Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4403

Appeal MA20-00515

Kingston Police Services Board

June 27, 2023

Summary: The appellant made a request to the Kingston Police Services Board (the police) for access to high-level information about homicides involving intimate partners cleared by the police between 2015 and 2020. The police created a list containing the requested information, but denied access to it on the basis of the mandatory personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*. The appellant raised the application of the public interest override in section 16. In this order, the adjudicator finds that disclosure of the record would not constitute an unjustified invasion of personal privacy because it is desirable for subjecting the police to public scrutiny, and that the record is therefore not exempt under section 14(1). The adjudicator also finds that, even if the record were exempt, the public interest override would require its disclosure, and orders the police to disclose the record to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of "personal information"), 14(1), 14(2)(a), 14(2)(b), 14(2)(f), 14(3)(b) and 16.

Orders Considered: Orders MO-2019 and PO-2518.

OVERVIEW:

[1] This appeal is about a request for access to a list of homicides involving intimate partners between January 2015 and June 2020. The appellant, a member of the media conducting research into intimate partner violence (IPV), made a request to the

Kingston Police Services Board (the police) for the following:

> …a list of homicides cleared by [the police] between January 1, 2015 and June 30, 2020, where the Closest Accused-Victim Relationship (as reported to the Canadian Centre for Justice Statistics at Statistics Canada) was a current or former romantic partner. This includes a current or former spouse, common law partner, boyfriend/girlfriend, same-sex partner or other intimate partner.
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> Please provide the name of both the victim and the accused, the date, the city where the homicide took place and a list of any charges and convictions in these cases. Please also provide any police records associated with Peace Bonds (Section 810 orders) in these cases.[1]

[2] The police created a record, a list consisting of the information requested for each IPV homicide they investigated during the five-year period defined by the request.

[3] The police denied access to the record on the basis of the mandatory personal privacy exemption in section 14(1). The police claimed that disclosure of the record would be presumed to constitute an unjustified invasion of personal privacy because of the presumption against disclosure in section 14(3)(b), which applies to records compiled and identifiable as part of investigations into possible violations of law. The appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC).

[4] The parties participated in mediation, during which the appellant raised the application of the public interest override in section 16 of the *Act*. As the matter was not resolved in mediation, the appeal was transferred to the adjudication stage of the appeal process for an inquiry, during which both parties submitted representations in writing. I also notified seven next-of-kin or representatives of victims and of deceased accused individuals, and living accused individuals directly (collectively, the affected parties), allowing them the opportunity to submit representations on the possible disclosure of some or all of the personal information in the record. Two affected parties whom I notified, both next-of-kin of victims, responded.[2]

[5] In this order, I find that the record is not exempt under section 14(1), but that even if it were, the public interest override requires its disclosure, and I order the police to disclose it to the appellant.

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[1] Under sections 810(1)(a) and (b) of the *Criminal Code*, R.S.C. 1985, c. C-46, an information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to them or to their intimate partner or child, damage their property, or commit another specified offence.

[2] Some envelopes containing notification were returned, while others went unanswered. One of the two individuals who responded opposed disclosure citing re-traumatization, while the second submitted more detailed representations.

RECORD:

[6] The record at issue is a list prepared by the police. It identifies four homicides by date and location, sets out the names of each victim and accused, the outcome (i.e. whether cleared by charges or death of the accused by suicide or otherwise), and whether or not there had been a peace bond in place at the time of the murder. The record is of homicides that occurred in Kingston from June 1, 2015 to June 30, 2020.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

B. Does the mandatory personal privacy exemption in section 14(1) apply to the record?

C. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Issue A: Does the record contain personal information as defined in section 2(1) of the *Act*, and if so, whose personal information is it?

[7] The personal privacy exemption in section 14(1) can only apply to "personal information" as that term is defined in the *Act*. I must therefore first decide whether the record contains personal information, and if so, whose.

[8] Section 2(1) of the *Act* defines personal information as "recorded information about an identifiable individual." Recorded information is information recorded in any format, including paper and electronic records.[3]

[9] Information is "about" an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.[4]

[10] Section 2(1) gives a non-exhaustive list of examples of personal information. Those relevant to this appeal are:

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[3] According to the definition of "records" in section 2(1).
[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
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> (b) information relating to the education or medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
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> …
>
> (h) the individual's name if 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.

Representations

[11] The police submit that the record contains the victims' and accused's personal information as defined in paragraphs (a), (b) and (h) of section 2(1). They say that the names of both the victim and the accused are their personal information when considered in the context of a homicide, its location, and date. The police submit that the record also reveals the existence of an intimate relationship between victims and accused, and therefore their marital status and, indirectly, their sexual orientation. The police submit that dates, charges, conviction and peace bond information are personal information because they reveal the criminal history of accused individuals. The police say that all homicides, including IPV homicides, are likely to garner public and media attention and are likely to be widely reported in the media. They say that, in light of the publicity of these events, victims and accused are likely to be identifiable persons even if names are removed and that the date of the event in combination with its classification as an IPV homicide becomes identifying information, so that the association of the event date could be linked to the victim and accused and is therefore personal information.

[12] The appellant does not dispute that the record contains personal information. The appellant's representations focus on whether or not the personal information that is contained in the record is exempt and whether the public interest override applies to it.

Analysis and findings

[13] I find that the record contains names of individuals and other information that would associate them with a homicide, either as a victim or an accused person. I find that the record contains information about the nature of the relationship between victims and accused, and, in the case of accused individuals, their related contact with the police and criminal justice system. Collectively, I find that the record contains these individuals' personal information as defined in paragraphs (a), (b) and (h) of section 2(1).

[14] I would also note that, based on the dates of the homicides,[5] all of the deceased individuals identified in the record (whether as victims of homicide, or by suicide or other means in the case of accused individuals) have not been deceased for more than 30 years. As such, I find that the information in the record continues to constitute their personal information in accordance with section 2(2) of the *Act*, which states that personal information does not include information about an individual who has been dead for more than 30 years.

[15] Because the appellant seeks access to the entire list including names, I must next consider the police's position that the record is exempt under section 14(1) because its disclosure would result in an unjustified invasion of personal privacy.

Issue B: Does the mandatory personal privacy exemption in section 14(1) apply to the record?

[16] The police have relied on the personal privacy exemption in section 14(1) to deny access to the record. For the reasons that follow, I find that the record is not exempt under section 14(1), and that the police must therefore disclose it to the appellant.

[17] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.[6] The mandatory personal privacy exemption in section 14(1) creates a general rule that prohibits an institution from disclosing another individual's personal information to a requester. The *Act* also allows for exceptions to this general rule, which are set out in sections 14(1)(a) to (f). If any of the exceptions exist, an institution is required to disclose the information.

[18] The parties did not raise any exception other than section 14(1)(f), and I find that this is the only exception that is relevant in the circumstances. This exception requires disclosure of personal information where the disclosure is not an unjustified invasion of personal privacy.

Section 14(1)(f): is disclosure an unjustified invasion of personal privacy?

[19] Under section 14(1)(f), if disclosure of the personal information would not be an unjustified invasion of personal privacy, the personal information is not exempt and must be disclosed.

[20] Sections 14(2), (3) and (4) give guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy:

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[5] Between 2015 and 2020.
[6] Section 1(b) of the *Act*.

- section 14(2) sets out a list of considerations, or factors, that help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 14(1)(f);

- section 14(3) lists the types of information of which disclosure is presumed to constitute an unjustified invasion of personal privacy; and,

- section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[21] None of the circumstances listed in section 14(4) is relevant to the information at issue in this appeal.

[22] As for the relevant sections, section 14(3) should generally be considered first. If any of the presumptions in section 14(3) apply, disclosure of the personal information is presumed to be an unjustified invasion of personal privacy. This means that the personal information cannot be disclosed unless there is a compelling public interest in disclosure that outweighs the purpose of the mandatory personal privacy exemption (the "public interest override" in section 16 of the *Act*, discussed later).[7]

[23] Where no presumption against disclosure in section 14(3) applies to the information, the factors listed in section 14(2) are considered. To find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances described in section 14(2) favouring disclosure must exist and outweigh any factors that apply and weigh against disclosure. The list of factors under section 14(2) is not exhaustive. This means that the police must also consider any circumstances that are relevant, even if they are not listed under section 14(2).[8]

[24] The police submit that the presumption in section 14(3)(b) applies to the record. This presumption states that disclosure of personal information is presumed to be an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[25] Accordingly, I will consider section 14(3)(b) first. Because, for the reasons set out below, I find that this presumption does not apply to the record, I will then consider whether any factors in section 14(2) apply to weigh in favour or against disclosure of personal information in the record. In this case, the relevant factors I will consider are those in sections 14(2)(a) and (f) (which balance the desirability of subjecting the activities of government agencies to public scrutiny against the privacy interests in potentially highly sensitive information, respectively).

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[7] Or unless a section 14(4) circumstance is present, which is not the case here: see *John Doe v. Ontario (Information and Privacy Commissioner)*, (1993) 13 O.R. (3d) 767 (Div. Ct.).
[8] Order P-99.

Representations

The police's representations

[26] The police argue that the presumption at section 14(3)(b) and the factor at section 14(2)(f) apply. They say that the information at issue is already in the public domain and that the appellant could consult court records to obtain it. They argue that the record itself is subject to the presumption against disclosure in section 14(3)(b) because they say that the information in it was "gathered and readily identifiable as part of an investigation into a possible violation of law." The police say that IPV includes a variety of offences that are contrary to the *Criminal Code,* including murder, manslaughter, assault, sexual assault and threats, and that the police are responsible for conducting investigations into allegations of IPV and for laying criminal charges where there is sufficient evidence to support them.

[27] The police say that, in response to the appellant's request in this case, they undertook a search for all homicides that had been reported to them during the specified period. They say that each homicide investigation was individually reviewed to determine if it met the criteria of an IPV homicide; only if the criteria were met was the information deemed to be responsive to the request noted.

[28] The police say that to "argue that the disposition and sentence of the IPV Homicide charges are records generated after the fact and accordingly are not investigative records," is a narrow interpretation that applies a generalization to the totality of the records, and that only information about the disposition and sentencing can be said to have been generated after the fact.

[29] However, the police also submit that "[a] list of IPV Homicide victims and accused was only created in response to the appellant's request." They say that the requested details were "garnered directly from the investigative files" which "were very much investigative records."

The appellant's representations

[30] The appellant submits that the presumption in section 14(3)(b) does not apply because the record was not compiled for the purpose of the individual investigations. She says that the record is similar to the statistical charts at issue in Order MO-2019 that summarized information about police involvement with illegal indoor drug grow-op[9] seizures; the IPC found those charts not to have been created as part of the underlying investigations.

[31] The appellant submits that the factor in section 14(2)(a) (public scrutiny) applies and weighs in favour of disclosure of the list.

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[9] Illegal marijuana grow operations or labs in residential homes.

[32] In her representations, the appellant describes her research into IPV homicides. She says that she is seeking to evaluate how the most serious cases of IPV are being handled by police agencies and the criminal justice system across Canada. She says that, of the law enforcement agencies she contacted, only two (the police and another institution whose decision is the subject of a separate appeal[10]) denied access to the information requested. The appellant says that, based on the disclosure she received from the other law enforcement agencies, she was able to find that warning signs were present in 1 in 3 of the disclosed homicides, and that her research has so far pinpointed predictors of homicides and the extent to which those predictors were present in IPV homicides by allowing her to gather information from all publicly available sources to evaluate patterns in cases handled by different police agencies.

[33] The appellant argues that the starting point for shedding light on the various practices and operations of these agencies is to know which IPV cases have been handled by which agencies and labelled IPV cases. She submits that non-identifying information, such as outcomes alone, is insufficient; for example, she says, locations may partly explain police response (i.e. in remote vs. urban centres), but that non-identifying information fails to provide the necessary context and information to be able to draw comparisons, or information about predictors of homicides in relationships and the extent to which they were present in IPV cases between 2015 and 2020.

[34] The appellant says her request for names and locations is not a matter of mere curiosity; this disclosure will enable public awareness on matters of social importance, and scrutiny of the police. The appellant argues that IPV homicides represent systemic failures at many levels, and that it is necessary to know the victims' and accused's names to be able to check whether police had previously been called to respond to domestic violence between them, and what actions were taken by police and the courts in response, including whether there were any protective conditions in place at the time of the killing.

[35] The appellant says that Parliament is considering a new law that would criminalize many forms of coercive and controlling behaviour that are predictors of IPV, and that it is important for the public to know how often and under what circumstances these types of crimes happen in order to evaluate the response of the legal system and political leaders. She argues that the police's refusal to provide the requested information has meant that they are shielded from scrutiny and from inclusion in the appellant's research.[11] The appellant says that, although police agencies have made IPV cases a "critical priority,"[12] and have established departments specifically mandated to investigate IPV, more than four in 10 women and one-third of men have experienced

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[10] See Order PO-4411-F.

[11] As I note at paragraph 33, the appellant submits that she has received the requested information from a number of other law enforcement agencies, which has allowed her to conduct research into IPV homicides. Of the law enforcement agencies contacted, only the police and one other law enforcement agency denied the appellant's request. The other matter is the subject of a separate appeal.

[12] Citing the Peel Regional Police Service, for example.

some form of IPV in their lifetime, and victims continue to die at the hands of their intimate partners.[13]

[36] The appellant also relies on the factor in section 14(2)(b) which applies where disclosure will promote public health and safety. She says that domestic violence is a crime that affects hundreds of thousands of people in Canada every year, and that, according to Statistics Canada, there were 107,810 victims of police-reported IPV in 2019 (the most recent year for which data is available). She says that the World Health Organization has referred to IPV as a "major public health problem."[14]

The affected parties' representations

[37] As I have noted above, two affected parties participated in this inquiry.[15] Both are next-of-kin of victims and both described the struggle of the aftermath of losing family members to IPV homicide. Both asked simply to be left alone to move on in peace. One opposed disclosure out of concern that it would reopen wounds. The second also opposed disclosure, claiming that the real tragedy had been "perpetrated by the media" for headlines at the expense of a grieving family. They expressed concern that the request is "an abuse of the system," intrusive, immeasurably stressful and that not only must it not be allowed, but it should be censured.

Analysis and findings

Does the presumption against disclosure in section 14(3)(b) (investigation into possible violation of law) apply?

[38] As I stated above, I will begin by addressing whether the section 14(3)(b) presumption applies. Under section 14(3)(b), a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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.

[39] I find that the personal information in the record was not compiled and is not identifiable as part of investigations into possible violations of law. Based on my review of the record, and as the police expressly state, the list was compiled well after the investigations were completed.

[40] To the extent that the list contains information about "ongoing" charges in one

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[13] Citing Statistics Canada (https://www150statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm).
[14] World Health Organization, Violence Against Women Key Facts https://www.who.int/news-room/fact-sheets/detail/violence-against-women.
[15] See paragraph 4, above.

case, I find that this information relates to matters that are in the process of adjudication before a court. Where the list indicates that certain charges are pending against another individual – suggesting an investigation may still be ongoing – I nevertheless find that the record itself was not compiled, nor is it identifiable as part of that (or any other listed) investigation. The list itself was not used in, and does not impact any of, the related investigations; it merely summarizes the status of four matters the police determined contain information that is responsive to the request.

[41] In Order MO-2019, relied on by the appellant, former Commissioner Brian Beamish considered whether charts prepared by the York Regional Police Services Board containing summaries of police involvement with grow labs (including dates, addresses, occurrence numbers, drugs, plants and money seized, and noting the presence of any children) were subject to presumption in section 14(3)(b). He found that the charts were created after the investigations, not for the purpose of the investigations, and were not "investigatory" in nature. He wrote:

> While it may be true that certain of the seizures recorded in the charts may yet result in charges being laid, the records were generated "after the fact" and were not compiled for the purpose of the investigations themselves, but rather to inform members of the Unit and select other members of the Police about the Unit's own activities. These records are summaries of investigations and are clearly not for use in any particular investigation nor were they compiled as part of any specific investigation. In the circumstances, I find that section 14(3)(b) of the Act does not apply.

[42] I agree with and adopt this reasoning. Although the police in Order MO-2019 created the charts for their own purpose, while the police in this case created the list to respond to the access request, I find that the same reasoning applies here because the records were created after the fact of the investigations, and not for use in them. I note that the list at issue contains similar (albeit less) information to that in the charts at issue in MO-2019, and also summarizes information compiled under similar circumstances that does not include the purpose of the investigations themselves. I find that it is not investigatory in nature, and that the presumption against disclosure in section 14(3)(b) does not apply to it.

[43] However, even if the section 14(3)(b) presumption did apply, so that the record would be exempt under section 14(1), I would find, as I discuss below under Issue C, that the public interest override in section 16 applies to it.

[44] Having found that the presumption does not apply, I must next consider whether there are factors in section 14(2) that apply to the list, either in favour or against disclosure.

Do any factors in section 14(2) apply?

[45] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[16] The listed factors relevant to this appeal are the following:

> (2) 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,
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> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
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> (b) access to the personal information may promote public health and safety;
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> …
>
> (f) the personal information is highly sensitive;

[46] The factors in section 14(2)(a) and (b) generally weigh in favour of disclosure, while the factor in section 14(2)(f) weighs against it. I must also consider whether there are any unlisted factors that weigh for or against disclosure.

[47] The parties raised the following listed factors:

Section 14(2)(a): public scrutiny

[48] The purpose of section 14(2)(a) is to promote transparency of government actions. It contemplates disclosure of information where it is desirable for the purpose of subjecting the activities of the government (as opposed to the views or actions of private individuals) and its agencies to public scrutiny.[17] An institution should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.[18]

Section 14(2)(b): public health and safety

[49] Section 14(2)(b) is a factor favouring disclosure if access to the information may promote public health and safety.

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[16] Order P-239.
[17] Order P-1134.
[18] Order P-256.

Section 14(2)(f): highly sensitive

[50] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the police to consider whether the personal information is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[19]

Discussion

[51] For the reasons that follow, I find that the factor in section 14(2)(f) applies and weighs against disclosure. However, in the circumstances, I also find that the factor in section 14(2)(a) applies and outweighs the factor in section 14(2)(f) because disclosure is desirable for subjecting the activities of law enforcement agencies to public scrutiny. I therefore find that the record is not exempt under section 14(1) and will order the police to disclose it to the appellant.

Section 14(2)(f): highly sensitive

[52] The police rely on Order PO-2518 to argue that individuals can suffer significant personal distress by disclosure of information relating to criminal history. In Order PO-2518, Adjudicator John Higgins considered a request for access to information about registered sex offenders. In finding that the factor in section 21(2)(f) of the *Freedom of Information and Protection of Privacy Act* – the provincial equivalent of section 14(2)(f) – applied to an individual's criminal history, Adjudicator Higgins wrote:

> Information about an individual's involvement with the criminal justice system, or even the fact of such involvement, in and of itself, will usually be highly sensitive because disclosure can be expected to cause significant personal distress.

[53] I agree that disclosure of information that reveals an accused's involvement in the criminal justice system – in this case, a homicide – can be expected to cause the accused (or their survivors, in the case of a deceased accused), significant personal distress.

[54] I note that the record also identifies victims killed by current or former intimate partners. I find that disclosure of this information can also reasonably be expected to cause victims' survivors significant personal distress, as is plain from the affected parties' submissions that I received.

[55] In determining how much weight to assign to the factor in section 14(2)(f), I have also considered the nature of the record itself, and that it contains what I find to be essentially high-level demographic or statistical information.

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[19] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[56] As I noted above, these murders are already a matter of public reporting, including in many cases several details about the homicides. By contrast, the record before me does not contain particulars of the homicides, or other details that might be included in investigative files or other records compiled by the police during the investigations themselves. In my view, the impact on the personal privacy of individuals is limited in these circumstances and the distress that might reasonably be expected to result from disclosure of deceased individuals' personal information is reduced because of the high- level, demographic, and statistical nature of it in the record, as well as the fact that some of the information has already been released into the public realm in more detail.

[57] Accordingly, although I find that the factor in section 14(2)(f) applies, I give it less weight than the factor in section 14(2)(a), discussed next.

Section 14(2)(a): public scrutiny

[58] I find that the factor in section 14(2)(a), which favours disclosure where it is desirable for subjecting the activities of the police to public scrutiny, applies and that it outweighs the factor in section 14(2)(f) favouring privacy protection.

[59] The appellant has explained how she intends to use the record and for what purpose. She has provided information about her research and the reasons for exploring IPV homicides. I accept that it is important for the public to understand how often and under what circumstances these types of crimes happen in order to evaluate the response of the legal system and the efficacy of mechanisms in place to protect victims.

[60] In my view, the record provides key information that allows a researcher to access and collate information that would assist in shedding light on the prevalence of IPV homicides across jurisdictions, and on law enforcement's and the courts' responses in particular, including whether there were mechanisms such as peace bonds in place, and whether, or how often, protections for victims failed.

[61] In Order MO-2019, former Commissioner Beamish, relying primarily on the "desirability of promoting both public health and safety and public scrutiny of the Police activities in relation to illegal grow operations," found that the balance tipped in favour of disclosure. About the application of section 14(2)(a) to the charts at issue,[20] former Commissioner Beamish wrote:

> In my view, the current and ongoing public debate over grow operations, together with the attention given by the provincial government and law

[20] As I have noted earlier, the charts at issue in Order MO-2019 contained high-level statistical and demographic information compiled from police investigations into illegal grow-ops. I have found that the list before me contains less information, but that the information is analogous to that contained in the grow-op charts.

> enforcement authorities in attempting to effectively counter such illegal operations, clearly point to a strong interest in ensuring an appropriate degree of scrutiny of law enforcement institutions and their activities by the public. **The primary objective of section 14(2)(a) is to assist in facilitating this scrutiny.**
>
> One of the vehicles for this scrutiny is the provision of the greatest amount of information about law enforcement activities possible in the circumstances. In my view, the criminal charges laid, along with accompanying details about the money and/or plants seized at the time of each of the grow operation seizures, are part of full disclosure about police activity in this high-interest area. [emphasis added]

[62] I find that the same can be said about the importance of examining the activities of law enforcement and the response of the criminal justice system to IPV.

[63] I accept the appellant's position that the underlying issue of intimate partner violence is a matter of urgent social concern, and that understanding its prevalence and how it is addressed by law enforcement agencies is made possible with accurate underlying information. I agree that a review of outcomes and efficacy or sufficiency of systems in place designed to protect victims, including the existence of any predictors that might have prevented a death, is desirable for the public to better understand the response in their communities compared with other law enforcement agencies in Canada.

[64] Where, as the appellant points out, significant resources are allocated to address IPV homicides, but individuals continue to be killed by intimate partners, I am satisfied that there is a strong interest in ensuring an appropriate degree of scrutiny of the related activities of law enforcement agencies and the criminal justice system. To the extent that resources are devoted to IPV cases specifically, disclosure of as much information as possible about IPV homicides is desirable to scrutinize how well, or whether, these resources are working, and to instill public confidence in the affected community and the public at large by allowing it to know and follow what police are doing to investigate so serious a crime. I find that disclosure of the record would assist in facilitating this scrutiny.

[65] The appellant has also made submissions on the application of the factor in section 14(2)(b), which favours disclosure where it may promote public health and safety. Given my finding that the record is not exempt because of the application of the factor in section 14(2)(a), I do not need to consider this factor. I would only note that, if I were to find that it applies, it would favour disclosure of the record.

[66] The parties did not raise any unlisted factors weighing either for or against disclosure. I have considered whether there are any such factors and find that there are none.

[67] For the above reasons, therefore, I find that disclosure of the record would not constitute an unjustified invasion of personal privacy because the desirability of public scrutiny over public institutions (the factor in section 14(2)(a) outweighs factors favouring privacy protection. I find, therefore that the record is not exempt under section 14(1) and order it to be disclosed to the appellant.

Issue C: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption?

[68] Because I have found that the record is not exempt under section 14(1) and that its disclosure would not constitute an unjustified invasion of personal privacy, I need not consider the appellant's argument that the public interest override in section 16 applies to it.

[69] However, even if I had found the record to be exempt under section 14(1),[21] I would have ordered its disclosure under section 16 based on a similar weighing of privacy interests and access rights as I have discussed under section 14(1).

[70] Briefly, section 16 of the *Act* provides for the disclosure of records that would otherwise be exempt under section 14.[22] For section 16 to apply, two requirements must be met: there must be a compelling public interest in disclosure, and this interest must clearly outweigh the purpose of the exemption.[23] In considering whether there is a public interest in disclosure of the probation file, the first question to ask is whether there is a relationship between it and the *Act's* central purpose of shedding light on the operations of government.[24]

[71] The IPC has stated in previous orders that, in order to find a compelling public interest in disclosure, the information in the record must inform or enlighten the population 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] The IPC has defined the word "compelling" as "rousing strong interest or attention."[26] A public interest is not automatically established because the requester is a member of the media.[27]

Representations

[72] The police acknowledge that there is a compelling public interest in the

[21] For instance, if the section 14(3)(b) presumption applied.
[22] Section 16 states that, "An exemption from disclosure of a record under sections 7, 9. 9.1, 10, 11, 14 and 14 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.
[23] Order P-244.
[24] Orders P-984 and PO-2607.
[25] Orders P-984 and PO-2556.
[26] Order P-984.
[27] Orders M-773 and M-1074.

information, but say that it is immediate as of the time of the events and not enduring. They say that, "During the immediacy of the event, [the police] would agree that there is a compelling public interest in serious criminal incidents like intimate partner homicide," but that this public interest is not permanent and dwindles over time as a homicide becomes a historical event. The police say that at the time when the immediate compelling public interest exists, a significant amount of information is disclosed that should be enough to address any public interest considerations. They say that the public is kept informed through media releases and through reporting of trials, which are open to the public.

[73] The appellant argues that there is a great public interest in knowing whether the systems that are supposed to protect victims in these cases are working. She submits that the impact of disclosure on the privacy of individuals is limited in the present case.

[74] The appellant says that the fact that domestic violence has been widely discussed in the media is indicative of the public interest in disclosure of the information at issue. Citing an article in the *Edmonton Journal* quoting Alberta's former information and privacy commissioner, the appellant says that the best example of providing the public with information about social conditions such as the level of violence in a city or community and possible causes for such violence "would be missing and murdered indigenous women, where knowledge of trends in homicides exposes social issues."[28]

[75] The appellant says that disclosure is also important because police do not always reveal when they consider a homicide to be domestic in nature, and this information does not always come out through the court process, such as in cases of murder-suicide. She says that because not all IPV homicides make their way through the courts, the public has no way of knowing whether the systems that are supposed to protect victims in these cases are working.

[76] The appellant also argues that a policy that presumptively withholds information of vital concern to the community calls into question the legitimacy of the police process and undermines public trust in police.

[77] An affected party who made submissions in support of the police's decision to "not release any further information" expressed concern about revictimization through media, and having to "worry about someone digging around in [their] dead relative's lives" through a process that they say risks another assault on their family by another member of the media.

Analysis and findings

[78] For reasons similar to those I have discussed above at Issue B, I find that there

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[28] Former Alberta Information and Privacy Commissioner Frank Work, quoted in https://edmontonjournal.com/news/crime/paula-simons-silent-as-the-grave-edmonton-police-refusal-to-name-homicide-victims-a-wilful-misreading-of-foip

is a compelling public interest in disclosure of information about domestic violence and IPV homicides that outweighs the purpose of the section 14(1) exemption.

[79] As I stated at the outset, I note that the information about the particular murders listed in the record is already in the public realm. As the police point out, information about homicides is released to the public contemporaneously, and updates are provided during milestones in an investigation and around any ensuing court proceedings. What is at issue is the list, which is a compilation of this information prepared by the police using their own methodologies and criteria for identifying these murders as involving IPV.

Is there a compelling public interest?

[80] I find that there is a compelling public interest in disclosure of the record because of its relationship to intimate partner violence and its ability to shed light on relevant police responses and the efficacy of mechanisms in place to protect victims. I acknowledge that there is a high amount of public disclosure in real time proximity to the crimes themselves. However, as I have noted under Issue B, a review of outcomes and the sufficiency or efficacy of systems in place intended to protect victims as proposed to be carried out by the appellant, including the existence of any predictors that might have prevented a death, is made possible by an accurate understanding of the number of, and responses to, these incidents across various law enforcement agencies in Canada. That these crimes were identified by the police as meeting these criteria would assist meaningful research into IPV cases by removing a researcher's risk of skewing data by not identifying, or overlooking, actual IPV cases.

[81] I am not persuaded that the compelling public interest in disclosure of the information at issue is diminished by the mere passage of time. In my view, this argument is predicated on a view of the homicide that is removed from the broader public concerns associated with IPV, its prevalence, and its devastating effects on the lives and communities it touches.

[82] I am also not persuaded that the record contains information that has shifted to being historical. The record indicates that charges are still "ongoing" or "pending" against some individuals,[29] suggesting that their matters are not yet concluded. Based on the police's representations, open matters may still attract the milestone updates the police describe, and all of the homicides listed occurred between 2015 to mid-2020, making them relatively recent events.

[83] While the immediacy of the event might serve a particular interest, such as investigating or solving a crime, in my view, this does not void any other public interest in disclosure at a later time. The public interest may shift (from the investigation, for example, to outcomes), but I find that the compelling public interest in access to

[29] The remainder involved the death of the accused, either by murder-suicide or otherwise.

information about domestic or intimate partner violence does not wane, especially in view of the statistics included in the appellant's representations and discussion about the need for associated legislative changes.

Does the compelling public interest outweigh the purpose of the personal privacy exemption in section 14(1)?

[84] The list does not reveal particulars of the homicides themselves. It simply compiles information into a single record that allows the appellant to confirm with confidence which cases were identified by police as cases of IPV, or, as the case may be, how the police identify such cases.

[85] In my view, and as I have already noted, the privacy interests in this case are limited because of the demographic or statistical nature of the information in the record and the fact that much of it is already in the public domain in other forms. I find that disclosure outweighs the purpose of the exemption in section 14(1) because the information at issue informs the public about the prevalence of these homicides in their community and allows for discussion and scrutiny of the response of law enforcement and the courts. As the appellant points out, knowledge and identification of trends associated with IPV homicides can help understand and expose the underlying social issue of domestic and intimate partner violence and shed light on how governments respond and whether resources are effectively allocated to protect victims.

[86] In these circumstances, I find that the public interest in disclosure of the information at issue is compelling and that it outweighs the purpose of the personal privacy exemption in section 14(1). I will therefore order the police to disclose the list to the appellant.

ORDER:

1. I do not uphold the police's decision.
2. I order the police to disclose the record to the appellant by **August 2, 2023** but not before **July 28, 2023**.
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the record disclosed to the appellant.

Original Signed by: June 27, 2023

Jessica Kowalski
Adjudicator