

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3263

Appeal PA12-454

Ministry of Government Services

October 11, 2013

**Summary:** A requester sought access to the entire files of two long-concluded Licence Appeal Tribunal (LAT) proceedings. The Ministry of Government Services (the ministry) provided partial access, denying access to some portions on the basis of the mandatory personal privacy exemption. The requester took the position that the LAT Rules provided express authorization for disclosure of the entirety of the records, within the meaning of section 21(1)(d) of the *Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that section 21(1)(d) does not apply. However, some information is ordered disclosed as it is not personal information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 21(1)(d), 21(1)(f), 21(3)(d), 21(3)(f), 21(3)(g); *Licence Appeal Tribunal Act*, 1999, c. 12, Sched. G, s. 1; *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S. 22.

**Orders and Investigation Reports Considered:** Investigation Report I95-30P, Order PO-1815

**Cases Considered:** *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502, *Gombu v. Ontario (Information and Privacy Commissioner)*, 2002 CanLII 53259 (ON SCDC).

## **OVERVIEW:**

[1] The Ministry of Government Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

The entire files of Licence Appeal Tribunal Cases: [first named individual and corresponding file number] and [second named individual and corresponding file number], including but not limited to, all evidence, exhibits, transcripts and recordings of proceedings on July 9 and November 1, 2001.

[2] The ministry located 422 pages of records responsive to the request.

[3] The ministry issued a decision to the requester, advising that partial access had been granted. The ministry advised the requester that access to portions of the records was denied pursuant to sections 17(2) (tax information) and 21(1) (personal privacy) of the *Act*. In addition, the ministry advised that the sound recordings of the identified proceedings no longer exist and cannot be provided as they were destroyed pursuant to the Licence Appeal Tribunal's scheduled retention period and disposition.

[4] The requester (now the appellant) appealed the ministry's decision to this office.

[5] The appellant took issue with the ministry's application of section 21(1) to withhold portions of the records. The appellant claimed that the records should be released on the basis of section 21(1)(c) (information collected for the purpose of publicly available record) and (d) (expressly authorized disclosure) of the *Act*, and section 6 of the *Licence Appeal Tribunal Act (LAT Act)*.<sup>1</sup>

[6] In addition, the appellant claimed that the records are relevant to a fair determination of his rights, within the meaning of section 21(2)(d) of the *Act*.

[7] Mediation did not result in a resolution of the appeal and the matter was moved to the adjudication stage of the process, where an adjudicator conducts an inquiry.

[8] I provided the ministry and two affected parties with the opportunity to provide representations on the issues. In its representations, the ministry advised that it was no longer claiming section 17(2) to exempt portions of the records. Therefore, section 17(2) is no longer at issue in this appeal.

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<sup>1</sup> 1999, c. 12, Sched. G, s. 1.

[9] Upon review of the ministry and affected parties' representations, I decided to seek representations from the appellant. For this purpose, I provided the appellant with the ministry's representations in their entirety, and summarized the affected parties' representations in the Notice of Inquiry sent to the appellant. The appellant then provided his representations.

[10] In his representations, the appellant requested a copy of the affected parties' submissions. I found it unnecessary to share those representations in their entirety with the appellant. The summary provided the appellant with sufficient information about the position taken by the affected parties and certain court decisions forwarded by them in support of their position. In any event, I have found it unnecessary to rely on the representations of the affected parties.

[11] In this order, I find that the withheld portions of the records, with some exceptions, contain the personal information of the affected parties, and uphold the decision of the ministry to withhold access to those portions. I order disclosure of the information that does not qualify as personal information.

## **RECORDS:**

[12] The records at issue consist of the records withheld in whole or in part, contained in Licence Appeal Tribunal (the Tribunal or the LAT) files, relating to two named individuals.

[13] The records include:

- Correspondence relating to the judicial review of the Licence Appeal Tribunal decision with respect to a numbered case file
- Documents and correspondence relating to the Licence Appeal Tribunal hearings with respect to two numbered case files, including Hearing Request Forms and Summons for Witnesses
- Notice of Judicial Review Application for the Licence Appeal Tribunal decision for a numbered case file
- Notices of Proposal to Refuse Registration under the *Motor Vehicle Dealers Act*
- Applications for registration as a motor vehicle sales person and motor vehicle dealer
- Articles of Incorporation for a named company
- Criminal History Report
- Credit Report
- Copies of drivers licences, birth certificates, passports, social insurance cards
- Performance evaluations and reference letters
- Director's Certificates

- Inspection Reports and Findings
- Various Vehicle Purchase Agreements

[14] Although the records at issue also included decisions of the Licence Appeal Tribunal, the appellant has indicated that he is not seeking access to those decisions, as he already has them. Those records are therefore not at issue.

### **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?

### **DISCUSSION:**

#### **A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[15] The ministry asserts that portions of the records are exempt under section 21(1). In order to determine whether section 21(1) of the *Act* applies to withhold the information at issue, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[16] The term "personal information" 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;

[17] 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.<sup>2</sup>

[18] Section 2(3) also relates to the definition of personal information. That section states:

- (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[19] 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.<sup>3</sup>

[20] 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.<sup>4</sup>

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

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<sup>2</sup> Order 11.

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[22] The ministry submits that the records contain the following personal information:

- Criminal conviction information about an identifiable individual
- Tax arrears information about an identifiable individual
- Bankruptcy information about an identifiable individual
- Addresses and phone numbers of various identifiable individuals
- Names, addresses and Vehicle Information Numbers (VIN) of witnesses summonsed before the Tribunal
- Signatures that would reveal the identity of individuals
- Banking information in money orders
- Driver's licence information of identifiable individuals
- Employment history of identifiable individuals
- Credit history of an identifiable individual
- Allegations of misconduct about an identifiable individual
- Particulars regarding an identifiable individual's unsuccessful business
- Resume information belonging to an identifiable individual
- Birth certificate of an identifiable individual
- Copy of an identifiable individual's Social Insurance Number card
- Copy of the identification page of an identifiable individual's passport
- Letters of reference for an identifiable individual
- Grades of an identifiable individual for a certification program
- Employment performance plan results of an identifiable individual
- Vehicle Registration Numbers of various named individuals
- Driver's licence numbers and car insurance policy numbers of various named individuals

[23] In his representations, the appellant states that he assumes for the purposes of the analysis that the records contain the personal information of the two affected parties. The affected parties do not address this issue in their representations.

[24] I have reviewed the records at issue and the portions to which the ministry applied the section 21(1) exemption and agree that, with some exceptions, they contain the personal information of identifiable individuals as defined in section 2(1). The records contain information relating to education, criminal or employment history and information relating to financial transactions in which identifiable individuals have been involved, as described in paragraph (b). The records contain identifying numbers of identifiable individuals, such as passport numbers, social insurance numbers and birth certificates, as described in paragraph (c), and addresses and phone numbers, as contemplated by paragraph (d). Other information falls under paragraphs (g) and (h) of the definition of personal information (reference letters; other personal information).

[25] I find that some of the information the ministry severed does not qualify as personal information. The Offer to Lease (Agreement to Lease) found on pages A-83 to A-85 of the records does not contain "personal information" as that term is defined in section 2(1) of the *Act*. Although signed by identifiable individuals, the document is a contract for the leasing of commercial premises, and is an agreement between two businesses represented by the individuals. On my review of the document, it does not contain the personal information of those or any other individuals.

[26] Some information severed from pages A-87, B-48, B-60, B-78, B-123, B-135, and B-153, is about a business and not an individual.

[27] Other portions severed by the ministry on pages A-8, A-74, A-86, A-88, A-96, A-128, B-48, B-60, B-78, B-123, B-135 and B-153 identify individuals as officers, directors, owner or employees of a company, does not reveal anything personal about them and, having regard to section 2(3) of the *Act* (business, professional or official capacity), is therefore not their personal information.<sup>6</sup>

[28] The ministry has severed portions of purchase agreements between an auto wholesaler and an auto dealer, listing the VIN (Vehicle Identification Numbers) of the vehicles, on pages A-115, A-117 and A-119. In the context in which it appears, I find that this information does not qualify as the personal information of any identifiable individual.<sup>7</sup>

[29] The ministry has also severed portions of vehicle purchase agreements showing the signatures of the representative of the auto dealer, on pages A-147, A-163, A-175, A-176 and A-177. I find that these portions do not qualify as the personal information of this individual, as s/he was acting in a business capacity.<sup>8</sup> The information does not reveal anything of a personal nature about this individual.

[30] As the above portions do not contain personal information, the personal privacy exemption in section 21(1) cannot apply. No other exemption has been claimed for this information and I will therefore order its disclosure.

[31] I will now consider whether section 21(1) applies to exempt the personal information in the records.

**B: Does the mandatory exemption at section 21(1) apply to the information at issue?**

[32] Where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the

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<sup>6</sup> See Order PO-3142.

<sup>7</sup> See Order PO-2410.

<sup>8</sup> See Order PO-3174.

exceptions in paragraphs (a) to (f) of section 21(1) applies. In this case, the appellant submits that the exception in section 21(1)(d) applies to the information at issue. In his representations, he withdrew his reliance on section 21(1)(c).

[33] Section 21(1)(d) of the *Act* reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure.

[34] The appellant relies on Rule 7.1(2) of the Rules of Practice of the Licence Appeal Tribunal (the Rules),<sup>9</sup> which provides:

Subject to the provisions of these Rules governing restricted access,

- (1) all parties are entitled to receive a copy of every document that any other party sends to the Tribunal in proceedings; and
- (2) all documents that are filed in respect of a proceeding shall be accessible to the public upon reasonable notice to the Tribunal.

[35] The appellant submits that the Rules are made under the statutory authority of the *LAT Act*, and therefore authorize disclosure of the records within the meaning of section 21(1)(d) above.

[36] In its representations, the ministry submits that neither the *LAT Act* nor the Rules provide any authorization for the disclosure of personal information outside the context of a proceeding/hearing. The ministry refers to the introductory language of section 6(1) of the *LAT Act* which states that the

Tribunal may make rules establishing procedures for **hearings** held by the Tribunal and the rights of parties to the **hearings**. [emphasis added by ministry]

[37] The ministry submits that this language suggests that the Rules are intended to apply only to the actual hearing and not outside the context of Tribunal proceedings.

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<sup>9</sup> *Rules of Practice*, Licence Appeal Tribunal (Effective: January 1, 2008, Revised: March 28, 2012).



[38] The appellant submits that the ministry's argument has no merit. He refers to section 25.1 of the *Statutory Powers and Procedures Act* (the *SPPA*),<sup>10</sup> which provides that a tribunal "may make rules governing the practice and procedures before it." The appellant asserts that Rule 7.1(2) which the ministry acknowledges is derived from statute, expressly permits the public to access copies of documents filed with the Tribunal, on reasonable notice to the Tribunal.

[39] The appellant submits that he seeks all of the records listed in the Notice of Inquiry, aside from the unredacted decisions of the Tribunal which he already has. The documents are all "filed in respect of a proceeding" and the mandatory language of Rule 7.1(2) requires that they be "accessible to the public upon reasonable notice to the Tribunal." He states that this language is clear and unambiguous. The records, in his submission, are intended to be public records.

[40] The appellant submits that well-accepted principles of statutory interpretation support his position. He also relies on section 1 of the *Act*, setting out the purposes of the *Act*, including to "provide a right of access to information...in accordance with the principles that...information should be available to the public" and "necessary exemptions from the right of access should be limited and specific."

### ***Analysis***

[41] The phrase "under an Act of Ontario or Canada that expressly authorizes the disclosure" in section 21(1)(d) closely mirrors the phrase "expressly authorized by statute" in section 38(2) of the *Act*, relating to the collection of personal information. In considering whether a collection of personal information was "expressly authorized by statute", this office has stated that:

...the phrase "expressly authorized by statute" in section 38(2) of the *Act* requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation under the statute; i.e., in a form or in the text of the regulation.<sup>11</sup>

[42] The Court of Appeal has approved of this approach, in *Cash Converters Canada Inc. v. Oshawa (City)*.<sup>12</sup> That case concerned a city by-law governing the licensing of second-hand goods dealers. The Court found that the by-law was validly enacted under the provisions of the *Municipal Act, 2001*, permitting municipalities to govern businesses for the purpose of, among other things, consumer protection.<sup>13</sup> However, the Court

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<sup>10</sup> R.S.O. 990, c. S. 22.

<sup>11</sup> Investigation Report I95-030P.

<sup>12</sup> 2007 ONCA 502.

<sup>13</sup> S.O. 2001, c. 25.

also determined that the provisions of the by-law mandating the collection of personal information were not “expressly authorized by statute”:

[36] The phrase “expressly authorized by statute” has been interpreted by the Commissioner to mean that the specific types of personal information collected be expressly described either in a statute or in a regulation that has been authorized by a general reference to the activity in a statute. See Investigation I95-030P, *A College of Applied Arts and Technology*, [1995] O.I.P.C. No. 546; Investigation I96-057M, *A Board of Education*, [1996] O.I.P.C. No. 449 at paras. 17-18.

[37] For example, s. 9 of the *Pawnbrokers Act* specifically obliges a pawnbroker to keep a book with the full name, address and description of the person who pawns an article sufficient to identify the person as well as details of the person’s identification or a note that the person did not produce identification, and s. 13 requires pawnbrokers to make a daily report of the information to the chief of police or the person designated by by-law. There is no similar provision in the *Municipal Act, 2001*. The structure of the Act indicates that it was not the intention of the legislature to allow municipalities, simply by virtue of their power to enact by-laws, to determine the type of personal information that can be collected.

[43] The Court of Appeal therefore indicated that the statutory grant of a power to enact by-laws for purposes under the *Municipal Act, 2001*, was not sufficient to be “express authorization” for the collection of personal information under the *Act*.

[44] A number of orders of this office have adopted the above approach in the context of access to information requests. These orders have found that in order for section 21(1)(d) or its municipal equivalent to apply, there must either be specific authorization in the statute for the disclosure of the type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in a regulation.<sup>14</sup>

[45] In Order PO-1815, this office found that sections 6 and 8 of the *SPPA*, requiring that certain information about a hearing be provided to parties, did not amount to express statutory authorization, within the meaning of section 21(1)(d), for disclosure of the entire contents of a tribunal’s application file. Other cases where section 21(1)(d) or its municipal equivalent have been found to apply rested on the existence of express statutory authority for the disclosure of the type of information at issue. For example, in *Gombu v. Ontario (Information and Privacy Commissioner)*,<sup>15</sup> the Divisional

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<sup>14</sup> See Orders M-292, MO-2030, PO-2641, PO-2266 and MO-2344.

<sup>15</sup> 2002 CanLII 53259 (ON SCDC).

Court found that a provision of the *Municipal Elections Act, 1996*, stating that materials filed with the city clerk under that *Act* were publicly available and open for inspection by the public, came within the municipal equivalent to section 21(1)(d).<sup>16</sup>

[46] I find the principles above to be applicable to the appeal before me, in determining whether the grant of a power to make rules governing proceedings at the Tribunal amounts to express authorization for disclosure of personal information, within the meaning of section 21(1)(d). Applying those principles, I conclude that whether this statutory power to make rules is found in the *LAT Act* or the *SPPA*, it does not amount to express authorization for the disclosure of the personal information. These provisions of the *LAT Act* and the *SPPA* do not speak to disclosure of information, much less disclosure of personal information. Further, Rule 7.1(2) of the Rules of the LAT, even if validly adopted, does not amount to express statutory authorization within the meaning of that section. The exception in section 21(1)(d) has no application in the circumstances of this appeal.

[47] Before concluding this section, I observe that the appellant relies on the mandatory language in Rule 7.1(2), asserting that it requires that access not be refused. He also submits that the files of the LAT should be treated like court files and available to the public on request. It is unnecessary to engage in any detailed analysis of the interplay between the Rules of the LAT and the *Act*. Nothing in my determinations here is intended to detract from the authority of the LAT, under the *LAT Act* and the *SPPA*, to establish rules governing proceedings before it. I merely indicate that the LAT is an institution governed by the *Act* and, in responding to access requests under Part II of the *Act*, is obliged to have regard to the exemptions from disclosure. This is unlike the courts, which are not covered by the *Act*.

[48] Having concluded that the exception in 21(1)(d) does not apply, I turn to consider whether another exception to the personal privacy exemption applies. In this case, the only other exception that may be relevant is section 21(1)(f), that is, where disclosure is not an unjustified invasion of personal privacy.

[49] Section 21(1)(f) reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the individual relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

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<sup>16</sup> S.O. 1996, c. 32.

[50] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

[51] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21(1). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.<sup>17</sup> If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>18</sup> In order to find that disclosure does *not* constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.<sup>19</sup>

[52] The ministry submits that the disclosure of the personal information at issue would be an unjustified invasion of privacy under section 21(1)(f). The ministry claims that the presumption in section 21(3)(b) (violation of law) applies in this case. The ministry submits that many of the records contain details of various convictions regarding one of the affected parties for a variety of violations of law, such as criminal offences and offences under both federal and provincial taxation statutes. In addition, the ministry submits that the records contain personal information about both of the affected parties arising from inspections by the provincial Registrar under the *Motor Vehicle Dealers Act* into possible violations under that *Act*. The ministry also submits that the records contain employment history and resume information of affected parties and accordingly, the presumption in section 21(3)(d) (employment or education history) applies. In addition, the ministry submits that the presumption in section 21(3)(d) (tax information) applies as the records contain personal information about the amount of taxes that an affected individual is indebted to the province for, and information about an affected individual's contravention of the *Retail Sales Tax Act*.

[53] The ministry also submits that the presumption in section 21(3)(f) (financial history) applies as many of the records describe an affected party's finances, liabilities, financial history or activities, and creditworthiness. Finally, the ministry raises the possible application of the presumption in section 21(3)(g) (personal recommendations) as, in its submission, the records contain letters of reference and employment performance plan results of one of the affected individuals.

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<sup>17</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>18</sup> Order P-239.

<sup>19</sup> Orders PO-2267 and PO-2733.

[54] With regard to the factors listed in section 21(2) of the *Act*, the ministry notes that the appellant relied on the factor in section 21(2)(d) (fair determination of rights) in support of disclosure. However, the ministry submits that it is not clear that the records are relevant and significant to a fair determination of rights. The ministry states that the appellant has indicated that the issue in the ongoing legal proceeding is the nature of an affected party's involvement with a named company. However, the ministry submits that none of the types of personal information in the records have any bearing or significance to this particular issue. As such, the ministry questions how these types of personal information would be required by the appellant in order to prepare for the proceeding.

[55] The ministry submits that it also placed significant weight on the factor listed in section 21(2)(f) (highly sensitive), in that some of the information at issue, as described above, is highly sensitive.

[56] The ministry submits that it considered the applicability of the factor listed in section 21(2)(a) (public scrutiny), but decided it has no relevance to this appeal.

[57] In their representations, the affected parties oppose any further disclosure of the information at issue and submit that it would constitute a violation of their privacy.

[58] Although the appellant originally cited section 21(2)(d) to support disclosure of the records, he submits in his representations that section 21(1)(f) has no application in this appeal and makes no submissions with regard to whether disclosure of the information would or would not constitute an unjustified invasion of personal privacy.

[59] On my review of the records, I find that the presumptions in sections 21(3)(d), (f) and (g) apply to some of the information, in that it relates to employment or educational history, describes finances or other information listed in section 21(3)f), or consists of recommendations, references or evaluations within the meaning of section 21(3)(g). Even if some of the information is not covered by a presumption, there is no evidence that any of the factors in section 21(2) favour its disclosure. As indicated above, in order to find that disclosure does *not* constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.

[60] In the circumstances section 21(1) applies to exempt the remaining information from disclosure.

**ORDER:**

1. I find that some of the information does not qualify for exemption as it is not "personal information", and I order it disclosed. For certainty, I am providing the ministry with a copy of the records, with the portions to be disclosed highlighted.
2. I uphold the decision of the ministry to withhold the remaining information.
3. I order the ministry to disclose the highlighted portions of the records to the appellant by **November 18, 2013** but not before **November 13, 2013**.
4. To verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant

Original signed by: \_\_\_\_\_  
Sherry Liang  
Senior Adjudicator

\_\_\_\_\_ October 11, 2013