

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-4472

Appeal PA22-00280

Ministry of the Solicitor General

December 22, 2023

**Summary:** The Ministry of the Solicitor General (the ministry) received a request under the *Act* for an occurrence report related to the appellant's deceased son. The ministry disclosed the report, but withheld portions under section 49(a) (discretion to refuse requester's own information), read with section 14(1)(l) (facilitate commission of an unlawful act), and section 49(b) (personal privacy).

In this order, the adjudicator partially upholds the ministry's decision. He finds that the information is exempt from disclosure under sections 49(a) and (b), but orders some withheld portions disclosed because disclosure is desirable for compassionate reasons (section 21(4)(d)). He also finds that withholding another portion provided by the appellant to the police would lead to an absurd result, and orders it disclosed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information), 49(a) and 49(b).

**Orders Considered:** Orders P-1618, PO-3712, MO-4370, and PO-4087.

### OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

I want my late son's report when he passed away [specified date]

Here in Moosonee, ON

[named person]

[named person's date of birth]

[2] The ministry located an Ontario Provincial Police (OPP) occurrence report and issued a decision granting partial access to the report, with access to certain portions withheld on the basis of section 49(a) (discretion to refuse requester's own information) read with section 14(1)(l) (facilitate commission of an unlawful act), and section 49(b) (personal privacy). Information was also withheld as non-responsive to the request. The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the mediator notified several affected parties and received the consent of one affected party to disclose their information to the appellant. The ministry issued a supplemental decision to the appellant disclosing additional information, with access to the remaining information being withheld based on the same sections as above. The appellant advised the mediator that she was not interested in obtaining access to non-responsive information but wished to access the remaining withheld information.

[4] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*. Representations were sought and received from the ministry and appellant and shared in accordance with the IPC's *Code of Procedure*.

[5] For the reasons that follow, I partially uphold the ministry's decision and order the ministry to disclose some withheld portions of the report to the appellant.

## **RECORDS:**

[6] The sole record at issue is a 20-page occurrence report with certain portions withheld (the report).

## **ISSUES:**

- A. Does the report contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with section 14(1)(l), apply to the withheld police operations information?

- C. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- D. Did the ministry exercise its discretion under sections 49(a) and (b)?

## **DISCUSSION:**

### **Issue A: Does the report contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[7] Before I consider the exemptions claimed by the ministry, I must first determine whether the report contains “personal information.” If it does, I must determine whether the personal information belongs to the appellant, other identifiable individuals (such as the affected parties), or both. “Personal information” is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.”

[8] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. 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.<sup>1</sup> Section 2(1) of the *Act* gives a list of examples of personal information.

[9] The ministry submits that the report contains a significant amount of personal information belonging to affected third parties, such as names and other identifying information. It states that there is also a small amount of information belonging to a deceased individual – the appellant’s son, which they submit does not fit within the scope of compassionate disclosure, and it notes that personal information belonging to deceased individuals is considered as such for up to 30 years following their death. The ministry also states small portions of the report were withheld because they contain Workplace Information Numbers of OPP staff and submits that previous orders have held that these constitute personal information.

[10] The appellant did not provide specific representations on whether the report contains personal information.

[11] I have reviewed the report and I find that it contains the personal information of the appellant and affected parties, with information such as their names, addresses, phone numbers, and statements to the police present throughout the report. The ministry has already disclosed the appellant’s personal information to her. I agree with the ministry’s submission that the Workplace Information Numbers constitute personal

---

<sup>1</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information.<sup>2</sup> Having found that the report contains the personal information of the appellant and other individuals, including the appellant's deceased son, I will consider the application of the personal privacy exemptions at sections 49(a) and (b).

**Issue B: Does the discretionary personal privacy exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, read with section 14(1)(l), apply to the withheld police operations information?**

[12] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this general right of access to one's own personal information.

[13] Section 49(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[14] The discretionary nature of section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.<sup>3</sup>

[15] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[16] In this case, the ministry has withheld portions of the report on pages 1-6, 12, and 20, relying on section 49(a) read with section 14(1)(l), which reads:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

facilitate the commission of an unlawful act or hamper the control of crime.

[17] Many of the exemptions listed in section 14 apply where a certain event or harm "could reasonably be expected to" result from disclosure of the record.

[18] The law enforcement exemption must be approached in a sensitive manner, because it is hard to predict future events in the law enforcement context, and so care

---

<sup>2</sup> See, for example, PO-3742.

<sup>3</sup> Order M-352.

must be taken not to harm ongoing law enforcement investigations.<sup>4</sup>

[19] However, the exemption does not apply just because a continuing law enforcement matter exists,<sup>5</sup> and parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. The harm can sometimes be inferred from the records themselves and/or the surrounding circumstances.<sup>6</sup>

[20] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>7</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>8</sup>

[21] For section 14(1)(l) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime.

### ***Representations, analysis and finding***

[22] The ministry submits that the withheld portions of the report are police codes that are widely used as part of OPP operations. Based on my review of the report, information related to police operations more generally, such as specific information about police databases, was also withheld. The ministry refers to Order PO-2409, where the adjudicator found that “a long line of orders (for example M-393, M-757, M-781, MO- 1428, PO-1665, PO-1777, PO-1877, PO-2209, and PO-2339) have found that police codes qualify for exemption under section 14(1)(l), because of the reasonable expectation of harm from their release.”

[23] The ministry states that disclosure of these codes would make it easier for individuals carrying out criminal activities to have internal knowledge of how OPP systems operate, and that disclosure of internal police codes could jeopardize the security of law enforcement systems and the safety of OPP staff identified by them.

[24] The appellant did not provide specific representations on the application of section 49(a) read with section 14(1)(l), or the merits of the ministry’s submissions about the risks of disclosure of police codes or other information related to police operations.

---

<sup>4</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>5</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>6</sup> Orders MO-2363 and PO-2435.

<sup>7</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>8</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

[25] I agree with the ministry's submission that the IPC has previously held that section 14(1)(l) applied to police code information,<sup>9</sup> as disclosure could compromise the ability of OPP staff to provide effective policing services. I agree that disclosure of this information could make it easier for individuals engaged in illegal activities to carry them out and would jeopardize the safety of police officers. I also find that disclosure of the certain specific information related to police operations would have the same effect. I uphold the ministry's decision to withhold this information.

**Issue C: Does the discretionary personal privacy exemption at section 49(b) apply to the personal information at issue?**

[26] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[27] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of another individual's personal privacy.<sup>10</sup>

[28] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b). Additionally, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.<sup>11</sup>

[29] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 49(b). Section 21(2) provides a list of factors for the ministry to consider in making this determination, while section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. In this case, the ministry has relied on sections 21(3)(b) and 21(2)(f), which state:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) 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

---

<sup>9</sup> For example, Orders M-393, M-757, M-781, MO-1428, PO-1665, PO-1777, PO-1877, PO-2209, PO-2339, PO-2409, and PO-3742.

<sup>10</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 49(b).

<sup>11</sup> Order PO-2560.

(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,

(f) the personal information is highly sensitive

[30] Section 21(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. The ministry previously disclosed information under section 21(4)(d) (compassionate grounds), and the appellant argues that additional information should be disclosed for similar reasons. Based on my review of the records, I find that none of the other section 21(4) exceptions are relevant to the appeal.

[31] In determining whether the disclosure of the withheld information in the report would be an unjustified invasion of personal privacy under section 49(b), therefore, I will consider and weigh the factors and presumptions in sections 21(2) and (3), balance the interests of the parties, and consider if additional information should be disclosed for compassionate reasons.<sup>12</sup>

## ***Representations***

### *Ministry representations*

[32] The ministry submits that disclosing the information withheld in the report under section 49(b) would constitute an unjustified invasion of personal privacy for the affected parties who have not consented to the disclosure of their personal information and were not notified as part of the appeal. It submits that this also includes the Workplace Identification Numbers of OPP employees, relying on Orders PO-3742 and PO-3993, where it was found that these identifiers qualify as an employee's personal information, which when linked to the name of the employee (which was disclosed) reveals something of a personal nature about the employee.

[33] The ministry referenced section 21(3)(b) in support of withholding the information, submitting that this presumption only requires that there be an investigation into a possible violation of law, and the report was created because the OPP investigated the death of an individual. It submits that if the OPP had collected evidence of criminal wrongdoing, charges under the *Criminal Code*<sup>13</sup> could have been laid. The ministry cites Order MO-4370, where the application of section 21(3)(b) was found to apply to an investigation commenced as a result of a report of a missing person.

[34] The ministry also referenced section 21(2)(f) in support of withholding the information, stating that the withheld information is highly sensitive and there is a

---

<sup>12</sup> Order MO-2954.

<sup>13</sup> R.S.C., 1985, c. C-46.

reasonable expectation of significant personal distress if the personal information is disclosed. Relying on Order P-1618, they submit that the personal information of individuals who are “complainants, witnesses or suspects” as part of their contact with the OPP has been found to be “highly sensitive” within the meaning of section 21(2)(f). It submits that this reasoning should be applied to this appeal, as the affected parties are generally identified in this manner, at least by implication.

[35] Relying on Order PO-3712, the ministry also submits that the application of section 21(2)(f) should be upheld where consent of the affected parties has not been provided. It submits that disclosure of the information will result in the affected parties permanently losing control over personal information in which they have an interest, and this invasion of privacy can be distressing. It submits that this is also the case for the Workplace Identification Numbers that were withheld, as the possibility of other individuals accessing human resources information belonging to an employee without their consent would be significantly distressing. The ministry cites Orders PO-3742 and PO-4336 in support of this position.

[36] With respect to the compassionate grounds exception, the ministry states that this exception requires that the ministry be satisfied that disclosure is compassionate based on the circumstances of the request, and that in this case, they are not satisfied that further disclosure meets this threshold. It references Order PO-4087, where it was found that the privacy interests of other individuals “should not automatically yield to the compassionate reasons that may call for full disclosure” to the appellant, and submits that this reasoning is applicable here. It submits that they have already considered that the appellant is requesting information about the death of her loved one, and that they have disclosed information with this in mind, while also respecting the personal privacy of other individuals.

#### *Appellant representations*

[37] In response to the ministry’s representations, the appellant submits that she is seeking the withheld information in the report in order to fully understand what happened on the night her son died. She specifically asks why a flashing light on the river where her son was walking was not investigated further, despite having been reported as being seen by OPP staff in the report. She states that she feels that her son was neglected by the professionals responsible for the search.

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

[38] As stated above, the issue in this appeal is whether disclosure of the withheld information in the report would be an unjustified invasion of their personal privacy under section 49(b).

#### *Presumptions and factors*

[39] If any of the five exceptions in sections 21(1)(a) to (e) apply, the section 49(b)



exemption does not apply to the report. Based on the representations of the parties and my review of the report, I find that none of the exceptions apply.

#### Investigation into a possible violation of law

[40] Under section 21(3)(b), the disclosure of an individual's personal information to another individual 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, except to the extent that disclosure is necessary to prosecute the violation of law or to continue the investigation.

[41] Even if no criminal proceedings were commenced against any individual, as is the case in this appeal, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.<sup>14</sup> I have reviewed the report, and it is clear that the information in the report was compiled as part of an OPP investigation into a report of a missing person, engaging the presumption in section 21(3)(b). Additionally, as the ministry states, the presumption was found to apply in the case of a missing person investigation in Order MO-4370.

[42] In the circumstances of this appeal, where the record at issue contains the personal information of the affected party and the appellant, this presumption is not determinative, but instead a rebuttable presumption that can be weighed against the other relevant factors in section 21(2) below.<sup>15</sup>

#### Highly sensitive information

[43] The ministry submits that the information at issue in the appeal is highly sensitive for the purposes of section 21(2)(f), a factor that weighs in favour of withholding the information from the appellant. They reference Order P-1618 where it was found that the personal information of individuals who are "complainants, witnesses, or suspects" as part of their contact with the OPP was found to be highly sensitive, and Order PO-3712, where 21(2)(f) was found to apply where consent had not been provided by affected parties whose information was contained in law enforcement investigation records.

[44] The withheld information consists of Workplace Information Numbers of OPP employees and the names and contact information of individuals who were involved in the investigation. Information about the appellant's son has also been withheld from the report. Considering that the information in the report was collected as part of a missing person investigation and reveals detailed information about the affected parties, I agree with the ministry's submission that the information at issue in this appeal is

---

<sup>14</sup> Orders P-242 and MO-2235.

<sup>15</sup> Order MO-2954.

highly sensitive for the purposes of section 21(2)(f).

*Balancing the factors and compassionate grounds*

[45] Having found that the section 21(3)(b) presumption against disclosure applies, along with the 21(2)(f) factor weighing against disclosure, I find that disclosure of the withheld information in the report would constitute an unjustified invasion of the affected parties' personal privacy. I uphold the ministry's decision to withhold this information, subject to the discussion about compassionate grounds below and the ministry's exercise of discretion.

[46] Considering the context of the request, I also find that the section 21(4)(d) compassionate grounds exception applies to an observation made by an officer on page 12 of the report. In order for this section to apply, the following conditions must apply:

1. the records must contain the personal information of someone who has died,
2. the requester must be a spouse or "close relative" of the deceased individual, and
3. the disclosure of the personal information of the deceased individual must be desirable for compassionate reasons given the circumstances of the request.<sup>16</sup>

[47] It is not disputed that this statement contains the personal information of a deceased individual, namely the appellant's son who is the subject of the report. Additionally, it is not disputed that the appellant, the subject of the report's mother, is a close relative. I also find that disclosure of this personal information is desirable for compassionate reasons when considering the subject matter of the request.

[48] While I agree that with the ministry's position, referencing PO-4087, that the privacy interests of affected parties do not automatically yield to compassionate reasons for disclosure, in this appeal I find that it is appropriate for some additional information to be disclosed. The information on page 12 relates to the circumstances of the death of the appellant's son and only contains his personal information, along with contextual information about the OPP's search efforts. I find, considering the appellant's stated purpose of wanting more information about what happened to her son, the information should be disclosed under section 21(4)(d).

[49] I also note that the appellant stated in her representations that she is specifically seeking additional information about a flashing light on the river that was mentioned in the report. While it is possible that such information could also be disclosed for compassionate grounds, there is no withheld information of this nature in the report.

---

<sup>16</sup> Orders MO-2237 and MO-2245.

*Absurd result*

[50] In addition to disclosing the above information under the compassionate grounds exception, I also find that the absurd result principle applies to some of the information in the record. An institution might not be able to rely on the section 49(b) exemption in cases where the requester originally supplied the information in the record or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.<sup>17</sup>

[51] For example, the “absurd result” principle has been applied when:

- the requester sought access to their own witness statement,<sup>18</sup>
- the requester was present when the information was provided to the institution,<sup>19</sup> and
- the information was or is clearly within the requester’s knowledge.<sup>20</sup>

[52] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.<sup>21</sup>

[53] Based on my review of the report there are some portions that, if found to be exempt from disclosure, would lead to an absurd result. In particular, on page 9, and duplicated on page 16, there are portions of a summary of a phone call that the appellant made to the police, where addresses of the appellant’s family members – as stated by the appellant to the OPP – are withheld. This information, having been supplied by the appellant to the police, is clearly within the appellant’s knowledge. I find that disclosing this information would not be inconsistent with the purposes of the personal privacy exemption, and I order the information disclosed.

**Issue D: Did the ministry exercise its discretion under sections 49(a) and 49(b)?**

[54] As described above, I find that certain information is exempt from disclosure under section 49(a), read with section 14(1)(l), and section 49(b).

[55] The sections 49(a) and 49(b) exemptions are discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

---

<sup>17</sup> Orders M-444 and MO-1323.

<sup>18</sup> Orders M-444 and M-451.

<sup>19</sup> Orders M-444 and P-1414.

<sup>20</sup> Orders MO-1196, PO-1679 and MO-1755.

<sup>21</sup> Orders M-757, MO-1323 and MO-1378.

[56] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[57] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>22</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>23</sup>

***Representations, analysis and finding***

[58] The ministry submits that it acted appropriately in exercising its discretion to not release the personal information and law enforcement information contained in the report that are the subject of the appeal. It states that it acted in accordance with its usual long- standing practices and note that it provided the appellant with access to their own personal information, to that of their loved one, and with access to information about another individual who provided their consent. It states that in doing so it achieved an appropriate balance between protection of the interests protected by sections 49(a), read with section 14(1)(l), and 49(b) and the principle of compassionate disclosure.

[59] The appellant did not provide specific representations on the ministry's exercise of discretion.

[60] I have reviewed the considerations relied upon by the ministry and I find that it properly exercised its discretion in response to the access request. Based on its representations, it is clear that it considered the purposes of the *Act* and sought to balance the appellant's interest in accessing the full records with the protection of the affected parties' privacy when making its access decision.

[61] I find that the ministry did not exercise its discretion to withhold the appellant's or affected parties' personal information for any improper purpose or in bad faith, and that there is no evidence that it failed to take relevant factors into account or that it considered irrelevant factors. Accordingly, I uphold the ministry's exercise of discretion in denying access to the portions of the report that I have not ordered disclosed.

---

<sup>22</sup> Order MO-1573.

<sup>23</sup> Section 54(2).

**ORDER:**

1. I uphold the ministry's decision to withhold portions of the report.
2. I order the ministry to disclose portions of the report on pages 9, 12, and 16. I order the ministry to disclose this information by **January 29, 2024** but not before **January 22, 2024**. I have provided the ministry with a copy of the record, highlighting this information in yellow. To be clear, only the information that is highlighted in yellow should be disclosed to the appellant.
3. In order to verify compliance with Order provision 2, I reserve the right to require the ministry to provide me with a copy of the report disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

December 22, 2023 \_\_\_\_\_