

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4530

Appeal PA23-00259

Ministry of the Solicitor General

July 17, 2024

**Summary:** An individual requested fire inspection records about a particular fire. The ministry provided some of these records, but denied access to others. The ministry said that it did so to protect other people's personal privacy (section 21(1) of the *Act*).

The adjudicator did not agree that the parts of records that the individual wanted contained other people's personal information. She ordered the ministry to disclose the withheld information to the individual.

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

**Orders and Investigation Reports Considered:** Orders PO-3088 and PO-3279.

### OVERVIEW:

[1] The requester submitted a request to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records from the Office of the Fire Marshal (OFM) relating to a fire at a specified residential property. The OFM is a branch of the Community Safety Division of the ministry; one of its roles is conducting fire investigations. The requester asked for the OFM's complete file, and any reports or records relating to the fire.

[2] The ministry granted partial access to responsive records but withheld portions of

a Fire Investigation Report, citing the mandatory personal privacy exemption in section 21(1) of the *Act*, as well as a discretionary law enforcement exemption.<sup>1</sup> The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the appellant narrowed the scope of their appeal, stating that they were only seeking access to the information withheld on four pages of the Fire Investigation Report. The ministry stated that it would not be changing its decision regarding access to those pages.

[4] As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeals process. The adjudicator decided to conduct an inquiry and sought and received representations from the ministry and the appellant. These representations were shared in accordance with the IPC's *Practice Direction 7*. The appeal was then transferred to me. I reviewed the parties' representations and determined that I did not need to hear from them further before making my decision.

[5] For the reasons that follow, I find that the withheld information is not personal information, so that the mandatory personal information exemption in section 21(1) does not apply. Accordingly, I order the ministry to disclose the portions of the Fire Investigation Report that remain at issue to the appellant.

## **RECORD:**

[6] The record at issue is a Fire Investigation Report (the report). Portions of pages 17 – 20 have been withheld.

## **DISCUSSION:**

[7] In order to determine whether the personal privacy exemption at section 21(1) of the *Act* applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

[8] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Section 2(1) gives a list of examples of personal information:

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<sup>1</sup> In its representations, the ministry advised that it was no longer relying on s.14(1)(l) of the *Act*. The application of that section is no longer at issue in this appeal.

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints, or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual except if they relate to another individual,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[9] This list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>2</sup>

[10] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

[11] Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.<sup>4</sup>

[12] In its representations, the ministry states that it has withheld information including the street address where the fire occurred and the cause of the fire. It posits that this information could likely identify the actions of one or more of the residents of the home, who the ministry describes as the subjects of the OFM fire investigation. The ministry further states that the residents of the house and individuals in the house at the time of

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<sup>2</sup> Order 11.

<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>4</sup> Sections 2(2.1) and (2.2) of the Act. See also Orders P-257, P-427, P-1412 and PO-2225.

the fire are a small group, and that releasing the record could be expected to reveal the identities of one or more of these individuals.

[13] The ministry relies on Order PO-3279 for its position that property-related information may be personal information if it reveals something of a personal nature about an individual. The ministry's position is that the withheld information is personal information because "it identifies the likely actions of one or more of a small group of individuals which relates to the cause of a fire."

[14] The appellant states that they are not seeking any personal information. They are already aware of the address of the property, which they specified in their request, and are not seeking access to it.

[15] The appellant disagrees with the ministry's position that disclosure of the withheld information could potentially lead to identification of the individual residents of the property. The appellant states that it is clear from the portions of the records they received that the ministry withheld multiple ignition hypotheses relating to the cause of the fire. The appellant notes that these hypotheses are not personal information, as they set out the potential causes of the fire, as considered by the investigation. They note that they find it difficult to comprehend how investigation findings of this type could be personal information, when they do not themselves provide a way for the individuals to be identified. The appellant also states that the ministry's reasoning is speculative and would permit non-disclosure of findings in any investigation where a small group of individuals is potentially involved.

[16] The appellant also distinguishes Order PO-3279, referred to by the ministry, from the case at hand. They state that the materials described in that order included details of a post-mortem exam, including the deceased individual's medical condition, employment information, and assets. They note that there are no indications that any information at issue in this case approaches anything as personal as that.

[17] In its reply representations, the ministry clarified that its position was that it "would not disclose personal information *'where cause purports to assign blame or to identify individual actions'*" [emphasis in original]. The ministry stated that the determinative factor was not the small number of individuals living in the house, but rather "that the particular actions that occurred are more attributable to one or more individuals, thereby making them identifiable and the individual or individuals have not been notified of this appeal in accordance with procedural rules of fairness."

## **Analysis and findings**

### ***Notification***

[18] In its representations, the ministry stated that the IPC should notify the individuals present at the time of the fire. Their information is included in portions of the report that are not at issue in this appeal, and which the ministry withheld from the requester. The

ministry states that those individuals should have an opportunity to address whether the information in the records should be disclosed. The ministry did not notify these individuals, at the request stage or later, so far as I am aware.

[19] During the appeal, I attempted to notify the individuals who appeared to be present at the time of the fire using the contact information available to me. These letters were returned to sender.

### ***Personal Information***

[20] I must first consider whether the withheld portions of the pages at issue contain the personal information of the residents of the house or those in the house at the time of the fire. Those are the individuals that the ministry states may have their identities revealed if the withheld information were to be disclosed.

[21] As noted by the appellant, the pages remaining at issue in this appeal include sections dealing with ignition sequences. One section also provides a conclusion on the cause of the fire. The appellant is aware of this because the ministry disclosed the titles for the individual sections, as well as most of the information in them.

[22] The ministry cites Order PO-3279 for the position that property-related information may be personal information if it reveals something of a personal nature about an individual. While that statement is correct, it is useful to delve deeper into both the context of Order PO-3279, and the previous IPC orders that the adjudicator reviewed prior to making his decision in that order.

[23] Order PO-3279 also dealt with the question of whether records relating to the investigation of a house fire contained personal information. In making his determination on those records, the adjudicator considered, and adopted, the reasoning set out in Order PO-3088.

[24] The circumstances of Order PO-3088 required that the adjudicator in that appeal determine whether disclosing the results of environmental tests from a homeowner's address would reveal personal information about the homeowner. In setting out her reasoning, the adjudicator included a survey of IPC jurisprudence on the distinction between information about a property and personal information. The adjudicator followed the reasoning from these cases, which identified that "the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals."<sup>5</sup> She pointed to examples of information in previous orders that had been found to be about a property and not about an individual. These included water analysis and test results about an identified property, and the fact that a property had previously been considered as a possible location for a landfill site. Adopting this line of reasoning in Order PO-3088, the adjudicator found that the results of environmental tests were not

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<sup>5</sup> MO-2053.

personal information.

[25] In Order PO-3279, the adjudicator applied this reasoning to the fire records before him, stating as follows:

[30]... In my view, the fact that the information in the records at issue in this appeal is associated with a fire at a specific address does not automatically result in all the information in the records being personal information. In that regard, I find that some of the information at issue, even though associated with a fire at a specified address, is about the property rather than about the deceased, and disclosing it would not reveal something of a personal nature about an individual or individuals. In this regard, I find that the consequences of the fire to the house and its path, is about the property, rather than the deceased. On the other hand, for example, information about certain of the personal possessions of the deceased that were affected by the fire, and, in the circumstances of this appeal, the cause of the fire, qualify as the deceased's personal information.

[31] The records do contain recorded personal information about various individuals (including the deceased) in their personal capacity, including information relating to age and sex (paragraph (a)[of the definition of "personal information" in section 2(1) of the *Act*]), medical history (paragraph (b)), address and telephone number (paragraph (d)), the views or opinions of other individuals about the deceased (paragraph (g)), as well as other personal information relating to the identifiable individuals, including the deceased. All of this information falls within the scope of the definition of personal information at section 2(1) of the *Act*.

[26] I agree with the adjudicator's assessment in Order PO-3279 that information associated with a fire at a specific address does not necessarily mean that all the information in the records is personal information. Whether information reveals something personal about an individual or individuals depends on the information and the context in which it is found, rather than its mere presence in fire investigation records. I note that the ministry has also applied this reasoning, as it disclosed a great deal of the information within the report to the appellant.

[27] The remaining withheld information does not include any of the categories of personal information listed in section 2(1) of the *Act*, as described in paragraph 31 of Order PO-3279.<sup>6</sup> Notably, it does not include any individuals' names. The records do not refer to or otherwise discuss any individual and do not associate the cause of the fire with any particular individual. On their face, the records do not appear to contain information that reveals something personal about any individual.

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<sup>6</sup> As noted at paragraph 14, the address of the property is found within those records, but the appellant in this appeal has confirmed they are not seeking that information, so the address is not at issue here.

[28] Instead, the withheld portions of the report include general information pulled from published texts on fire analysis. They also contain expert analysis that uses this published information, together with the evidence gathered from the fire itself, to reach a conclusion regarding the cause of the fire. Overall, the withheld information in the report is similar to the information described as the "consequences of the fire to the house and its path" in Order PO-3279, which was found to be information about the property. The difference is that in this case, the ministry has withheld the analysis flowing from the physical evidence, while largely providing the evidence itself.

[29] The ministry sees a clear distinction between the underlying physical evidence left by the fire, and any portion of the analysis or conclusion that could lead to identifying actions or assigning blame in any way associated with the fire. The ministry's position is that disclosure of the cause of the fire, and the analysis leading up to determining the cause, is personal information because only a limited number of individuals (those in the house at the relevant time) can be associated with the cause of the fire. In its view, information in the records should not be disclosed if it assigns blame in any way or identifies actions, regardless of whether the records associate any particular individual(s) with those actions or the cause of the fire.

[30] I disagree. Fundamentally, personal information must reveal something of a personal nature about an individual or individuals. The analysis and conclusions relating to the cause of the fire in the relevant pages of the report do not reveal anything personal about an individual. They provide information about the fire and its likely cause, not about any identifiable individual.

[31] I also note that the ministry's application of this distinction has led to some logical inconsistencies between the information that was withheld and that which was not. For example, the ministry withheld information from published texts on fire analysis as personal information. In one instance, the ministry provided access to the citation and the beginning of the quote from the cited text but withheld the remainder of the quote as personal information. The withheld portion does not reveal anything of a personal nature about any individual. Both the withheld and disclosed portions provide physical values associated with an ignition hypothesis. Because the ministry determined that one of these hypotheses could purport to assign blame to any of the group of individuals in the residence, they withheld physical values associated to one means of combustion, but not another. To me, this result indicates that the ministry applied the wrong standard in determining what personal information is present in the records at issue.

[32] I acknowledge that in Order PO-3279 the cause of the fire was found to be personal information – in that case, of the identifiable deceased individual. However, the adjudicator in that case specified that determination was made in the circumstances of that appeal. Similar circumstances do not apply here. In this case, from my review of the records at issue, the withheld portions do not contain anything that reveals something of a personal nature of any identifiable individual or individuals. It is information relating to a physical property, the damage it suffered due to a fire, and the analysis that was

conducted to reach a conclusion on the cause of that fire. The withheld portions of the records at issue do not name or otherwise refer to any individual(s), and any actions or blame that the ministry may be referring to are not associated with any individual(s) within those pages.

[33] I find that the pages at issue do not contain personal information within the meaning of the definition of that term under section 2(1) of the *Act*, aside from the address, which the appellant does not seek access to.

***Application of section 21(1)***

[34] The ministry claims that the withheld information is exempt under section 21(1) of the *Act*. Section 21(1) is a mandatory personal privacy protection, which states that a head shall refuse to disclose personal information to any person other than the person to whom the information relates, unless certain exceptions apply.

[35] As section 21(1) of the *Act* only prohibits the disclosure of personal information, and I have found that the withheld portions of the records at issue do not contain personal information, I find that the ministry cannot withhold the information at issue pursuant to that section.

[36] Accordingly, I order the ministry to disclose pages 17-20 of the records, in their entirety, with the exception of the property address that it should sever from the top of page 20.

**ORDER:**

1. I order the ministry to disclose to the appellant pages 17-20 of the records, except for the property address at the top of page 20 of the report, by **August 22, 2024**, but not before **August 16, 2024**.
2. To confirm compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the record as disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Jennifer Olijnyk  
Adjudicator

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July 17, 2024