



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2312**

**Appeals PA-030365-1 and PA-030407-2**

**Ministry of Community Safety and Correctional Services**



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## **BACKGROUND:**

*Christopher's Law (Sex Offender Registry) (Christopher's Law)* was proclaimed on April 23, 2001, in response to a coroner's jury recommendation that the government create a registry for convicted sex offenders. The Sex Offender Registry is a provincial registration system for sex offenders who have been released into the community, requiring them to report annually to the local police service. During the registration process, police enter information on these individuals into a database. The database is intended to provide police services with important information that will improve their ability to investigate sex-related crimes as well as monitor and locate convicted sex offenders within the community.

The Sex Offender Registry includes such information as:

- name
- date of birth
- current address
- current photograph
- sex offence(s) for which the offender has been convicted

*Christopher's Law* provides sex offenders with the right to access information about themselves that is contained in the Sex Offender Registry, but does not provide members of the public with an explicit right of access to this same information.

## **NATURE OF THE APPEAL:**

The Ministry of Community Safety and Correctional Services (the Ministry) received the following three similar requests under the *Freedom of Information and Protection of Privacy Act (the Act)* from the same requester for information contained in the Sex Offender Registry:

Request #1: "copies of records listing the postal code contained in the address of each sex offender registered in Ontario's Sex Offender Registry database. I would like this information both in electronic form and hard copy."

Request #2: "copies of records indicating the total number of convicted registered sex offenders residing in each police division in Ontario."

Request #3: "a breakdown of the total number of sex offenders registered in Ontario's Sex Offender Registry by type of sex offence conviction as defined by the Criminal Code. I would like this information both in electronic form and in hard copy."

The Ministry responded to Requests #1 and #2 in the same manner, essentially suggesting that the requester submit the requests to individual police services:

Please be advised that it is the Ministry's position that individual police services have the greater interest in and control of the responsive information and as such,

written submissions for this information should be forwarded to individual police services.

In response to Request #3, the Ministry took the position that *Christopher's Law* applied, thereby removing the request from the scope of the *Act*.

The requester, now the appellant, appealed all three decisions. Appeal file PA-030365-1 was opened to deal with Requests #1 and #2, and Appeal PA-030407-1 was opened to deal with Request #3.

During mediation the Ministry changed its position for Requests #1 and #2, now claiming that they are also covered by *Christopher's Law*:

It is the view of the Ministry that *Christopher's Law (Sex Offender Registry), 2000* applies in the circumstances of your request. The type of information you have requested is outside the scope of the *Freedom of Information and Protection of Privacy Act*.

Specifically, it is the Ministry's position that sections 10 and 13(1) of *Christopher's Law* constitute confidentiality provisions that prevail over the *Act*, by virtue of the application of section 67(1) of the *Act*.

Mediation did not resolve these appeals, and they were transferred to me for adjudication. I decided to combine the two appeals into one inquiry, and began by sending a Notice of Inquiry to the Ministry. The Ministry responded with representations, which were then shared with the appellant. The appellant also submitted representations. I gave the Ministry an opportunity to reply to the appellant's representations, but it declined to do so.

## **DISCUSSION:**

The only issue in these appeals is whether section 67(1) of the *Act*, in combination with sections 10 and/or 13(1) of *Christopher's Law*, gives authority to the Ministry to exclude the information contained in the records that would be responsive to the appellant's requests from the access provisions of the *Act*.

Section 67(1) of the *Act* states:

- (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.

Sections 10 and 13(1) of *Christopher's Law* are not among the confidentiality provisions listed in section 67(2). Accordingly, I must look to the wording of these sections in order to determine:

- whether either of them qualifies as a "confidentiality provision"; and if so

- whether the confidentiality provision specifically provides that it prevails over the Act; and if so
- whether the information requested by the appellant would fall within the scope of the confidentiality provision.

**Is section 13(1) a “confidentiality provision”?**

Section 13(1) of *Christopher’s Law* states:

- (1) Personal information may be collected, retained, disclosed and used in accordance with this *Act* despite the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

The Ministry’s representations do not deal specifically with section 13(1).

The appellant takes the position that this section is not a “confidentiality provision”, for the purpose of section 67 of the *Act*. She submits:

Subsection 13(1) simply provides that personal information about someone may be collected, disclosed, and used in accordance with [*Christopher’s Law*], despite provisions in [the *Act*] that might otherwise prohibit someone from collecting, disclosing, and using such information. There is no reference in section 13(1) to any information being exempt from disclosure, as there is in section 153 of the *Securities Act*. ...

I accept the appellant’s position. In order to qualify as a “confidentiality provision”, the provision must restrict the disclosure of information. Section 13(1) does not do so. Rather, it authorizes the collection, retention, use and disclosure of information. In my view, section 13(1) is not relevant in the context of a request for access to general records under Part II of the *Act*. It has potential application in the context of Part III of the *Act*, which contains a set of rules governing the management of personal information by institutions covered by the *Act*. Without section 13(1) of *Christopher’s Law*, someone could potentially argue that a police service charged with responsibility for administering the Sex Offender Registry, would be bound by the rules in Part III rather than the provisions of *Christopher’s Law*. Clearly, that is not the intent of *Christopher’s Law*, which recognizes that personal information about convicted sex offenders must, at times, be collected and shared among appropriate police services in order to meet the policy objectives of the legislation. Section 13(1) removes any ambiguity as to which set of rules governing personal information contained in the Sex Offender Registry should apply in that context; however, it has no application in the context of an access request under Part II of the *Act*, which is the situation here.

Therefore, I find that the appellant's requests do not fall outside the scope of the *Act* by virtue of the application of section 13(1) of *Christopher's Law*.

**Is section 10 a “confidentiality provision”?**

Section 10 of *Christopher's Law* reads as follows:

- (1) Subject to subsections (2) and (3), no person shall disclose to another person information obtained from the sex offender registry in the course of his or her duties under this *Act* or received in the course of his or her duties under this *Act* except as provided by this *Act*.
- (2) A police force, an employee of a police force and an employee of or person authorized by the ministry for the purpose of this section shall have access to the sex offender registry at any time and may collect, retain and use information obtained from the sex offender registry for any purpose under this *Act*, under subsection 41 (1.1) of the *Police Services Act* or for crime prevention or law enforcement purposes.
- (3) A police force, an employee of a police force and an employee of or person authorized by the ministry for the purposes of this section may disclose information contained in the sex offender registry to another police force in or outside Canada for the purposes of this section or for crime prevention or law enforcement purposes and the other police force may collect, retain and use the information for crime prevention or law enforcement purposes.
- (4) Any disclosure of personal information made under subsection (2) or (3) shall be deemed to be in compliance with clauses 42(e) of the *Freedom of Information and Protection of Privacy Act* and 32(e) of the *Municipal Freedom of Information and Protection of Privacy Act*.

The Ministry takes the position that section 10(1) qualifies as a “confidentiality provision” and the appellant accepts this position.

I concur. This section prohibits disclosure of certain information, subject to certain exceptions listed in sections 10(2) and (3).

**Does section 10 specifically provides that it prevails over the *Act*?**

The Ministry submits:

It is the position of the Ministry that any disclosure of information from [the Sex Offender Registry] must be in accordance with section 10(3) of *Christopher's*

*Law.* This section specifies the limited circumstances in which information may be disclosed. A release of information in response to a request under [the *Act*] does not fall within these circumstances.

The rest of the Ministry's representations focus on the content of the Sex Offender Registry and its position that information falling within the scope of the appellant's requests would constitute "personal information" of the various offenders and therefore governed by the disclosure scheme established by *Christopher's Law*.

The appellant disagrees, and submits:

I agree the subsection 10(1) of *Christopher's Law* (Sex Offender Registry) is a confidentiality provision that prohibits someone from disclosing to anyone else information s/he obtains from [the Sex Offender Registry] during the course of his/her duties. This prohibition is subject to the exceptions listed in subsections 10(2), 10(3), and 10(4) that allow disclosure of information from the sex offender registry for purposes of police work.

Since section 10 of *Christopher's Law* does not "specifically provide otherwise", subsection 67(1) of [the *Act*] would prevail over the confidentiality provision of section 10.

In my submission, the plain and ordinary meaning of the words "specifically provides otherwise" in subsection 67(1) of [the *Act*] is that provisions of [the *Act*] that mandate disclosure of a record will prevail over any provision in another act that prohibits such disclosure, unless the words of the other act explicitly state that such prohibition applies despite [the *Act*].

The appellant makes a comparison between the explicit exclusionary language used in section 153 of the *Ontario Securities Act*, and the non-specific language contained in *Christopher's Law*:

The key words are "Despite the *Freedom of Information and Protection of Privacy Act*...the information received by the Commission is exempt from disclosure under that Act if the Commission determines that the information should be maintained in confidence." This section provides a specific exemption from the disclosure requirements of [the *Act*] in certain circumstances. In other words, the section specifically provides that [the Ontario Securities Commission] does not have to disclose information that [the *Act*] would otherwise require disclosure.

The appellant also points to Order PO-1792 as an example of situation where this office rejected a section 67(1) argument concerning the application of a provision in the *Highway Traffic Act* on the basis that the text of the "confidentiality provision" in question (section 203(3)) lacked the degree of specificity required to bring it within the purview of section 67(1).

In determining whether section 10 “specifically provides” that it prevails over the *Act*, as required in order to bring the provision within the scope of section 67(1), I will consider to things:

1. the impact of section 10(4); and
2. the actual wording of section 10(1).

### ***Section 10(4)***

In my view, section 10(4) does not “specifically provide” that section 10(1) prevails over the *Act*. For the same reasons outlined above with respect to section 13(1), I find that section 10(4) of *Christopher’s Law* provides for, rather than prohibits, the disclosure of personal information by individuals within the policing sector, despite specific listed provisions of the *Act* (section 42(e) and its equivalent provision in the municipal statute) that could, in certain circumstances, prevent disclosure in a manner that would be inconsistent with the policy objectives of *Christopher’s Law*. Section 10(4) in effect deems the collection, retention, use and disclosure permitted by sections 10(2) and (3) to also be permitted under the *Act*. The section does not prohibit the disclosure of information, nor does it contain the degree of specificity necessary to bring the provision within the scope of section 67(1).

### ***Wording of section 10(1)***

Section 10(1) uses the term “except as provided by this Act”, and the Ministry takes the position that this is sufficient to bring the provision within the scope of the term “specifically provides otherwise” in section 67(1) of the *Act*.

Part II of the *Act* outlines a comprehensive scheme of access to records held by provincial government ministries and agencies. It provides a basic right of public access, but also recognizes that this right is not absolute and must at times be balanced against various legitimate interests, including the protection of individual privacy. Section 67(1) recognizes that there may be circumstances where confidentiality schemes in other statutes more appropriately regulate the management of information holdings; however the structure of section 67 makes it clear that, unless an alternative confidentiality provision is specific, the default position is that the *Act* would prevail.

When the *Act* came into force in 1988, confidentiality provisions in other statutes were deemed to prevail for a 1-year period, after which the default position would shift and the *Act* would prevail, subject to specific exceptions. During this period, the Chair of Management Board of Cabinet, as Responsible Minister, undertook a comprehensive review of various confidentiality provisions and developed a framework for determining whether a particular provision should prevail over the *Act*. Under this framework, in order to qualify as a “confidentiality provision” for the purpose of the potential inclusion in the list of exceptions under section 67(2), the provision had to:

- exist in a statute;
- relate to records in the custody or under the control of an institution;
- provide a right or duty to refuse access to records; and
- have exemptive effect in express or explicit language

This framework was consistent with early decisions of this office, such as Order 29, where former Commissioner Sidney B. Linden found that to qualify as a confidentiality provision “such a provision must include express language by which the disclosure of certain information is clearly prohibited”.

Management Board applied its framework to the approximately 90 statutes containing confidentiality provisions, and determined that only 11 of them, with a total of 20 provisions, should be listed in section 67(2) as prevailing over the *Act*. In adopting Management Board’s recommendations, the Legislature set a clear policy direction that section 67 should be applied restrictively in future.

Since that time, the Legislature has taken care to ensure that whenever a provision is enacted that requires information to be kept confidential despite a right of access to that information under the *Act*, it says so clearly, making specific reference to the *Act* or explicitly adding the provision to the section 67(2) list. Only six provisions in 4 statutes have been added to the list since 1989.

Among those statutes that include confidentiality provisions that make specific reference to the *Act* are:

1. The *Child and Family Services Act* - section 165(1) provides, “Despite any other Act, after an adoption order is made, no person shall inspect...or permit the inspection...of information that relates to the adoption...or disclose or permit the disclosure of such information...”; and section 165(5) states, “The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption”.
2. The *Securities Act* - section 153 provides, “Despite the *Freedom of Information and Protection of Privacy Act*, ...any information...received by the Commission shall be exempt from disclosure under that Act if the Commission determines that the information should be maintained in confidence”. I found in Order PO-1930 that section 153 (i) “specifically addresses and overrides the provisions of the *Act*” and (ii) “calls for the preservation of secrecy, thereby qualifying it as a confidentiality provision”. Similar language to section 153 of the *Securities Act* is also found in s. 85 of the *Commodity Futures Act*.



3. The *City of Greater Sudbury Act, 1999* - section 23(1) states, “A person who obtains information...shall use it or disclose it only for the purposes of this Act”; and section 23(4) provides, “Subsection (1) applies despite anything in the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*.” Similar language is found in section 23 of the *City of Hamilton Act, 1999*.

All of these statutes contain specific and explicit language that clearly communicates the Legislature’s intention that the confidentiality regime in that legislation should prevail over the access rights under the *Act*.

Consistent with the ordinary meaning of the word “specific” that is used in section 67(1), I find that, in order for an external confidentiality provision to prevail, unless the provision is listed in section 67(2), it must contain specific reference to the *Act* (and/or the *Municipal Freedom of Information and Protection of Privacy Act*). My finding is supported by the approach taken by the Legislature in establishing the confidentiality scheme in section 67 of the *Act* and by the manner in which it has addressed confidentiality provisions in other legislation since that time.

Applying this approach to the wording of section 10 of *Christopher’s Law*, I find that it does not satisfy the requirements of section 67(1). The *Act* is not mentioned specifically in section 10, nor does it impose a specific duty in express or explicit language to refuse access to records requested by a member of the public. In my view, the policy intent of section 10 of *Christopher’s Law* is:

- to clarify the ability of police services to collect, retain and use information obtained from the Sex Offender Registry (section 10(2));
- to disclose this information to another police force for crime prevention or law enforcement purposes (section 10(3));
- to prevent any other types of disclosures by police officials in discharging their responsibilities (section 10(1)); and
- to make it clear that any actions taken by police services do not offend the disclosure requirements of Part III of the *Act* (section 10(4)).

Public access rights under Part II of the *Act* are not specifically addressed in section 10, nor can any restriction on these rights reasonably be inferred from the detailed framework of this section, whose policy intent is clearly stated and does not deal in any way with a right of access.

Accordingly, I find that section 10 of *Christopher’s Law*, when read in conjunction with section 67(1) of the *Act*, is not a confidentiality provision that “specifically provides” that it prevails over the *Act*, and therefore it does not.

**ORDER:**

1. I do not uphold the Ministry's decisions in the two appeals.
2. I order the Ministry to provide the appellant with the decisions on access to the records responsive to her three requests, in accordance with the requirements of section 26 of the *Act*, treating the date of this order as the date of the request, without recourse to a time extension under section 27(1) of the *Act*.
3. I order the Ministry to provide me with a copy of the decision letters issued to the appellant in response to Provision 2.

Original Signed By: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ August 27, 2004