Order F15-22

MINISTRY OF JUSTICE

Caitlin Lemiski
Adjudicator

June 3, 2015

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Summary: An applicant requested a copy of the Ministry of Justice's Corrections Branch adult custody policy manual. The Ministry disclosed most of the manual but withheld some information about the control tools staff members use, how often inmates are checked, and how staff members respond to emergencies, under ss. 15(1)(c),(f),(j),(k) and (l) of the *Freedom of Information and Protection of Privacy Act* (harm to law enforcement). The adjudicator determined that, except for a small amount of information related to preserving evidence, the designation of suicidal inmates, some of the methods and technology used to search visitors and inmates, and where control tools are located, the Ministry's evidence does not establish that disclosure could reasonably be expected to cause the harms the Ministry alleged, therefore the Ministry must disclose most of the information it withheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 1 and 15(1),(c),(f),(j),(k), *Correction Act*, s. 2, *Interpretation Act*, [SBC 1996] Ch. 238, s. 29, *Criminal Code* of Canada, ss. 140, 144 and 145.

Authorities Considered: B.C.: Order No. 50-1995, [1995] B.C.I.P.C.D. No. 23; Order 00-39, 2000 CanLII 14404 (BC IPC); Order 02-50, 2002 CanLII 42486 (BC IPC); Order F08-03, 2008 CanLII 13321 (BC IPC), F08-13, 2008 CanLII 41151 (BC IPC); Order F12-03, 2012 BCIPC 3 (CanLII).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3, [2012] 1 S.C.R. 23; *British Columbia (Public Safety and Solicitor General) v. Stelmack*, 2011 BCSC 1244 (CanLII).

INTRODUCTION

[1] This inquiry concerns an applicant's request for a complete copy of the policy manual (the "Manual") that the Ministry of Justice ("Ministry") Corrections Branch staff members ("staff members") use to manage jail inmates.

[2] The Ministry released some of the Manual but withheld other information under ss. 15 (harm to law enforcement), 16 (harm to intergovernmental relations or negotiations), and 22 (harm to personal privacy) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The applicant requested a review of the public body's decision by the Office of the Information and Privacy Commissioner ("OIPC"). Mediation resolved the s. 22 issue but not the Ministry's application of ss. 15 and 16 to the records.[1] The applicant requested that those issues proceed to inquiry. The Ministry subsequently disclosed the information withheld under s. 16,[2] therefore the only issue in dispute is the application of ss. 15(1),(c),(f),(j),(k) and (l) to the records. Both parties provided initial and reply submissions.

ISSUE

[3] The issue in this inquiry is whether the Ministry is authorized under ss. 15(1)(c),(f),(j),(k) or (l) of FIPPA to refuse to disclose parts of the Manual. Part 57(1) of FIPPA places the burden on the Ministry to prove that the applicant has no right of access to the information it is withholding.

DISCUSSION

[4] **Background—**The Corrections Branch ("Corrections") operates a total of nine high and medium security correctional centres throughout the province.[3] The Branch also delivers programs designed to promote public safety and to reduce crime.[4] The applicant is from Prisoners' Legal Services ("PLS"), a project of the West Coast Prison Justice Society. The PLS is a non-profit service providing legal advice, advocacy and representation to inmates. As part of its work, PLS requests access to information about inmates and works to inform them of their rights.[5]

[5] **Record in dispute—**Portions of the Manual are in dispute. The withheld information, which makes up about 15 percent of the 582-page Manual, addresses the use of force, searches, dealing with emergency situations,

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[1] The OIPC Fact Report at para. 4 states that that the applicant took no issue with the information withheld under section 22 of FIPPA.
[2] Ministry's initial submission at para 5. The Ministry disclosed a copy of the information it was withholding from page 380 of the Manual by letter to the Applicant dated October 27, 2014.
[3] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 12 and 13.
[4] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para.10.
[5]Applicant's initial submission at pp. 1 and 11.

escorting inmates off site for appointments, and other information related to supervising inmates.

[6] **Public interest disclosure—**The applicant submits that s. 25(1)(b) requires the Ministry to disclose the disputed information.[6] Section 25 was not identified as an issue in the OIPC Investigator's Fact Report or the Notice of Inquiry issued to the parties. Past orders and decisions of the OIPC have said parties may raise new issues at the inquiry stage, only if they request and receive prior permission to do so.[7]

[7] The applicant had an opportunity during OIPC mediation in which to raise s. 25 of FIPPA. He did not explain why he did not raise the issue prior to his initial submission or why he should be permitted to raise s. 25 at this late stage. Absent any such explanation, I cannot see why he should be permitted to address s. 25 here. In addition, disclosure under s. 25(1) requires that there be a need for disclosure "without delay", and based on my review of the records and the parties' submissions, I cannot see any element of urgency in this case. I therefore will not consider s. 25 any further.

[8] **Policy Manuals available without request—**The applicant also submits that s. 70 of FIPPA is relevant here. Section 70(1) includes a requirement for public bodies to make available to the public, without a request for access under FIPPA, manuals issued to the officers or employees of a public body.

[9] Section 70 was not listed as an issue in the Notice of Inquiry or in the Fact Report, and the applicant does not explain why he did not raise this issue at mediation or why he should be permitted to raise it at this late date. Therefore, I will not consider this issue further. In any case, I note that s. 70(2) states that the head of a public body may delete from a record made available under this section any information he or she would be entitled to refuse to disclose to an applicant. In this case, the Ministry relies on ss. 15(1)(c),(f),(j),(k), and (l) of FIPPA to refuse access to the requested information, and those are the issues before me in this inquiry.

[10] **Section 15 of FIPPA—**The Ministry submits that ss. 15(1)(f),(j),(k) and (l) apply to all of the information in dispute,[8] and that s. 15(1)(c) also applies to some of the information in dispute.[9] These sub clauses are as follows:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
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> …

[6] Applicant's initial submission at p. 16.
[7] Order F12-03, 2012 BCIPC 3 (CanLII) at para. 6.
[8] Public body's initial submission at paras. 5, 24, 31, 33, 41, 42, 44 and 46.
[9] Public body's initial submission at para. 47.

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

…

(f) endanger the life or physical safety of a law enforcement officer or any other person,

…

(j) facilitate the escape from custody of a person who is under lawful detention,

(k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[11] The applicant submits that the Ministry did not provide adequate reasons as to why it was withholding parts of the Manual under various sub clauses of s. 15.[10] Specifically, the applicant submits that the Ministry did not tell him that it was relying on ss. 15(1)(c),(j) and (k) until the Ministry made initial submissions for this inquiry, therefore I should only consider the Ministry's arguments that rely on ss. 15(1)(f) and (l).[11]

[12] The Notice of Inquiry and the OIPC Investigator's Fact Report state that s. 15 is at issue, and the applicant had the opportunity to consider and respond to the Ministry's arguments and evidence regarding ss. 15(1)(c),(f),(j),(k), and (l) when it received the Ministry's initial submissions. I am therefore satisfied that the applicant has had an adequate opportunity to be heard. In conclusion, I will consider whether ss. 15(1)(f),(j),(k), and (l) apply to all of the information in dispute, and where the Ministry is relying on it, s. 15(1)(c) as well.

[13] **Reasonable expectation of harm—**In *Merck Frosst Canada Ltd. v. Canada (Health)*[12] and again in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),*[13] the Supreme Court of Canada explained the standard of proof applicable to exceptions like s. 15 that use the phrase "could reasonably be expected to." In *Ontario (Community Safety and Correctional Services)* the Court stated:

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[10] Public body's initial submission at pp. 6-7.
[11] Applicant's reply submission at p. 1.
[12] *Merck Frosst Canada Ltd. v. Canada (Health),* [2012] 1 SCR 23, 2012 SCC 3 (CanLII).
[13] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 (CanLII).*

> This Court in Merck Frosst adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the "could reasonably be expected to" language is used in access to information statutes. As the Court in Merck Frosst emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible.…[14]

[14] In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* the Supreme Court of Canada further explained the evidentiary burden applicable to exceptions that use the phrase "could reasonably be expected to" as follows:

> …An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground… This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences"… [15]

[15] This is consistent with what former Commissioner Loukidelis stated in Order F08-03:

> As I have said many times before, the evidence required to establish that a harms-based exception like those in ss. 15(1)(a) and (l) must be detailed and convincing enough to establish specific circumstances for the contemplated harm that could reasonably be expected to result from disclosure of the withheld records; it must establish a clear and direct connection between the disclosure of the withheld information and the alleged harm. General speculative or subjective evidence will not suffice.[16]

[16] In summary, the Ministry must prove that there is a reasonable expectation of probable harm that would result from disclosure of the parts of the Manual that are in dispute, and it must provide supporting evidence that is specific, objective, and establishes a direct connection between disclosure and the alleged harm.

ANALYSIS

[17] I will now decide whether the Ministry is authorized under s. 15 to refuse to disclose information in the Manual. I will begin by considering s. 15(1)(c).

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[14] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 (CanLII),* at para. 54.

[15] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 (CanLII),* at para. 54.

[16] Order F08-03, 2008 CanLII 13321 (BC IPC), at para. 27.

Section 15(1)(c)

[18] The Ministry submits that s. 15(1)(c) authorizes it to withhold parts of the following sections of the Manual:

- Section 1.12.17., dealing with conducting strip search procedures (p. 73)
- Section 1.17.7., dealing with detection tools; (p. 94)
- Section 1.18.4., dealing with definitions; (p. 98)
- Section 2.8., dealing with bombs and bio-terrorist threats; (pp. 147-148)
- Section 2.9., dealing with police and Canadian Forces assistance; (pp. 151-153)
- Section 2.10., dealing with protection of evidence; (pp. 155-156)
- Section 9.14., dealing with suicide response. (pp. 481-483)[17]

[19] Section 15(1)(c) authorizes a public body to withhold information if disclosing it could reasonably be expected to "harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement."

[20] FIPPA defines "law enforcement"[18] as

(a) policing, including criminal intelligence operations,

(b) investigations that lead or could lead to a penalty or sanction being imposed, or

(c) proceedings that lead or could lead to a penalty or sanction being imposed;

[21] In this case, I accept the Ministry's submission that Corrections' investigations can lead to a penalty or sanction being imposed under the *Correction Act* or convictions under the *Criminal Code*.[19] I am satisfied that the disputed information includes information staff members would use in these types of investigations. I am also persuaded that because staff members appointed under the *Correction Act* are peace officers,[20] the disputed information includes information staff members would use in policing. I therefore conclude that the activity to which the information in question relates is a "law enforcement" matter.

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[17] Public body's initial submission at para. 47.
[18] See Schedule 1 of FIPPA.
[19] Public body's initial submission at para. 50.
[20] *Interpretation Act,* [RSBC 1996] CH 238, s. 29.

[22] I will next consider whether the information the Ministry has severed under s. 15(1)(c) could reasonably be expected to harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, by law enforcement.

[23] Former Commissioner Flaherty stated the following in Order 50-1995 in regards to the application of s. 15(1)(c):

> I read section 15(1)(c) to cover the protection of technologies and techniques used in law enforcement, not the actual contents of the product of such "investigative techniques and procedures currently used, or likely to be used, in law enforcement," unless disclosure of that information could reveal those investigative techniques and procedures. Thus it may be inappropriate to reveal that policing authorities have a capacity to use high resolution surveillance cameras and that they can manage to read documents or observe persons at considerable distances or under adverse conditions.[21]

[24] In this case, the Ministry submits that it has severed information that discloses investigative procedures and techniques. The Ministry submits that inmates could use this information to harm crime scene investigations and to help inmates to carry out criminal activities undetected.[22]

[25] For example, the Deputy Provincial Director, Adult Custody, Corrections Branch (the "Deputy Director") deposed that disclosing the types of evidence staff members preserve would be harmful because inmates would know what types of evidence they should not leave behind at a scene.[23] He also deposed that revealing some of the steps staff members take when responding to emergencies would be harmful because inmates would know what to anticipate in such situations and they could use that knowledge to harm the security of a correctional centre.[24]

[26] The applicant contends that the information the Ministry has severed is common sense and that the Ministry has not adduced evidence that disclosing it would compromise the effectiveness of the investigative procedures and techniques described in the Manual.[25]

[27] I have reviewed the disputed information and have determined that the Ministry's *in camera* evidence[26] establishes a direct connection between disclosure of one of the steps taken to protect evidence following a critical

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[21] Order 50-1995, [1995] B.C.I.P.D. No. 23 at pp. 6-7.
[22] Public body's initial submission at paras. 51-52.
[23] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 110.
[24] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 108-109.
[25] Applicant's reply submission at pp. 26, 27 and 29.
[26] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 116.

incident (page 156) and one of the emergency procedures related to hanging (page 482), and a reasonable expectation of harm to the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement. Specifically, the Ministry's *in camera* evidence satisfies me that it is not commonly known that this information on pages 156 and 482 would have investigative value, and that if inmates acquired this information, they could use it to destroy or manipulate evidence.[27] This in turn could reasonably be expected to harm an investigation, because certain evidence may not be available to investigators, or they might be misled in their investigations. I cannot describe the type of evidence or the Ministry's *in camera* evidence in greater detail without revealing the actual information in dispute.

[28] The Ministry's evidence also satisfies me that the information the Ministry has severed on pages 73, 94, and 98 that details some of the methods and technology Corrections staff members use to search visitors and inmates entering a correctional centre may be withheld under ss. 15(1)(c). The Ministry submits that disclosing this information would make it easier for an individual to bring contraband into a correctional centre, and the Deputy Director provided a specific *in camera* example of how this could be facilitated if the information were disclosed.[28] I am therefore satisfied that disclosing this information could reasonably be expected to harm the effectiveness of investigative techniques and procedures as set out in s. 15(1)(c).

[29] In all of the other instances where the Ministry relies on s. 15(1)(c) to refuse access to information, I have determined that the Ministry's evidence does not establish that the harm feared could reasonably be expected to result from disclosure. For example, the Ministry has severed information about the role of a third party during hostage taking situations at correctional centres (page 143). The Ministry's evidence has not convincingly addressed how merely knowing that this third party is involved in hostage taking situations could reasonably be expected to harm the effectiveness of investigative techniques or procedures. The *in camera* example the Ministry provides of how an individual could use this information to harm security at a correctional centre[29] is in my view, not persuasive. An individual would have to have access to all kinds of other skills, knowledge, and equipment, and Corrections staff members would have to engage in a concert of failures of their own protocol as set out on page 143, to even attempt the type of scenario the Ministry is alleging. This is far short of the threshold that requires the harm to be reasonably expected from the disclosure of the information.

[30] The Ministry's evidence also does not satisfy me that s. 15(1)(c) authorizes the Ministry to sever any of the emergency procedure information on

[27] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 110 and 116.
[28] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 92.
[29] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 108.

pages 482 and 483 related to attempts at self-harm, other than one part of the information related to one type of self-harm incident on page 482 to which I have already determined s. 15(1)(c) applies.

[31] In summary, I find that the Ministry is not authorized to withhold any of the information it has severed under s. 15(1)(c) with the exception of the highlighted information on pages 73, 94, 98, 156 and 482.

[32] I will next consider to what extent ss. 15(1)(f) and (l) authorize the Ministry to sever information from the Manual.

Sections 15(1)(f) and 15(1)(l)

[33] The Ministry submits that ss. 15(1)(f) and (l) authorize it to refuse access to all of the information it has severed from the Manual. Section 15(1)(f) authorizes a public body to refuse access to information if disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. Section 15(1)(l) authorizes a public body to refuse access to information if it would harm the security of any property or system, including a building, a vehicle, a computer system or a communications system. As in Order F08-13, I will take the approach[30] of considering ss. 15(1)(f) and (l) together because the harms are linked.

[34] **Parties' submissions on ss. 15(1)(f) and (l)—**The Ministry submits inmates could use all of the information the Ministry severed from the Manual to try to circumvent or exploit security measures and systems for the purpose of planning criminal acts, and that this could harm inmates and staff members, as well as correctional centres.[31] The Deputy Director set out his rationale for the parts of the Manual the Ministry severed as follows:

> In Correctional Centres there are multiple levels of security and many control tools available to Corrections. In this affidavit I will refer to how harming any one of those levels or layers of security would harm the overall security of centres. That is because security is not an "all or nothing" proposition. It requires multiple layers and anything that diminishes the effectiveness of one of those layers harms the overall security of the centre. Whether the other levels of security prove to be sufficient, I believe the disclosure of the Severed Information would assist an inmate and/or an associate in any attempt to escape, harm someone or smuggle contraband into a Centre. Such a disclosure, i.e., would increase the chances of a successful escape and/or put the safety of

[30] Order F08-13, 2008 CanLII 41151 (BC IPC), at para. 29. In Order F08-13, the information at issue was video footage of an applicant while she was in custody. The Order was upheld on judicial review; see *British Columbia (Public Safety and Solicitor General) v. Stelmack,* 2011 BCSC 1244 (CanLII), at para. 431.

[31] Public body's initial submission at paras. 34-35.

> employees, inmates, the public and others (i.e. court staff, hospital staff) at risk.[32]

[35] In this case, the Ministry's evidence regarding its application of ss. 15(1)(f) and (l) to parts of the Manual overlap. The Deputy Director deposed that inmates could use the disputed information to engage in activities that could harm staff members, inmates and correctional centres. For example, he submits that if inmates had access to severed information about security levels associated with escorting inmates, inmates could use this information to change their behavior and try to reduce their level.[33] He also deposed that inmates could learn when checks and counts are performed to try to avoid detection,[34] gain information to help them acquire weapons,[35] or try to evade restraint devices.[36]

[36] The applicant contends that the Manual "is a general policy manual, not a tactical combat instruction book".[37] He rejects the Ministry's suggestion that disclosing information about control tactics that staff members use to manage inmates could be used by inmates and their associates to research counterattack methods.[38] In regards to the timing of inmate checks and counts, the applicant submits that inmates could acquire this information by observation, therefore disclosing such information in the Manual would not harm correctional centres, inmates, or staff members.[39] In addition, the applicant submits that regardless of when or how often they occur, particularly if they are at irregular intervals, an inmate would most likely try to harm an individual or a correctional centre as soon as possible after the last check was completed; therefore having information in the Manual about the timing of checks would have no impact.[40]

[37] **Findings - ss. 15(1)(f) and (l)—**I have reviewed the disputed information and have determined that the Ministry's evidence establishes a direct connection between disclosure of the information severed on pages 156 and 482 (to which I have already determined that s. 15(1)(c) applies) and a reasonable expectation of the harms in ss. 15(1)(f) and (l). The Ministry's *in camera* evidence in regards to the alleged harms to the security of inmates and to correctional centres, if this information were disclosed, is specific and convincing. I am unable to reveal more about the information on these pages without disclosing the portions of the Deputy Director's evidence that was received *in camera*.[41] I find that ss. 15(1)(f)

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[32] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 23.
[33] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 81.
[34] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 28.
[35] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 80.
[36] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 51.
[37] Applicant's reply submission at p. 20.
[38] Applicant's reply submission at p. 20.
[39] Applicant's reply submission at p. 18.
[40] Applicant's reply submission at p. 19. Also the Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 39-40.
[41] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 110 (not *in camera)* and 116 (*in camera)*.

and (l) apply to this information, which I have highlighted in the copy of the records I am providing to the Ministry.

[38] The Ministry's *in camera* evidence also establishes a direct connection between the disclosure of information related to the responsibilities of correctional officers dealing with "at risk" inmates (pages 475 and 479) and the harm the Ministry alleges, which is that other inmates could use this information to their advantage in such a way that would result in probable harm to some inmates and to the security of correctional centres. I find that ss. 15(1)(f) and (l) apply to this information, which I have highlighted in the copy of the records I am providing to the Ministry.

[39] I also find that the Ministry's evidence establishes a direct connection between the disclosure of information that discloses where spray irritants and firearms are located (pages 24, 25 and 43) and the harms the Ministry is alleging. This information could be used by inmates to locate and therefore potentially gain access to these tools to harm individuals and the security of a correctional centre.[42] In addition I am satisfied based on the information itself, which is a form of evidence[43] that disclosing information about where a specific suicide prevention tool is kept (page 481) could reasonably be expected to harm individuals and the security of a correctional centre.

[40] I am further satisfied that ss. 15(1)(f) and (l) apply to the information on pages 73, 94 and 98 to which I have already determined s. 15(1)(c) applies. The Ministry's evidence[44] satisfies me that disclosing this information could reasonably be expected to harm the security of a correctional centre because it would assist an individual who is trying to bring in contraband that could be used to harm an individual.

[41] In all other instances where information is severed in the Manual, I find that the Ministry's evidence does not demonstrate a direct connection between the harms feared and the information withheld. For example, I have determined after reviewing the information severed about how the Ministry determines an inmate's security level (on page 46) that many of the factors are not determined based solely on an inmate's behavior, but include matters that are beyond the inmate's control; therefore I am not persuaded that if an inmate had access to this information, he could use it to change his level as the Ministry alleges. Further, the Ministry does not explain how having a lower security level could reasonably be expected to harm individuals or property.

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[42] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 56 and 80.
[43] Order 00-39 at para. 11.
[44] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 91 and 92.

[42] Other information the Ministry has severed from the Manual is information about control tools and tactics, defence equipment, who these items are issued to and when they are used.[45] The Ministry submits that disclosing this information would enable those on the outside with access to the internet (inmates do not have such access) to research methods to counteract these tools and equipment, and then pass that information to inmates. The inmates could then use it to harm other inmates, staff members and the security of correctional centres.[46] The Deputy Director deposed that information about how to evade control tools is readily available on the internet, but he did not identify those sites or provide any details or examples.[47] The Ministry's evidence requires that I speculate about what information may be on the internet and how useful that information is. In my view, the Deputy Director's evidence on this point is not specific enough to prove that there is a reasonable expectation of either of the harms under ss. 15(1)(f) or (l) that would result from disclosure of this information.

[43] The Ministry's evidence also fails to establish that either ss. 15(1)(f) or (l) authorize it to withhold an email address for the Victim Safety Unit. The Ministry alleges an inmate could email the Victim Safety Unit to report that they have unexpectedly been released from custody and then the Unit would contact the inmate's victims and this would distress those victims.[48] However, the Ministry does not explain how their system could be administered in such a manner as to allow this kind of misrepresentation to be perpetrated let alone how, if it did occur that it could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person or harm the security of any property or system, including a building, a vehicle, a computer system or a communications system. Furthermore, the Ministry has not indicated whether the email address is already publicly available on the Ministry's website. In conclusion, I am unconvinced that disclosing this email address could reasonably be expected to result in the harms described in ss. 15(1)(f) or (l).

[44] In summary, I find that the Ministry is not authorized to withhold any of the information it has severed under ss. 15(1)(f) or (l) except for the highlighted information on pages 24, 25, 43, 73, 94, 98, 156, 475, 479 and 482.

Section 15(1)(j)

[45] The Ministry relies on s. 15(1)(j) to refuse access to all of the information it has severed from the Manual. Section 15(1)(j) authorizes a public body to refuse to disclose information to an applicant if the disclosure could reasonably be

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[45] Some examples of this type of information are at pages 17, 18, 20, 22, 26 and 39-42 of the Manual.

[46] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 39, 45, 48, and 57.

[47] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 46.

[48] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 111.

expected to facilitate the escape from custody of a person who is under lawful detention.

[46] The Ministry's Deputy Director explains that disclosure of the information at issue would facilitate escape because it would allow inmates and their associates to understand:

- how they are monitored and what restraints and controls are used in certain situations;[49]
- where contraband may be located;[50]
- how correctional centres deal with emergency situations, such as riots or power outages.[51]

[47] The applicant submits that disclosing information about how inmates are monitored would not facilitate an escape because inmates would already know to attempt an escape immediately after the last check by a correctional officer.[52] The applicant further submits that inmates already know that certain control tools will likely be used, therefore disclosing the fact that these tools are available for use would do nothing to facilitate an escape.[53]

[48] I have considered the Ministry's evidence and determined that it establishes a direct connection between the disclosure of information about where spray irritants and firearms are located (on pages 24, 25 and 43) and a reasonable expectation that an inmate or another individual could use that information to obtain these devices to facilitate an inmate's escape. In addition, I am satisfied on the basis of the information itself that disclosing information about where a suicide prevention tool is kept could also facilitate an escape (page 481). The Ministry's evidence further satisfies me that s. 15(1)(j) applies to the same search information at pages 73, 94 and 98 that I have already determined is properly withheld under ss. 15(1)(c), (f) and (l). I am satisfied that disclosing this information could reasonably be expected to facilitate an inmate's escape from custody because it would assist an individual in bringing contraband into a correctional centre.

[49] However, I have determined that the Ministry's evidence does not establish that disclosure of the rest of the severed information could reasonably be expected to facilitate an inmate's escape from custody. For example, the Ministry does not convincingly explain how, if inmates knew the details of certain procedures (such as how they may be forcibly extracted from their cells) they

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[49] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 43, 48 and 49.
[50] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 80.
[51] Public body's initial submission at para 46. Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 102-103.
[52] Applicant's reply submission at p. 19.
[53] Applicant's reply submission at p. 26.

could use that information to facilitate an escape. The connection between knowledge of the disputed information and the feared harm (i.e., escape) is simply not clear. Similarly, the Ministry has not satisfied me that disclosing information about the types of restraints staff members use on inmates or how they are used could reasonably be expected to facilitate escape from those restraints and/or escape from lawful custody.

[50] I also find unconvincing the Ministry's submission that disclosing information about how correctional centres operate during emergencies could facilitate an escape because inmates would better understand the security measures they would need to overcome. For example, the Deputy Director deposed that revealing some of the steps staff members take when responding to emergencies would be harmful because inmates would know what to anticipate in such situations and they could use that knowledge to their advantage.[54] The example the Deputy Director provided to support the application of s. 15(1)(j) to this information (on page 143), which is the same example he relies on to support the application of s. 15(1)(c) to this information, is unconvincing. That is because in order for events to occur as he fears, there would have to be, as I have already mentioned above in relation to s. 15(1)(c), a succession of failures of the Ministry's own protocols.

[51] In my view, the evidence does not meet the evidentiary threshold required to prove that s. 15(1)(j) applies.

[52] Similarly, simple assertions that disclosing information about how staff members monitor or restrain hospitalized inmates could reasonably be expected to facilitate their escape also fall short of meeting the Ministry's burden of proof without further explanation. The Ministry fails to establish a link between that information and how hospitalized inmates or their associates could use it to facilitate an escape from custody.

[53] Further, the Deputy Director submits that if inmates had access to the security level information severed from the Manual, they would know how inmates are classified and use this information to change their behaviour in order to lower their classification for the purposes of trying to escape.[55] As the Ministry does not explain how having a lower security level could reasonably be expected to facilitate an escape, I am unconvinced that s. 15(1)(j) applies to this information. In addition, I conclude from reading the severed information (on page 46) that an inmate's behavior is only one of several factors upon which an inmate's security classification is based.

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[54] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at paras. 108-109.

[55] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 81.

[54] In conclusion, I find that the Ministry is not authorized to withhold any of the information it has severed under s. 15(1)(j) except for the highlighted information on pages 24, 25, 43, 73, 94, 98 and 481.

Section 15(1)(k)

[55] Sub clause 15(1)(k) authorizes a public body to withhold information if disclosing it could reasonably be expected to facilitate the commission of an offence under an enactment of British Columbia or Canada. The Ministry submits that disclosing the information withheld under s. 15(1)(k) could reasonably be expected to facilitate offences such as extortion and assault.[56] The applicant submits that the Ministry's evidence does not establish that disclosing the disputed information could reasonably be expected to facilitate these or other offences.[57]

[56] In this case, I find that s. 15(1)(k) authorizes the Ministry to withhold the information on pages 475 and 479, to which I have already determined that ss. 15(1)(f) and (l) apply. In my view, any information that could endanger other inmates or staff members or harm the security of a correctional centre or vehicle could reasonably be expected to facilitate the commission of an offence. I am also satisfied that s. 15(1)(k) authorizes the Ministry to withhold the information on pages 156 and 482, to which I have found s. 15(1)(c) applies, because the Ministry's evidence[58] satisfies me that disclosing that information about evidence that has investigative value could reasonably be expected to assist an inmate to commit public mischief by destroying or manipulating evidence, which is contrary to s. 140 of the *Criminal Code.* I am also satisfied that s. 15(1)(k) authorizes the Ministry to continue to sever the information on pages 24, 25, 43, 73, 94, 98 and 481 to which I have already determine ss. 15(1)(f), (l) and (j) apply, because I am satisfied that disclosing this information could reasonably be expected to assist an individual from attempting to escape or escaping from lawful custody, which is contrary to ss. 144 and 145 of the *Criminal Code.* I have highlighted this information on the copy of the records that I am providing to the Ministry.

[57] In all other instances I find that s. 15(1)(k) does not apply because the Ministry did not provide evidence establishing a direct connection between disclosure and the alleged harm.[59] The Ministry makes general assertions that disclosing the severed information could reasonably be expected to facilitate a variety of offences, but the Ministry does not connect specific offences with specific parts of the Manual the Ministry has severed. For example, the Ministry's evidence as to how disclosing the type of stun devices in use,[60] how

[56] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 56 and the public body's initial submission at para. 54.
[57] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 56.
[58] Affidavit of the Deputy Provincial Director, Adult Custody, Corrections Branch, at para. 116.
[59] Public body's initial submissions at para. 41.
[60] The Ministry has already disclosed that the information severed is about stun devices (see pp. 2 and 27 of the Manual).

often inmates are counted and checked, or the Victim Safety Unit's email address could reasonably be expected to facilitate any of the offences it identifies,[61] is so general and vague that it is unconvincing.

[58] Therefore, with the exception of the information that I have highlighted on pages 24, 25, 43, 73, 94, 98, 156, 475, 479, 481, and 482 I find that the Ministry is not authorized under s. 15(1)(k) to refuse disclosure of any of the other information in dispute.

Exercise of discretion

[59] The applicant submits that the Ministry should disclose all of the information in the Manual because historically, the Ministry disclosed much of this information.[62] The applicant supplied partial copies of old versions of the Manual as evidence.[63] The Ministry submits that some of the previous disclosures were likely made in error, and that it is withholding information in the Manual because of "significant changes in the Correctional environment in British Columbia over the last ten years."[64]

[60] FIPPA requires public bodies to properly exercise their discretion when refusing access to information under discretionary provisions such as s. 15.[65] Although a public body's historical disclosure practices regarding similar types of records is a relevant factor when assessing whether a public body has properly exercised discretion, it is one of many considerations.[66] In this case, the Ministry has disclosed most of the Manual. The information, where severed, has been removed line-by-line and sometimes word-by-word. In addition, the Ministry acknowledges it released more information in the past, but it decided to apply severing in this case because of what it perceives as changes to the correctional environment.[67] These factors satisfy me that the Ministry's decision was carefully considered. I therefore find that the Ministry has properly exercised its discretion in this case.

CONCLUSION

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

1. Subject to paragraphs #2, #3, #4 and #5 below, the Ministry is not authorized to refuse access to information severed from the Manual under ss. 15(1)(c),(f),(j),(k) or (l).

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[61] Public body's initial submissions at para. 41.
[62] Applicant's initial submission at p. 11.
[63] Applicant's affidavit at exhibits 3-33.
[64] Public body's reply submission at paras. 18-19.
[65] See for example, Order 02-50 at para. 144.
[66] For a (non-exhaustive) list of factors, see Investigation Report F08-03 at para. 38.
[67] Public body's reply submission at para. 19.

2. The Ministry is authorized to refuse to disclose, under ss. 15(1)(c), the information I have highlighted in yellow on pages 73, 94, 98, 156 and 482.
3. The Ministry is authorized to refuse to disclose, under ss. 15(1)(f) and (l), the information I have highlighted in yellow on pages 24, 25, 43, 73, 94, 98, 156, 475, 479 and 482.
4. The Ministry is authorized to refuse to disclose, under s. 15(1)(j), the information I have highlighted in yellow on pages 24, 25, 43, 73, 94, 98 and 481.
5. The Ministry is authorized to refuse to disclose, under s. 15(1)(k), the information I have highlighted in yellow on pages 24, 25, 43, 73, 94, 98, 156, 475, 479, 481 and 482.
6. The Ministry must comply with the terms of this order by July 16, 2015. The Ministry must concurrently copy the Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

June 3, 2015

ORIGINAL SIGNED BY

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Caitlin Lemiski, Adjudicator

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