Information and Privacy Commissioner,
Ontario, Canada

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

FINAL ORDER PO-4411-F

Appeal PA21-00038

Ministry of the Solicitor General

June 27, 2023

Summary: The appellant made a request to the Ministry of the Solicitor General (the ministry) for access to high-level information about homicides involving intimate partners cleared by the Ontario Provincial Police (OPP) between 2015 and 2020. The ministry denied access to a chart containing the requested information prepared by the OPP on the basis of the mandatory personal privacy exemption in section 21(1) of the *Act*. The appellant raised the application of the public interest override in section 23. In this order, the adjudicator finds that disclosure of the information at issue would not constitute an unjustified invasion of personal privacy because it is desirable for subjecting the OPP to public scrutiny, and that the record is therefore not exempt under section 21(1). The adjudicator also finds that, even if the information were exempt, the public interest override would require its disclosure, and orders the ministry to disclose it to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 21(1), 21(2)(a), 21(2)(f), 21(3)(b) and 23.

Orders Considered: Orders P-1618, MO-2019 and PO-3712.

OVERVIEW:

[1] This appeal is about a request for access to information about 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 Ministry of the Solicitor General (the ministry) for the following:

> …a list of homicides cleared by [the Ontario Provincial Police (OPP)] 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 ministry produced a record, a chart compiled by the OPP containing the information requested for each IPV homicide the OPP investigated during the five-year period defined by the request.

[3] The ministry denied access to the record on the basis of the mandatory personal privacy exemption in section 21(1). The ministry 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 21(3)(b), which applies to records compiled and identifiable as part of investigations into possible violations of law. The ministry also relied on the discretionary law enforcement exemptions in sections 14(1)(l) (facilitate commission of unlawful act or hamper control of crime) and 14(2)(a) (law enforcement report).

[4] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation, during which the ministry granted partial access to the chart by issuing a revised decision. The ministry granted access to all of the column headings in the chart, and to the information in these columns:

- reporting year
- police service
- victim and accused gender
- MSV (first or second degree murder, or manslaughter)[2]
- clearance status.

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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] The acronym "MSV" is not defined in the record. The information in this column, and disclosed to the appellant, lists charges of first- or second-degree murder or manslaughter for each incident.

[5] The ministry maintained its decision to deny access to the information in the following columns:

- incident date
- incident file number
- victim name
- accused name
- location
- relationship to victim
- other charges/convictions related to homicide
- any previous convictions of the accused for criminal activities.

[6] The ministry confirmed during mediation that it would no longer be relying on the discretionary law enforcement exemption in section 14. Accordingly, sections 14(1)(l) and 14(2)(a) were removed as issues and are not before me in this appeal.

[7] The appellant maintained that she seeks access to all of the remaining withheld information, except for the incident file numbers. She also raised the application of the public interest override in section 23 of the *Act*.

[8] The matter was not resolved in mediation and the appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry during which both parties submitted representations in writing. I also notified 86 next-of-kin or representatives of the victims and of the deceased accused individuals, and the living accused individuals directly (collectively, affected parties), to give them the opportunity to submit representations on the possible disclosure of some or all of the personal information in the record.[3] Eight affected parties whom I notified (next-of-kin of victims and accused, and an incarcerated accused individual) responded.[4]

[9] In this order, I find that the information sought by the appellant in the record is not exempt under section 21(1), but that even if it were, the public interest override requires its disclosure, and I order the ministry to disclose it to the appellant.

[3] The ministry provided contact information for these individuals pursuant to Interim Order PO-4317-I.
[4] Some envelopes containing notification were returned, while others went unanswered.

RECORD:

[10] The record at issue is a chart that lists 44 homicides by year that were cleared[5] by the OPP between June 1, 2015 to June 30, 2020. The chart contains columns for each homicide's date and location, incident file number, the names of each victim and accused, the clearance status (i.e. by charges or death of the accused by suicide or otherwise), any other charges or convictions related to the homicide, and whether the accused had any previous convictions for criminal offences. At issue is access to the dates, names of victims and accused, locations, and information relating to outcomes and prior criminal activity.

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 21(1) apply to the information at issue?

C. Is there a compelling public interest in disclosure of the information at issue that clearly outweighs the purpose of the section 21(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?

[11] The personal privacy exemption in section 21(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.

[12] 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.[6]

[13] 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

[5] Referring to investigations that were concluded by charges or otherwise.
[6] According to the definition of "records" in section 2(1).

other information.[7]

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

> (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

[15] The ministry submits that the record contains individuals' names and gender, and information that would associate them with a homicide, either as a victim or an accused person, and includes related contact with the police and justice system. The ministry says that all of the deceased individuals in the record have been deceased for less than 30 years, so that information about them continues to constitute their personal information under section 2(2) of the *Act*.

[16] The ministry also submits that, given the significant amount of media coverage in some cases, even if names were removed from the record, individuals could still be identified from disclosure of other information in the record because of information already contained in the public domain.

[17] The appellant does not dispute that the record contains personal information belonging to victims and accused individuals. The appellant's representations focus on whether or not the personal information is exempt and whether the public interest override applies to it.

Analysis and findings

[18] 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

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

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).

[19] I agree with the ministry that, based on the dates of the homicides,[8] all of the deceased individuals identified in the record[9] 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.

[20] Because the appellant seeks access to all of the remaining withheld information except for file numbers, I must next consider the ministry's position that the record is exempt under section 21(1) because its disclosure would result in an unjustified invasion of personal privacy.

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

[21] The ministry has relied on the personal privacy exemption in section 21(1) to deny access to the information at issue. For the reasons that follow, I find that it is not exempt under section 21(1), and that the ministry must therefore disclose the information at issue to the appellant.

[22] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.[10] The mandatory personal privacy exemption in section 21(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 21(1)(a) to (f). If any of the exceptions exist, an institution is required to disclose the information.

[23] The parties raised only the exception in section 21(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 21(1)(f): is disclosure an unjustified invasion of personal privacy?

[24] Under section 21(1)(f), if disclosure of the personal information would not be an unjustified invasion of personal privacy, the personal information is not exempt and

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[8] Between 2015 and 2020.
[9] Whether as victims of homicide, or by suicide or other means in the case of accused individuals.
[10] Section 1(b) of the *Act*.

must be disclosed.

[25] Sections 21(2), (3) and (4) give guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy:

- section 21(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 21(1)(f);
- section 21(3) lists the types of information of which disclosure is presumed to constitute an unjustified invasion of personal privacy; and,
- section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3).

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

[27] As for the relevant sections, section 21(3) should generally be considered first. If any of the presumptions in section 21(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 23 of the *Act*, discussed later).[11]

[28] Where no presumption against disclosure in section 21(3) applies to the information, the factors listed in section 21(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 21(2) favouring disclosure must exist and outweigh any factors that apply and weigh in favour of disclosure. The list of factors under section 21(2) is not exhaustive. This means that the ministry must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[12]

[29] The ministry submits that the presumption in section 21(3)(b) applies to the information at issue. This presumption states that disclosure of personal information is presumed to be an unjustified invasion of personal privacy if it was compiled and is identifiable as part of an investigation into a possible violation of law.

[30] Accordingly, after summarizing the parties' arguments, I will consider section 21(3)(b) first. Because, for the reasons set out below, I find that this presumption does not apply to the information at issue, I will then consider whether any factors in section

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[11] Or unless a section 21(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.).
[12] Order P-99.

21(2) apply to weigh in favour or against disclosure of the personal information in the record. In this case, the relevant factors I will consider are those in sections 21(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).

Representations

The ministry's representations

[31] The ministry submits that disclosure would presumptively constitute an unjustified invasion of personal privacy under section 21(3)(b). The ministry argues that the personal information at issue was compiled by members of the OPP because of their investigations into homicides, and is "by its very nature identifiable as being part of a law enforcement investigation, and therefore fits squarely within the scope of" the presumption against disclosure in section 21(3)(b).

[32] The ministry also submits that the information is highly sensitive so that the factor in section 21(2)(f) applies and weighs against disclosure because the information relates to individuals' contact with police and because affected third-parties have not given their consent to disclosure of information relating to what the ministry says are "law enforcement investigation records." The ministry relies on Orders P-1618 and PO-3712 to argue that information about individuals' contact with the police, including as complainants, witnesses or suspects, is highly sensitive for the purposes of section 21(2)(f).

[33] The ministry also argues that the *Victims Bill of Rights, 1995* (the *VBR*)[13] "should be applied to protect the personal information in the record." The ministry cites the preamble to the *VBR*, which states, in part, that victims of crime should be treated with compassion and fairness, and that the justice system should operate in a manner that does not increase their suffering. Noting that the definition of victim in the *VBR* includes a child, parent, or dependant of an individual who has died as a result of the commission of a crime, the ministry says that disclosure may have the effect, however unintended by the appellant, of increasing victims' suffering. The ministry says that the information may be used to contact victims, or expose them or their deceased loved ones to media scrutiny in a way that victims would not wish, and that this type of publicity may be traumatic and re-victimizing.

[34] The ministry also says that, pursuant to section 2(1) of the *VBR*, victims of crime should be treated with courtesy, compassion and respect for their personal dignity "and privacy" by justice system officials. The ministry argues that this binds the OPP as justice system officials, being the investigating law enforcement agency, and says that disclosure cannot be justified in light of the *VBR*'s broad principles.

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[13] S.O. 1995, c. 6.

The appellant's representations

[35] The appellant submits that the presumption against disclosure in section 21(3)(b) does not apply because the information at issue was not compiled only for the purpose of individual investigations. She argues that the information collected in the record is information that police agencies must collect and retain for different purposes, including, for example, under the *Identification of Criminals Act*[14] or for submission to the RCMP's National Repository of Criminal Records.

[36] The appellant 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[15] seizures, and which the IPC found had not been created as part of the underlying investigations.

[37] The appellant submits that neither the deceased victims nor the accused individuals are complainants, witnesses or suspects, and that disclosure would not reveal personal information about other individuals' contacts with the OPP, as the ministry says. She disputes that there is a reasonable expectation of significant personal distress (as required for section 21(2)(f) to apply); she argues that victims, who are deceased, and whose personal information is at issue, cannot experience this distress. As for the accused, the appellant submits that their names are sought in the context of homicides that have been investigated and resulted either in charges and a conviction or acquittal or dismissal of charges.

[38] The appellant also argues that any infringement on personal privacy is justified because "the information is being sought to scrutinize the government agency's handling of these cases." As I understand it, the appellant's argument is that disclosure is desirable for subjecting the activities of government agencies – in this case law enforcement and the criminal justice system – to public scrutiny, which, although not specifically cited by the appellant, is the factor in section 21(2)(a) and which, if it applies, weighs in favour of disclosure of personal information.

[39] 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. Sometimes, says the appellant, police agencies have been involved with IPV incidents before a homicide. The appellant submits that, to be able to examine police's various responses, the public must first know not only which cases have been handled by which police agencies, but which have also been labeled IPV cases. She says that without this information, the public may have an incomplete list of the relevant cases from which to draw conclusions about a particular agency's track record. She submits that non-identifying information, such as outcomes alone, is insufficient; for example, she says, locations may partly explain

[14] R.S.C., 1985, c. I-1.
[15] Illegal marijuana grow operations or labs in residential homes.

police response (i.e. in remote areas 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.

[40] 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 ministry and another institution whose decision is the subject of a separate appeal[16]) denied access to the information requested. The appellant says that, as a result of disclosure she received from the other law enforcement agencies, she was able to find that warning signs were present in one in three homicides, and to pinpoint predictors of homicides and the extent to which those predictors were present in IPV homicides. She submits that this disclosure also allowed for a close examination of the functioning and integrity of our criminal justice system, including the presence of issues like systemic racism. For example, she says, her investigation found that people of colour were more likely than white or Indigenous individuals to be initially charged with first- or second-degree murder, and that Indigenous accused were more likely to be charged with manslaughter.[17] The appellant says that the ministry's refusal to grant access has effectively meant that the OPP have been shielded from this scrutiny and inclusion in the appellant's research. The appellant says that without names, she cannot scrutinize police conduct in each case identified as an IPV homicide and that this information is vital to understanding both weaknesses and successes within the government systems meant to oversee IPV.

[41] Finally, the appellant says that, although police agencies have made IPV cases a "critical priority,"[18] and have established departments specifically mandated to investigate IPV, more than four in 10 women and one-third of men have experienced some form of IPV in their lifetime, and victims continue to die at the hands of their intimate partners.[19] She argues that neither the ministry nor the access-to-information regime should be the gatekeeper of expression for victims and their families, that loved ones should be given the opportunity to decide for themselves whether they want to speak with media or not, and that individuals who were not ready or willing to talk have been left alone.

The affected parties' representations

[42] Of the 86 affected parties notified, eight participated in this appeal. They were

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[16] See Order MO-4403.
[17] https://www.cbc.ca/news/canada/warning-signs-intimate-partner-homicide-1.6269761, cited by the appellant.
[18] Citing the Peel Regional Police Service, for example.
[19] Citing Statistics Canada (https://www150statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm).

the next-of-kin of deceased victims and accused, and a convicted incarcerated individual. Of those eight, two returned consent forms simply opposing disclosure of any information relating to their deceased loved ones without comment. The third individual who opposed disclosure cited re-traumatization, bullying by family members, media and strangers, and living with the constant pain of what happened within their own family.

[43] The remaining affected parties who responded supported disclosure. Two endorsed the appellant's research, but asked not to be contacted "for any reason by the researchers." One cited the potential benefit of research into IPV homicides in assisting mental health policy makers and police services to prevent and manage these crimes.[20]

[44] One convicted and incarcerated individual wrote in support of disclosure "to bring public awareness on matters of social importance and permit scrutiny of the police." This individual consented to disclosure of his own personal information, even if highly sensitive.

Analysis and findings

Does the presumption against disclosure in section 21(3)(b) (investigation into possible violation of law) apply?

[45] As I stated above, I will begin by addressing whether the section 21(3)(b) presumption applies. Under section 21(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.

[46] 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 chart, I find that it contains summary information about 44 homicides. While I accept that the information was collected or derived from underlying investigative records, it was done so after those investigations were completed.

[47] 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 whether any children were present) were subject to presumption in section 14(3)(b) (the municipal equivalent of section 21(3)(b)). He found that the charts were created after the investigations, not for the purpose of the investigations, and were not "investigatory" in

[20] With the caveat that they not be contacted.

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) [the municipal equivalent of section 21(3)(b)] of the Act does not apply.

[48] I agree with and adopt this reasoning. Although the police in Order MO-2019 created the charts for their own purpose, 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 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 a summary list of information about homicides over a five-year period is not investigatory in nature, and that the presumption against disclosure in section 21(3)(b) does not apply to it.

[49] However, even if the section 21(3)(b) presumption did apply, so that the record would be exempt under section 21(1), I would find, as I discuss below under Issue C, that the public interest override in section 23 applies to it.

[50] Having found that the presumption does not apply, I must next consider whether there are factors in section 21(2) that apply to the information at issue, either in favour or against disclosure.

Do any factors in section 21(2) apply?

[51] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[21] 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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

[21] Order P-239.

…

(f) the personal information is highly sensitive;

[52] The factor in section 21(2)(a) weighs in favour of disclosure, while the factor in section 21(2)(f) weighs against it. I must also consider whether there are any unlisted factors that weigh for or against disclosure.

Section 21(2)(a): public scrutiny

[53] The purpose of section 21(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.[22] 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.[23]

Section 21(2)(f): highly sensitive

[54] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 21(2)(f) requires the ministry 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.[24]

Unlisted factor: Victims' Bill of Rights, 1995

[55] The list of factors is not exhaustive. This means that the ministry must also consider any circumstances that are relevant, even if they are not listed in section 21(2).[25] As I have noted above, the ministry cites the *VBR* as an unlisted factor weighing against disclosure.

Discussion

[56] For the reasons that follow, I find that the factor in section 21(2)(f) applies and weighs against disclosure. However, in the circumstances, I also find that the factor in section 21(2)(a) applies and outweighs the factor in section 21(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 21(1) and will order the ministry to disclose the information at issue to the appellant.

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[22] Order P-1134.
[23] Order P-256.
[24] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[25] Order P-99.

Section 21(2)(f): highly sensitive

[57] The ministry relies on Orders P-1618 and PO-3712, in which, broadly speaking, section 21(2)(f) was found to be a relevant factor where personal information was contained in law enforcement investigation records.

[58] Because of my finding that the record is not itself an investigative record, I find Orders P-1618 and PO-3712 are of limited assistance in this appeal. In Order P-1618, Assistant Commissioner Tom Mitchinson considered a request for access to investigative records consisting of occurrence reports, incident summaries, witness "will say" statements, handwritten notes and instructions to crown counsel. He found that personal information of individuals who have contact with the OPP as complainants, witnesses or suspects is highly sensitive for the purposes of section 21(2)(f). Similarly, in Order PO- 3712, the records at issue consisted of police documents, including occurrence reports and synopses of witness statements, compiled during an investigation into a possible violation of law in which no charges had been laid. Adjudicator Catherine Corban found section 21(2)(f) to be a factor where affected third-party individuals had not provided consent to disclosure of their personal information contained in law enforcement investigation records.

[59] Despite the distinguishable nature of the records at issue, I nevertheless agree with the ministry's position. Prior IPC orders have found that information contained in a record that reveals an individual's contact with the police is highly sensitive. In Order PO- 2518, for example, Adjudicator John Higgins considered a request for access to information about registered sex offenders. In finding that the factor in section 21(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.

[60] I agree with and adopt the same reasoning here. The record contains information about victims and their relationships with intimate partners who were charged with or convicted of killing them. It reveals information about the accused individuals' involvement with the criminal justice system and identifies their current or former intimate partners as their victims. In determining how much weight to assign to the factor in section 21(2)(f), however, 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. I have also considered the affected parties' submissions, including that some who responded supported disclosure of the information at issue. Of the three that opposed, only one commented about the trauma they experienced and expressed a fear of re- traumatization.

[61] As I noted above, and as is acknowledged by the ministry, these murders are

already a matter of public reporting, including in some cases several details about the homicides.[26] 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.

[62] Accordingly, although I find that the factor in section 21(2)(f) applies, I give it less weight than the factor in section 21(2)(a), discussed next.

Section 21(2)(a): public scrutiny

[63] I find that the factor in section 21(2)(a) applies and that it outweighs the factor in section 21(2)(f) favouring privacy protection. Section 21(2(a) favours disclosure where it is desirable for subjecting the activities of the government or its agencies, in this case the police and the criminal justice system as they relate to the handling of IPV, to public scrutiny.

[64] 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 police and legal system and the efficacy of mechanisms in place to protect victims.

[65] 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 different jurisdictions, and in scrutinizing law enforcement's and the courts' responses in particular, including when or whether there was a history of violence between partners, and including previous charges or contact with the criminal justice system that preceded a homicide, and whether, or how often, protections for victims failed.

[66] 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), the municipal equivalent to section 21(2)(a), to the charts at issue,[27] former Commissioner Beamish wrote:

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[26] Resulting, in one case, from a Coroner's Inquest, and other public reporting.

[27] 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

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

[67] 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 and homicides.

[68] 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 a history of violence or 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.

[69] 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 response and 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.

Unlisted factor: Victims' Bill of Rights, 1995

[70] As I have noted above, the ministry argues that the *VBR* should be applied to protect personal information in the record, and that, under section 2(1), victims should

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list before me contains less information, but that the information is analogous to that contained in the grow-op charts.

be treated with courtesy, compassion and respect for their personal dignity "and privacy." Regarding the ministry's argument that disclosure under the *Act* cannot be justified because of the *VBR's* broad principles, I note that the *Act* prevails over any other Act unless the *Act* or the other Act state otherwise.[28] I therefore find that the *VBR* has no direct application in the circumstances. However, I agree with the ministry that victims of crime should be treated with compassion and with consideration for their privacy interests. In the circumstances of this appeal, I find that disclosure of sensitive information about a crime and victims, including their relationships with the accused, could reasonably be expected to cause victims significant personal distress and that the factor in section 21(2)(f) therefore applies to this information with all the more reason to favour protection of victims' privacy interests. In other words, although I have found the *VBR* not to apply directly as an unlisted factor, I have considered the impact of disclosure of the information at issue on victims, including the principles raised by the ministry, in my consideration of the factor in section 21(2)(f), above. And, although I find that the factor in section 21(2)(f) applies and weighs against disclosure, I find that it is outweighed by the factor in section 21(2)(a).

[71] 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 21(2)(a)) outweighs the factor favouring privacy protection. I find that the record is therefore not exempt under section 21(1) and order it to be disclosed to the appellant.

Issue C: Is there a compelling public interest in disclosure of the information at issue that clearly outweighs the purpose of the section 21(1) exemption?

[72] Because I have found that the record is not exempt under section 21(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 23 applies to it.

[73] However, even if I had found the record to be exempt under section 21(1),[29] I would have ordered its disclosure under section 23 based on a similar weighing of privacy interests and access rights as I have discussed under section 21(1).

[74] Briefly, section 23 of the *Act* provides for the disclosure of records that would otherwise be exempt under section 21.[30] For section 23 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.[31] In considering whether there is

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[28] Section 67(1) of the *Act*.
[29] For instance, if the section 14(3)(b) presumption applied.
[30] 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."
[31] Order P-244.

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.[32]

[75] 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.[33] The IPC has defined the word "compelling" as "rousing strong interest or attention."[34] The IPC has found a public interest in disclosure to exist where, for example, the integrity of the criminal justice system is in question,[35] but not where another public process or forum has been established to address public interest considerations,[36] where a significant amount of information has already been disclosed that is adequate to address any public considerations,[37] or where there has already been wide public coverage or debate of the issue and the records would not shed further light on the matter.[38] A public interest is not automatically established because the requester is a member of the media.[39]

Representations

The ministry's representations

[76] The ministry submits that it "acknowledges that there is a general public interest in the tragic issue of homicides caused by partners," but says that, to the extent that there is a compelling public interest, it has been met because of the portions of the record already disclosed.[40] The ministry submits that it has provided important data to the appellant without highly sensitive personal information being disclosed, and that the ministry has therefore "struck a balance between the appellant's right to information without contravening the privacy rights of the affected third-party individuals identified in the record."[41]

[77] The ministry also submits that any compelling public interest in the record has also been met because of the extent to which homicides are generally reported in the media, and the extent to which they tend to result in public proceedings such as trials, or even coroner's inquests. The ministry says that, where another public process or

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[32] Orders P-984 and PO-2607.
[33] Orders P-984 and PO-2556.
[34] Order P-984.
[35] Order PO-1779,
[36] Orders P-123/124, P-391 and M-539.
[37] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[38] Order P-613.
[39] Orders M-773 and M-1074.
[40] As noted above, the ministry disclosed the reporting years, police service, MSV and clearance status, and victims' and accused's gender.
[41] The only individuals identified in the record are the victims and accused.

forum has been established to address public interest considerations, which the ministry says is the case in this appeal, section 23 has been found not to apply.[42]

[78] Finally, the ministry disputes that there is any relationship between the personal information in the record and shedding light on the operations of government, claiming that disclosure will instead focus unwanted scrutiny on victims of crime, and that the public interest in the information at issue does not outweigh the purpose of the section 21(1) exemption.

The appellant's representations

[79] As noted above, the appellant submits that she seeks to evaluate how the most serious cases of IPV are being handled by police agencies and the criminal justice system across Canada. According to the appellant, various government agencies handle IPV incidents, and that a local police agency does not always take charge of a matter. She submits that accountability can only be directed at the correct government agency once it is known which IPV cases have been handled by which agencies.

[80] The appellant says that without a list of IPV homicides confirmed by law enforcement, many of the statistics she discovered would have been based on incomplete data and "best guesses" as to which cases were actually IPV homicide cases. She says that police-released information allows for a fuller data set and for a more comprehensive sense of the problem and that without names and locations, it is much more difficult, if not impossible, to shed light on the operation of relevant government agencies. She says that this information is vital to an understanding of the efficacy of government systems meant to oversee IPV.

[81] Finally, the appellant submits that identifying victims and their relationships to accused perpetrators fosters meaningful community dialogue on matters of safety and security. Although she says her research is still ongoing, the appellant says that a series of articles published on this issue have already fostered important public debate[43] and led to fruitful public interest groups and discussion with victims' families about possible ways government agencies can better help to prevent IPV homicides.

[82] She submits that names are not a matter of mere curiosity, but enable public awareness on matters of social importance. She submits that disclosure upholds public trust in police and that it is a vital component in acknowledging, addressing and denouncing a crime that is morally offensive to our community. She argues that it enables a community to, among other things, reflect on broader issues impacting society, and is a vital element in public support and funding for policing activities. The appellant argues that withholding the names of victims of crime deprives society of an important opportunity to address the shortcomings of our communities and bring about social change, and that public awareness of the prevalence of domestic violence,

[42] See, for example, Order MO-4222.
[43] https://www.cbc.ca/news/canada/warning-signs-intimate-partner-homicide-1.6269761.

through personalizing the victim rather than cloaking them in silence, and discussion on the way our government agencies handle these cases, can inspire an impassioned community response and drive much needed social change. She argues that disclosure is essential to shedding light on the operations of government by allowing for a comparison of the actions or inactions of police agencies in their respective cases across the country, and that a presumptive withholding of information of vital concern to the community calls into question the legitimacy of the police process and undermines public trust in police.

Analysis and findings

[83] For reasons similar to those I have discussed above at Issue B, I find that there is a compelling public interest in disclosure of information about domestic violence and IPV homicides that outweighs the purpose of the section 21(1) exemption.

[84] As I stated at the outset, I note that information about the particular murders listed in the record is already in the public realm. As the ministry points out, homicides are generally reported in the media, and ensuing public legal proceedings. However, what is at issue is a chart, which is a compilation of information prepared and collected from investigations using the OPP's own methodologies and criteria for identifying these murders as involving IPV.

Is there a compelling public interest?

[85] I find that there is a compelling public interest in disclosure of the information at issue 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, and during subsequent legal proceedings, as the case may be. However, as I have noted under Issue B, a comprehensive 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 OPP or ministry 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.

[86] I am not persuaded that the compelling public interest in disclosure of the information at issue has been satisfied because there may have been legal proceedings or, in limited cases, a coroner's inquest. The ministry has not provided me a basis to conclude that specific information in the record has already been the subject of significant public discourse or that public discussion has been made possible to address, as a result of any case on the list, the broader public concerns associated with IPV, its prevalence, and its devastating effects on the lives and communities it touches outside

of the concerns raised in any legal proceedings such as a trial or an inquest following an individual case.

[87] While a trial or an inquest might serve a particular interest or purpose, such as solving a crime or putting forward recommendations resulting from specific cases, this does not, in my view, void any other public interest in disclosure at another time, or answer the need to address the issue of IPV more comprehensively or comparatively. I reiterate that there may be a public interest in an investigation, or an outcome, but I find that the compelling public interest in access to information about domestic or intimate partner violence more broadly is not diminished by greater disclosure in one or more individual cases on the list, especially in view of the statistics included in the appellant's representations. These include statistics revealed by her research thus far, and the need for broader discussion about meaningfully addressing this issue and potentially inconsistent or ineffective responses to it that result in deaths where there has been a history of violence and previous law enforcement or criminal justice involvement and where existing resources have not resulted in effective intervention.

Does the compelling public interest outweigh the purpose of the personal privacy exemption in section 21(1)?

[88] The record does not reveal specific details 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 the OPP as cases of IPV, or, as the case may be, how they identify such cases and the types of charges that are laid, whether before and after a death.

[89] 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 21(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, including examining where or how systems in place to protect victims have failed. 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.

[90] 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 21(1). I will therefore order the ministry to disclose the list to the appellant.

ORDER:

1. I do not uphold the ministry's decision.

2. I order the ministry to disclose the information in the record under the columns titled Incident Date, Victim Name, Accused Name, Location, Relationship to Victim, Other Charges/Convictions Related to Homicide, and Accused Previous Conviction for Criminal Activities 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 ministry to provide me with a copy of the record disclosed to the appellant.

Original Signed by: June 27, 2023

Jessica Kowalski
Adjudicator