



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2728

Appeal PA06-304

Ministry of Government Services



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BACKGROUND:

In April 1998, the Ministry of Government Services (the Ministry) received a number of consumer complaints. The complaints originated from citizens of the United States of America and were with respect to a loan broker operation operating out of Ontario. The companies required the payment of “up-front fees” contrary to the *Loan Brokers Act* (now the *Consumer Protection Act, 2002*). The complainants also alleged that the loans had never been issued.

The consumer Protection Branch of the Ministry is responsible for mediating complaints between businesses and consumers, including complaints of loan broker fraud and the requirement of “up-front fees”. Section 105 of the *Consumer Protection Act, 2002* also provides the Ministry with the power to make inquiries and gather information with respect to contraventions of the *Consumer Protection Act, 2002* and other legislation for the protection of consumers.

An investigator with the Ministry was assigned to investigate these complaints and the allegedly fraudulent loan broker activities of several named companies.

The investigator commenced an investigation of the named companies. Based on his investigation, the Ministry investigator believed that a search of certain premises in which loan telemarketing operations were taking place, would substantiate a charge of fraud under the Criminal Code (Canada). The investigator, who has been designated a special constable, applied to a Justice of the Peace for a search warrant in his capacity as a peace officer, pursuant to section 487(1) of the Criminal Code.

The investigator was granted a search warrant by the Ontario Court (Provincial Division). He conducted a search of the premises in which the telemarketing loan operations were taking place, with the assistance of the Toronto Police.

As a result of the investigation and search of the premises, a number of individuals involved in the alleged fraudulent telemarketing loan operation were identified. The individuals identified by the Ministry investigator were Canadian residents, and included several individuals.

The Ministry’s investigation of the allegedly fraudulent telemarketing loan operation was part of a coordinated effort, involving law enforcement bodies in Ontario and the United States.

In 2001, the Ministry’s investigation records were supplied to the U.S. Postal Inspection Service. The records were used to prepare and file an indictment by the U.S. Attorney’s Office, laying charges against a number of individuals for conspiracy to commit mail fraud and wire fraud in violation of Title 18, United States Code, sections 371, 1341 and 1343.

NATURE OF THE APPEAL:

The Ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all files, records and documents pertaining to a telemarketing loan scam investigation involving the requester and a named individual. The requester attached various documents to assist in clarifying the request including court transcripts, a newspaper article and police reports.

The Ministry located the responsive records and denied access to them pursuant to the exemptions found at sections 14(1) and (2) of the *Act*.

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

The appeal was moved to the mediation stage of the process. Due to the voluminous nature of the records related to this request, the mediator attended the Ministry's office to view the records and to assist with the preparation of an Index of Categories of Records. Approximately twelve boxes of records were identified as relating to various fraud cases involving loan and insurance companies, and most of the boxes contained a great deal of duplication in terms of the types and categories of records produced during the investigation.

During mediation, the appellant agreed that this appeal could be narrowed to one particular case in which he was most interested, identified as [named] investigation. The appellant indicated that this is the case that was directly related to his arrest by U.S. authorities, and is therefore the case that he is seeking information about. As there are approximately two boxes of records relating to the [named] investigation, the mediator suggested that the appellant consider narrowing the scope of his request to particular documents that he is most interested in pursuing. The mediator provided the appellant with a general list of the categories of records that relate to the [named] investigation and which were identified during her meeting with the Ministry. The appellant subsequently provided the mediator with a revised request highlighting the categories of records that he wished to pursue at adjudication.

The Ministry subsequently issued a revised decision advising the appellant that access has been denied to the records requested pursuant to sections 14(1) and (2) (law enforcement), 17, and 21(personal privacy) of the *Act*. The Ministry clarified with the mediator that it is claiming both sections 17(1) (third party information) and (2) (tax information) of the *Act*.

The appeal was moved to the adjudication stage of the process. I sent a Notice of Inquiry setting out the facts and issues in the appeal, to the Ministry initially, seeking its representations. The Ministry provided representations in response.

I then sent a Notice of Inquiry to the appellant along with a copy of the non-confidential portions of the Ministry's representations. The appellant provided representations in response.

RECORDS:

The records at issue are listed in the following chart:

RECORD NUMBER	DESCRIPTION OF RECORD	EXEMPTION(S) CLAIMED
	Internal Investigation Records:	
1	Appendix C: Grounds for Belief	49(b)/21(1)

2	Anticipated Evidence of Investigator	49(b)/21(1)
3	Appendix 1: Company Documentation	
4	Appendix 2: Company Documentation	
5	Printout	
6	Complaint [specified #]	21(1)
7	Appendix 3: Ministry Complaint Forms [5 separate complaints for various individuals]	21(1)
8	Fax Cover Sheet	21(1)
9	References	21(1)
10	Letter of Approval	21(1)
11	Fed Ex Receipt	21(1)
12	Fax Cover Sheet	21(1)
13	Social Security Number and Drivers Licence	21(1)
14	Pay Stubs	21(1)
15	Fax Cover Sheet	21(1)
16	Letter of Approval	21(1)
17	Social Security Number and Drivers Licence	21(1)
18	W2 Tax Form	21(1)
19	References	21(1)
20	Customer Receipt	21(1)
21	Insurance Forms	21(1)
22	Fed Ex Receipt	21(1)
23	Police Fax Cover Sheet	21(1)
24	Fax Cover sheet and Letter to Police (from Complainant)	21(1)
25	Appendix 4: Complaint Letter to Ombudsman	21(1)
26	Fax Cover sheet and Insurance Form	21(1)
27	Fed Ex Receipt	21(1)
28	Appendix 5: Advertisement	
29	Appendix 6: Insurance Commission Certificate	
	Victim Statement Records	
30	Appendix 7: Victim Faxes	21(1)
31	Appendix 8: Victim Statements and Supporting Documents	21(1)
32	Appendix 9: Victim Statements and Supporting Documents	21(1)
33	Appendix 10: Victim Statements and Supporting Documents	21(1)
34	Appendix 3: Ministry Complaint Forms [specified complaint #'s] – similar to Record above	21(1)
35	Appendix 12: Company Documents ONBIS Database	
	Search Warrant Materials	
36	Pay Stubs from victims	21(1) 14(1)(h)

37	Phone Records	49(a)/14(1)(h)
38	Victim List	21(1) 14(1)(h)
39	Phone Records	49(a)/14(1)(h)
40	Suspect Identification Documents	49(a)/14(1)(h)
41	Photographs of Telemarketing Business	14(1)(h)
	Police Records	
42	13 Police Questionnaires and Photographs of Various Accused	49(b)/21(1)

DISCUSSION:

PERSONAL INFORMATION

In order to determine whether disclosure of the records would constitute an unjustified invasion of personal privacy under section 49(b) or 21(1), it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) 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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if 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;

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, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Representations

The Ministry submits that the records contain the personal information of the appellant, another accused (affected party), other indicted individuals, and the victims of the telemarketing loan scheme.

The Ministry submits that the records that contain the personal information of the appellant and the affected party include photographs of the searches, bank cards, car rental cards and immigration records collected pursuant to search warrant. The Ministry states:

While the affected party was involved in the loan operation in a business capacity, it is respectfully submitted that the information qualifies as personal information since his conduct, in working as part of the loan operation, has been called in to question by law enforcement officials. Namely, as a principal in the fraudulent telemarketing loan scheme, any of his business activities were ultimately directed toward alleged criminal ends.

In regard to the victims, the Ministry states that the records include employee time cards, driver's licenses, correspondence to the Ministry, investigation notes and supporting documents gathered as evidence for the search warrant (faxes from victims). The Ministry further states:

The employee time cards contains the personal information of the victims that applied for loans, including their financial information (amount of payment from employment), rate of pay, hours worked, and deductions from pay.

The driver's licenses qualify as personal information, as they contain an identifying number assigned to the victims and the address of the victims.

The correspondence and investigation notes contain the names of the complainants, and the nature of their complaints.

The supporting documents include correspondence from the victims sent via facsimile to a fax number, provided by the companies. This information is highly sensitive, coming from victims that were angry and very distressed about their loan applications. The correspondence is quite detailed and contains personal information including copies of money orders and cheques sent by victims, inquiries into loans, complaints to the companies, and threats of legal actions.

The appellant submits that he does not need the personal information of any individuals in the records and that this information could be severed.

Analysis and Findings

I have reviewed the records to determine whether they contain personal information and, if so, to whom the information relates. I find that the records can be divided into two groups: records containing the personal information of the appellant and other individuals and records containing only the personal information of other individuals.

Records containing personal information of appellant and other individuals

Records 1, 2, 37, 39, 40 and 42 contain the personal information of the appellant, the affected party, other indicted individuals and other individuals identified by the Ministry as "victims".

Records 1 and 2 (Appendix C and the Anticipated Evidence of Ministry Investigator) contains a narrative description of the Ministry investigator's investigation and findings including the names of various involved individuals. Records 37 and 39 (Phone Records) contain the phone numbers of various victims and the individuals involved in the telemarketing scheme. The Suspect Identification Documents, Photographs and Police Questionnaires (Records 40 and 42) all relate to the appellant, affected party and other indicted individuals.

These records contain personal information about the affected party, the appellant and other indicted individuals including, as stated above, information relating to their race, national and ethnic origin, age, sex, criminal, employment history, identifying number, address, telephone number and other information found within paragraphs (e), (g) and (h) of the definition of personal information in section 2(1) of the *Act*.

Other information in Records 1 and 2 relates to the roles the appellant, affected party and other indicted individuals played in the telemarketing loan scheme including financial transactions relating to the business. The information relating to the affected party, the appellant and the other indicted individuals who were involved in the telemarketing scheme is their personal information. In Order PO-2225, cited by the Ministry to support their position, former Assistant Commissioner Tom Mitchinson, reviewed the distinction between information about an individual in a personal capacity, and information associated with an individual in a professional or business capacity. After summarizing a number of orders in this area, the Assistant Commissioner stated the following:

Based on the principles expressed in these orders, the first question to ask in a case such as this is: *“in what context do the names of the individuals appear”*? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

After considering the first question, the Assistant Commissioner then stated:

The analysis does not end here. I must go on to ask: *“is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual”*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

In relation to the affected party and other indicted individuals, their information arises out of their business capacities with the various telemarketing loan businesses. In answer to the first question posed in Order PO-2225, it is not a context that is inherently personal. However, the second question requires some further discussion. The complaints of the “victims” to the Ministry led to the investigation and the arrest of these individuals by the police. Given the allegations of wrongdoing, the information about the actions of the affected party and other indicted individuals reveals something of a personal nature about them.

Records 3, 4, 5, 28, 29 and 35 are corporate records pertaining to the loan businesses. The Ministry did not provide representations on these records and from my review I find that the records do not contain the personal information of any individuals. As no other exemption was claimed to withhold these records I will order that these records be disclosed to the appellant.

Records relating to other individuals only

The rest of the records contain the personal information of the “victims” only. These records do not relate to the appellant, affected party or other indicted individuals and were forwarded to the Ministry in order to substantiate the “victims” complaints against the loan telemarketing companies. The records contain detailed employment and financial information of the victims as well as their telephone numbers, addresses, sex, date of birth, and race. I find that all of the

information relating to the victims is recorded information about identifiable individuals and as such is their personal information.

Conclusion

Previous orders have established that if a record contains the personal information of individuals other than the appellant, but does not contain the appellant's personal information, a decision regarding access must be made in accordance with the exemption at 21(1) of Part II of the *Act* [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 relevant personal privacy exemption is the exemption at section 49(b) [Order M-352] or section 49(a). Some exemptions, including the invasion of privacy exemption at section 21(1) are mandatory under Part II but discretionary under Part III, and thus, in the latter case, an institution may disclose information that it could not disclose if Part II applied [Order MO-1757-I].

Accordingly, for Records 1, 2, 37, 39, 40 and 42 which contain the personal information of the appellant and other identifiable individuals, I will review whether they qualify for exemption under sections 49(a) and (b) of Part III of the *Act*.

For the remaining records which contain the personal information of the individuals other than the appellant, I will review whether they qualify for exemption under section 14(1) and 21(1) of Part II of the *Act*.

LAW ENFORCEMENT

Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

In this case, the Ministry relies on section 49(a) in conjunction with section 14(1)(h) for those records containing the personal information of the appellant and other individuals, section 14(1)(h) alone for those records containing the personal information of individuals other than the appellant.

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, **14**, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information.

Records confiscated by a peace officer

Section 14(1)(h) provides the following:

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

reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

The purpose of this section is to exempt records that have been confiscated or “seized” by search warrant [Order PO-2095].

This exemption applies where the record at issue is itself a record which has been confiscated from a person by a peace officer, or where the disclosure of the record could reasonably be expected to reveal another record which has been confiscated from a person by a peace officer [Order M-610].

Representations

The Ministry submits that Records 36 to 41, categorized as “Search Warrant Materials” in the index of records, qualify for exemption under section 14(1)(h) as they were seized by a peace officer pursuant to a search warrant granted under section 487(1) of the Criminal Code. The Ministry submits the following in support of its claim:

Section 2 of the Criminal Code defines “peace officer” as

- (c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,

The Ministry investigator is designated a Special Constable with the Ontario Provincial Police. Accordingly, it is submitted that the Ministry investigator qualifies as a “peace officer” under the Criminal Code.

The Ministry investigator applied for, and was granted a search warrant, pursuant to section 487(1) of the Criminal Code.

On June 23, 1998, a search was conducted at 6 locations, and the following materials were seized:

- employee time cards (pay stubs)
- driver’s licenses of victims
- (Bell) phone records
- Bank cards
- Car rental cards
- Appointment books
- Immigration records/passports
- Computer hard-drives

It is submitted that the records listed under search warrant materials consist of records that have been confiscated by a peace officer, copies of records that have been confiscated by a peace officer, photos of locations searched, and printed files from seized hard-drives. Accordingly, all of these records qualify for exemption.

The Ministry also provided an affidavit of the Ministry investigator which sets out his application for a search warrant and his search of a number of premises. The investigator also details the material seized during the search.

The appellant did not provide representations on this issue although he provided a transcript of trial which confirms that a search took place and the materials that were seized.

From my review of the records and the representations of the parties I find that section 14(1)(h) applies to Records 36 to 41. In this case, disclosure of the records described in the index as "Search Warrant Materials" could reasonably be expected to reveal records that have been confiscated by a peace officer, namely the Ministry investigator, in accordance with section 487(1) of the Criminal Code. Accordingly, I find that the Records 37, 39, and 40 described as "Search Warrant Materials" (records containing the personal information of the appellant) qualify for exemption under section 49(a). Records 36, 38 and 41 (records that do not contain the personal information of the appellant) qualify for exemption under section 14(1)(h). As both section 49(a) and 14(1)(h) are discretionary exemptions, my findings with respect to the search warrant materials are subject to my review of the Ministry's exercise of discretion in the discussion below.

PERSONAL PRIVACY

As I have found that Records 36 to 41 are exempt from disclosure under section 49(a) and/or 14(1)(h), the following discussion pertains to records 1 through 34 (excluding Records 3 to 5, 28 and 29) and 42

In circumstances, where a record contains both the personal information of the appellant and other individuals, the relevant personal privacy exemption is the exemption at section 49(b). Under section 49(b) of the *Act*, the Ministry has the discretion to deny the appellant access to that information if the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. However, the Ministry may choose to disclose a record with mixed personal information upon weighing the appellant's right of access to her own personal information against another individual's right to protection of their privacy.

When, however, the records contain only the personal information of other individuals and not the appellant, section 21(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception in this section which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "...does not constitute an unjustified invasion of personal privacy."

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. None of the section 21(4) exceptions appear to apply in the circumstances of this appeal.

Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of the personal privacy of another individual. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or the “public interest override” at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)*(1993), 13 O.R. (3d) 767]. The appellant has not claimed that section 23 applies in the circumstances of this appeal.

If none of the presumptions against disclosure contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the *Act* as well as all other considerations which are relevant in the circumstances of the case [Order P-99].

The Ministry claims that section 49(b) applies in conjunction with the presumption at sections 21(3)(b) for the records relating to the appellant and other individuals (Records 1, 2 and 42). For records containing the personal information of other individuals only, the Ministry submits that sections 21(3)(b) and 21(3)(f) apply to exempt the information from disclosure (Records 6 to 27, 30 to 34). I will first consider whether the presumption at section 21(3)(b) applies to all the information.

Section 21(3)

Representations

The Ministry submits that the presumption against disclosure in section 21(3)(b) applies to the personal information in the records. Section 21(3)(b) states as follows:

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;

In regard to section 21(3)(b), the Ministry submits that the personal information contained in the records were compiled and are identifiable as part of an investigation into a possible violation of “Title 18 of the United States Code, sections 371, 1341 and 1343 by the affected party and the other indicted individuals.” In addition, the Ministry notes that in the event that the affected

party is extradited, criminal proceedings would commence against him. The Ministry investigator affirms in his affidavit that the search he conducted pursuant to the search warrant would provide evidence to substantiate a charge under section 380(1) of the Criminal Code.

The Ministry submits that the presumption at section 21(3)(b) applies whether or not criminal proceedings ensue from a law enforcement investigation (Order PO-2171). Thus, the fact that the affected party has not yet been extradited or prosecuted does not affect the application of the presumption. The Ministry states, "The fact that the affected party has been charged with a view to extraditing him to face the charges before a court of law in the U.S. is sufficient to qualify for the presumption."

The Ministry further submits that even though the records may have already been disclosed to the appellant in other proceedings does not affect the application of the presumption (Order MO-1378).

The appellant's representations focus on the fact that most of the records and information described in the records was produced during his trial.

Analysis and findings

I have reviewed the records at issue and agree that all of the information was compiled and is identifiable as part of an investigation into a possible violation of law, specifically, section 380(1) of the Criminal Code, as well as the various sections referenced by the Ministry relating to the United States Code. The fact that no criminal proceedings have yet ensued relating to the affected party or other indicted individuals has no bearing on the issue, since section 21(3)(b) only requires that there be an investigation into a possible violation of law.

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 in Records 1, 2, and 42, 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 in Records 6 to 27 and 30 to 34, which do not include the personal information of the appellant but rather, only that of other individuals.

ABSURD RESULT

As noted above, the appellant made extensive representations regarding the information he has received from the freedom of information process in the United States as well as information he was exposed to in court during his trial. The appellant further provided transcript information, government exhibits, and video deposition transcripts of witnesses. Essentially, the appellant is arguing that the records at issue were disclosed to him in whole or in part during his trial and thus should be disclosed to him now. This raises the possible application of the "absurd result" principle.

The absurd result principle applies in instances where the requester originally supplied the information or is otherwise aware of it. In such instances, the information may be found not to be exempt 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 requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

Previous orders have also stated that, 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 in the requester's knowledge [Orders M-757, MO-1323, MO-1378].

The Ministry submits that I should follow the reasoning in Order MO-1378 where the adjudicator found that even though records had been disclosed to the appellant in other proceedings, the presumption in section 21(3)(b) still applied to that information. The Ministry states that MO-1378 is analogous to the present appeal where the appellant may have received some of the records through the disclosure mechanisms at his trial.

Analysis and Findings

I agree with the Ministry that the absurd result principle does not apply in the circumstances of this appeal. Former Senior Adjudicator David Goodis reviewed the issue of whether disclosure was consistent with the purpose of the section 21(3)(b) exemption in Order PO-2285. He stated:

Although the appellant may well be aware of much, if not all, of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester. In my view, this situation is similar to that in my Order MO-1378, in which the requester sought access to photographs showing the injuries of a person he was alleged to have assaulted.

Senior Adjudicator Goodis went on to refer to the following excerpts from Order MO-1378:

The appellant claims that the photographs should not be found to be exempt because they have been disclosed in public court proceedings, and because he is in possession of either similar or identical photographs.

In my view, whether or not the appellant is in possession of these or similar photographs, and whether or not they have been disclosed in court proceedings open to the public, the section 14(3)(b) [the equivalent of section 21(3)(b) in the municipal *Act*] presumption may still apply. In similar circumstances, this office stated in Order M-757:

Even though the agent or the appellant had previously received copies of [several listed records] through other processes, I find that the information withheld at this time is still subject to the presumption in section 14(3)(b) of the *Act*.

In my view, this approach recognizes one of two fundamental purposes of the *Act*, the protection of privacy of individuals [see section 1(b)], as well as the particular sensitivity inherent in records compiled in a law enforcement context. The appellant has not persuaded me that I should depart from this approach in the circumstances of this case.

I adopt the approach taken by the former Senior Adjudicator with respect to the absurd result principle set out in the above orders.

I have carefully reviewed the contents of the records at issue, the representations and exhibits of the appellant, including the appellant's belief that disclosure of the information will prove his innocence. While I am sympathetic to the appellant's need for the records and his frustration at knowing the information which is being withheld from him, I find that in the circumstances of this appeal, disclosure of the personal information contained in the records would not be consistent with the fundamental purpose of the *Act* described by former Senior Adjudicator Goodis in Order MO-1378. I want to emphasize to the appellant that the information relating to the "victims" was sensitive personal information compiled in a law enforcement context. Accordingly, I find the "absurd result" principle does not apply to the personal information withheld in the records.

EXERCISE OF DISCRETION

Sections 14(1)(h), 49(a) and (b) are discretionary exemptions. When a discretionary exemption has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the records. On appeal, the Commissioner may determine whether the institution failed to do so.

The Commissioner may find that the institution erred in exercising its discretion where, for example,

- It does so in bad faith or for an improper purpose
- It takes into account irrelevant considerations

- It fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

In support of its exercise of discretion, the Ministry provided the following:

The [Ministry] found that the disclosure could reasonably be expected to cause harm to an ongoing law enforcement proceedings in the United States.

The [Ministry] also considered the potential harms to the relationship between the Ministry and its partners in the Strategic Partnership. Each party to the memorandum of understanding has expectations of confidentiality in respect of information gathered and lawfully shared to facilitate the investigation and prosecution of cross-border telemarketing fraud schemes. In this regard, the decision-maker considered that premature disclosure of records that are relevant to ongoing prosecutions in the United States could not only prejudice the conduct of those proceedings, but also strain the Ministry's ongoing positive relationship with its partners in respect of other law enforcement investigations and prosecutions.

The [Ministry] also considered whether refusing to disclose the records would constitute an absurd result, mindful of the fact that the appellant has seen some of the records, when entered into evidence as exhibits or through oral testimony of the Ministry investigator at his trial in the U.S. Moreover, the Ministry is aware that some of the records contain the personal information of the appellant.

...

In summary, the head concluded that the harms flowing from disclosure of the records would, in the circumstances, outweigh any absurd result to the appellant, and the public interest in the effective prosecution of the remaining co-conspirators in the telemarketing scheme required the application of the exemption.

The appellant submits that he is requesting his own personal information and that he needs this information to prove his innocence of the charges against him.

Based on my review of the Ministry and the appellant's representations and the information at issue, I find that the Ministry properly exercised its discretion to withhold the records both under section 14(1)(h), 49(a) and (b). The records remaining at issue contain the personal information of a number of other individuals, including individuals who may still be prosecuted. In addition, the Ministry properly considered the fact that the records contain the personal information of the appellant and the fact that the appellant may have seen some of the records. Accordingly, given the circumstances of this appeal and the nature of the information withheld, I find the Ministry's exercise of discretion to be appropriate.

SEVERANCE

Where a record contains exempt information, section 10(2) requires the Ministry to disclose as much of the record as can reasonably be severed without disclosing the exempt information. This office has held, however, that a record should not be severed where to do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663 and PO-1735 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

As stated above, the appellant asked that the personal information of other individuals be removed from the records, including the personal information of both the victims and staff members. Given the fact that the appellant may have seen some of the personal information during his trial and was involved in the telemarketing and loan businesses, I find that removal of the personal identifiers from the records would not be enough to render the individuals unidentifiable from the remaining information. Additionally, were the Ministry to sever all the personal information of other individuals from the records except the personal information of the appellant, the remaining information would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information. Consequently, I find that it is not possible to sever the information for disclosure in this appeal.

ORDER:

1. I order the Ministry to disclose Records 3, 4, 5, 28, 29 and 35 by sending a copy of the records to the appellant by **November 30, 2008**.
2. I uphold the Ministry’s decision to withhold the remaining records at issue.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to provision 1.

Original Signed By:
Stephanie Haly
Adjudicator

October 29, 2008