



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2550

Appeal PA-050315-1

Ministry of Community Safety and Correctional Services



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received an eight-part request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) relating to a fatal motor vehicle accident. The requester's son and mother were among the deceased.

The Ministry located responsive records prepared by the Ontario Provincial Police (the OPP) and granted partial access to them. The Ministry denied access to portions of the records pursuant to the exemptions at section 49(a) (discretion to refuse requester's own information), in conjunction with section 14(1)(l) (facilitate commission of unlawful act); and section 49(b) (invasion of privacy), in conjunction with section 21(1) (invasion of privacy), taking into consideration the presumptions in sections 21(3)(a) (medical information) and section 21(3)(b) (investigation into a possible violation of law), as well as the factor listed in section 21(2)(f) (highly sensitive). The Ministry also identified some information as non-responsive to the request.

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

During mediation, the appellant advised that she accepts that the portions of the record identified by the Ministry as non-responsive are, in fact, not responsive to the request. Accordingly, the information identified by the Ministry as non-responsive is not at issue in this appeal.

The mediator discussed the possible application of section 66(a) of the *Act* (personal representative of an estate) with the appellant and, based on those discussions, it was established that section 66(a) does not appear to apply in the circumstances of this appeal.

Also during mediation, the Ministry wrote to the appellant and provided her with further details about the information that she requested. These details included explanations that certain forensic testing of the vehicles' drivers was not done, that formal statements were not taken from the driver or passenger of the other vehicle, that a Reconstruction Report had not been done, and that a Technical Traffic Collision Report (TTIC) had not yet been completed. The Ministry also directed the appellant to the Bancroft detachment of the OPP to obtain photographs and the TTIC when it is completed.

During mediation, the appellant attempted to obtain the consent of the other individuals involved in the accident (the affected parties) to disclose their information to her. To date no consent could be obtained.

As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process.

I began my inquiry into this appeal by sending a Notice of Inquiry to the Ministry, initially. The Ministry responded with representations. I then sent a copy of the Notice of Inquiry, along with a copy of the Ministry's representations, to the appellant, inviting her representations. The appellant responded with representations.

Following the submission of representations, Bill 190 (*Good Government Act*, S.O. 2006, c. 19, Sched. N) came into force on June 22, 2006. Schedule N of this Bill 190 amends the *Act* (as well

as the *Municipal Freedom of Information and Protection of Privacy Act*) to provide that disclosure of personal information about a deceased individual to his or her spouse or a **close relative**, pursuant to an access request, does not constitute an unjustified invasion of personal privacy if the head is satisfied that, in the circumstances, the disclosure is **desirable for compassionate reasons**.

The amendments to the *Acts* are not retroactive and do not affect the outcome of files that pre-exist the passage of the Bill, including the current appeal. However, in the spirit of the *Act*, the Ministry agreed to revisit the information at issue in this appeal to determine whether, taking into account the amended provisions, they might be prepared to disclose additional information to the appellant.

The Ministry agreed to the disclosure of additional portions of some of the records at issue, specifically, disclosure of information that relates to two deceased individuals, the appellant's mother and son. As a result of the additional disclosure, pages 2 and 24 have now been disclosed in their entirety and therefore are removed from the scope of this appeal. The Ministry also disclosed portions of pages 6, 7, 8, 10, 30, 35, 40, 41 and 47, but other portions of those pages remain at issue.

RECORDS:

The table below details the records and portions of records that remain at issue and the exemptions the Ministry has claimed for the information that has been withheld. The table also reflects the additional disclosure made by the Ministry.

| Record and total page numbers | Pages w/ severances | Record Description | Withheld in full/in part | Exemptions applied |
|-----------------------------------|---------------------|---------------------------|--------------------------|---|
| Record 1 (pages 000001-000005) | | Incident Report | In part | |
| | 000003-000004 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000005-000005 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| Record 2 (pages 000006-000012) | | General Occurrence Report | In part | |
| | 000006-000006 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(a), 21(3)(b) |
| | 000007-000007 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |

| | | | | |
|-----------------------------------|---------------|---|---------|--|
| | 000008-000008 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(b) |
| | 000009-000009 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000010-000012 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(a), 21(3)(b) |
| Record 3 (pages 000015-000017) | | Supplementary Occurrence Report and Driver Record | In part | |
| | 000015-000016 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(a), 21(3)(b) 49(a), 14(1)(l) |
| | 000017-000017 | | In full | Sections 49(b), 21(1), 21(2)(f), 21(3)(b) |
| Record 4 (pages 000020-000033) | | Officer's Notes | In part | |
| | 000021-000021 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(b) |
| | 000022-000022 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000023-000023 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000025-000026 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000027-000027 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(b) |
| | 000028-000028 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000029-000029 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000030-000030 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(b) |
| | 000031-000031 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |

| | | | | |
|-----------------------------------|---------------|-----------------|---------|---|
| Record 5 (pages 000034-000049) | | Officer's Notes | In part | |
| | 000034-000034 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(b) |
| | 000035-000035 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000036-000036 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000037-000037 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000039-000039 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000040-000040 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000041-000041 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(b) |
| | 000042-000042 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000043-000043 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000045-000048 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(b) |
| | 000049-000049 | | In full | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(b) |
| Record 6 (pages 000050-000055) | | Officer's Notes | In part | |
| | 000053-000053 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000054-000054 | | In part | Sections 49(b), 21(1), 21(3)(b) |

| | | | | |
|------------------------------------|---------------|-----------------|---------|--|
| | 000055-000055 | | In part | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| Record 7 (pages 000056-000063) | | Officer's Notes | In part | |
| | 000056-000056 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| | 000057-000057 | | In part | Sections 49(b), 21(1), 21(3)(a), 21(3)(b) |
| | 000059-000060 | | In part | Sections 49(b), 21(1), 21(2)(f), 21(3)(a), 21(3)(b) |
| | 000061-000063 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| Record 8 (pages 000064-000067) | | Officer's Notes | In part | |
| | 000067-000067 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| Record 9 (page 000070) | | Officer's Notes | In part | |
| | 000070-000070 | | In part | Sections 49(b), 21(1), 21(3)(b) |
| Record 10 (page 000071) | | Officer's Notes | In part | |
| | 000071-000071 | | In part | Sections 49(a), 14(1)(l) |
| Record 11 (pages 000072-000073) | | Statement | In full | |
| | 000072-000073 | | In full | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(2)(f) 21(3)(a), 21(3)(b) |
| Record 12 (pages 000074-000075) | | Statement | In full | |

| | | | | |
|--|-------------------|--|---------|---|
| | 000074- 000075 | | In full | Sections 49(a), 14(1)(l) Sections 49(b), 21(1), 21(2)(f) 21(3)(a), 21(3)(b) |
|--|-------------------|--|---------|---|

DISCUSSION:

PERSONAL INFORMATION

Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester (in this case, the appellant) [see Order M-352]. Where records contain the appellant's own information, access to the records is addressed under Part III of the *Act* and the exemptions found at section 49 may apply. Where the records contain personal information belonging to individuals other than the appellant, access to the records is addressed under Part II of the *Act* and the exemptions found at sections 12 through 22 may apply.

In order to determine which part of the *Act* may apply, it is necessary to decide whether the records at issue contains "personal information" and, if so, to whom it belongs. That term is defined in section 2(1), in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (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,
- ...
- (e) the personal opinions or views of the individual except where they relate to another individual,
- ...
- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name if 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O. J. No. 4300 (C.A.)].

The correct approach is to review the entire record, not only the portions remaining at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines what exemptions that the records as a whole (rather than only certain portions of it) must be reviewed under [Order M-352].

Representations

In its decision letter, the Ministry claimed the application of the discretionary exemptions in sections 49(a) and (b), implying that they took the position that the records at issue contained the personal information of the appellant as well as that of other individuals. In its representations, the Ministry submits that the information at issue consists only of the personal information of individuals other than the appellant, and not the personal information of the appellant herself. The Ministry submits:

The records at issue were created or gathered for the purpose of investigating [a highway traffic accident] in order to determine if there were any breaches of the *Highway Traffic Act*, *Criminal Code* or other statutes. In the course of investigating such law enforcement matters the OPP collects relevant personal information about the parties involved. This is necessary in order to reach specific conclusions as to whether there have been any violations of the law.

...

The records in question contain the personal information of identifiable individuals who were involved in a motor vehicle accident and were the subject of the police investigation into this matter. The Ministry submits that the records contain the names, addresses, ages, dates of birth, telephone numbers, medical information regarding injuries, next-of-kin information, licence plate numbers, driver record information and statements of a number of individuals, other than the requester.

The Ministry submits that the information contained in the records at issue is recorded information about identifiable individuals, other than the requester, as defined under section 2(1) of the *Act*.

The appellant makes no specific submissions on whether the records at issue contain information that qualifies as personal information, whether belonging to herself or to others, under the definition at section 2(1) of the *Act*.

Analysis and finding

Having reviewed all of the records at issue in this appeal, I find that most of them contain information about individuals other than the appellant (the individuals involved in the accident), that satisfies the definition of “personal information” in section 2(1) of the *Act*. Specifically, I find that there is personal information about these individuals that falls within the ambit of the following paragraphs of the definition of personal information: (a) age, sex and family status, (b) information relating to the medical history of the individual, (g) the views or opinions of another individual about the individual, and (h) the individuals’ name along with other personal information relating to them and information where disclosure of the name would reveal other personal information about the individual.

However, I find that some of the records also contain the personal information of the appellant. This information includes the appellant’s sex and family status (paragraph (a)), as well her name with other personal information relating to her, along with information where disclosure of her name would reveal other personal information about her (paragraph (h)). Specifically, the appellant’s personal information is found on pages 9 and 11, pages 27, 28 and 33, page 43 and page 59.

As noted above, previous orders have established that if a record does not contain the personal information of the appellant but contains either the personal information of individuals other than the appellant or no personal information at all, a decision regarding access must be made in accordance with the exemptions in Part II of the *Act*. For example, in this appeal the relevant sections would be sections 14(1)(l) and/or 21(1) [Orders M-352 and MO-1757-I]. However, in circumstances where a record contains both the personal information of the appellant and another individual, the request falls under Part III of the *Act* and the decision regarding access must be made in accordance with the exemptions at section 49 [Order M-353].

Also noted above, the correct approach is to review the entire record, not only the portions remaining at issue, to determine whether it contains the requester’s personal information. This record-by-record analysis is significant because it determines what exemptions that the records as a whole (rather than only certain portions of it) must be reviewed under [Order M-352].

Accordingly, access to the records that contain the personal information of the appellant, Records 2 (pages 6-12), 4 (pages 20-33), 5 (pages 34-49) and 7 (pages 56-63), must be determined under Part III of the *Act* in accordance with the exemptions at sections 49(a) and (b).

Access to the records that contain no personal information belonging to the appellant, Records 1, 3, 6, 8, 9, 10, 11, and 12 must be determined under Part II of the *Act*, in accordance with the exemptions at section 14(1)(l) and 21(1).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions from this right. In circumstances where a record contains both personal information of the appellant and another individual, the request falls under Part III of the *Act* and the relevant exemptions are found at section 49. In their decision letter, as noted above, the Ministry claimed that the exemptions at sections 49(a) and (b) apply.

Section 49(a) provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20, or 22 would apply to the disclosure of that personal information. [emphasis added]

Even if the information at issue falls under one of the listed exemptions, the institution must still exercise its discretion in deciding whether or not to disclose the information to the requester. The exercise of discretion by the Ministry in this appeal will be reviewed under a separate heading in this order.

The Ministry has severed information at issue from the pages of the records, specifically Records 3, 4, 5, 6, 10, 11, and 12, because it takes the position that the information falls within section 14(1)(l) of the *Act*.

Facilitation of the commission of an unlawful act

The Ministry has severed all the “ten-codes” found in the pages at issue pursuant to section 14(1)(l). Section 14(1)(l) provides:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

To establish the application of sections 14(1)(l), the Ministry must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in

Ontario (Attorney General) v. Goodis (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct); *Ontario (Workers Compensation board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

Representations

The Ministry submits:

“[T]en-codes” are used by OPP officers in their radio communications with each other, the Detachments and Communications Centres. The Ministry further submits that the release of “ten-codes” would compromise the effectiveness of police communications and could possibly jeopardize the safety and security of OPP officers.

In Order PO-1665, Adjudicator Laurel Cropley found that “ten-codes” were properly exempt under section 14(1)(l) and stated:

[D]isclosure of the “ten-codes” would leave OPP officers more vulnerable and compromise their ability to provide effective policing services as it would be easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of OPP officers who communicate with each other on publicly accessible radio transmission space.

A number of other orders issued by the Information and Privacy Commission have consistently upheld the application of section 14(1)(l) or its municipal equivalent to “ten-codes”, and that “ten-codes” are properly exempt under section 14(1)(l) of the *Act* (Orders M-757, PO-1877, and MO-1414).

The appellant made no specific representations on the disclosure of the police ten-codes.

Analysis and finding

As noted above, the Ministry has severed all of the ten-codes that appear in the pages of records that remain at issue.

In their representations, the Ministry have briefly explained what ten-codes are used for and submit very generally that disclosure of the ten-codes would compromise the effectiveness of OPP communications and could possibly jeopardize the safety and security of OPP officers. However, the Ministry has not provided a specific explanation of how their disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime as required by section 14(1)(l).

To provide context for this office's line of decision that discuss the disclosure of police codes, including ten-codes, in Order MO-1715, Adjudicator Bernard Morrow quoted from the representations made by the institution in that appeal as follows:

The use of ten-codes by law enforcement is an effective and efficient means of conveying a specific message without publicly identifying its true meaning. In fact, the word "code" implies the intention that the information not be widely disclosed.

By encoding a particular meaning with a ten-code, the police seek to reduce the ability of those involved in criminal activity from using such knowledge to circumvent detection by police while committing criminal activities. This information could also be used to counter the actions of police personnel responding to situations. This could result in the risk of harm to either police personnel or members of the public with whom the police are involved; i.e., victims and witnesses.

....

The ten-codes referred to in the records, do not, in isolation, provide a specific meaning, however, when read in the context of the records at issue, the corresponding meaning would easily be revealed. Thus, the security of those codes would be compromised if they were released...

In the context of the above-quoted submissions and earlier orders of this office, as cited by the Police in their representations for Order MO-1715, Adjudicator Morrow went on to find that disclosure of the confidential police ten-codes in the records at issue could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. I agree.

In my view, the rationale provided for withholding ten-codes in Order MO-1715, as well as that provided in Order PO-1665 as cited by the Ministry, is equally applicable in the current appeal. Based on my review of the pages of records at issue in this appeal and past orders of this office, I accept that disclosing these confidential police codes could reasonably be expected to render law enforcement activities and OPP officers vulnerable to the interference of the kind contemplated – and sought to be avoided – by the exemption at section 14(1)(l) of the *Act*.

Accordingly, I find that the confidential OPP ten-codes that were severed from Records 4, and 5, (records that contain the personal information of the appellant), qualify for exemption under section 49(a). I also find that the ten-codes that were severed from Records 3, 6, 10, 11 and 12, records which do not contain the personal information of the appellant, qualify for exemption under section 14(1)(l). As both section 49(a) and section 14(1)(l) are discretionary exemptions, my findings with respect to the disclosure of ten-codes are subject to my review of the Ministry's exercise of discretion to be discussed below.

PERSONAL PRIVACY

Section 49(b) is the relevant personal privacy exemption under Part III of the *Act*. Section 49(b) provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

The personal privacy exemptions under the *Act* are *mandatory* at section 21(1) under Part II and *discretionary* at section 49(b) under Part III.

Put another way, where a record (taken as a whole rather than just the portions remaining at issue), contains "mixed" personal information (the personal information of both the appellant and another individual), section 49(b) in Part III of the *Act* permits an institution to disclose information that it could not disclose if Part II were applied [Order MO-1757-I]. Nevertheless, under section 49(a) the institution retains the discretion to deny the appellant access to that information if it determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy.

Section 49(b) introduces a balancing principle, which involves weighing the requester's right of access to his own personal information against the other individual's right to protection of their privacy. On appeal, I must be satisfied that disclosure of the information **would** constitute an unjustified invasion of another individuals' personal privacy [see Order M-1146].

Under section 49(b), sections 21(1) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy under section 49(b) is met. If the information fits within any of paragraphs (a) to (d) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). If any of paragraphs (a) to (c) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b).

Section 21(3) lists a number of presumptions against disclosure. The Divisional Court has stated that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.)], though it can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in disclosure of the record in which the personal information is contained that clearly outweighs the purpose of the exemption [see Order PO-1794].

I will now review whether the information at issue in Records 2, 4, 5, and 7, which contain the information of both the appellant and other individuals, qualifies for exemption under the discretionary exemption at section 49(b) and whether the information at issue in Records 1, 3, 6, 8, 9, 10 and 11, qualifies for exemption under the mandatory exemption at section 21(1).

Identifiable as part of an investigation into a possible violation of the law

For all of the records for which section 49(b) (Records 2, 4, 5, and 7) or section 21(1) (Records 1, 3, 6, 8, 9, 10, and 11) might apply, the Ministry submits that the presumption at section 21(3)(b) applies to exempt all of the information at issue from disclosure. Section 21(3)(b) provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Representations

Specifically addressing how section 21(3)(b) applies to the information at issue, the Ministry submits:

The *Police Services Act* (the *PSA*), as amended, establishes the Ontario Provincial Police (OPP) and provides for its composition, authority and jurisdiction. Section 19 sets out the responsibilities of the OPP, which in part include:

- Providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers.
- Maintaining a traffic patrol on the King's Highway, except the parts designated by the Solicitor General.

Section 42 of the *PSA* also lists the duties of a police officer which, in part, include:

- Preserving the peace;
- Apprehending criminals and other offenders and others who may lawfully be taken into custody;
- Laying charges and participating in prosecutions;

The information at issue in this appeal relates to an investigation into a traffic accident undertaken by the OPP. In the course of investigating such law enforcement matters the OPP collects relevant personal information about the parties involved. This is necessary in order to reach specific conclusions as to whether there have been any violations of the law. The Ministry submits that the personal information contained in the record was compiled and is identifiable as part of an OPP investigation into a possible violation of law, in accordance with section 21(3)(b) of the *Act*.

The appellant does not make any specific submissions on the application of section 49(b) and/or section 21(1), including section 21(3)(b).

Analysis and findings

Based on my review of the personal information at issue, I find that all of it was compiled and is identifiable as part of an investigation into possible violations of law under the *Highway Traffic Act*, the *Criminal Code* or other criminal or quasi-criminal statutes. In my view, all of this information was originally compiled as part of the police investigation into a fatal highway traffic accident and is identifiable as part of that investigation.

Accordingly, I find that, subject to my review of the Ministry's exercise of discretion, the discretionary exemption at section 49(b) applies to exempt the personal information for which it was claimed in Records 2, 4, 5, and 7, containing the information of both the appellant and other individuals.

Additionally, I find that the mandatory exemption at section 21(1) applies to exempt the personal information for which it was claimed in Records 1, 3, 6, 8, 9, 10 and 11, which does not include the personal information of the appellant but rather, only that of other individuals.

Absurd Result

Whether or not the presumptions in section 21(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b) or section 21(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the information is clearly within the requester's knowledge [Orders MO-1996, PO-1679, MO-1755].

However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Order M-757, MO-1323, MO-1378].

My review of the information reveals that there are three instances where information, specifically, the date of birth, address and telephone number of the appellant's mother has been withheld from her. As the Ministry has already disclosed this information to the appellant in page 2 of Record 1, it is clearly within the appellant's knowledge and it would be absurd for this information to be withheld in other portions of the records. Accordingly, I will order the Ministry to disclose the date of birth, the address and the telephone number of the appellant's mother as it appears in Record 4 (page 26), Record 5 (page 42) and Record 6 (page 54).

EXERCISE OF DISCRETION

As already discussed at several points in this order, the Ministry has the discretion under sections 49(a) and (b) of the *Act* as well as section 14(1)(l) to disclose the information contained in the records even if those exemptions apply. I have upheld the Ministry's decision to apply section 49(a) in conjunction with section 14(1)(l) to the OPP ten-codes in Records 4 and 5, and section 14(1)(l) to the OPP ten-codes in Records 3, 6, 10, 11, and 12, and have found that the ten-codes are exempt under those exemptions. I have also upheld the Ministry's decision to apply section 49(b) to exempt from disclosure the personal information of individuals other than the appellant (and certain information relating to the appellant's mother) found in Records 2, 4, 5, and 7. I must now review the Ministry's exercise of discretion in determining not to release that information.

On appeal, an adjudicator may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so. I may find that the Ministry erred in exercising their discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant consideration. In these cases, I may send the matter back to the Ministry for an exercise of discretion based on proper considerations [Order MO-1573]. However, I may not substitute my own discretion for that of the Ministry's.

The Ministry submits that it has disclosed as much of the responsive records as could reasonably be disclosed without disclosing material which is exempt. The Ministry submits that it has:

...fulfilled its responsibilities and obligations under the *Act* and determined that the information at issue was personal information in accordance with the *Act*. Under section 49(b), where a record contains the personal information of both the requester and other individuals, and disclosure of the information would constitute an unjustified invasion of the other individual's privacy, the Ministry may refuse to disclose that information to the requester. As indicated previously, the determination of whether disclosure would constitute an invasion of privacy involves a weighing of the requester's right of access to their personal information against the other individuals right to protection of their privacy. In this instance, the Ministry has released all information pertaining to the requester. The only information remaining at issue relates to other individuals and the Ministry

submits that disclosure of this information would constitute an unjustified invasion of a number of other individual's personal privacy.

In making the determination that disclosure would be an unjustified invasion of privacy the Ministry was satisfied that:

- (a) the information was personal information in accordance with section 2(1) of the *Act*;
- (b) the personal information was sensitive in nature;
- (c) some of the personal information was medical information in accordance with section 21(3)(a); and
- (d) the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law in accordance with section 21(3)(b) of the *Act*.

The Ministry, therefore, submits that the presumption of an unjustified invasion of personal privacy has been established under section 21(3)(a) and (b) and that as much information from the record as possible has been released to the requester and further severance is not possible.

I understand that the appellant simply wishes to obtain information that would assist her in obtaining closure regarding the accidental death of both her mother and her son. The appellant submits:

As a bereaved mother and daughter in this case, I am seeking closure and justice. The partial release of information by the Ministry of Community Safety and Correctional Services with respect to the investigation of this case has not laid my concerns about it to rest, and so closure and justice have been denied to me.

I still fear that the investigating officers may have prematurely rushed to judgement, on the basis of the stereotype of the "reckless young Asian driver", or because it is administratively simpler to fix responsibility on the deceased party in the case, or because the other party in the case is a local resident potentially known to the investigating officer(s), while my son is "an immigrant from the City". A significant public safety hazard (the form and configuration of the roadway at the site of the accident) may thus go uncorrected.

My fear has been supported by the early attempt of an investigating officer to convince me of my son's misjudgement without, in my view, supporting evidence or witnesses; by the lack of time indicators on that investigating officer's notes as compared to the notes of other officers; by conflicts in different investigating officer's accounts and evaluations; and by the fact that considerable information was released early on by the Police to the *Bancroft Times* and to myself on my

visit to the station, information that would supposedly be “confidential” under the guidelines specified in the partial release I am appealing.

...

I would be greatly reassured if your office, rather than the investigating officers themselves, were to decide what part of the investigating officers’ notes should be redacted prior to release. My concerns about the conduct of their investigation clearly put them into a conflict of interest should I have recourse to legal proceedings against them, and their premature judgements are material to legal proceedings already underway on behalf of the other party to the case.

I appreciate the appellant’s concern. However, I have reviewed the records closely, particularly the information that has been severed, and I accept that the information that has been withheld falls squarely within the parameters of the discretionary exemptions claimed by the Ministry and that by choosing to apply them to this information the Ministry has appropriately exercised its discretion. The Ministry has disclosed virtually all of the information about the appellant’s mother and son. The information that has been withheld is almost exclusively the personal information of individuals involved in the accident, other than the appellant’s son or mother. OPP ten-codes have also been severed. Even if it were disclosed, it is unlikely that the information that remains would provide the appellant with the answers she is seeking to provide closure to her grief.

As stated above, my jurisdiction in reviewing the Ministry’s decision is limited in that I cannot substitute my own opinion, but can only determine whether the Ministry erred in their exercise of discretion by finding, for example, that they have exercised their discretion in bad faith, for an improper purpose, by taking into account irrelevant consideration or by failing to take into account relevant considerations.

I have reviewed the representations of the Ministry and the appellant and, in light of the circumstances of this appeal and the nature of the information that I have not ordered disclosed, I am satisfied that the Ministry has taken appropriate facts into consideration in exercising their discretion. In my view, the Ministry has not erred in exercising its discretion to withhold the ten-codes in Records 4 and 5 from disclosure under section 49(a) or the ten-codes in Records 3, 6, 10, 11, and 12 from disclosure under section 14(1)(l). Also, it is not my view that the Ministry has erred in withholding the personal information of the individuals other than the appellant’s mother and son found in Records 2, 4, 5, and 7 under section 49(b). Accordingly, there is no basis upon which to interfere with their exercise of discretion. Therefore, I find that, given the circumstances and the nature of the information that has not been disclosed, the exercise of discretion by the Ministry was appropriate.

ORDER:

1. I order the Ministry to disclose to the appellant by April 4, 2007 but not before March 30, 2007, her mother's date of birth, address and telephone number as this information appears in Record 4 (page 26), Record 5 (page 42) and Record 6 (page 54).
2. I uphold the Ministry's decision to withhold the information at issue in this appeal, with the exception of the information listed above in order provision 1.
3. In order to verify compliance with the terms of order provision 1, I reserve the right to require the Ministry to provide me with a copy of the records as disclosed to the appellant, upon request.

Original signed by: _____
Catherine Corban
Adjudicator

February 28, 2007 _____