Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3935

Appeal PA17-388

Ministry of Community Safety and Correctional Services

March 12, 2019

Summary: The Ministry of Community Safety and Correctional Services (the ministry) received a request from a media requester under the *Freedom of Information and Protection of Privacy Act* for access to briefing materials and communications regarding the acquisition and use by police of reinforced gloves. In its decision, the ministry granted partial access to the records. Access to some of the information was denied, pursuant to the exemptions in sections 13(1) (advice or recommendations) and 21(1) (personal privacy) of the *Act*.

In this order, the adjudicator partially upholds the ministry's decision under section 13(1) and upholds its decision under section 21(1). The adjudicator finds that the public interest override in section 23 does not apply because the records do not respond to the applicable public interest raised by appellant.

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"), 13(1), 21(1), 23.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request from a media requester under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following information:

> All briefing materials prepared for the Minister or Deputy Minister from January 1, 2016, to date of receipt of this request regarding police or correctional officer acquisition and use of reinforced gloves; and records of all communications between the Minister's office or Deputy Minister's

office and any Ontario police force or institution pertaining to reinforced gloves.

[2] In its decision, the ministry granted partial access to the records. Access to some of the information was denied, pursuant to the exemptions in sections 12(1) (Cabinet records), 13(1) (advice or recommendations), 18(1)(d) (economic or other interests), 19 (solicitor-client privilege), and 21(1) (personal privacy) of the *Act*. Some information was severed as the ministry deemed it not responsive to the request.

[3] The requester, now the appellant, appealed the decision.

[4] During the course of mediation, the appellant confirmed that she was not pursuing access to the information deemed not responsive. No further mediation was possible and the appellant asked for this appeal to be transferred to the adjudication stage where an adjudicator may conduct an inquiry.

[5] In conducting my inquiry, representations were sought and exchanged between the ministry and the appellant in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. In its representations, the ministry withdrew its reliance on section 12(1) and this removed the exemption from the scope of the appeal.

[6] In her representations, the appellant indicated that she was not interested in seeking access to the information withheld under section 18(1)(d), which was a government staff member's cell phone number. Therefore, this exemption is no longer at issue.

[7] In this order, I do not uphold the ministry's claim of section 13(1) to the responsive information in the routing form at pages 55 to 56 of Record 7, and I order the ministry to disclose it to the appellant. I uphold the ministry's decision to withhold the remaining information at issue under sections 13(1) and 21(1) and find that the public interest override in section 23 does not apply.

RECORDS:

[8] The records remaining at issue consist of:[1]

Record #	Page(s) #	Description	Exemptions claimed
1	1 to 2	email chain	13(1)
2	7	email chain	13(1)

[1] Records 1 to 6 were withheld in their entirety and Record 7 was partially withheld.

3	10 to 14	email chain	13(1), 19
4	17 to 22	email chain	13(1)
5	24 to 33	email chain	13(1), and 21(1) [for page 25]
6	38 to 42	email chain	13(1)
7	52 to 56	draft information note and routing form	13(1) for pages 53 to 56, and 21(1) [for pages 52-54]

ISSUES:

A. Does the discretionary advice or recommendations exemption at section 13(1) apply to the records?

B. Did the institution exercise its discretion under section 13(1)? If so, should this office uphold the exercise of discretion?

C. Do Records 5 and 7 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

D. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the sections 13(1) and 21(1) exemptions?

DISCUSSION:

Issue A: Does the discretionary advice or recommendations exemption at section 13(1) apply to the records?

Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[9] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and

frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[2]

"Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

"Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[3]

"Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[4]

[10] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[5]

[11] Section 13(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of

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[2] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[3] See above at paras. 26 and 47.
[4] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.
[5] *John Doe v. Ontario (Finance)*, cited above, at para. 51.

the deliberative process leading to a final decision and are protected by section 13(1).[6]

[12] Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information[7]
- a supervisor's direction to staff on how to conduct an investigation[8]
- information prepared for public dissemination[9]

[13] The ministry states that Records 1 to 6 consist of email chains and Record 7 consists of a draft information note and routing form and that they all concern what information should be contained in proposed public communications.[10]

[14] The ministry states that the purpose of the chain of emails in Records 1 to 6 was to seek approval from various ministry staff as to the contents of specific public communications. It submits that this advice or recommendation relates to a suggested course of action, which various senior officials within the ministry either accepted or rejected.

[15] The ministry states that the portions at issue of Record 7, the draft information note and routing form, contain draft advice or recommendations regarding proposed legislation.

[16] The ministry states that it has applied section 13(1) due to the following additional considerations:

a. The records are ministry-created records, in that they were prepared by ministry staff discharging their duties by providing advice or recommendations;

b. The records were clearly intended for, and addressed to, various senior decision-makers in the ministry, tasked with preparing, or assisting in the preparation of, communications on behalf of the ministry; and,

c. The records are clearly identified as containing advice or a recommendation. They are easily distinguished and delineated from other responsive pages, which

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[6] *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.
[7] Order PO-3315.
[8] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[9] Order PO-2677.
[10] As stated above, Records 1 to 6 were withheld in their entirety and Record 7 was partially withheld.

do not contain recommendations or advice, and which were therefore disclosed to the appellant.

[17] The appellant did not provide representations on the section 13(1) exemption. Her representations focus on the application of the public interest override in section 23.

Analysis/Findings

[18] Based on my review of the emails in Records 1 to 6, I agree with the ministry that they contain advice or recommendations of public servants about suggested public communications. These emails contain an evaluative analysis of information and material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. I find that Records 1 to 6 qualify for exemption under section 13(1).

[19] Concerning the remaining record, Record 7, this record consists of two documents, the draft information note and a routing form for this information note. The ministry has claimed section 13(1) for the severances starting on the bottom of pages 53.

[20] I agree with the ministry, and I find, that the information at issue in the draft information note on pages 53 to 54 of Record 7 contains the advice or recommendations of public servants regarding proposed legislation and it is not possible to sever these pages without revealing the advice or recommendations in them. As noted above, section 13(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version.

[21] Further, I find that none of the exceptions to section 13(1) in sections 13(2) or 13(3) apply to Records 1 to 6 or pages 53 and 54 of Record 7. Therefore, this information is exempt under section 13(1), subject to my review of the ministry's exercise of discretion and the application of the public interest override in section 23.

[22] As I have found Record 3 subject to section 13(1), it is not necessary for me to also consider whether it is subject to section 19.

[23] I find, however, that section 13(1) does not apply to pages 55 to 56 of Record 7, which is a ministry routing form for the information note at pages 52 to 54. On my review of it, I find that this routing form in Record 7 does not contain advice or recommendations. One paragraph at issue in the routing form, found on page 55, is virtually identical to some information elsewhere in the records that the ministry has disclosed. The remaining information at issue on pages 55 to 56 consists only of the details of where the information note was or may be routed.

[24] As the routing form at pages 55 to 56 of the records does not contain advice or

recommendations, section 13(1) cannot apply to it. As no other exemptions have been claimed for these two pages, I will order them disclosed, except for the non-responsive information on page 55.

[25] In conclusion, I uphold the ministry's decision to withhold Records 1 to 6 in full and the information at issue on pages 53 to 54 of Record 7 under section 13(1), but I order the ministry to disclose the responsive information in the routing form at pages 55 to 56 of Record 7.

Issue B: Did the institution exercise its discretion under section 13(1)? If so, should this office uphold the exercise of discretion?

[26] The section 13(1) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[27] In addition, 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.

[28] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[11] This office may not, however, substitute its own discretion for that of the institution.[12]

[29] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[13]

- 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

[11] Order MO-1573.
[12] Section 54(2).
[13] Orders P-344 and MO-1573.

  - 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.

[30] The ministry states that in denying access to the information at issue under section 13(1), it took into account the importance of preserving an effective and neutral public service by ensuring that ministry employees are able to freely and frankly make recommendations as part of the deliberative process of government decision-making. It states that although it has not disclosed the records that contain the drafts of the public communication, it has disclosed the responsive public communication in final form.

[31] The appellant did not provide representations on this issue.

Analysis/Findings

[32] I find that in denying access to the records at issue, the ministry exercised its discretion under section 13(1) in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[33] Accordingly, I uphold the ministry's exercise of discretion and find that the information to which I have found that section 13(1) applies is exempt on that basis, subject to my review of the application of the public interest override in section 23.

Issue C: Do Records 5 and 7 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[34] 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;

[35] 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.[14]

[36] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

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[14] Order 11.

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (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.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[37] The ministry states that it has withheld information from pages 25 and 52-54 of the records because they contain personal information about two individuals, one of whom is deceased and has been deceased for less than 30 years. The ministry further states that the second individual is identified in an official capacity. However, it submits that disclosure of the information would reveal something highly personal about that individual, such that it constitutes their personal information.

[38] The appellant did not provide representations on this issue.

Analysis/Findings

[39] 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.[15]

[40] 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.[16]

[41] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[17]

[42] Based on my review of the information at issue, which concerns two individuals other than the appellant, I accept the ministry's submission that disclosure of the name of the deceased individual would reveal other personal information about the individual, in accordance with paragraph (h) of the definition of personal information in section

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[15] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[16] Orders P-1409, R-980015, PO-2225 and MO-2344.
[17] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

2(1). I am satisfied that the exception in section 2(2) for information relating to a deceased individual, set out above, does not apply because the individual has been dead for less than thirty years. Therefore, I find that the information relating to this individual constitutes their personal information for the purpose of the definition in section 2(1) of the *Act.*

[43] I also accept the ministry's position that although the other individual in the record is identified in an official capacity, disclosure of their name would also reveal other personal information about this individual according to paragraph (h) of the definition of personal information in section 2(1).

[44] In sum, I find that the record contains the personal information of two identifiable individuals and I must now consider the application of the personal privacy exemption in section 21(1) to that information.

Issue D: Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[45] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies or paragraphs (a) to (d) of section 21(4). None of these paragraphs apply.

[46] In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

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

[48] 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. 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.[18]

[49] In this appeal, the presumptions in section 21(3) do not apply.

[50] 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

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[18] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

constitute an unjustified invasion of personal privacy.[19] 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.[20]

[51] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[21]

[52] The ministry relies on the factor in section 21(2)(f), which reads:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > the personal information is highly sensitive.

[53] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[22]

[54] The ministry submits that section 21(2)(f) applies as the two individuals identified in the records are linked to interactions with the police and, in the circumstances, disclosure without notification would be expected to cause significant personal distress.

[55] The appellant did not address this issue directly, but did provide extensive representations about the creation of the record.

Analysis/Findings

[56] I disagree with the ministry that the factor in section 21(2)(f) applies in this appeal. I conclude that the personal information at issue is not highly sensitive and I find that there is not a reasonable expectation of significant personal distress if the information is disclosed. It is clear from the parties' representations that the personal information at issue has been widely publicized.

[57] However, in order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors or circumstances favouring disclosure

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[19] Order P-239.
[20] Orders PO-2267 and PO-2733.
[21] Order P-99.
[22] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

in section 21(2) must be present. In this appeal, I have not been provided with sufficient evidence to support a finding that a factor favouring disclosure of the personal information at issue applies. Therefore, in the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory exemption in section 21(1) applies to the personal information at issue in the records.

Issue E: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the sections 13(1) and 21(1) exemptions?

Section 23 states:

> 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.

[58] 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.

[59] 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, the IPC 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.[23]

Compelling public interest

[60] 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 central purpose of shedding light on the operations of government.[24] 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.[25]

[61] A public interest does not exist where the interests being advanced are

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[23] Order P-244.
[24] Orders P-984 and PO-2607.
[25] Orders P-984 and PO-2556.

essentially private in nature.[26] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[27]

[62] A public interest is not automatically established where the requester is a member of the media.[28]

[63] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[29]

[64] Any public interest in *non*-disclosure that may exist also must be considered.[30] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[31]

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[32]
- the integrity of the criminal justice system has been called into question[33]
- public safety issues relating to the operation of nuclear facilities have been raised[34]
- disclosure would shed light on the safe operation of petrochemical facilities[35] or the province's ability to prepare for a nuclear emergency[36]
- the records contain information about contributions to municipal election campaigns[37]

[65] A compelling public interest has been found *not* to exist where, for example:

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[26] Orders P-12, P-347 and P-1439.
[27] Order MO-1564.
[28] Orders M-773 and M-1074.
[29] Order P-984.
[30] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[31] Orders PO-2072-F, PO-2098-R and PO-3197.
[32] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[33] Order PO-1779.
[34] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[35] Order P-1175.
[36] Order P-901.
[37] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

- another public process or forum has been established to address public interest considerations[38]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[39]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[40]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[41]
- the records do not respond to the applicable public interest raised by appellant[42]

[66] The appellant submits that the information at issue in the records directly relate to the *Act's* central purpose of shedding light on the operations of government.

[67] The appellant states that since the records are about what to say in public communications about reinforced police gloves in light of the death of one of the individuals identified in the records and the charges against the other individual in relation to this death, the records are of extreme public interest. She states that this death and the resulting charges have been covered extensively in dozens of web articles and radio/TV broadcasts. She submits that this is an issue many members of the public are watching closely and continue to ask her about, as a reporter.

[68] The appellant states that reinforced gloves are capable of inflicting serious harm. She says that they are used "day in and day out" by police to protect themselves when they are busting through doors and windows. She further states that she cannot find anything about these gloves being used on people in the past and from discussions with police, both on the record and off, there seem to be no internal guidelines about that scenario. She states:

> The citizens of Ontario deserve to know everything they can about the gear and apparel they pay to equip police with, how it can be used against them, and whether/how the province is scrambling to get their ducks in a row about a type of equipment that may have contributed to someone's death.

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[38] Orders P-123/124, P-391 and M-539.
[39] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[40] Orders M-249 and M-317.
[41] Order P-613.
[42] Orders MO-1994 and PO-2607.

[69] The ministry acknowledges that the death of one of the individuals allegedly relates to the other individual's use of reinforced gloves. The ministry submits that the appellant is interested in this death and the charges, not the use of reinforced gloves.

[70] The ministry states that if the appellant is now alleging that the public interest override at section 23 should be applied to 'shed light' on the death and the charges brought, to the extent there is a compelling public interest in the records, this interest can be expected to be met through the trial process. It states that an extensive amount of reporting has already taken place in relation to the death and that satisfying the compelling public interest in the records has been met through this reporting. The ministry believes that the trial, which has been scheduled for 2019, can also be expected to serve as a public interest process or forum to address any public interest considerations with respect to the use of reinforced gloves.

[71] In reply, the appellant states that she is looking for information about reinforced gloves used by police in this province. She is doing this as the deceased individual lost vital signs during an altercation with a police officer who was wearing reinforced gloves, and because "…we know next to nothing about how police are trained to use them, the history of their use, etc."

[72] The appellant submits that residents of Ontario deserve to know about the reinforced gloves their tax dollars fund, and how that gear may be used against them, in light of the death, and what their government has had to say about it.

[73] The appellant states that although there has indeed been much coverage about the death, there has been very little reporting about reinforced gloves. She states that contrary to the ministry's assertions, the compelling public interest in how reinforced gloves are used by police and might cause people harm, as well as what the government response has been, has most certainly not been served by the reporting to date.

[74] The appellant states that the trial will determine whether the police officer is guilty of the charges and may contain evidence about the police's use of the gloves in that case. She states that the trial will not provide the requested information, namely, communications between the Minister's office, Deputy Minister's office, and briefing materials regarding reinforced gloves.

Analysis/Findings re Compelling Public Interest

[75] The appellant's request, in general, seeks copies of briefing materials and communications regarding police or correctional officer acquisition and use of reinforced gloves. The appellant's submission is that there is a compelling public interest in how reinforced gloves are used by police and how they might cause people harm.

[76] Pages 8 and 9 of the records disclosed to the appellant contain a copy of the ministry's public communication about the reinforced gloves issue. The email chains at

issue in Records 1 to 6 are primarily an exchange of information containing advice or recommendations between various ministry staff as to how to word this communication.

[77] The information at issue in the draft information note in Record 7 contains advice or recommendations regarding proposed legislation and does not mention the acquisition and use of reinforced gloves. The records do not contain information about how police are trained to use reinforced gloves and the history of their use. In addition, based on my review of the information at issue in the records, I also conclude that disclosure would not 'shed light' on the death and the charges brought.

[78] Having reviewed the records or portion of records for which I have upheld the ministry's exemption claims, I find that the records do not respond to the applicable public interest raised by appellant, namely, how reinforced gloves are used or have been used by police and how they might cause people harm.

[79] Therefore, I find that a compelling public interest in disclosure of the information at issue in the records does not exist in this case.[43]

[80] As I have found that a compelling public interest does not exist, there is no need for me to also consider whether there is a public interest in non-disclosure, or whether any public interest clearly outweighs the purpose of the section 13(1) or section 21(1) exemption claims in the specific circumstances of this appeal.

ORDER:

1. I order the ministry to disclose the responsive information in the routing form at pages 55 to 56 of Record 7 to the appellant by **April 11, 2019**. For ease of reference, I have included a copy of this form with the ministry's copy of this order to highlight the non-responsive information that should not be disclosed to the appellant.

2. I uphold the ministry's decision to withhold the remaining information at issue in the records.

Original signed by | March 12, 2019

Diane Smith
Adjudicator

[43] Orders MO-1994 and PO-2607.