Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INTERIM ORDER PO-2054-I

Appeal PA-010194-2

Ministry of the Solicitor General

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NATURE OF THE APPEAL:

The Ministry of the Solicitor General (now the Ministry of Public Safety and Security) (the Ministry), received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to "the 147 records referred to on page 6 [of Order PO-1608]."

Order PO-1608 resulted from a request by a different requester for "records by [a named employee] … sent and received from Sept 1/95 to Sept 15/95 relating to the Emergency Planning for Aboriginal Issues Interministerial Committee and/or Ipperwash Provincial Park". In the body of that order, which dealt with the nature of the searches conducted for responsive records, I made the following statement:

> In response to my request for additional details regarding [the Deputy Minister's] affidavit, I received subsequent correspondence from the Deputy Minister regarding searches of the files relating to the named individual. The Deputy Minister advised me that there were a total of 147 records contained in the four files of the named individual ….

The Ministry (which was also the institution in PO-1608) identified the responsive records, which actually consist of 163 documents. The Ministry provided the requester with access to a number of records, in whole or in part, and denied access to the remaining records or partial records on the basis of one or more of the following exemptions contained in the *Act*:

- section 12(1) (Cabinet records)
- section 13(1) (advice or recommendations)
- section 14(1) (law enforcement)
- section 15 (relations with other governments)
- section 18(1) (economic and other interests of Ontario)
- section 19 (solicitor-client privilege), and
- section 21(1) (personal privacy).

The requester, now the appellant, appealed the Ministry's decision.

During mediation, the Ministry issued a revised decision letter stating that it was transferring 44 records to the Minister Responsible for Native Affairs and three records to the Ministry of the Attorney General on the basis that "those ministries have custody and control of the responsive records." The appellant did not appeal the Ministry's revised decision, and the 47 transferred records are not at issue in this appeal.

Also during mediation, the Ministry provided the requester with an index describing the remaining 116 responsive records and identifying the relevant exemption claims for each of them. The Ministry also provided access to additional records or partial records, and the appellant, in turn, advised that he was no longer pursuing access to certain other records. As a result, 43 records or partial records remain at issue in this appeal.

Further mediation did not resolve the remaining issues, and the file was transferred to the adjudication stage. I sent a Notice of Inquiry initially to the Ministry, setting out the facts and

issues and inviting the Ministry to provide written representations, which it did. After reviewing the representations, I decided to seek representations from the appellant, and to provide him with a copy of the non-confidential portions of the Ministry's representations, in accordance with *Practice Direction 7*.

After issuing Interim Order PO-1931-I (that dealt with the sharing of the Ministry's representations with the appellant), I sent the Notice of Inquiry to the appellant, together with the non-confidential portions of the Ministry's representations. The Notice reflected changes in the Ministry's position with respect to certain records and exemptions, outlined in its representations. The appellant provided representations in response to the Notice. In them, he raised the possible application of section 23 of the *Act*, the "public interest override". After giving the appellant an opportunity to provide representations on section 23, I invited the Ministry to respond the appellant's position, which it did.

RECORDS:

There are 43 records or portions of records remaining at issue in this appeal. The records total 123 pages, and each page is numbered individually. I will refer to the records by page rather than record number throughout the rest of this order.

The records are described in an index prepared by the Ministry and disclosed to the appellant during the mediation stage of this appeal.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Personal Information

The Ministry claims that the following pages contain "personal information": pages 18, 19, 21, 22, 25, 28, 29, 33, 35-37, 40, 53-56, 63-65, 91-93, 109-110, 112, 122, 125, 126, 153, 154, 231, 248, 253, 261, 262, 297-298, 310, 318, 331-341, 356-361, 362, 364, 375, 400 and 401-402.

Section 2(1) of the *Act* defines "personal information" means recorded information about an identifiable individual, and goes on to list a number of examples, which include:

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

Pages containing general information only

Having reviewed the various pages of records, I find that some of them, on their face, do not contain "personal information" as defined in section 2(1). The Ministry's representations with respect to these pages also do not persuade me that the disclosure of this information would reveal any "personal information". They consist of:

Page 33	-	handwritten phone number (with no area code) that has not been identified by the Ministry
Page 35	-	an abbreviated phone number assigned to a government office
Page 56	-	handwritten phone number that has not been identified by the Ministry
Page 65	-	handwritten phone and fax number that has not been identified by the Ministry
Page 109	-	four severances that relate to locations, not individuals
Page 110	-	five severances that relate to locations, not individuals
Page 253	-	handwritten notes that have not been identified by the Ministry
Page 318	-	handwritten phone number that has not been identified by the Ministry

Personal vs. Professional or Official Government Capacity

Previous decisions of this office have drawn a distinction between an individual's personal information, and information relating to a person's professional or official capacity. Generally speaking, these orders have found that information associated with a person in his or her professional or official government capacity is not "about the individual", and therefore falls outside the scope of the definition of "personal information" in section 2(1) of the *Act* (e.g. Orders P-257, P-427, P-1412, P-1621-I).

In Reconsideration Order R-980015, Adjudicator Donald Hale reviewed the history of the Commissioner's approach to this issue and the rationale for taking such an approach. He also extensively examined the approaches taken by other jurisdictions and considered the effect of the decision of the Supreme Court of Canada in *Dagg* v. *Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 on the approach which this office has taken to the definition of personal information. In applying the principles that he described in that order, Adjudicator Hale came to the following conclusions:

> I find that the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not **about** these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.
>
> In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of personal information contained in section 2(1)(e) of the *Act*. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message [emphasis in original].

In the Notice of Inquiry sent to the Ministry, I asked for representations on whether any information exempted by the Ministry under section 21 of the *Act* related to an individual's professional or official capacity. I also referred the Ministry to previous orders that discussed this distinction.

In its representations, the Ministry takes issue with the personal/professional distinction adopted by this office, described above. However, in the alternative, it submits that:

> … none of the records are associated with a person in his or her professional or official capacity. The Ministry contends that all of the Records fall within a specifically enumerated category under the definition of personal information …, or have some other personal, as opposed to professional or representative quality about it such that it could be said to be "about" the identifiable individual in each case, as opposed to the title of their office.

The Ministry also submits that any review of this issue must carefully examine the context in which the records were created, and that the particular context involving the records at issue in this appeal supports the Ministry's view that they should be characterized as containing "personal information". The Ministry refers to the following factors in support of its position:

1. The records are atypical in nature, and were generated during an unusual, volatile, emergency situation, for the purpose of passing on information on a rapid, need-to-know basis. They tend to reflect what individuals witnessed or what they were told, and tend to be time sensitive, given the quickly changing conditions. The Ministry refers to Order PO-1983 in support of its position that this type of information is personal information.

2. Where the records provide a response or assessment of government policy, they tend to represent a personal response or assessment, as opposed to an actual policy. Order P-427 is cited in support of this position.

3. The individuals involved in dealing with the Ipperwash incident had an expectation of privacy, and the records are highly sensitive. The Ministry cites Orders P-611 and P-235 as examples of similar situations where records were found to contain "personal information".

In Order PO-1983, relied on by the Ministry, the issue concerned whether recorded statements by employees of a company regarding a fire on the company's premises were statements made in their personal or professional capacity. Adjudicator Laurel Cropley found that the individuals were making the statements in their personal capacity, for reasons outlined in her order. However, in my view, there are important factual distinctions that limit the relevance of this order. In Order PO-1983, the individuals whose statements were at issue were not employed to examine fires or to deal with the fire on behalf of their employer. Rather, the statements they provided were more analogous to witness statements. In the current appeal, the records involved the information of individuals who were given responsibilities for dealing with the Ipperwash incident, either by their employers or by organizations involved in various aspects of the Ipperwash matter.

I also find that Order P-427 does not assist the Ministry. In that order, Adjudicator Holly Big Canoe rejected an institution's claim that views expressed by Ministry personnel and others in the course of a program review was "personal information". She stated:

> The Ministry submits that the names and titles of the individuals, combined with the fact that these people provided input to the consultants, constitute the personal opinions of those individuals for the purpose of section 2(e). The Ministry submits:
>
> > In this instance, individuals were not expressing the opinions of the Ministry nor were they explaining Ministry policies or practices within the context of their professional responsibilities. They were

> expressing their personal opinion concerning the Ministry's policies and practices. Their answers did not represent nor were they intended to represent the opinions or views of the Ministry.
>
> The Ministry employees were senior land management staff and policy officers. The members of the client groups and general interest groups were generally group presidents, managing directors, or their delegates. The employees of federal departments and provincial ministries were identified by the Ministry through discussions with each agency.
>
> Having reviewed the record, in my view, the views and opinions were expressed in each individual's professional or business capacity, and are not "personal" opinions or views. The names and titles or affiliations of these individuals cannot be categorized as "personal information" as defined in section 2(1).

Similarly, I find that any views and opinions that were reflected in the relevant records at issue in this appeal were made by individuals in a professional or official capacity, and are not "personal" views in the sense contemplated by section 2(1). To borrow from the earlier quotation from Reconsideration Order R-980015, the information at issue "… is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of [these individuals]. Essentially, the information is not about these individuals and, therefore, does not qualify as their 'personal information'…".

The Ministry also refers to Orders P-235 and P-611. Both of these orders dealt with situations where individuals were acting as "reviewers". In Order P-235, former Commissioner Tom Wright found that disclosing the names of individual drug reviewers would disclose other personal information about these individuals, specifically that they had reviewed a particular drug product. He concluded that this information qualified as their "personal information". Similarly, in Order P-611 former Assistant Commissioner Glasberg found that the identities of two reviewers of a particular screenplay who had prepared reports on the artistic merits of the work constituted the personal information of these individuals under section 2(1)(h) of the *Act*.

In my view, the circumstances giving rise to those two appeals are unique and distinguishable from the present appeal. In both instances, the review process was reliant on the particular expertise and opinion of the experts in their field, and the decision-makers determined that disclosing the identities of the reviewers might jeopardize the particular review process. As Adjudicator Hale stated in Reconsideration Order R-980015 concerning P-235 and other orders in which certain records were found to contain "personal information:

> In all of these latter cases, the information at issue either fell within a specifically enumerated category under the definition of personal information or had some other personal, as opposed to professional or representative, quality about it such that it could be said to be "about" the identifiable individual in each case.

In my view, the information at issue in the present appeal has no such "personal" quality, and I do not accept the Ministry's position for that reason. The information contained in the relevant

records here is not "about" the government officials and/or native leaders in any personal sense. Rather, it is "about" them as officials of the organizations they work for or otherwise represent.

A number of pages of records have been disclosed to the appellant, with only the names and other identifying information of various native leaders severed. I dealt with the treatment of information concerning native leaders in my Order P-1621-I. In that order, I found that:

- the positions held by native leaders is analogous to employment or a profession, and references to these individuals is not the personal information of these individuals (see also Orders P-157, P-270 and P-300 referred to in Order P-1412);

- the views and opinions of another individual about a native leader are the personal information of the native leaders under paragraph (g) of the definition in section 2(1) of the *Act*.

Applying the same analysis to information about native leaders in this appeal, I find that the following pages contain information about these individuals in their professional or official capacity, and therefore fall outside the scope of the definition of "personal information:

Page 18	-	first severance
Page 19	-	first severance
Page 21	-	severed portions of final paragraph
Page 22	-	first paragraph and severed word in third paragraph
Page 25	-	name of leader in first severed paragraph, and all undisclosed information in second and third severed paragraphs
Page 28	-	severed name in first paragraph
Page 92	-	final severed paragraph
Page 93	-	all undisclosed portions
Page 109	-	second severance
Page 110	-	third severance
Page 122	-	first severance
Page 231	-	first severance
Page 248	-	undisclosed portions of first severed paragraph
Page 261	-	all undisclosed portions
Page 262	-	all undisclosed portions
Page 364	-	names of negotiators (inaccurately referred to as page 365 in Ministry's representations)
Page 400	-	all undisclosed portions
Page 402	-	name of leader

It is also significant to note that information about a number of these native leaders, including their identities and roles in the Ipperwash incident, has already been disclosed to the appellant through the release of other records in this appeal.

In contrast, I find that the severance on page 112 contains the views and opinions of another person about a native leader, and that this information qualifies as that leader's personal information.

The Ministry also submits that the heading and three final bullet points on page 310 contains the views and opinions of the author of the record about another individual named in the record. I disagree. The author and the other individual are both individuals acting in their professional as opposed to personal capacities, and I find that any views and opinions contained in this severance relate to aspects of the Ipperwash issue itself and not to the person identified in the record.

I find that the first three words in the second-to-last severed paragraph on page 92 identify an individual indirectly through his relationship to another individual and qualifies as his "personal information"; but that the time notation and the remaining information in the text of this severed portion of page 92 relates to individuals in their professional capacities and does not constitute "personal information".

I further find that the following severances contain information about individuals in their professional or official capacity, and therefore fall outside the scope of the definition of "personal information", for the reasons indicated:

Page 22	-	second severed paragraph - information concerns a lawyer representing a native group who is acting in his professional capacity
Page 25	-	remaining information in first severed paragraph concerns elected officials and government representatives acting in their official capacities
Page 53	-	phone, pager, mobile, cellular, portable and fax numbers assigned to government officials for use in their professional capacities
Page 54	-	pager and mobile numbers assigned to government officials for use in their professional capacities
Page 63	-	phone, pager, mobile, cellular, and portable numbers of government officials for use in their professional capacities
Page 64	-	phone, pager and mobile numbers of government officials for use in their professional capacities
Page 65	-	government fax numbers
Page 110	-	name of a federal Minister acting in his official capacity
Page 248	-	name of a federal MP acting in her official capacity
Pages 297/8	-	fax cover sheets from federal government officials to a provincial government official, all communicated and received in their professional capacities
Page 356/7	-	name of a lawyer who filed notice of claim on behalf of her client

Page 362	-	first severed paragraph - information about federal officials, including the name of one individual, all acting in their professional capacities; last severance - name of provincial MPP acting in his official capacity

Telephone numbers

In contrast to the various office phone, pager, cellular, mobile, portable and fax numbers of various government officials on pages 53, 54, 55, 63, 64 and 65, I find that the home phone, cellular, mobile pager, car, cottage and farm numbers of these individuals also contained on these pages qualify as their "personal information" for the purposes of section 2(1). Similarly, I find that the home phone and fax number of an elected official that appears on pages 153 and 154 qualify as his "personal information".

Criminal history

The first severed section on page 21 contains information concerning an individual charged with criminal offenses as a result of activities that took place at Ipperwash. I find that all of this severed information falls within the scope of paragraph (b) of the definition of "personal information".

The severed section on page 91 contains information concerning a suspect in an incident that took place at Ipperwash. I find that the name of this individual qualifies as his "personal information", but that if this name is withheld, the remaining undisclosed portions of page 91 do not reveal the identity of this individual and do not qualify as "personal information" for the purposes of section 2(1).

The severed section at the bottom of page 122 contains information concerning an incident that took place at Ipperwash. I find that certain portions of the final two paragraphs that could reasonably be expected to identify an individual in relation to the incident qualify as his "personal information", but that if this information is withheld, the remaining undisclosed portions of this section of page 122 do not reveal the identity of this individual and do not qualify as "personal information" for the purposes of section 2(1). I will attach a highlighted version of page 122 with the copy of this order sent to the Ministry that identifies the portions of the two paragraphs that qualify as "personal information".

The first severed section on page 126 contains information concerning an incident that took place at Ipperwash. I find that certain portions of this section that could reasonably be expected to identify an individual in relation to the incident qualify as this individual's "personal information", but that if this information is withheld, the remaining undisclosed portions of this section of page 126 do not reveal the identity of this individual and do not qualify as "personal information" for the purposes of section 2(1). I will attach a highlighted version of page 126 with the copy of this order sent to the Ministry that identifies the portions of this section of page 126 that qualify as "personal information".

The Ministry acknowledges that a number of other pages of records do not specifically identify any individuals by name, but submits that disclosing the severed information in them could

reasonably be expected to identify individuals, and therefore reveal information about their criminal histories. The Ministry refers me to Interim Order P-1621-I as an example of an order that found this type of information to constitute "personal information" for those reasons.

In Interim Order P-1621-I, I made the following statements with respect to the type of information identified by the Ministry:

> … the references to individuals charged with criminal offences, and to an incident which led to the laying of criminal charges, which appear on page 38, could reasonably be expected to identify this individual, and therefore fall within the scope of the definition of personal information in section 2(1);

In the circumstance of this appeal, I must review the relevant information to determine whether disclosing it could reasonably be expected to reveal the identity of any individual, thereby bringing it within the scope of the definition of "personal information". The severances on pages 28, 29, 37 and the first severed bullet point on page 40 indicate that arrest warrants were made out against individuals. No individual is identified on these pages, and in each case the actions referred on the pages are not directed at a single individual. There is nothing on the face of these records or in the Ministry's representations to indicate that these warrants led to criminal charges, which distinguishes the situation from Order P-1621-I. In the circumstances, I am not persuaded that disclosing theses severances could reasonably be expected to reveal the identity of any individual, and for that reason I find that the relevant portions of pages 28, 29, 37 and the first severed bullet point on page 40 do not contain "personal information".

The Ministry also takes the view that portions of pages 40, 92, 122, 125 and 126 contain information about suspected illegal activities. Although I accept the Ministry's position with respect to certain portions of these pages, in my view, other portions do not contain any "personal information". Specifically, I find that the second severed bullet point on page 40, the severed sentence immediately following the information relating to the second heading "injured" on page 92, the second severed line on page 122, the severed portion of page 125, and the second incident report at the bottom of page 126 do not contain information about identifiable individuals, nor have I been provided with sufficient evidence to support the position that individuals could be identified by the release of this information. Accordingly, I find that these portions of pages 40, 92, 122, 125 and 126 do not contain "personal information" as defined in section 2(1) of the *Act*.

Age

I find that the birth date of the identified individual contained on page 21, and the age of the three individuals identified as "deceased" or "injured" on page 92 fall within the scope of paragraph (a) of the definition.

Medical history

The Ministry submits that page 92 contains "information about the injuries [the identified individuals] sustained and the treatment they received as a result of the Occupation", thereby falling within the scope of paragraph (b) of the definition of "personal information". Having

reviewed this page, I find that the severed portions do not contain any of the type of information described by the Ministry or any other information relating to specific injuries or medical treatments. Accordingly, I find no portions of page 92 contain "medical" information for the purpose of the definition of "personal information" in section 2(1) of the *Act*.

Employment history

The Ministry submits that the second severance on page 231 contains information about the employment history of a named individual, and therefore falls within the scope of paragraph (b) of the definition of "personal information". I concur. The severance identifies an individual by name and makes reference to his past employment with two different employers.

The Ministry also submits that information severed from pages 22 and 359 qualifies as "employment history". I disagree. The individual identified on page 22 is a lawyer acting in a professional capacity. It simply identifies him in that capacity, and makes no reference to his employment or employment history. As far as the individuals identified on page 359 are concerned, they are listed as defendants in a civil law suit, with no reference to their employment or, more specifically, any information concerning their employment history. In my view, the fact that these individuals may be employees of the Ministry is itself not sufficient to bring this information within the scope of the definition of "employment history" for the purposes of the definition of "personal information".

Confidential correspondence sent to and received from an institution

The Ministry submits that pages 331-341, which consist of correspondence sent from a member of the public to the government and the replies sent in response, fall within the scope of paragraph (f) of the definition of "personal information". The author clearly identifies in the letter that he is writing as a private individual.

There is no indication on any of these pages that the author intended his correspondence to be treated confidentially. In fact, he copied it to a number of public officials, and the various responses sent to him by the provincial and federal governments were also copied to others. That being said, the author makes it clear on page 333 that he is acting in the capacity of a private citizen and not as a representative of any group or organization. Accordingly, although I do not accept the Ministry's position that the requirements of paragraph (f) of the definition of "personal information" are present, I nevertheless accept that the author's name and address as they appear on pages 331, 332, 333, 334, 335, 336 and 339 are about him in a personal sense and constitute his "personal information" for the purpose of section 2(1) in this context.

The Ministry also identifies page 357 as falling within the scope of paragraph (f). This is clearly not the case. Page 357 is a letter to the Solicitor General from a lawyer, which attaches a Notice of Claim filed on behalf of her clients. There is nothing to indicate that it is a confidential communication, and the lawyer is clearly corresponding in her professional as opposed to personal capacity.

Other

I will deal with page 375 in my discussion of section 14(2)(a) later in this order.

I find that the second-to-last severance on page 25 deals with the vacation plans of a named individual, and qualifies as his "personal information".

I find that the 4-word severance on page 36 and the first severance on page 40, which contain the same information, refer to the family status of identifiable individuals, and qualify as their "personal information" under paragraph (a) of the definition in section 2(1).

I find that the names, addresses and home phone and fax numbers of two residents who attended the meeting referred to in pages 153 and 154 qualify as their "personal information" under paragraph (d) of the definition in section 2(1).

I find that the names of the two individuals identified in the first sentence of the first severed paragraph of page 310 qualify as their "personal information" under paragraph (h) of the definition in section 2(1). The rest of this paragraph does not contain "personal information" and should be disclosed. [I will also deal with portions of this paragraph of page 310 under my discussion of section 19 later in this order.]

Pages 358-361 consist of a Notice of Claim, apparently filed in the Ontario Court of Justice (General Division) in March 1996 by a lawyer (identified on page 257) on behalf of a number of plaintiff claimants. The defendants' names in the law suit are various elected officials and OPP officers. I find that the names of the plaintiffs that appear on pages 358 qualify as their "personal information" for the purposes of section 2(1), but that the remaining portions of pages 358-361 do not contain "personal information".

Finally, I find that a reference on page 362 to a street name (with no number) is not sufficiently specific to reveal the identity of any individual, and therefore does not satisfy the definition of "personal information" in section 2(1).

Unjustified invasion of personal privacy

Section 21(1) of the *Act* is a mandatory exemption claim, which requires the Ministry to deny access to personal information unless certain circumstances listed in section 21(1) are present. The only circumstance with potential application in the circumstances of this appeal is section 21(1)(f), which provides that:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to

whom the information relates. Section 21(2) provides some criteria for the Ministry to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

Having carefully reviewed the records that contain "personal information", I find that disclosing the names of the plaintiffs that appear on page 358, which are contained in a formal publicly-accessible document apparently filed with the Ontario Court of Justice (General Division) could not constitute an unjustified invasion of their privacy, and these names do not qualify for exemption under section 21(1) of the *Act*.

In the absence of any evidence or argument from the appellant to establish that disclosure of any of the remaining "personal information" would **not** be an unjustified invasion of the personal privacy of the various identifiable individuals, I find that it would.

In summary, I find that the following pages contain "personal information" as defined in section 2(1) of the *Act*, and that disclosure of this information, with the exception of the names of the plaintiffs that appear on page 358, would constitute an unjustified invasion of privacy, thereby falling within the scope of the section 21 mandatory exemption claim:

Page 21	-	first severed paragraph
Page 25	-	second-to-last severed portion
Page 36	-	4-word severance
Page 40	-	first severance
Pages 53, 54, 55, 63, 64 and 65	-	portions containing personal numbers
Page 91	-	name of suspect
Page 92	-	names and dates of birth/ages of deceased/injured individuals, and three words in the second-to-last severance
Page 112	-	two severed words
Page 122	-	severed portions relating to criminal history
Page 126	-	severed portions relating to criminal history
Pages 153 and 154	-	names, addresses and home phone and fax numbers of residents, and home and fax numbers of an elected official
Page 231	-	two severed sentences at bottom
Page 310	-	names of two individuals in first severed paragraph
Pages 331, 332, 333, 334, 335, 336 and 339	-	names and address of member of public

CABINET RECORDS

The Ministry claims that page 188 and the undisclosed portions of page 189 qualify for exemption under section 12(1)(d). Page 188 is a typed version of the handwritten notes comprising page 189.

Section 12(1)(d) reads:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> > A record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

The Ministry identifies that page 188 was dealt with in a previous order (Interim Order P-1621-I) where the section 12 exemption claim was upheld, and argues that it should similarly apply in this appeal for the same reasons. The Ministry also submits that the exemption claim should extend to page 189, which contains the same information.

The issue of whether records found to qualify for exemption in one instance should also qualify in another appeal was also addressed by me in Interim Order P-1621-I, which involved the Ministry. In that appeal the Ministry submitted that records found to be exempt under section 19 (solicitor-client privilege) in an earlier decision should continue to be exempt. I stated:

> In its representations, the Ministry submits that because these records have been the subject of a previous adjudication, they should be treated in the same manner in this appeal. …
>
> There may be circumstances where this office should not rely on previous decisions in deciding similar matters, due to the passage of time or a change in circumstances or context. However, in my view, this appeal does not fit into this category. The nature of the exemption under consideration, solicitor-client communication privilege, is not time-sensitive, nor is it impacted by the termination of litigation. In the circumstances of this appeal, I have concluded that the undisclosed portions of pages 2-3 and 39-41 continue to qualify for exemption under section 19, for the same reasons as articulated in Order P-1412.

I will apply the same approach to the treatment of pages 188 and 189 in this appeal.

In Interim Order P-1621-I, I found that a one-page document titled "Ipperwash Update", which was sent by a member of the Interministerial working group to the then-Solicitor General, qualified for exemption under section 12. This is the same record as page 188 in this appeal. In the previous appeal the Ministry explained that the purpose of sending the record was to assist the Solicitor General in presenting the issue to Cabinet and to advise Cabinet, and submitted that the record reflected consultation among ministers relating to the making of decisions and the formulation of policy (section 12(1)(d)), as well as briefing material for Cabinet (section 12(1)(e)).

In finding that the record qualified for exemption, I stated:

> Given the circumstances under which the record was prepared and the nature of its contents, I am satisfied that page 35 was used for consultation among ministers

> of the Crown on matters relating to the working of government decisions on the formulation of government policy. Therefore, page 35 qualifies for exemption under section 12(1)(d) of the *Act*.

Outside the context of the twenty-year provision in section 12(2) that is not relevant here, the passage of time has no impact on the application of section 12(1)(d). The circumstances and context in which the record was created and used during the Cabinet deliberation and decision-making context remain constant over time and, as long as the requirements of the exemption claim have been established, in my view, they continue to apply in the context of subsequent appeals involving the same record. Therefore, I find that, in the circumstances of this appeal, page 188 and the undisclosed portions of page 189, which contain the same information, continue to qualify for exemption under section 12(1)(d) of the *Act* for the same reasons as articulated in Interim Order P-1621-I.

ADVICE OR RECOMMENDATIONS

The Ministry claims that page 310 qualifies for exemption under section 13(1) of the *Act*. The Ministry's representations on this issue are restricted to the bottom portion of page 310, and I will assume that the Ministry is not relying on section 13(1) as a basis for denying access to the other undisclosed portions of this page. In any event, the Ministry has not provided evidence or representations to substantiate the application of section 13(1) to any portions of page 310 other than the bottom portion, and I find that it has not discharged the burden of proving that the exemption applies to any other severed information on this page.

Section 13(1) reads as follows:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Previous orders have established that advice and recommendations, for the purposes of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders P-94, P-118, P-883 and PO-1894). Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the *Act* (Orders P-1054, P-1619 and MO-1264).

The interpretation of section 13(1) first introduced in Orders 94 and P-118 was applied in Order P-883, upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (December 21, 1995), Toronto Doc. 220/95, leave to appeal refused [1996] O.J. No. 1838 (C.A.).

The Ministry submits that information contained in the bottom portion of page 310 recommends a particular course of action. It states:

> … This advice forms part of a discussion note, dated January 24, 1996, that was prepared by an employee of the Ministry for the Deputy Solicitor General and was presented to the Deputy Solicitor General as part of a deliberative process that occurred with another senior member of Government.
>
> Therefore, the Ministry submits that according to the test set out in the Notice of Inquiry, this Record meets the scope of this exception (sic), and should not be disclosed. Disclosure of this type of advice would discourage Ministry employees from being frank and honest in developing policy advice or recommendations, thereby harming the entire policy development process in the Ministry.

I do not accept the Ministry's position.

I recently reviewed the meaning of the word "advice" for the purpose of section 13 in Order P0-2028, involving the Ministry of Northern Development and Mines. In that Order the ministry took the position that "advice" should be broadly defined to include "information, notification, cautions, or views where these relate to a government decision-making process". I did not agree, and stated:

> … [the institution's position] flies in the face of a long line of jurisprudence from this office defining the term "advice and recommendations" that has been endorsed by the courts; conflicts with the purpose and legislative history of the section; is not supported by the ordinary meaning of the word; and is inconsistent with other case law.
>
> A great deal of information is frequently provided and shared in the context of various decision-making processes throughout government. The key to interpreting and applying the word "advice" in section 13(1) is to consider the specific circumstances and to determine what information reveals actual advice. It is only advice, not other kinds of information such as factual, background, analytical or evaluative material, which could reasonably be expected to inhibit the free flow of expertise and professional assistance within the deliberative process of government.

In this appeal, the relevant portions of Page 310 clearly indicate that the author of the report is giving his opinion concerning a particular matter or course of action, and makes it clear that the recipient of the opinion is not in a position to take any specific action in response. Ordinarily, an opinion would not constitute advice for the purpose of section 13. However, I also made the following statement in Order PO-2028:

> What is clear from these [previously identified] cases is that the format of a particular record, while frequently helpful in determining whether it contains "advice" for the purposes of section 13(1), is not determinative of the issue. Rather, the content must be carefully reviewed and assessed in light of the context in which the record was created and communicated to the decision maker. In circumstances involving options that do not include specific advisory language or an explicit recommendation, careful consideration must be given to determine

> what portions of a record including options contain "mere information" and what, if any, contain information that actually "advises" the decision maker on a suggested course of action, or allows one to accurately infer such advice. If disclosure of any portions of a record would reveal actual advice, as opposed to disclosing "mere information", then section 13(1) applies.

Applying this approach to the bottom portion of page 310, I find that it does not contain any "advice" or "recommendations" for the purposes of section 13(1). The author makes it clear that he is providing his opinion, and that the Ministry is not in a position to take any action on the matter under discussion. Therefore, I find that the bottom portion of page 310 does not relate to a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process, and does not qualify for exemption under section 13(1) of the *Act*.

LAW ENFORCEMENT

The Ministry claims the following provisions of section 14 with respect to pages 18, 91-93, 122, 125, 126 and 375-379, in whole or in part:

Page 18, in part	-	sections 14(1)(d) and (l)
Pages 91-93, in part	-	section 14(2)(a)
Page 122 and 125, in part	-	section 14(2)(a)
Page 126, in part	-	sections 14(1)(d) and (l) and 14(2)(a)
Pages 375-379, in whole	-	section 14(2)(a)

In its representations, the Ministry withdrew its section 14(1)(g) exemption claim for pages 364-379, and all section 14 claims for pages 19, 25, 364-374. As no other exemption claims were made for the relevant portion of pages 19 and page 25, they should be disclosed to the appellant.

The various identified provisions of section 14 read as follows:

> 14(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (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;
>
> (l) facilitate the commission of an unlawful act or hamper the control of crime.
>
> 14(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;

Section 14(1)(d) and (l)

In Order PO-1747, Senior Adjudicator David Goodis stated the following with respect to the words "could reasonably be expected to" contained in the introductory wording of the law enforcement exemption:

> The words "could reasonably be expected to" appear in the preamble of section 14(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

The Ministry states that the undisclosed paragraph on page 18 contains comments allegedly made to a group of non-native campers about an illegal act about to be committed, and subsequently passed on to the OPP by the campers. The Ministry submits:

> This information was provided implicitly in confidence, given that it was passed on to provincial authorities, and contained information about an illegal act about to be committed. It could subject these campers to some type of retributive action as it could identify them. Finally, it could hinder future law enforcement activities as individuals would not provide the police with confidential information if they knew it could subsequently be disclosed.

I do not accept the Ministry's position. No individual is identified in the severed paragraph of page 18 and, based on the representations provided by the Ministry, I am not persuaded that any camper could reasonably be identified from the contents of the severed paragraph. The absence of identifiability precludes the application of section 14(1)(d), and also any possibility that these campers could be exposed to retributive action as suggested by the Ministry. I also find that the Ministry has failed to provide the required detailed and convincing evidence necessary establish a reasonable expectation that disclosure of the text of the severed paragraph could facilitate the commission of an unlawful act or hamper the control of crime, as required by section 14(1)(l). Any specific unlawful act relating to the occupation of Ipperwash is clearly now in the distant past, and I am not persuaded that individuals would be inhibited from providing similar information to the police in future similar circumstances, particularly where they are not identified or identifiable.

As far as page 126 is concerned, the Ministry submits that disclosing the portion that consists of an incident summary based on information provided by a specified type of individual could disclose the identity of this individual and therefore result in the section 14(1)(d) and (l) harms. No individual is identified by name in this incident report. Also, based on the Ministry's

representations, I am not persuaded that, as long as the portions of this section of page 126 that qualify for exemption under section 21(1) are withheld (see my previous discussion on page 9), disclosure of the rest of this incident report would provide information identifying the individual. I also find that as long as the individual is not identified or identifiable, the harms requirements of section 14(1)(l) are not reasonable in the circumstances.

Therefore, I find that the severed paragraph on page 18 and the incident summary at the top of page 126 do not qualify for exemption under section 14(1)(d) or (l) of the *Act*.

Section 14(2)(a)

In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the Ministry must satisfy each part of the following three-part test:

1) the record must be a report; and
2) the report must have been prepared in the course of law enforcement, inspections or investigations; and
3) the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law [see Order 200 and Order P-324].

I am satisfied that the records at issue were prepared in the course of "law enforcement, inspections or investigations" by an agency, the OPP, that has the function of enforcing and regulating compliance with a law. Accordingly, the second and third requirements of section 14(2)(a) are satisfied.

As far as the first requirement is concerned, previous orders have found that in order to qualify as a "report", a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

In Order PO-1988, Adjudicator Sherry Liang summarized the approach taken by this office to various standard documents routinely used by various police forces during the discharge of their responsibilities:

> In sum, although it is generally accepted that occurrence reports or inspection reports are generated out of law enforcement activities, it has been found that they do not have the quality of formality of analysis required to qualify as "reports" for the purpose of section 14(2)(a) or its municipal equivalent. I find that the area inspection reports before me are similar in nature to the records under consideration in the above orders. Their purpose is to describe, rather than to evaluate and their contents consist essentially of observations and facts rather than evaluations of those observations and facts. The fact that there are some comments in some of the reports which might be considered evaluative does not detract from their essential nature.

In Order M-1109, I also found that police occurrence reports did not qualify as "reports" for the purpose of the municipal equivalent to section 14(2)(a), because they consisted primarily and

essentially of descriptive material, notwithstanding that they contained a few comments which might be considered evaluative in nature.

The Ministry describes pages 91-93 as part of a "chronological report prepared by the OPP in connection with the OPP monitoring illegal activities at [Ipperwash] Park or in its vicinity during the Occupation". The Ministry submits that it qualifies as a "report" for the purposes of section 14(2)(a) because it "sums up what took place, describes the actions of the OPP, the results of their actions, and their assessment of the situation."

I do not accept the Ministry's position. Pages 91-93 appear to be portions of a chronology of events taking place during the occupation, although there is no specific date contained on these pages. Portions of all three pages have been disclosed to the appellant, which would appear to reflect the Ministry's view that the chronology in its entirety does not qualify for exemption under section 14(2)(a). Having carefully reviewed the undisclosed portions, in my view, they are similar in nature to the portions already disclosed. They describe events taking place at specific times on the day in question, and consist of statements of fact and observations made by the author of the chronology. The severed portions, with perhaps one exception on page 93, do not contain evaluative information and, as Adjudicator Liang stated, a single comment such as the one on page 93, which might be considered evaluative, does not detract from the essential nature of the chronology as a statement of facts and observations of activities taking place during the specified period. Therefore, I find that pages 91-93 do not qualify for exemption under section 14(2)(a).

The Ministry also claims that pages 122, 125 and 126 qualify for exemption under section 14(2)(a). The Ministry submits that these records, which consist of four OPP incident summaries "sum up what took place, describes the actions of the OPP, the results of their actions, and their assessment of the situation."

Again, I do not accept the Ministry's position on these pages of records. The incident reports are factual accounts of specific incidents handled by the OPP during the course of the Ipperwash incident. They contain facts and observations but no evaluative information and, for the same reasons as pages 91-93, I find that they are not accurately characterized as "reports" for the purposes of section 14(2)(a) and do not qualify for exemption under this section for that reason.

Page 375 is described by the Ministry as an intelligence report prepared by an OPP detective concerning the status of various aspects of the Ipperwash situation as of a specified date. The Ministry submits that this record constitutes a "report" in that it not only includes facts and observations, but also "an assessment of the situation at the Park." Page 375 is headed "Intelligence Report" and dated. It is different in nature and content from the information in the chronology (pages 91-93) and the incident reports (pages 122, 125 and 126) in that it not only outlines specific facts, but also reflects the author's assessment of the situation and his evaluation of the status of certain events and aspects of the Ipperwash incident. I find that page 375 is accurately described as a "report" as the term has been defined in previous orders, and that it qualifies for exemption under section 14(2)(a) of the *Act*.

Pages 376-379 are described by the Ministry as an intelligence report prepared by another government and provided to the Ministry in confidence. Section 15 has also been claimed for

these pages. Unlike page 375, the content of pages 376-379 is strictly factual in nature. These pages contain no evaluative information, as required in order to qualify as a "report" for the purposes of section 14(2)(a). Accordingly, I find that pages 376-379 do not qualify for exemption under section 14(2)(a). I will consider these pages in my discussion of section 15.

RELATIONS WITH OTHER GOVERNMENTS

The Ministry relies on section 15(a) and (b) as the basis for exempting the following pages or portions of pages: pages 21, 25, 127-128, 143-144, 159-161, 268-277, 297-298, 322-324, 343-345, 362, 364-379, and 400-402.

In its representations, the Ministry withdrew the section 15(a) and (b) exemption claims for pages 236-243, 270-277 and 332-341, but raises section 15(c) as the basis for withholding access to pages 236-243. I will deal with pages 268-271 in my section 19 discussion that follows, so will not address them here.

Section 15 reads a follows:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
>
> (b) reveal information received in confidence from another government or its agencies by an institution; or
>
> (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,
>
> and shall not disclose any such record without the prior approval of the Executive Council.

Sections 15(a) and (b)

Previous orders have found that, in order for a record to qualify for exemption under section 15(a), the Ministry must establish that:

> 1. the records relate to intergovernmental relations, that is relations between an institution and another government or its agencies; and
>
> 2. disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations.

[Reconsideration Order R-9700003]

For a record to qualify for exemption under section 15(b), the Ministry must establish that:

1. the records reveal information received from another government or its agencies; **and**

2. the information was received by an institution; **and**

3. the information was received in confidence.

[Order 210]

The Ministry submits that the identified pages qualify for exemption under these two sections because:

> … disclosure of the [pages] would jeopardize the integrity of Ontario's intergovernmental relations with Canada. Ontario's relationship with Canada is an ongoing one, both generally, with respect to their long-term interactions and specifically, with respect to the [Kettle and Stoney Point] Band. It could reasonably be expected that if the records were to be disclosed, Canada would be less willing to disclose such records in the future to Ontario, which in turn could delay the resolution of land claims disputes, and other matters involving First Nations. Obviously, this could have a chilling effect on Ontario's relations with other levels of government if it were to become known that its legislation did not enable it to keep its records confidential.
>
> The Ministry further submits that the expectation of prejudice to its intergovernmental relations with Canada is reasonable, given that Canada has taken the position that prejudice would result, in the request for other records created pursuant to disputes and negotiations with other First Nations, and considered in previous orders. [The Ministry then refers to Orders P-630 and P-730].

The Ministry's representations do not address page 21. I have reviewed the relevant undisclosed portions of this page and, on their face, I am not persuaded that they qualify for exemption under section 15(a) or (b). There is no indication that the information contained in these portions was received by the Ministry from another government or its agencies in confidence; nor, absent evidence or argument from the Ministry, am I prepared to conclude that its disclosure could reasonably be expected to prejudice "the conduct of intergovernmental relations".

The Ministry identifies that the disclosure of the first severed portion of page 25 would reveal the planned attendance of representatives of the Government of Canada at specific meetings prior to the occupation. I find that this severed portion of page 25 qualifies for exemption under section 15(b). It is clear from its content that the information reflected in the severed portion was received by the Ministry from the federal government and, given the nature of the information, I accept that it was received with a reasonably held expectation of confidentiality in the circumstances.

Pages 401-402 are an undated, signed letter from the then-Minister of Natural Resources and Northern Development and Mines to the federal Ministers of Defense and Indian and Northern Affairs. The letter is also copied to two other Ministers of the Ontario Government and the Chief of a named First Nation organization. The Ministry submits that this letter, if disclosed, would reveal the existence of other records exempt under section 15(a) and (b) (i.e. pages 127-128 and 143-144). There is no indication on the face of pages 401-402 to indicate that it was being sent to the two federal ministers in confidence, nor, in my view, would it be reasonable in the circumstances to infer that it was being sent in confidence, given its content and the fact that it was being copied to at least one party outside the provincial and federal government. The letter was clearly not "received by " the Ministry in confidence (as required by section 15(b)), nor am I convinced that the reference in it to the other records was itself received in confidence by the Ministry by way of the carbon copied letter. I am also not convinced, based on the Ministry's representations, that disclosure of this minister-to-minister correspondence, would give rise to a reasonably-held expectation of prejudice to the conduct of intergovernmental relations (as required by section 15(a)). Rather, based on its contents and the fact that it was copied to others would more reasonably infer that it was intended to be used to exert influence on the actions of the federal government in ways that might well involve the public disclosure of the letter. Therefore, I find that pages 401-402 to do not qualify for exemption under sections 15(a) or (b) of the *Act*.

Page 400 is "Routing Memo" produced from the Ministry's executive correspondence management system transmitting the attached letter (pages 401-402) to the Commissioner of the OPP. There is no indication on this page that the letter is being sent in confidence, or that access to the routing memo describing the letter has been restricted on the Ministry's correspondence tracking system Having found that the letter itself does not qualify for exemption, I similarly find that the routing memo also does not qualify for the same reasons.

In the index provided to the appellant during the mediation stage of the appeal, the Ministry identifies pages 127-128 as a "Memorandum of Understanding (signed copy)". This record is referred to by the then-Minister of Natural Resources and Northern Development in pages 401-402. Pages 143-144 are a duplicate copy of the same memorandum, and are described in the Ministry's index as "Memorandum of Understanding – Fed. (signed) (duplicate)". This memorandum of understanding (the federal MOU) is also referred to and its contents are described in some level of detail in other pages of records already disclosed to the appellant (e.g. pages 183, 213, 214, 221 and 266). The federal MOU is signed by two senior representatives of the federal government and two senior officials representing native interests. The Ministry submits that is it not a party to the federal MOU, and that it received the document in confidence. There is nothing on the face of the federal MOU to indicate that it is a confidential document, nor does its content require that the parties hold the document confidentially. The Ministry also has not indicated precisely whom the federal MOU was received from. Given the fact that the existence of the federal MOU is widely known, the absence of any explicit indication that it is a confidential record, and the fact that its contents have been described in other records previously disclosed to the appellant, I find that pages 127-128 and 143-144 do not qualify for exemption under section 15(a) or 15(b) of the *Act* and should be disclosed.

Pages 322-324 are described in the Ministry's index as "Memorandum of Understanding". Pages 159-161 and 343-345 are unsigned versions of the same record. Page 342, which is a

routing memo that accompanied pages 343-345 and has been disclosed to the appellant, further describes the Memorandum of Understanding as a document "developed between the OPP/First Nations (Stoney Pointers) in Sept 95 during the Ipperwash incident". Pages 343-345 are stamped "confidential", but there is no express indication of confidentiality on pages 322-324, the signed version of the memorandum (the provincial MOU). The Ministry's submissions on these pages are focused on the fact that they make reference to pages 127-128, and that disclosing the provincial MOU would reveal the substance of the federal MOU, thereby prejudicing the conduct of intergovernmental relations (section 15(a)). The Ministry's representations do not address the other provisions of the provincial MOU. As outlined above, I have determined that the existence of the federal MOU comprising pages 127-128, and its content, is known to the appellant and others through actions taken by various parties that are inconsistent with a reasonably held expectation of confidentiality. While I can understand that pages 343-345 were marked "confidential" while the provincial MOU was unsigned, I put little weight on this indication of confidentiality once the agreement was finalized, particularly in the absence of any indication of confidentiality in the text of the document. Therefore, I find that pages 322-324, 159-161 and 343-345 do not qualify for exemption under section 15(a) of the *Act*, and should be disclosed to the appellant.

Pages 297-298 are two fax cover sheets sent by two different federal government officials to the Ministry. Page 297 has a box to indicate the "security classification" of the document and it contains the word "unclassified", which I take to mean that it has a low level of security associated with it. The Ministry claims that both pages qualify for exemption under section 15(a), but includes no specific representations indicating how or why the disclosure of these pages could reasonably be expected to prejudice the conduct of intergovernmental relations. In the absence of any specific representations, and on my review of the pages, I find that the requirements of section 15(a) of the *Act* are not present, and pages 297-298 do not qualify for exemption and should be disclosed to the appellant.

Page 362 is an email sent and received by Ministry employees described in the Ministry's index as "Ipperwash Update - General info only". Most of the page has been disclosed, and only one 2-sentence paragraph exempted under section 15(a) and (b). The Ministry's representations do not refer to page 362 specifically. On my review of the exempt paragraph, I find that it is factual in nature, reporting on a specific aspect of ongoing activities involving various levels of government and native organizations. There is nothing on the face of page 362 to indicate that the information in the paragraph was received by the Ministry in confidence from another government, as required for section 15(b); nor am I persuaded, in the absence of any specific representations from the Ministry, that its disclosure could reasonably be expected to prejudice the conduct of intergovernmental relations, as required by section 15(a). Accordingly, I find that the one severed paragraph on page 362 does not qualify for exemption under section 15 of the *Act* and should be disclosed to the appellant.

Pages 364-374 consist of minutes of a March 1, 1996 negotiation session attended by representatives of the federal government and a native band. Page 364 also indicates that two documentary filmmakers were in attendance at the meeting. The Ministry states that no provincial representatives attended the meeting. Page 363, which has been disclosed to the appellant, is a fax cover sheet indicating that pages 364-379 were forwarded from one Ministry

staff person to another, but there is no indication on the exempt pages or in the Ministry's representations to explain how or why these minutes came into the custody of the Ministry.

I have determined that page 375 qualifies for exemption under section 14(2)(a) so will not discuss it further here.

As far as pages 364-374 and 376-379 are concerned, I have decided to defer my finding regarding the application of section 15 in order to provide the federal government with an opportunity to provide representations on the records. It is clear from the contents of these pages that the interests of the federal government, and not the provincial government, are being discussed and although the Ministry's representations would not, in my view, be sufficient to support the section 15(a) or (b) exemption claims, in fairness, the federal government is unaware that these records are at issue in this appeal and it should be notified and provided with an opportunity to provide input.

Section 15(c)

The Ministry submits that pages 236-243 (and the duplicate of this record being pages 270-277) qualify for exemption under section 15(c).

In my view, for a record to qualify for exemption under section 15(c), the institution must establish that:

1. the records reveal information received from an international organization of states or a body thereof; **and**

2. the information was received by an institution; **and**

3. the information was received in confidence.

The Ministry submits:

> [These pages] contain correspondence sent by [an international organization] through the Federal Government, which the Ministry respectfully submits ought to be interpreted as having been provided in confidence by both [the international organization] and the Federal Government. It is submitted it was never written for public dissemination, and it was intended for fact gathering and investigation purposes only, and is of a highly sensitive nature. Some of the facts in [the international organization's] correspondence are incorrect, such as … . Revealing this Record might therefore embarrass [the international organization]. It might further embarrass the Federal Government who provided it to the Ministry arguably in contemplation of it not being subject to further disclosure.

Pages 236 and 238 are fax cover sheets, the first transmitting a cover letter from a federal government lawyer to a lawyer in the Ministry of the Attorney General (page 237); and the second attaching the letter and attachments sent by the international organization to the federal government. Neither fax page includes any indication that the attachments contain confidential

information, and page 238 includes a notation that the documents are "UNCLASSIFIED", which I again take to indicate that they do not contain sensitive information. Similarly, pages 237 and 239, which are the front pages of correspondence, do not include any express reference to confidentiality, nor does the content of the records appear to contain sensitive or confidential information. However, for the same reasons outlined above with respect to pages 364-374 and 376-379, I have decided to defer my finding regarding the application of section 15(c) in order to provide the federal government and the international organization with an opportunity to provide representations on the records. It is clear from the contents of these pages that the interests of the federal government and the international organization, and not the provincial government, are being discussed and although the Ministry's representations would not, in my view, be sufficient to support the section 15(c) exemption, in fairness, the federal government and the international organization are unaware that these records are at issue in this appeal and they should be notified and provided with an opportunity to provide input.

In summary, I find that the first severance on page 25 qualifies for exemption under section 15(b); and that pages 21, 25, 127-128, 143-144, 159-161, 268-277, 297-298, 322-324, 343-345, 362, and 400-402 do not qualify for exemption under either section 15(a) or 15(b). I have deferred my findings on pages 364-374 and 376-379 pending notification of the federal government, and on pages 236-243 and 270-277 pending notification of the federal government and the identified international organization.

ECONOMIC AND OTHER INTERESTS

The Ministry claims section 18(1)(d) as the basis for exempting cellular phone numbers and pager numbers contained on pages 19, 53-56 and 63-65.

Section 18(1)(d) reads as follows:

A head may refuse to disclose a record that contains,

> information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

The Ministry submits:

> … unlike ordinary telephone service, where a call is billed to the person making the call, cellular telephone calls are billed to the recipient of the call. The Ministry submits that it is reasonably foreseeable that through use or dissemination of the cellular telephone numbers and pagers, that these devices would be exposed to unauthorized use, with resultant costs to be borne by the Ministry.

The Ministry relies on Order M-551 in support of its position. In that order Adjudicator Laurel Cropley stated:

> … I find that because calls are paid on an in-coming as opposed to an out-going basis, and the charge is placed on the call at the time a connection is made, disclosure of the cellular telephone numbers would significantly compromise the ability of the Police to control expenditures associated with these telephones. Accordingly, I find that disclosure of these numbers could reasonably be expected to be injurious to their financial interests. Therefore, I find that the cellular telephone numbers are properly exempt under section 11(d) of the *Act*.

In Order M-551, Adjudicator Cropley dealt with a significantly different situation involving cellular phones. She had to determine whether access should be granted to a summary listing of billings for all cellular telephones used by a police service for a particular billing period. In contrast in the present appeal, the undisclosed information concerns a small number of cellular and pager numbers used by certain government officials several years ago, a number of whom are no longer employed by or associated with the government. I am not convinced that the section 18(1)(d) exemption claim, which deals with injury to the financial interests of the government and its ability to manage the economy of the province, was intended to apply to the disclosure of a small number of pager and cellular phone numbers used by various government officials in 1995.

Based on the Ministry's representations, I do not accept that disclosure of the cellular and pager phone numbers contained on pages 19, 53-56 and 63-65 could reasonably be expected to be injurious to the financial interests of the Government of Ontario or to the ability of the Government to manage the economy of Ontario. Therefore, this information does not qualify for exemption under section 18(1)(d) of the *Act* and should be disclosed to the appellant.

SOLICITOR-CLIENT PRIVILEGE

The Ministry relies on section 19 as the basis for exempting the following records, in whole or in part: pages 246-247, 249-250, 255, 259-260, 268-269, 270-271, 310 and 348-355.

In its representations, the Ministry withdrew its section 19 claim for pages 236-243, 272-277 and 356-361.

Section 19 of the *Act* reads:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation

Previous orders of this office have identified that solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation (Order P-1551).

The Supreme Court of Canada has described this privilege as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ... (*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409)

The privilege has been found to apply to "a continuum of communications" between a solicitor and client:

> . . . the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context (*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409).

With respect to records 246-247, 249-250, 255, 259-260, 268-271 and 348-355, the Ministry submits that these records contain written communications prepared by Ministry legal counsel for his client. The Ministry submits that these records contain references to statutes, legal roles and responsibilities, and material which clearly requires legal expertise, and that the author was clearly acting in his capacity as legal counsel.

Having reviewed these records, I concur with the Ministry's position for the identified pages, with the exception of pages 270 and 271. All of these records were authored by legal counsel employed by the Ministry, and were prepared for the purpose of providing confidential legal advice to his internal clients on how to respond to information received from the federal government on an issue relating to the Ipperwash occupation. Pages 270 and 271, on the other hand, consist of a fax cover sheet and 1-page letter from a legal counsel at the federal government to a legal counsel at the Ministry of the Attorney General. Clearly, there is no solicitor-client relationship between each counsel and the other's client, nor is any advice contained in pages 270 and 271 in any event. Accordingly, I find that section 19 of the *Act* does not apply to pages 270 and 271.

As far as page 310 is concerned, Ministry submits:

> [It] contains written communications in a briefing note which communicates legal advice, and which explicitly refers to the Legal Counsel who provided it. In a large institution such as the Ministry, it is to be expected that the solicitor-client privilege would extend to communications between different parts of the Ministry that refer to legal advice provided by Ministry Counsel.

As the Ministry acknowledges, page 310 is not authored by legal counsel, but instead makes reference to legal advice previously communicated by legal counsel to the author of the record and referred to in the record. I find that the portions of page 310 that refer to this legal advice, which are contained in the final two sentences in the first severed portion of the page, qualify for exemption under section 19. The remaining undisclosed portions of page 310 do not reflect the advice provided by counsel and, in my view, their disclosure would not reveal the advice contained in the two sentences that qualify for solicitor-client communication privilege.

In summary, I find that page 246-247, 249-250, 255, 259-260, 268-269, 348-355 and the final two sentences in the first severed portion of page record 310 qualify for exemption under section 19 of the *Act*.

OVERALL SUMMARY

As a result of my findings under sections 2(1)/21, 12(1)(d), 13, 14(1)(d) and (l), 14(2)(a), 15(a) and (b), 18(1)(d) and 19, the following pages or partial pages of records qualify for exemption:

Section 21(1):

Page 21	-	first severed paragraph
Page 25	-	second-to-last severed portion
Page 36	-	4-word severance
Page 40	-	first severance
Pages 53, 54, 55, 63, 64 and 65	-	personal numbers
Page 91	-	name of suspect
Page 92	-	names and dates of birth/ages of deceased/injured individuals, and three words in the second-to-last severance
Page 112	-	severed word
Page 122	-	severed portions relating to criminal history
Page 126	-	severed portions relating to criminal history
Pages 153 and 154	-	names, addresses and home phone and fax numbers of residents, and home and fax numbers of an elected official
Page 231	-	two severed sentences at bottom
Page 310	-	names of two individuals in first severed paragraph

Pages 331, 332,
333, 334, 335,
336 and 339 - names and address of member of public

Section 12:

Page 188 and 189

Section 14(2)(a):

Page 375

Section 15(b):

Page 25 - first severance

Section 19:

Page 246-247, 249-250, 255, 259-260, 268-269, 348-355 and the final two sentences in the first severed portion of page record 310.

I will now consider whether any of these exempt records should be disclosed through the public interest provision contained in section 23 of the *Act*.

PUBLIC INTEREST OVERRIDE

Section 23 of the *Act* reads as follows:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 ,21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Section 23 does not apply to records that qualify for exemption under sections 12, 14 or 19. In addition, I have determined that none of the pages of records at issue in this appeal qualify for exemption under sections 13(1) or 18(1)(d), so I need not consider these sections in the context of my section 23 discussion.

As far as section 15 is concerned, I have decided to notify the federal government and the identified international organization before making my findings under section 15 for pages 236-243, 270-277, 364-374 and 376-379. I will also defer considering section 23 for the one severance on page 25 that qualifies for exemption under section 15(b) until I have received all of the relevant representations on the remaining section 15 records.

Therefore, the only pages I will address under section 23 in this order are those that I have determined qualify for exemption under section 21(1) of the *Act*.

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the exemption (see Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)). In Order P-1398, former Adjudicator John Higgins stated:

> An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.
>
> If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

Is there a public interest in disclosure, and if so, it compelling?

The Divisional Court has provided guidance in determining whether a "compelling public interest" exists in a given case. In *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), the Court noted that, in assessing the issue of "compelling public interest", it is necessary to "… take into account the public interest in protecting the confidentiality …" of the information.

I would note at the outset that I have already found a compelling public interest in disclosure of certain other records relating to the events at Ipperwash (see my Interim Orders P-1619, P-1620, P-1621 and PO-2033-I). Similar findings were made in Orders P-984, P-1363 and P-1409.

the appellant's position

The appellant identifies that the information contained in the requested records has continually been the subject of requests since the incidents at Ipperwash occurred back in 1995. In that regard, the appellant points out that "[u]nderstanding why the police were sent into the park remains of paramount importance in preventing further such tragedies."

The appellant goes on to state:

> I make no apologies for being in the media or for trying to find out the truth of what happened that night. If questions about Ipperwash had been answered shortly after the fatal operation, the story would have been dead years ago. I challenge government spokespeople to quickly recall any other stories from September, 1995. The very reason why this story has lingered so long in the

> media is because of the intense battle put up by the government to keep information from the public.
>
> …
>
> To bolster my point that this is a grave matter of the utmost public interest, I include a printout of a story that suggests that the vast majority of Ontario residents would like clear answers on what happened that night, when an innocent, unarmed man was killed by people on the public payroll.

He then states:

> This is not just my opinion … but a widely and strongly held one by a large number of respected and important Ontario, Canadian and international organizations and authorities, who have publicly recognized the need for more information on the death of [a named individual]. These include human rights and civil liberties groups, a judicial authority, government mandated public review bodies, political parties and elected representatives (including cabinet ministers), provincial and national Aboriginal organizations, local and national church bodies, municipal governments, provincial and national labour unions and newspaper editorial boards and columnists.

The appellant then proceeds to list 38 specific groups which, according to him, have all publicly asserted the need for more information on circumstances regarding the death of the identified individual. He then states:

> All of the above-mentioned groups have shown a strong interest in shedding more light on government operations regarding Ipperwash. Obviously, we cannot learn more without information being released to the public.
>
> The above-mentioned list of groups who have called for more light to be shed on Ipperwash is not inclusive, but it is certainly lengthy and wide-reaching. It also does not include interested individuals who do not belong to organizations.
>
> This clearly shows that this is a clear case for public interest override.
>
> This is not a frivolous request, but one of compelling interest, as it involves allegations of interference at the highest levels of government. It also involves the death of a man and the traumatization of a community. It's hard to think of a case of more compelling public interest.

the Ministry's position

The Ministry responds to the points raised by the appellant by identifying that, in its view, there is no compelling public interest in the disclosure of the particular records at issue in this appeal. The Ministry points out that there has been widespread media coverage of Ipperwash-related

issues, as well as extensive disclosure of relevant records. The Ministry relies on Orders P-613 and P-532 to support this position.

The Ministry then submits:

> … that the same argument [in the referenced orders] can be made in respect of this appeal, because there has been extensive media coverage of this subject area for the last seven years. Further, many related records and parts of records have already been disclosed under numerous access request made under [the *Act*] since 1995. The Ministry emphasises that it voluntarily disclosed many of these records or parts of records … to comply with the spirit of [the *Act*]. For example, in this request alone, 279 of 402 pages, or nearly three quarters of all pages were voluntarily disclosed, prior to the appeal, with most of the rest of the pages being severed partly disclosed.

The Ministry also submits that the records that remain at issue do not relate to the public interest that is being asserted by the appellant. The Ministry states:

> The appellant's submissions are that the records should be disclosed as the public has a right to know about what caused the death of [the named individual]. In fact, none of the records appear to contain any substantive information on the death of [the named individual], except perhaps that which is already in the public domain.

findings

Consistent with previous orders, such as my Interim Orders P-1619, P-1620, P-1621 and PO-2033-I, I find that the media and public attention paid to the handling of the incidents at Ipperwash by the government and the OPP demonstrates a clear and ongoing public interest in various aspects relating to this matter. I have no hesitation in finding that there continues to be a public interest in the disclosure of records relating to the occupation and subsequent criminal investigations of activities that took place at Ipperwash in September 1995.

In deciding whether this public interest is compelling, the following comments of former Adjudicator Higgins in Order P-1398 are an appropriate starting point:

> Order P-984 relies on the Oxford dictionary's definition of "compelling" to mean "rousing strong interest or attention". I agree that this is an appropriate definition for this word in the context of section 23.

In upholding former Adjudicator Higgins' decision in Order P-1398, the Court of Appeal for Ontario in *Ontario (Ministry of Finance*), *supra*, stated:

> ... in our view the reasons of the inquiry officer make clear that in adopting a dictionary definition for the term "compelling" in the phrase "compelling public interest", the [adjudicator] was not seeking to minimise the seriousness or strength of that standard in the context of the section [at p. 1].

In light of the Court of Appeal's comments, I adopt former Adjudicator Higgins's interpretation of the word "compelling" in section 23.

In Order PO-2033-I, which also dealt with Ipperwash-related records, I made the following statements regarding the issue of whether the public interest in disclosure was compelling:

> As the appellant points out, the activities taking place at Ipperwash in September 1995 have been subject to intense public interest in the years since they occurred. In particular, calls for an inquiry into the death of a protester have been prominently featured in the media and have been the subject of debates in the Legislature. In my view, there can be little doubt that issues surrounding the events that took place at Ipperwash have "roused strong interest or attention", and that this interest has not dissipated with the passage of time. Members of the Legislature routinely pose questions to the government on various aspects of the matter; it continues to receive a significant amount of media coverage throughout the province; and, as the appellant points out, it has also been the subject of a recently published book.
>
> …
>
> In my view, there is a clear and compelling public interest in disclosure of records that deal with events that took place at Ipperwash in September 1995. Records such as those qualifying for exemption under section 21 in this appeal, which were created during the course of the occupation itself, and were the subject of criminal investigations undertaken by the OPP, are closely and directly connected to the activities that gave rise to the public's interest and, in my view, this lends support to my finding that there is a "compelling" public interest in disclosure of these records for the purposes of section 23 of the *Act*.

Quite clearly, there is a well-established compelling public interest in disclosing records concerning the events that took place at Ipperwash in September 1995. However, it does not necessarily follow that this compelling public interest extends to any and all records or information that is in any way connected to these events. For example, the public interest in disclosing information that is only peripherally connected to the occupation itself, information already widely known or otherwise readily available to the public, or information created a significant time before or after the termination of the occupation may not be compelling, depending on their content and relationship to the actual incidents of September 1995. In my view, the information contained in each record must be examined to determine whether there is a compelling public interest in its disclosure, and the nature of the public interest may vary depending on the circumstances.

As far as the section 21(1) information at issue in this appeal is concerned, I find that much of it does not meet the test of "compelling", as required in order to qualify for consideration under section 23, for the following reasons:

- information concerning the criminal history and age of the individual on page 21 is publicly known or otherwise available

- information concerning vacation plans for an individual on page 25 is too remotely connected to the actual Ipperwash incident

- information concerning the family status of two individuals on pages 36 and 40 is, in all likelihood, widely known, and is also too remotely connected to the actual Ipperwash incident

- the various personal numbers on pages 53, 54, 55, 63, 64 and 65 are too remotely connected to the actual Ipperwash incident

- the name of the suspect and other related personal information on page 91 are too remotely connected to the actual Ipperwash incident, and the extent of information on page 91 that I have ordered disclosed is sufficient to address public interest considerations, without revealing the identity of the suspect

- the names and dates of birth/age of the deceased and injured individuals on page 92 are publicly known or otherwise available

- identifying information regarding the individual in the incident report at the bottom of page 122 is too remotely connected to the actual Ipperwash incident

- the extent of information in the incident report in the top section of page 126 I have ordered disclosed is sufficient to address public interest considerations, without revealing identifying information in the undisclosed portions of this incident report

- the names, addresses and home phone and fax numbers of residents, and home and fax numbers of an elected official attending the meeting referred to on pages 153 and 154 are too remotely connected to the actual Ipperwash incident

- the employment history of the individual in the bottom section of page 231 is too remotely connected to the actual Ipperwash incident

- the names of the two individuals in the first severed section of page 310 are too remotely connected to the actual Ipperwash incident, and the extent of information in this section of page 310 I have ordered disclosed is sufficient to address public interest considerations, without revealing the names of the two individuals

- the name and address of the author of the correspondence identified on pages 331, 332, 333, 334, 335, 336 and 339 are too remotely connected to the actual Ipperwash incident

The other exempt records are different. They were all created during the course of the occupation itself and are closely and directly connected to the activities that gave rise to the well-established compelling public interest in learning more about what occurred at Ipperwash during the course of the occupation. Specifically,

- the three words in the second-to-last severance on page 92 contain information relating to activities that took place a short time after the death of the individual at Ipperwash, and their disclosure would shed light on events that took place at this significant point in time

- the severed two words on page 112 contain the author's views and opinions about one of the native leaders involved in negotiations relating to the Ipperwash occupation, and their disclosure would shed light on the dynamics of these negotiations

Applying the standard adopted in previous orders and endorsed by the Court of Appeal, I find that there is a rousing strong interest or attention in disclosing the three words in the second-to-last severance on page 92 and the two severed words on page 112, for the reasons outlined above. Accordingly, these portions of the two records meet the "compelling" standard for the purpose of section 23 of the *Act*.

The only remaining issue is whether this clearly established compelling public interest in disclosure of otherwise exempt portions of these pages is sufficient to outweigh the purpose of the section 21 exemption claim.

Does this compelling public interest clearly outweigh the purpose of the section 21 exemption?

Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is protected except where infringements of this interest are justified. The importance of this exemption, in the context of the *Act*, is underlined by its inclusion as one of the fundamental purposes of the *Act*, as stated in section 1(b):

> The purposes of this Act are,
>
> > to protect the privacy of individuals with respect to personal information about themselves held by institutions ...

On this basis, I would conclude that the protection of individual privacy reflects a very important public policy purpose which is recognized in the section 21 exemption. However, it is important to note that the balancing exercise within section 21(2), the class-based exclusion of information from the reach of section 21 set out in section 21(4), and the inclusion of section 21 as an exemption that can be overridden by section 23 all indicate that this public policy purpose must, at times, yield to more compelling interests in disclosure identified by the legislature (Order P-1779).

Commenting generally on the personal privacy exemption under the freedom of information scheme, the authors of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations that would generally be regarded as particularly sensitive, in which case the information should be made the subject of a presumption

of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature . . . the effect of the proposed exemption is to tip the scale in favour of non-disclosure" (Order MO-1254).

As far as the three-word severance on page 92 is concerned, although it contains the personal information of one individual, it simply confirms that he took part in an event in his role as a relative of one of the other individuals identified on this page. The information is not sensitive and is widely known. In my view, the significance of the privacy interests in this information is low.

Finally, the two words on page 112 relate to a native leader, whose identity is already known to the appellant through the disclosure of other portions of this page. The opinion of the author about this leader is, in my view, arguably evident from the previously-disclosed text on page 112 immediately following the severance and, in any event, it is not sensitive in nature. In my view, the significance of the privacy interests in this information is low.

As far as the interests in disclosure are concerned, all of the information at issue is the personal information of occupiers and others sharing their interests, and this information is all directly related to the events taking place during the occupation period. Both of these factors carry significant weight.

In weighing the low weight accorded to the privacy interests of the two individuals against the significant weight favouring disclosure, I find that the interests favouring disclosure clearly outweigh the privacy interests of the individuals in the circumstances. Therefore, I find that the requirements of section 23 of the *Act* have been established for the three words in the second-to-last severance on page 92, and the severed two words on page 112. This information should be disclosed to the appellant. I find that the requirements of section 23 have not been established for all other information that qualifies for exemption under section 21(1) and this information should not be disclosed.

INTERIM ORDER:

1. I order the Ministry to disclose the following records or portions of records to the appellant: Pages 18, 19, 22, 28, 29, 33, 35, 37, 56, 93, 109, 110, 112, 125, 127-128, 143-144, 159-161, 248, 253, 261, 262, 297-298, 318, 322-324, 343-345, 356-361, 362, 400 and 401-402, and portions of records 21, 25, 40, 53, 54, 63, 64, 65, 91, 92, 122 (the non-highlighted portions), 126 (the non-highlighted portions), 231, 310, 331-341, as identified in the body of this order. Because this order does not specify which exact portions of records 122 and 126 qualify for exemption, I have provided the Ministry with a highlighted copy of those records. Disclosure of these records or portions of records is to be made by the Ministry by **November 12, 2002**.

2. I uphold the Ministry's decision to deny access to records 36, 55, 153, 154, 188-189, 246-247, 249-250, 255, 259-260, 268-269, 348-355, 375 and the exempt portions of records 21, 25, 40, 53, 54, 63, 64, 65, 91, 92, 122, 126, 231, 310 and 331-341, as identified in the body of this order.

3. I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, only upon request.

4. I remain seized of this matter, in order to deal with the outstanding issues related to records 236-243, 270-277, 364-374 and 376-379.

Original signed by: October 21, 2002
Tom Mitchinson
Assistant Commissioner