

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-4110

Appeal PA19-00305

Ministry of the Solicitor General

February 17, 2021

**Summary:** The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* for police reports about a complaint of sexual assault that occurred in the 1990s. The ministry granted the requester partial access to the responsive records. The ministry denied access to portions of the records, relying on the mandatory personal privacy exemption in section 21(1) of the *Act*.

In this order, the adjudicator upholds the ministry's decision, finding that the information at issue is exempt under section 21(1). The adjudicator also considers the possible application of the public interest override in section 23 and finds that it does not apply, as there is no compelling public interest in disclosure of the personal information at issue in the records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31, sections 2(1) (definition of personal information), 21(1), 21(3)(b), and 23.

### OVERVIEW:

[1] This appeal decides the issue of access to decades-old police investigation reports about a complaint made against a named individual regarding his alleged sexual assault of minors.

[2] The Ministry of the Solicitor General (the ministry) received a request under the

*Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for information related to the complaint, which was made to the Ontario Provincial Police (OPP)<sup>1</sup> in the 1990s. The requester provided the ministry with a signed consent form from the individual named in the request (the suspect), authorizing the ministry to disclose all information relating to himself to the requester.

[3] In response to the request, the ministry identified several records and granted access in part, while withholding portions in accordance with sections 14 (law enforcement), 19 (solicitor-client privilege), and 21(1) (personal privacy) of the *Act*. In addition, some of the information was identified and withheld as non-responsive to the request.

[4] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner (the IPC) and a mediator was appointed to explore resolution.

[5] During the mediation stage of the appeal, the ministry confirmed that no additional portions of the records would be disclosed. The appellant advised that it is not seeking access to the information withheld as non-responsive information or to the police 10- codes in the records. As the ministry only applied the section 14 law enforcement exemption to these codes, section 14 is not at issue in this order.

[6] As mediation did not resolve the appeal, it was transferred to the adjudication stage where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and sought the representations of the ministry, initially. The ministry provided representations in response to the Notice of Inquiry I sent to it. The ministry's representations were sent to the appellant along with a Notice of Inquiry.

[7] The appellant provided representations in response to the ministry's representations. As the appellant appeared to be raising the application of the public interest override in section 23, I considered it in my analysis of the appeal, below.

[8] In this order, I uphold the ministry's decision that the information at issue is exempt under the mandatory personal privacy exemption in section 21(1) of the *Act*. I also find that the public interest override in section 23 does not apply to override the application of section 21(1).

## **RECORDS:**

[9] The records at issue consist of OPP Occurrence Summaries and OPP officer's notes.

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<sup>1</sup> The OPP is part of the ministry.

## **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 personal privacy exemption at section 21(1) apply to the information at issue?

## **DISCUSSION:**

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

[10] 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;

[11] 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>

[12] 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>

[13] 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>

[14] 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>

### ***Representations***

[15] The ministry submits that the records contain extensive amounts of personal information belonging to the complainant and the witnesses. It states that this personal information includes their names, dates of birth, ages, and more sensitive details about the complaint filed against the suspect.

[16] The ministry submits that due to the specific nature of the records about this particular OPP investigation, even if identifying information, such as the names, were removed from the records, it is reasonable to expect that the complainant and the witnesses could still be identified.

[17] The appellant did not provide representations directly addressing this issue, but does not dispute that the records contain the personal information of the complainant and the witnesses.

### ***Analysis/Findings***

[18] I agree with ministry, and I find, that the records contain the personal

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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.).

information of the complainant and the witnesses, as well as that of the victims and the suspect. This personal information is about these individuals in their personal capacity and includes their names, dates of birth, ages, home addresses and phone numbers, their personal opinions and views, and other personal information about them, fitting within paragraphs (a), (c), (d), (e), (g), and (h) of the definition of personal information in section 2(1) of the *Act*.

[19] In accordance with the written consent provided to the ministry, the ministry has disclosed to the appellant the personal information that belongs solely to the suspect. The remaining personal information in the records is that of the complainant, the witnesses, and the victims, as well as the suspect, whose personal information is intermingled with the personal information of these other individuals.

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

[20] 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.

[21] The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21.

[22] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[23] If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). The personal information at issue does not fit within these paragraphs.

[24] 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.<sup>6</sup>

***Representations***

[25] The ministry relies on the presumption in section 21(3)(b), which reads:

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<sup>6</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

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.

[26] The ministry states that the records at issue were specifically created as a result of an OPP investigation. It states:

The investigation led to the OPP seeking the advice of an Assistant Crown Attorney. Depending on the outcome of the investigation, charges under the *Criminal Code* could have been laid ...

The ministry relies upon recent IPC Orders, including PO-3897 and PO-4020, which related to similar types of investigative records in the custody of the OPP, and which upheld the ministry's decision to deny access to them based on section 21(3)(b).

[27] The appellant does not dispute that the records were created as a result of an OPP investigation into a possible violation of law. The entirety of the appellant's submission in this appeal reads:

The request for the third party personal information is imperative to being able to address potential sexual abuse of a minor, or minors.

Attempts could be made to contact the affected individuals to obtain their consent to disclosure of their contact information. The only ones who have that information are those connected to the OPP.

Even without such efforts being made, such information should be provided without consent of necessary individuals, particularly with respect to the adults who did the reporting twenty years ago (which adults were not the victim(s)).

It is not in dispute that privacy is an important consideration. However, the greater good is served if requests for otherwise private information in relation to historical reports of sexual abuse (of children in particular) are considered in light of the need and desire to,

(a) assist victims of abuse, and

(b) have some degree of certainty an act of abuse has occurred in order to take steps to prevent future abuses.

### ***Analysis/Findings***

[28] I agree with the ministry's position, and I find that the presumption against disclosure in section 21(3)(b) applies to the withheld personal information in the records.

[29] 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>7</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>8</sup>

[30] Based on my review of the records and the ministry's representations, I agree with the ministry that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law, namely an investigation into allegations of sexual assault under the *Criminal Code*.

[31] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).<sup>9</sup>

[32] Therefore, as section 21(3)(b) applies, I find that the mandatory personal privacy exemption in section 21(1) applies to exempt the information at issue in the records.

[33] In making my determination, I have considered the appellant's argument that I should seek the consent of the victims, the complainant and the witnesses. However, the records date back from well over 20 years ago and the victims were minors at the time. Based on my review of the records and the circumstances of the victims in particular, I conclude that any contact information in the records is outdated and not reliable.

[34] I have also considered the appellant's argument that the personal information at issue should be disclosed even without consent, especially the personal information of individuals who were adults at the time the records were created.

[35] The appellant is not an individual. In making this request, the appellant does not represent the suspect, although the suspect provided his consent to it for the disclosure of his personal information. The appellant has no relationship with the victims, complainant, and witnesses.

[36] The records detail highly personal events involving identifiable individuals,

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<sup>7</sup> Orders P-242 and MO-2235.

<sup>8</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>9</sup> *John Doe v. Ontario (Information and Privacy Commissioner)*, cited above.

including minors. Based on my review of the records, I find that disclosing the personal information of the adults in the records, as suggested by the appellant, would reveal the personal information of the minors in the records. In the circumstances of this appeal, therefore, I will not order the personal information of the adults in the records disclosed.

[37] As I noted above, the appellant's representations appear to raise the possible application of the public interest override in section 23 of the *Act* to override the application of section 21(1). Section 23 reads:

An exemption from disclosure of a record under sections 13, 15, 15.1, 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.

[38] 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.

[39] 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 their 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.<sup>10</sup>

[40] In considering whether there is a "public interest" in disclosure of the records, 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.<sup>11</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>12</sup>

[41] A public interest does not exist where the interests being advanced are essentially private in nature.<sup>13</sup> Where a private interest in disclosure raises issues of

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<sup>10</sup> Order P-244.

<sup>11</sup> Orders P-984 and PO-2607.

<sup>12</sup> Order P-244.

<sup>13</sup> Orders P-12, P-347 and P-1439.



more general application, a public interest may be found to exist.<sup>14</sup>

[42] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.<sup>15</sup>

[43] Any public interest in non-disclosure that may exist also must be considered. A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.<sup>16</sup>

[44] The appellant submits that disclosure of the personal information at issue could assist victims of abuse, and prevent future abuses. The appellant has not sufficiently explained how the decades old information in the specific records at issue is connected to, or could respond, to this public interest.

[45] In this case, I find that the personal information at issue does not respond the public interest raised by the appellant. The records are about a single event that occurred decades ago. From my review of the records, this event appears to have been thoroughly investigated by the OPP, in consultation with the Assistant Crown Attorney. I cannot ascertain how disclosure of the records could now assist victims of abuse and prevent future abuses, as claimed by the appellant.

[46] A compelling public interest has been found not to exist where the records do not respond to the applicable public interest raised by the appellant.<sup>17</sup> I find that this is the case here.

[47] I also find that there is not a compelling public interest in disclosure, based on the age of the records, the circumstances of the alleged sexual assault set out therein, and the very sensitive nature of the personal information of the minors in the records.

[48] Accordingly, I find that there does not exist a compelling public interest in disclosure of the personal information at issue in the records and that the public interest override in section 23 does not apply to override the application of section 21(1).

[49] As I have found that there is not a compelling public interest in disclosure of the personal information at issue in the records, there is no need for me to also consider whether there is a public interest in non-disclosure of this information or whether any public interest clearly outweighs the purpose of the section 21(1) exemption.

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<sup>14</sup> Order MO-1564.

<sup>15</sup> Order P-984.

<sup>16</sup> Orders PO-2072-F, PO-2098-R and PO-3197.

<sup>17</sup> Orders MO-1994 and PO-2607.

[50] Accordingly, I find that the personal information at issue in the records is exempt under the mandatory personal privacy exemption in section 21(1). As I have found the information at issue exempt under section 21(1), there is no need for me to consider whether the solicitor-client privilege exemption in section 19 also applies to page 10 of the records, as claimed by the ministry.

**ORDER:**

I uphold the ministry's decision that the personal information at issue in the records is exempt under section 21(1) and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

February 17, 2021 \_\_\_\_\_