

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-3533

Appeal PA14-141

Ministry of Natural Resources and Forestry

September 18, 2015

**Summary:** The appellants sought access to information relating to the ministry's investigation into the death of their son which occurred as a result of a hunting accident. The ministry granted partial access to the requested records, denying access to portions of them pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*. The appellants appealed the ministry's decision on the basis that the withheld information should be disclosed as a result of the application of the exception that permits disclosure for compassionate reasons at section 21(4)(d). The appellants also raised the possible application of the override provision at section 23, which permits disclosure despite the application of section 21(1), provided that a compelling public interest exists.

In this order, the adjudicator upholds the ministry's decision not to disclose the information at issue as a result of the application of the exemption at section 21(1). The adjudicator finds that neither the exception to the section 21(1) exemption for compassionate reasons at section 21(4)(d), nor the compelling public interest override provision at section 23, have been established for the specific information that remains at issue. The appeal is dismissed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1), 21(2)(f), 21(3)(b), 21(4)(d), and 23. *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 14(4)(c) and 16.

**Orders and Investigation Reports Considered:** Orders MO-1722, MO-2237, MO-2245, MO-2430 and MO-3224.

## **OVERVIEW:**

[1] A request was submitted to the Ministry of Natural Resources and Forestry (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the ministry's investigation into a fatal hunting accident the investigator was undertaken to determine whether charges of careless hunting would be laid under the *Fish and Wildlife Conservation Act*. The requesters, the parents of the deceased, who was a minor, specifically sought access to the following information:

1. records containing the information relied upon, and the sources cited in support of, [named Conservation Officer]'s conclusion that there "was no evidence to show that the accident was a result of careless hunting" [as stated in the enclosed email dated July 31, 2013];
2. records containing the information relied upon, and the sources cited in support of, [named Conservation Officer]'s recommendation that [named individual] and his father re-take the Ontario Hunter Education Course [recommendation stated in the enclosed email dated July 31, 2013];
3. all forensic reports relating to the investigation;
4. all correspondence (emails, briefing notes, reports and memoranda) between [two named Conservation Officers] relating to the investigation, whether or not such correspondence also includes additional senders/recipients;
5. all correspondence (emails, briefing notes, reports and memoranda) between [two named Conservation Officers] relating to the investigation, whether or not such correspondence also includes additional senders/recipients;
6. all correspondence (emails, briefing notes, reports and memoranda) between [two named Conservation Officers] relating to the investigation, whether or not such correspondence also includes additional senders/recipients;
7. all correspondence (emails, briefing notes, reports and memoranda) relating to the investigation in which [named individual] is the sender and/or recipient, whether or not such correspondence also includes additional senders/recipients; and
8. all correspondence (emails, briefing notes, reports and memoranda) relating to the investigation in which [named individual] (Kemptville Branch of Ministry) is the sender and/or recipient, whether or not such correspondence also includes additional senders/recipients.

[2] The request specified that the date range for responsive records should fall between September 30, 2012 and November 7, 2013.

[3] The ministry located records responsive to the request and issued a decision granting partial access to them. Access was denied to portions of the records pursuant to sections 14 (law enforcement), 19 (solicitor-client privilege) and 21(1) (personal privacy) of the *Act*.

[4] In its decision letter, the ministry further advised:

A number of the records responsive to your request that are in our ministry's possession were generated by the Ottawa Police Service. As the Ottawa Police Service has greater interest (as defined in section 25(3)) in these records, that portion of your request, along with the records for which they have greater interest, have been transferred to them. This action is taken under section 25 of the Act.

[5] The ministry charged \$41.80 for processing the request.

[6] The requesters (now the appellants) appealed the ministry's decision to deny access to the withheld information.

[7] During mediation, the appellants' lawyer wrote to the ministry to clarify that she was representing the parents of the young man who died as a result of the hunting incident. She provided the ministry with written consent from the parents to act on their behalf. The appellants' lawyer also confirmed that her clients were seeking access to the requested records to better understand the circumstances of their son's death, thereby raising the possible application of section 21(4)(d) of the *Act* to the records (access to records for compassionate reasons).

[8] The ministry decided to consider the application of section 21(4)(d) of the *Act* to the records and notified several affected parties of the request, seeking their consent to the disclosure of their personal information that might appear in the records. Subsequently, the ministry issued a supplementary decision to the appellant advising that following their consideration of the possible application of section 21(4)(d) and having obtained the views of the affected parties, it had decided to grant additional disclosure, in full and in part, of some of the records. The ministry also advised that it had located one additional record that was not identified in the original access decision, an audio recording of a statement, and that it was prepared to disclose the recording in full. With respect to the information that it continued to withhold, the ministry claimed the application of sections 19 and 21(1) of the *Act* to withhold them.

[9] The appellants advised that they were not interested in pursuing access to the records being withheld under sections 14 and 19 of the *Act*, as well as to any records or portions of records that the ministry deemed to be not responsive to the request. Accordingly, the records or portions of records withheld for these reasons are no longer at issue.

[10] The appellants confirmed that they continue to seek access to some of the

information that has been withheld pursuant to section 21(1) of the *Act*. Specifically, they seek access to portions of notebook entries made by the ministry Conservation Officers responsible for conducting the investigation into the incident.

[11] As a mediated resolution could not be reached, the file was transferred to the adjudication stage for an adjudicator to conduct an inquiry. I began my inquiry into this appeal by sending a Notice of Inquiry setting out the facts and issues on appeal, to the ministry, initially. The ministry provided representations in response. I then sought representations from the appellants, which they provided.

[12] In this order, I uphold the ministry's decision and dismiss the appeal. Specifically, I find that the disclosure of the portions of the records that remain at issue is presumed to result in an unjustified invasion of personal privacy of individuals other than the appellants, pursuant to the mandatory exemption at section 21(1) of the *Act*. In reaching this finding, I considered the possible application of the exception that permits disclosure of information for compassionate reasons at section 21(4)(d), and the override provision at section 23, which permits disclosure if a compelling public interest that outweighs the purpose of the exemption is established. I found that neither section 21(4)(d) nor section 23 applies with respect to the specific information that remains at issue.

## **RECORDS:**

[13] The records containing the information that remains at issue have been labelled by the ministry as follows: AO217868, AO217899, AO217901, AO217905 and AO217908. As noted above, these records consist of handwritten notebook entries of the ministry Conservation Officers responsible for conducting the investigation into the accident.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) of the *Act* apply to the portions of records that remain at issue?
- C. Is there a compelling public interest in the disclosure of the portions of records that remain at issue that clearly outweighs the purpose of the section 21(1) exemption?

## **DISCUSSION:**

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

[14] In order to determine which sections of the *Act* may apply, 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.

[15] 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>1</sup>

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

### ***Representations***

[17] The ministry submits that the records contain “personal information” as that term is defined in section 2(1) of the *Act*. It submits that the records contain the personal information of the appellants’ son, as well as that of other identifiable individuals. Specifically, it submits that this personal information of individuals other than the deceased includes their Outdoors Card status and number of comments and statements made by identifiable individuals, regarding themselves, to Conservation Officers in the course of the investigation into the accident.

[18] In their representations, the appellants acknowledge that the information contains the personal information of the deceased, as well as that of other identifiable individuals.

### ***Analysis and finding***

[19] Having reviewed the records, I accept that they contain information that qualifies as “personal information” as that term is defined in section 2(1) of the *Act*.

[20] The records contain the personal information of the deceased, including his name, where it appears together other personal information relating to him (paragraph (h)).

[21] The records also contain the personal information of identifiable individuals other than the deceased. Specifically, the records contain an identifying number assigned to an individual (paragraph (c)), the address or telephone number of an identifiable individual (paragraph (d)), the personal opinions or views of an identifiable individual (paragraph (e)), as well as the names of identifiable individuals, together with other personal information relating to them (paragraph (h)).

[22] Accordingly, I find that the records at issue contain “personal information” as that term is defined in section 2(1) of the *Act*.

### **B. Does the mandatory exemption at section 21(1) of the *Act* apply to the portions of records that remain at issue?**

[23] Having established that the records contain the personal information of

---

<sup>1</sup> Order 11.

<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

identifiable individuals, I must now establish whether the disclosure of the portions at issue falls within the mandatory exemption at section 21(1) of the *Act*. Section 21(1) requires the ministry to refuse to disclose the information unless one of the exceptions at sections 21(1)(a) through (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy as contemplated by section 21(1)(f).

[24] The facts and presumptions in sections 21(2), (3), and (4) of the *Act* help in determining whether disclosure of personal information would or would not result in an unjustified invasion of personal privacy under section 21(1)(f).

### ***Section 21(1) – exceptions***

[25] In the circumstances of this appeal, it appears that the only paragraph in section 21(1) that might be relevant is section 21(1)(f). That section states:

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

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

[26] To establish whether disclosure of the information at issue amounts to an unjustified invasion of personal privacy and is exempt from disclosure, I will consider the possible application of the provisions in sections 21(2), (3) and (4).

### ***Sections 21(2) and (3) – factors and presumptions***

[27] 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. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if either one of the provisions at section 21(4) or the “public interest override” at section 23 applies.<sup>3</sup>

[28] If the records are not covered by a presumption in section 21(3), section 21(2) lists various criteria that might be relevant in determining whether disclosure of the personal information would amount to an unjustified invasion of personal privacy. In such case, the personal information will be exempt unless the circumstances favour disclosure.<sup>4</sup>

### ***Section 21(3)(b): investigation into a possible violation of law***

[29] The ministry submits that the disclosure of the information at issue in this appeal would result in the presumed unjustified invasion of personal privacy set out at section

---

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

<sup>4</sup> Order P-239.

21(3)(b) of the *Act*. Section 21(3)(b) reads:

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.

[30] The ministry submits that the records at issue were “compiled and are identifiable” as part of an investigation into a possible violation of law; first, the *Criminal Code* and subsequently, the *Fish and Wildlife Conservation Act*. As a result, the ministry submits that the presumption against disclosure at section 21(3)(b) of the *Act* applies to them.

[31] The appellants submit that they accept that the records responsive to their request “were compiled and are identifiable as part of an investigation into a possible violation of the *Fish and Wildlife Conservation Act* in respect of the use of firearms that resulted in their son’s death” and therefore, that the records at issue fall within the ambit of section 21(3)(b). They concede that, as a result, the disclosure of information contained therein is presumed to constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f). However, the appellants submit that the presumption at section 21(3)(b) is rebutted by the application of section 21(4)(d) (disclosure for compassionate reasons) and/or the compelling public interest override at section 23 of the *Act*.

[32] It has been well established that even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>5</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>6</sup>

[33] Based on my review of the records, it is clear that they have been compiled as part of an investigation into a possible violation of law. The appellant does not dispute that they relate to an investigation that could have given rise to charges under the *Criminal Code* and/or the *Fish and Wildlife Conservation Act*. Accordingly, subject to the possible application of the exception at section 21(4)(d), or the override at section 23, discussed below, I find that the disclosure of the information at issue is presumed to result in an unjustified invasion of personal privacy within the meaning of section 21(3)(b).

---

<sup>5</sup> Orders P-242 and MO-2235.

<sup>6</sup> Orders MO-2213, PO-1849 and PO-2608.



***Section 21(4) – disclosure not an unjustified invasion of personal privacy***

[34] As mentioned above, a presumed unjustified invasion of personal privacy in section 21(3) can be overcome if the personal information is found to fall under one of the paragraphs of section 21(4) of the *Act*.

[35] The only paragraph in section 21(4) that might be relevant in this appeal is section 21(4)(d). Therefore, I must now determine whether, despite the application of the presumption at section 21(3)(b), section 21(4)(d) permits the further disclosure of some or all of the personal information that remains at issue in the records.

*Section 21(4)(d): disclosure for compassionate reasons*

[36] Section 21(4)(d) permits the disclosure of personal information about a deceased individual to the spouse or close relative of the individual where it is desirable to do so for compassionate reasons. Based on the wording of this provision, a finding that section 21(4)(d) applies to some or all of the personal information means that disclosure would *not* be an unjustified invasion of personal privacy. Section 21(4)(d) reads:

... a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[37] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the “circumstances” to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. Additionally, the factors and circumstances referred to in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).<sup>7</sup>

[38] The application of section 21(4)(d) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?

---

<sup>7</sup> Order MO-2237.

3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?<sup>8</sup>

[39] With regard to the first question, I have found that the records, considered in their entirety, contain the personal information of the deceased. In addition, I have found that they also contain the personal information of other identifiable individuals, specifically those who were present at the time of the accident.

[40] With regard to the second question, after the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."<sup>9</sup>

[41] The term "close relative" is defined in section 2(1) of the *Act* as:

"close relative" means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption.

[42] As the appellants' are the deceased's parents, they satisfy the second part of the test under section 21(4)(d).

[43] Now turning to the third question that must be established for the exception at section 21(4)(d) to apply, I must consider whether the disclosure of the personal information of the deceased individual is desirable for compassionate reasons, which has generally been described as information that will assist a close relative in understanding the events leading up to and surrounding the death of an individual.<sup>10</sup>

[44] The ministry acknowledges that once a presumption has been established pursuant to section 21(3), it may only be rebutted by the criteria set out in section 21(4) or by the compelling public interest override at section 23 of the *Act*. However, the ministry submits that the information at issue is "particularly sensitive as it involves the investigation of a minor." The ministry submits that both federal and provincial legislation (including the *Provincial Offences Act*) have special provisions dealing with offences allegedly committed by minors and their treatment by the courts. The ministry submits "that information relating to law enforcement investigations of minors is particularly sensitive given the impact that its release may have on the minors now and in the future."

[45] The ministry explains that after it learned that the requester represented the

---

<sup>8</sup> Orders MO-2237 and MO-2245.

<sup>9</sup> Order MO-2245.

<sup>10</sup> Order MO-2245.

family of the deceased, it reviewed the records at issue to consider whether the disclosure of any additional information was desirable for compassionate circumstances, as contemplated by section 21(4)(d) of the *Act*. It submits that, when conducting its review, it considered the grieving process of the family of the deceased and the role that understanding the circumstances of his death would have in that process.

[46] The ministry also submits that when reviewing the information at issue it was mindful of the test for the application of that provision set out in Order MO-2237 (the three-part test outlined above). It submits that although it was satisfied that the first two conditions of the test were met, on its review, it was of the view that the disclosure of the information remaining at issue would not substantively increase the amount or nature of the information relating to the circumstances of the accident that was already in the appellants' knowledge. It explains that it balanced the nature of the information that was already disclosed to the appellants with the highly sensitive nature of the law enforcement investigation involving other identifiable individuals, including a minor. The ministry submits that, as a result, it was not satisfied that the disclosure of the information was desirable in the circumstances and, therefore, it did not apply section 21(4)(d) to decide upon its disclosure.

[47] In response, the appellants submit that in making a determination of whether disclosure is desirable for compassionate reasons under section 21(4)(d), a consideration of the factors in section 21(2) is also relevant. They submit that the factor in sections 21(2)(b) (promotion of public health and safety) is relevant because the information might help to clarify the circumstances of a fatal shooting accident involving a minor which, the appellants submit, would clearly promote the object of greater public safety.

[48] The appellants also submit that the factor at section 21(2)(f), whether the information is highly sensitive, is relevant. They submit that although the ministry contends that the information at issue is particularly sensitive, they are of the view that this conclusion is unwarranted because the investigation is limited to whether a regulatory offence has been committed and not an investigation into a violation of the *Criminal Code*. Also, they submit that the information is not highly sensitive because hunting is a privilege and not a right. They further submit that the ministry's investigation did not involve the determination of a minor's fundamental rights and freedom and could not result in their curtailment and, moreover, that the minor involved in the investigation is no longer a minor. Finally, they submit that it is unlikely that disclosure would cause the minor (or the other individual identified in the records) the level of "significant personal distress" required for the factor at section 21(2)(f) to apply, particularly in view of the amount of information that has already been disclosed regarding the investigations.

[49] With respect to whether the information should be disclosed for compassionate reasons pursuant to section 21(4)(d), the appellants point to Order MO-2430 in which Adjudicator Stephanie Haly addressed a request filed by a grieving mother for

investigative case records, including the investigating officer's notebook entries, relating to her daughter's death. In that appeal, the notebook entries contained the personal information of a number of identifiable individuals who were present at the time of the daughter's death and included their observations. The appellants submit that Adjudicator Haly gave significant weight to the mother's evidence regarding her need to know further details of the circumstances of her daughter's sudden death despite having already been granted significant portions of the Sudden Death Report.

[50] The appellants submit that, in Order MO-2430, Adjudicator Haly also gave significant weight to the fact that much of the deceased's personal information included other identifiable individuals' observations and statements about the deceased prior to her death. They submit that this was relevant to Adjudicator Haly's finding that disclosure of that information was desirable for compassionate reasons.

[51] The appellants also point to Order MO-2245 in which Commissioner Brian Beamish gave significant weight to evidence provided by the appellant that disclosure of information relating to her son's death, including videotapes and photographs of the scene where his body was discovered, would help her with her grieving process. They submit that in that order, Commissioner Beamish also stated that section 14(4)(c) of the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal equivalent of section 21(4)(d) in the *Act*) was designed to allow families to have the records they feel that they require in order to grieve in the way that they choose.

[52] The appellants submit:

In the present case, the appellants have not been able to grieve in the way they choose, as they have received incomplete and inconclusive information about the investigation and the circumstances of their son's tragic death. In addition, [the named individuals] resumed hunting only a short time after [the appellants' son's] death. Meanwhile, the information about the ministry's investigation that has been released to the appellants appears to indicate that a thorough investigation was not carried out. For example, it appears that [a named individual] has not been interviewed by the ministry at all, which would be a significant and inexplicable omission in the investigation of a fatal accident caused by the discharge of a gun operated by [that named individual].

[53] The appellants conclude their representations on the application of section 21(4)(d) by submitting:

The appellants feel that they need a complete picture of the circumstances of their son's death in order to help them with their grieving process. They seek answers to unanswered questions about the accident, and in particular about [named individuals'] account of the events surrounding the accident to the ministry. Significant weight must

be given to this factor in accordance with prior orders of the [Office of the Information and Privacy Commissioner, Ontario].

[54] The third part of the test that is applied to determine whether information should be disclosed for compassionate reasons under section 21(4)(d) requires first that the information at issue contains the personal information of the deceased individual and second, that disclosure of that information is desirable for compassionate reasons.

[55] In many of the situations where section 21(4)(d) might possibly apply, the responsive information contains both the personal information of the deceased and the personal information of other identifiable individuals in a manner where it is intertwined. This is often the case with records created during the course of investigations into incidents that might amount to possible violations of law, as was the investigation that was conducted in this appeal. Such records include, police notes, witness statements and interviews. However, in some cases, even in situations where the personal information of the deceased and that of other identifiable individual are intertwined, there may be portions of the records that contain personal information that is exclusively that of one or the other; for example, contact information such as addresses or telephone numbers or identifying numbers assigned to the individual. A number of previous orders have addressed situations where the records contain both person information of identifiable individuals that is intertwined with that of the deceased, as well as personal information that is exclusively that of an identifiable individual, other than the deceased.

[56] In Order MO-2237, Commissioner Beamish applied the exception in section 14(4)(c) of the *Municipal Freedom of Information and Protection of Privacy Act* (as noted above, the municipal equivalent of section 21(4)(d) in the *Act*), to records which contained the intermingled personal information of several identifiable individuals, including the deceased daughter of the appellant in that case. He made the following comments on the difficulties in applying section 14(4)(c) in these circumstances:

I have found that parts of records 5, 6 and 11 consist of the personal information of the appellant's daughter. Record 11 also contains the affected party's image, voice and mannerisms, and records 5, 6 and 11 contain information about the affected party's activities where these also involve the appellant's daughter. This information is inextricably intertwined in a way that cannot be fully resolved by severing, and accordingly, these records raise one of the more difficult aspects of applying section 14(4)(c), namely the question of how to treat information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of another individual or individuals.

The first question to address here is whether the reference to "personal information about a deceased individual" can include information that also

qualifies as that of another individual. In my view, this question should be answered in the affirmative. The circumstances of an individual's death, particularly one that is followed by a police or coroner's investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals' personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of "personal information", set out above, since the information would clearly qualify as recorded information "about" the deceased individual. It would also frustrate the obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

In my view, this approach is borne out by the legislative history of section 14(4)(c) (and section 21(4)(d) of the *Freedom of Information and Protection of Privacy Act*, the equivalent section in that statute). Prior to the enactment of this provision, denial of access to information to family members regarding the circumstances of their loved ones' death was often forced upon institutions by the operation of section 14(3). Examples of the kind of information previously withheld include records such as those at issue here and include police occurrence reports, ambulance call reports and 911 call reports [see Orders PO-2473, PO-1757]. This information was previously determined to be exempt from disclosure as an unjustified invasion of the privacy of the deceased because the presumptions of unjustified invasion in section 14(3)(a) (relates to medical history) and/or 14(3)(b) (compiled and identifiable as part of an investigation into a possible violation of law) applied to much of the personal information in these types of records.

[57] Commissioner Beamish then went on to describe the legislative history of the compassionate grounds provision before commenting on its application:

Accordingly, in my view, it is consistent with both the definition of "personal information" in section 2(1) and the legislative purpose behind this section to interpret "personal information about a deceased individual" as including not only personal information solely relating to the deceased, but also information that qualifies as the personal information of not only the deceased, but another individual or individuals as well.

The conclusion that personal information about a deceased individual can include information about other individuals, raises the further question of how the information of those other individuals should be assessed in deciding what to disclose under section 14(4)(c). In my view, assistance is

provided in that regard by the legislative text, which permits disclosure that is "in the circumstances, desirable for compassionate reasons."

Where this is the case, the "circumstances" to be considered would, in my view, include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).

As well, the fact that the protection of personal privacy is one of the *Act's* purposes, articulated in section 1(b), must be considered in assessing whether to disclose information that, in addition to being personal information of the deceased, also qualifies as the personal information of another individual or individuals.

[58] As noted above by the appellants, the Commissioner's approach taken in Order MO-2237 was subsequently followed by Adjudicator Haly in Order MO-2430. In that order, Adjudicator Haly found that some of information remaining at issue, specifically that where the personal information of the appellant's deceased daughter was intertwined with that of other identifiable individuals (in some circumstances this amounted to the statements of the witnesses to the appellant's daughter's death or statements from individuals who were with the deceased in her last moments), was subject to disclosure for compassionate reasons, as contemplated by section 14(4)(c) of the *Municipal Freedom of Information and Protection of Privacy Act*. However, she also found that the address and contact information of several affected parties was not the personal information of the appellant or the deceased, and found that it was exempt under the discretionary personal privacy exemption at section 38(b) of the *Municipal Freedom of Information and Protection of Privacy Act*.

[59] Similarly, in Order MO-3224, Adjudicator Justine Wai considered information in which the personal information of the deceased and other identifiable individuals were comingled, including witness statement and interviews. Although she gave significant weight to the appellant's need to receive the records at issue for closure and found that some of the information in the records was desirable for compassionate reasons under the exception of section 14(4)(c) of the *Municipal Freedom of Information and Protection of Privacy Act*, she found that some of the information did not. She observed that this remaining information related mainly to identifiable individuals other than the deceased and that the deceased's personal information was found in very discrete portions of the record. Specifically, Adjudicator Wai found that the personal information of identifiable individuals that was contained in the records at issue (including witness statements) that related only to those individuals and was not intertwined with that of the appellant and/or the deceased was properly exempt under either section 14(1) or 38(b), the personal privacy exemptions set out in the *Municipal Freedom of Information and Protection Act*.

[60] I agree with the approaches taken in the above-noted orders with respect to information that does not meet the definition of the personal information of the deceased and adopt them for the purposes of the current appeal.

[61] In the circumstances before me, the majority of the information in the responsive records has been disclosed to the appellants and only a small amount has been severed. On my review of the specific information that remains at issue, I find that it can neither be described as the personal information of the deceased alone; nor does it qualify as the personal information of the deceased that is comingled or intertwined with the personal information of other identifiable individuals. Rather, this information consists of only the personal information of two identifiable individuals, other than the deceased. It does not contain any personal information belonging to the deceased himself. It does not consist of statements taken from those individuals present at the time of the accident containing their views or opinions about the deceased or what transpired. It also does not describe the deceased's last moments or reveal any of the circumstances surrounding the fatal hunting accident.

[62] Although the appellants submit that the disclosure of the information at issue would help promote public health and safety as contemplated by the factor at section 21(2)(b) as it might help to clarify the circumstances of the accident, I disagree. As described above, the information that remains at issue consists of only the personal information of identifiable individuals other than the deceased and, in my view its disclosure would not help to clarify the circumstances of the accident. As a result, I find that the factor weighing in favour of disclosure at section 21(2)(b) is not relevant in the circumstances of this appeal.

[63] Additionally, the appellants submit that the disclosure of the information at issue is not highly sensitive as contemplated by the factor weighing against disclosure in section 21(2)(f) and therefore, that this factor is not relevant. They submit that it is unlikely that disclosure would cause the individuals to whom the information relates, "significant personal distress" as required for that factor to apply. I disagree. Given its nature, I accept that the circumstances surrounding this accident were extremely difficult for all those who were involved, including those whose personal information is at issue in this appeal. In my view, the disclosure of their personal information, as it appears in the records, could reasonably be expected to cause them "significant personal distress." Accordingly, I find that the factor at section 21(2)(f) is a relevant factor that weighs in favour of the non-disclosure of the information at issue.

[64] It has not been established that any of the factors weighing in favour of the disclosure of the specific information that remains at issue apply. Additionally, I do not accept that the disclosure of that personal information, which does not amount to the personal information of the deceased, would contribute to the appellants' understanding of the circumstances surrounding the accident that lead to their son's death. As a result, I find that it has not been established that the disclosure of that specific information at issue is desirable for compassionate reasons as contemplated by the



third part of the section 21(4)(d) test.

[65] As the third part of the test has not been established, I find that the exception permitting the disclosure of personal information in compassionate circumstances at section 21(4)(d) does not apply in the circumstances of this appeal. Subject to my discussion below on the possible application of the public interest override provision at section 23 of the *Act*, I find that the information that remains at issue in the responsive records has been properly withheld under the mandatory personal privacy exemption at section 21(1).

**C. Is there a compelling public interest in disclosure of the portions of records at issue that clearly outweighs the purpose of the section 21(1) exemption?**

[66] The appellants submit that, if the information does not fall within the exception at section 21(4)(d) of the *Act*, the presumption of unjustified invasion of privacy set out in section 21(3)(b) is overridden by section 23 which permits disclosure of certain exempt information if a compelling public interest in that disclosure can be established.

[67] Section 23 reads:

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

[68] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[69] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, this office will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.<sup>11</sup>

**COMPELLING PUBLIC INTEREST**

[70] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's*

---

<sup>11</sup> Order P-244.

central purpose of shedding light on the operations of government.<sup>12</sup> Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>13</sup>

[71] A public interest does not exist where the interests being advanced are essentially private in nature.<sup>14</sup> Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.<sup>15</sup>

[72] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.<sup>16</sup>

## **PURPOSE OF THE EXEMPTION**

[73] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[74] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.<sup>17</sup>

## **Representations**

[75] The appellants submit that the information at issue involves a fatal accident that occurred as a result of the use of a firearm by a minor. They submit that it is not clear from the information that has been disclosed to them whether there had been careless use of a firearm. The appellants further submit:

[T]he ministry appears to have failed to obtain crucial information regarding the safety and hunting methods practiced on the day of the accident from [a named minor]. Rather the ministry appears to have based its conclusion on the interview with [named individual] who admitted that he did not witness the accident.

---

<sup>12</sup> Orders P-984 and PO-2607.

<sup>13</sup> Orders P-984 and PO-2556.

<sup>14</sup> Orders P-12, P-347 and P-1439.

<sup>15</sup> Order MO-1564.

<sup>16</sup> Order P-984.

<sup>17</sup> Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

The appellants have also filed a complaint against [sic?] the Ministry of the Office of the Ombudsman for Ontario in an attempt to obtain some clarity with respect to the sufficiency of the conduct of the ministry's investigation. Information at issue may be necessary to complete the picture of how the accident occurred. It is in the compelling public interest that government bodies conduct investigations concerning inherently dangerous activities such as hunting as thoroughly and transparently as possible.

### **Analysis and finding**

[76] In Order MO-1722, Adjudicator Donald Hale found that a compelling public interest did not exist with respect to the disclosure of records including information detailing the results of a deceased individual's toxicology tests and blood alcohol reading. In that order, referring to section 16 of the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal equivalent of section 23 of the provincial *Act*), Adjudicator Hale stated:

The circumstances surrounding the accident to which the records at issue are related are very compelling and were of great interest not only in the community where it occurred but also throughout Ontario. However, I am of the view that the disclosure of the information contained in the records would not serve the purpose of information the public about the activities of the police or the government. The public interest in this case revolves around the need to know more about the tragic circumstances which led to the accident and the loss of four young lives. In my view, there is no public interest, compelling or otherwise, in disclosure that would serve the purposes envisioned by section 16. As a result, I find that section has no application to the records under consideration.

[77] I acknowledge that the circumstances in the appeal before Adjudicator Hale are not entirely parallel to those in the current appeal. In that case, the personal information at issue related to deceased individuals, rather than identifiable individuals who were witness to a fatal accident. Nevertheless, I find that Adjudicator Hale's reasoning with respect to the interpretation of the term "compelling public interest" and whether the disclosure of the specific information that was before him would serve to inform the public is relevant to my determination in this appeal.

[78] In the appeal before me, I accept that the circumstances surrounding the fatal accident involving the appellants' son are incredibly tragic. However, the appellants' submissions regarding their desire to be granted access to the information that I have found to be subject to the mandatory exemption at section 21(1) of the *Act* speak primarily to a private, as opposed to a public, interest. I acknowledge that the appellants have expressed a personal concern with respect to the manner in which the ministry conducted its investigation into the accident. The appellants also comment on

their personal need to obtain the withheld information as it might be necessary with respect to a personal complaint that they have filed with the Ombudsman with respect to the ministry's investigation. However, in my view, there is insufficient evidence before me to suggest that there is a more general public interest or concern with respect to the ministry's conduct with respect to its investigation into the accident. Additionally, there is insufficient evidence to suggest that the disclosure of the specific and limited information in the records at issue would, in isolation, advance an interest that is public in nature, compelling or otherwise. For these reasons, I am unable to conclude that there is a public interest that is compelling in nature, in the disclosure of the specific information at issue.

[79] Moreover, even if a compelling public interest in the disclosure were to exist, for the section 23 override provision to apply, that compelling public interest must be shown to clearly outweigh the purpose of the exemption claim. In this case, the purpose of the exemption at section 21(1) also reflects one of the key purposes of the *Act*: to protect the privacy of individuals with respect to personal information about themselves held by government institutions. In my opinion, given the nature of the specific information that has been withheld and remains at issue, the personal interests of the appellants in this case do not outweigh the privacy interests of the individuals whose personal information is contained in the records.

[80] I am not satisfied that a compelling public interest that would outweigh the purpose of section 21(1) of the *Act* exists in the circumstances of this appeal. Therefore, I find that the "public interest override" at section 23 does not apply and the information that remains at issue is exempt from disclosure pursuant to the mandatory exemption at section 21(1) of the *Act*.

**ORDER:**

I uphold the ministry's decision and dismiss the appeal.

Original Signed by:  
Catherine Corban  
Adjudicator

September 18, 2015