

INTERPRETATION BULLETIN

Danger to Safety or Health

This interpretation bulletin discusses the threat to safety or health exemption, as set out in **section 20** of the Freedom of Information and Protection of Privacy Act (FIPPA) and **section 13** of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). It outlines factors to consider in determining whether the threat to safety or health exemption applies.

Section 20 of FIPPA states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Section 13 of MFIPPA is virtually identical.

Why is this exemption necessary?

The purpose of the exemption in section 20 of FIPPA and section 13 of MFIPPA is to protect individuals from serious threats to their safety or health resulting from the disclosure of a record.

Burden of proving threat to safety or health

The burden of proving a threat to safety or health rests with the party claiming that section 20 of FIPPA or section 13 of MFIPPA applies. Parties resisting disclosure of a record must provide detailed and convincing evidence to establish a reasonable expectation of probable harm if the record is disclosed.¹

¹ Order **PO-1939**.



It is not enough to assert that the harms under section 20 of FIPPA or section 13 of MFIPPA are obvious based on the record. While harm can sometimes be inferred from the records themselves and/or the circumstances, parties should not assume that the harms under section 20 of FIPPA or section 13 of MFIPPA are self-evident and can be proven simply by repeating the description of harms in the act.²

Reasonable expectation of harm

Institutions resisting disclosure must show that the risk of harm is real and not just a possibility.³ However, they do not have to prove that disclosure will in fact result in harm to an individual. Nor is it necessary to show a probability of harm resulting from disclosure.⁴

For section 20 of FIPPA or section 13 of MFIPPA to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to seriously threaten an individual's safety or health. Such a reasonable basis cannot be groundless, frivolous or exaggerated. A person's subjective fear, or their sincere belief that they could be harmed, is an important consideration, but it is not enough on its own to establish this exemption.⁵

The exemption at section 20 of FIPPA or section 13 MFIPPA is not restricted to an actual physical attack or violence. Persistent and harassing behaviour that could reasonably be expected to seriously threaten the health or safety of another could be sufficient to justify the application of the exemption.⁶

How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁷ A consideration of the type of information at issue and the behaviour, or potential behaviour, of the person or persons posing a threat may be relevant. The amount of time between when the behaviour in question occurred and inquiry into the matter may also be relevant.⁸

For example, simply exhibiting inappropriate, uncooperative or difficult behavior⁹ may not be sufficient to qualify for the exemption. The exemption may, however, be established when there is a pattern of correspondence that contains hurtful, aggressive, abusive or intimidating attacks against

² Orders [MO-2363](#) and [PO-2435](#).

³ [Merck Frosst Canada Ltd. v. Canada \(Health\)](#), [2012] 1 S.C.R. 23.

⁴ [Ontario \(Information and Privacy Commissioner, Inquiry Officer\) v. Ontario \(Minister of Labour, Office of the Worker Advisor\)](#), 1999 CanLII 19925 (ON CA).

⁵ Order [PO-2003](#).

⁶ Order [PO-2642](#).

⁷ [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.

⁸ Orders [PO-1939](#) and [M-321](#), affirmed [Toronto \(City\) v. Ontario \(Information and Privacy Commissioner\)](#), [1995] OJ No 3232, and [MO-1595-R](#), affirmed [Toronto District School Board v. Doe](#), 2004 CanLII 3320 (ON SCDC).

⁹ Order [PO-3024](#); Order [PO-1940](#).

specific individuals.¹⁰ The relative vulnerability of the affected individuals may also be a relevant factor.¹¹

Publication of statistics alone, may not raise a reasonable expectation of harm.¹² For example, in separate appeals relating to issues of animal experimentation and abortion, information associated with specific individuals or facilities was found to meet the “harm” threshold. More generalized information which could not be linked to specific individuals or facilities, or which would not reveal new or additional identifying information, was not subject to the exemption.¹³

The term “individual” is not necessarily confined to a particular individual but may be “any” individual and may include any member of an identifiable group or organization.¹⁴

10 Orders **PO-1940** and **PO-2113**.

11 Order **MO-3308**.

12 Order **MO-2466**.

13 Orders **PO-1747** and **PO-2642**.

14 Orders **PO-1817-R** and **PO-1776-R**.