formations when dealing with crowds,<sup>39</sup> instructions to staff at Ontario's Family Responsibility Office,<sup>40</sup> child and spousal support documents,<sup>41</sup> or forensic science manuals where the requested information was made available to the requester.<sup>42</sup>

## Sections 14(1)(d) of FIPPA and 8(1)(d) of MFIPPA: disclose the identity of a confidential source or information furnished by a confidential source

The exemption detailed in section 14(1)(d) of FIPPA and 8(1)(d) of MFIPPA is intended to protect the identity of people who provide information to an institution related to a law enforcement matter. The institution must show that it was reasonable to expect that the identity of the source or the information given by the source would remain confidential in the circumstances.<sup>43</sup> This includes, for example, the identity of complainants in a municipal by-law enforcement matter where the complainant has a reasonable expectation of confidentiality.<sup>44</sup>

31 Order [MO-2356](#).

32 Orders [P-170](#), [P-1487](#), and [PO-2751](#).

33 Order [MO-2347-I](#).

34 Order [MO-2347-I](#) and [PO-3013](#).

35 Order [MO-1633-I](#).

36 Orders [PO-2751](#) and [PO-3052](#).

37 Order [MO-2715](#).

38 Order [PO-4096](#).

39 Order [MO-2730](#).

40 Order [PO-2034](#).

41 Order [P-1340](#).

42 Order [PO-1487](#).

43 Order [MO-1416](#).

44 Orders [M-147](#) and [MO-2716](#).

The exemption also protects the information given by the confidential source. However, when it is determined that the information would not identify the confidential source, and it is possible to sever the details from the record, the remaining information will not be exempt.<sup>45</sup>

## Sections 14(1)(e) of FIPPA and 8(1)(e) of MFIPPA: endanger life or physical safety of a law enforcement officer or any other person

For sections 14(1)(e) of FIPPA and 8(1)(e) of MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information could be expected to endanger someone's life or physical safety. Merely claiming that the possible endangerment to one's life or safety is self-evident is not sufficient. A person's subjective fear, or their sincere belief that they could be harmed, while important, is not enough on its own to establish this exemption.<sup>46</sup>

Disclosure of similar records in the past which did not result in the alleged harm is a consideration but not a determining factor.<sup>47</sup>

This exemption was upheld for abortion-related records. The records could, if distributed further, reasonably be expected to endanger the life or safety of individuals associated with the abortion facilities.<sup>48</sup> It was also found to apply to a screening questionnaire for individuals applying for a firearms certificate.<sup>49</sup> In contrast, the exemption was not upheld for records containing the first three digits of postal code areas where sex offenders lived for fear of possible harm.<sup>50</sup>

The term person is not necessarily limited to a specific individual. It can include the members of an identifiable group or organization.<sup>51</sup>

## Sections 14(1)(f) of FIPPA and 8(1)(f) of MFIPPA: fair trial or adjudication

To establish that section 14(1)(f) of FIPPA and 8(1)(f) of MFIPPA applies, the institution must show that there is a real and substantial risk of interference with the right to a fair trial or impartial adjudication or could confuse or predispose potential jurors.<sup>52</sup>

This exemption will not apply if there is only a remote chance or speculation that an individual's right to a fair trial or adjudication could be jeopardized.<sup>53</sup>

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45 Order [MO-2238](#).

46 Orders [PO-2003](#) and [MO-2011](#).

47 Order [P-1499](#).

48 Order [P-1499](#), *supra*.

49 Order [M-767](#).

50 Order [PO-2811](#), upheld in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII).

51 Order [PO-1817-R](#).

52 Order [P-1413](#).

53 Order [P-948](#); *Dagenais v. Canadian Broadcasting Corp.* (1994), 1994 CanLII 39 (SCC); and Order [PO-2037](#), upheld on judicial review in *Ontario (Attorney General) v.*

The IPC has guarded against the facile assumption that fair trial rights could be prejudiced by disclosure of records. There must be some rational connection between the two.<sup>54</sup>

Whether disclosure of records will have an impact on a party's right to a fair trial must be decided on the facts of each case.<sup>55</sup> This requires more than a passing consideration of whether any information in the record might relate to the trial in question.

A claim that a complainant's testimony might be influenced<sup>56</sup> or that the public's viewing of record would impact a proceeding<sup>57</sup> did not establish the exemption. Absent in both cases was sufficiently detailed evidence demonstrating how disclosure could reasonably be expected to deprive an individual of their right to a fair proceeding.

## Sections 14(1)(g) of FIPPA and 8(1)(g) of MFIPPA: law enforcement intelligence information

For these sections to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to interfere with the gathering of or reveal law enforcement intelligence information.

The term intelligence information has been defined in the case law as:

Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence.<sup>58</sup>

Records created for a background check on a police service applicant,<sup>59</sup> reports regarding money laundering and suspicious transactions,<sup>60</sup> surveillance information about a specific individual,<sup>61</sup> and a list of workplaces earmarked for proactive inspection<sup>62</sup> have all been found exempt.

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*Ontario (Information and Privacy Commissioner)*, (2003) CanLII 40720 (ON SC).

54 Order **P-1413**.

55 Order **PO-2490**.

56 Order **M-362**.

57 Order **MO-4566**.

58 Orders **M-202**, **MO-1261**, **MO-1583**, and **PO-2751**. See also order **PO-2455**, confirmed in *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC).

59 Order **MO-1261**.

60 Order **PO-4080**.

61 Order **MO-1754**.

62 Order **PO-2330**.



## Sections 14(1)(h) of FIPPA and 8(1)(h) of MFIPPA: record confiscated by a peace officer

For these sections of FIPPA and of MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information could reveal a record which has been confiscated by a peace officer in accordance with an act or regulation.

The purpose of this exemption is to protect records that have been confiscated or seized by search warrant.<sup>63</sup> There is no application to physical items (clothing, bags and other personal items).<sup>64</sup>

This exemption applies when:

- the record itself was confiscated from a person by a peace officer in accordance with an act or regulation, or
- where disclosing the record could reasonably be expected to reveal another record confiscated from a person by a peace officer, in accordance with an act or regulation.<sup>65</sup>

Search warrant materials<sup>66</sup> and cell phone records from a voluntarily handed over phone<sup>67</sup> were found to be exempt. In contrast, a video not confiscated via warrant was not found to be exempt.<sup>68</sup>

## Sections 14(1)(i) of FIPPA and 8(1)(i) of MFIPPA: security of a building, vehicle, system or procedure

For these sections of FIPPA and MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items reasonably requiring protection. The type of services provided at a facility, or the individuals who access those services, may have implications for the characterization of a building's use in connection with the expected danger.<sup>69</sup>

This exemption is not restricted to law enforcement situations. It can cover any building, vehicle, system or procedure that requires protection, even if those items are not connected to law enforcement.<sup>70</sup>

63 Order [PO-2095](#).

64 Order [MO-2424](#).

65 Order [M-610](#).

66 Order [PO-2728](#).

67 Order [MO-4454](#).

68 Order [MO-4119](#).

69 Order [MO-2986](#).

70 Orders [P-900](#) and [PO-2461](#).

Records relating to: animal research,<sup>71</sup> design documents of a transit system,<sup>72</sup> bingo gaming system materials,<sup>73</sup> surveillance cameras at an identified detention centre,<sup>74</sup> and floor plans of a government building<sup>75</sup> were all found to be exempt.

## Sections 14(1)(j) of FIPPA and 8(1)(j) of MFIPPA: escape from custody

For sections 14(1)(j) of FIPPA and 8(1)(j) of MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the escape of a person from custody.<sup>76</sup>

Construction plans of a maximum-security facility<sup>77</sup> and a detailed diagram containing courthouse information<sup>78</sup> were found to be exempt. In another case, historical plans of an old jail were not exempt since the plans were not related to present day security arrangements.<sup>79</sup>

## Sections 14(1)(k) of FIPPA and 8(1)(k) of MFIPPA: security of a detention centre

For sections 14(1)(k) of FIPPA and 8(1)(k) of MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to jeopardize the security of a detention centre.

Information of a correctional facility contained in a security audit<sup>80</sup> and video security footage<sup>81</sup> were found to be exempt as both routine and non-routine information therein could be exploited by a knowledgeable person, which could reasonably be expected to jeopardize the security of a correctional facility. Also exempt were the specific procedures followed by staff when responding to an emergency and the hourly schedule of staff.<sup>82</sup>

## Sections 14(1)(l) of FIPPA and 8(1)(l) of MFIPPA: unlawful act or hamper the control of crime

For these sections of FIPPA and MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate or hamper the control of crime.

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71 Order [PO-2197](#).

72 Order [PO-4490-I](#).

73 Order [PO-3670](#).

74 Order [PO-3723](#).

75 Order [P-900](#).

76 Order [P-187](#).

77 Order [P-187](#).

78 Order [PO-4491](#).

79 Order [MO-2300](#).

80 Order [PO-2332](#).

81 Order [PO-3905](#).

82 Order [PO-4428](#).

In one case, disclosure of various police and Ontario Provincial Police codes such as ten codes, location codes and Canadian Police Information Centre access/transmission codes were found exempt.<sup>83</sup> Likewise, in another case, records containing police codes were also found to be exempt.<sup>84</sup>

## Section 14(2) FIPPA and 8(2) MFIPPA exemptions

Under sections 14(2) of FIPPA and 8(2) of MFIPPA, there are certain exemptions relating to law enforcement that institutions can apply without having to show reasonable expectation of harm.

### Sections 14(2)(a) of FIPPA and 8(2)(a) of MFIPPA: law enforcement report

For a record to be exempt under sections 14(2)(a) of FIPPA and 8(2)(a) of MFIPPA, it must be

1. a report,
2. prepared in the course of law enforcement, inspections or investigations, and
3. prepared by an agency that has the function of enforcing and regulating compliance with a law.<sup>85</sup>

A report is a formal statement or account of the results of the gathering and consideration of information. Results do not generally include mere observations or recordings of fact.<sup>86</sup> The title of a document does not necessarily determine whether it is a report, although it may be a relevant consideration when making that determination.<sup>87</sup>

Police occurrence reports, inspection reports or special investigation unit reports are not considered reports if they contain only facts and observations.<sup>88</sup> If there is more than one record, each record should be considered independently for exemption.<sup>89</sup>

### Sections 14(2)(b) of FIPPA and 8(2)(b) of MFIPPA: disclosure as an offence

Sections 14(2)(b) of FIPPA and 8(2)(b) of MFIPPA provide an exemption for a law enforcement record if its disclosure would constitute an offence under an act of parliament.

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83 Order **PO-3338**.

84 Order **PO-3170**.

85 Orders **P-200** and **P-324**.

86 Orders **P-200**, **MO-1238** and **MO-1337-I**.

87 Order **MO-1337-I**.

88 Order **PO-3212**.

89 Orders **PO-3003** and **PO-1959**.

## Sections 14(2)(c) of FIPPA and 8(2)(c) of MFIPPA: exposure to civil liability

These sections provide an exemption for a law enforcement record if its disclosure could reasonably be expected to expose its author (or anyone who has been quoted or paraphrased in the record) to civil liability.

The purpose of this exemption is to protect individuals who have provided information or created a record during a law enforcement investigation, which may expose them to civil liability (payment of monetary damages or other penalties as a result of a civil lawsuit). The exemption is not intended to protect a police officer's routine recordings of observations and actions.<sup>90</sup>

## Sections 14(2)(d) of FIPPA and 8(2)(d) MFIPPA: person under the control or supervision of a correctional authority

Sections 14(2)(d) of FIPPA and 8(2)(d) of MFIPPA exempt a record that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. The purpose is to allow an appropriate level of security with respect to the records of individuals in custody. The exemption cannot apply to the records of an individual whose term of correctional supervision has expired.<sup>91</sup>

A record containing information about the requester when incarcerated, was found not to be exempt under this section as a person should not be denied access to their own information using this exemption.<sup>92</sup>

## Sections 14(3) of FIPPA and 8(3) of MFIPPA: refusal to confirm or deny the existence of a record

These sections of FIPPA and MFIPPA grant an institution the discretion to refuse to confirm or deny the existence of a record in some circumstances where an exemption in sections 14(1) or 14(2) of FIPPA and 8(1) and 8(2) of MFIPPA applies to the record.

The purpose of these sections is to allow law enforcement agencies to withhold information if it is necessary for them to carry out their mandate or to avoid compromising the effectiveness of their law enforcement or intelligence gathering activities. However, it is rare that disclosure of the mere existence of a record would prevent an ongoing investigation or intelligence-gathering activity from continuing.<sup>93</sup>

To rely on sections 14(3) of FIPPA and 8(3) of MFIPPA, the institution must show that:

1. the record (if it exists) would qualify for exemption under sections 14(1) or (2) of FIPPA and 8(1) or 8(2) of MFIPPA, and

<sup>90</sup> Order [MO-1192](#).

<sup>91</sup> Order [P-352](#).

<sup>92</sup> Orders [P-98](#) and [P-460](#).

<sup>93</sup> Orders [P-255](#) and [PO-1656](#).

2. disclosure of the fact that a record exists (or does not exist) would itself convey information that could reasonably be expected to compromise the effectiveness of an existing or reasonably contemplated law enforcement activity.<sup>94</sup>

Where the discretion has been exercised in accordance with established legal principles, it should not be disturbed on appeal.<sup>95</sup> An improper exercise of discretion would be to take a blanket approach to applying this section in all cases involving a particular type of record.<sup>96</sup>

## Exceptions to the exemptions: sections 14(4) and 14(5) of FIPPA and 8(4) and 8(5) of MFIPPA

Under these exceptions, institutions must mandatorily disclose certain records or information related to law enforcement, notwithstanding the already discussed exemptions.

### Sections 14(4) of FIPPA and 8(4) of MFIPPA: routine inspection report

Sections 14(4) of FIPPA and 8(4) of MFIPPA requires disclosure of material relating to routine inspections and other similar enforcement mechanisms in such areas as health and safety legislation, fair trade practices laws, environmental protection schemes, and many of the other regulatory schemes administered by the government.<sup>97</sup> It reads:

Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Whereas sections 14(2)(a) of FIPPA and 8(2)(a) of MFIPPA create a discretionary exemption for law enforcement reports, the exceptions herein treat such reports differently when they relate to routine inspections by requiring their disclosure.

Generally, inspections resulting from a specific complaint are not considered to be routine inspections.<sup>98</sup> The existence of a discretion to inspect or not to inspect is a factor to consider in deciding whether an inspection is routine.<sup>99</sup> For example, a regular annual inspection that is required by law (that is, it is not discretionary) might be routine, whereas an inspection that is based on a specific complaint or is not part of a regular inspection might not be routine because there is discretion about whether to investigate.

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94 Order [PO-1656](#).

95 Order [P-255](#).

96 Order [P-344](#).

97 Order [PO-1988](#).

98 Orders [P-136](#) and [PO-1988](#).

99 Orders [P-480](#), [P-1120](#) and [PO-1988](#).

## Sections 14(5) of FIPPA and 8(5) of MFIPPA: law enforcement programs

Sections 14(5) of FIPPA and 8(5) of MFIPPA create an exception to the law enforcement exemptions when it comes to records relating to the degree of success of a law enforcement program. Institutions must disclose such information when it meets the following terms:

Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.