

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4562

Appeal PA21-00433

Ministry of the Attorney General

October 16, 2024

Summary: A journalist asked the ministry for a record listing each complaint filed against a police officer to the Complaints Director of the Law Enforcement Complaints Agency during an 11-year period. The journalist did not want aggregate information, but rather, several details about each complaint (such as the police's officer's name and badge number, the police service where they were employed, the seriousness of the allegation, and the status of the complaint). The ministry responded to the request and produced a spreadsheet about 40,000 lines long. The ministry disclosed all information in the record except the names and badge numbers of the police officers who had been complained about. The ministry said that it had to protect another person's personal information (section 21(1)).

The adjudicator agreed that the names and badge numbers are personal information and should not be shared for that reason. She considered the journalist's view that it is in the public interest (section 23) to disclose the names and badge numbers anyway, but she was not persuaded of that. As a result, she agrees with the ministry's decision to withhold the names and badge numbers in the spreadsheet.

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

Orders Considered: P-1134, PO-2225, PO-2525, PO-3025, PO-3075, PO-3617, PO-4108, PO-4418-F, M-1053, and MO-2019.

Cases Considered: *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673 (CanLII); *Ontario Medical Association, et al. v. Information and*

Privacy Commissioner of Ontario, et al., 2019 CanLII 29760 (SCC); *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399 (CanLII); *Calgary (Police Service) (Re)*, 2008 CanLII 88728 (AB OIPC); *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 SCR 815.

OVERVIEW:

[1] A reporter seeks the names and badge numbers of police officers who were the subject of complaints made to the Independent Police Review Director (OIRPD), now called the Law Enforcement Complaints Agency (LECA).¹ The head of the LECA is the Complaints Director.² In this order, I explain why the names and badge numbers of the police officers are exempt from disclosure under the *Freedom of Information and Protection of Privacy Act* (the *Act*) and dismiss the appeal.

[2] At the time of the request, the reporter was directed to file his request through the Ministry of the Attorney General (the ministry).

[3] The reporter's request said:

This is a request to the Office of the Independent Police Review Director, which directed me to file through the Ministry of the Attorney General.

Please provide a record-level (non-aggregated) copy of the Office of the Independent Police Review Director Legal File System Database in a machine-readable format (i.e. Microsoft Excel, Access, SQL or CSV file format, not .PDF) going back to the database's inception consisting of the following fields: Received date, Name of officer, Badge number, Police Service, Classification, Screening Outcome, Allegations, Findings, Closing reason (for complaints screened out) – e.g., "Not in the Public Interest", "Frivolous", Screening date, Current status of file." As clarified on [date].

[4] The ministry issued a decision granting partial access to the data, compiled in a spreadsheet (about 40,000 lines long).

[5] The ministry withheld all lines in the spreadsheet field for the names and badge numbers of police officers under certain section 65(6) exclusions under the *Act*, and the mandatory exemption at section 21(1) (personal privacy) of the *Act*.³ It also relied on certain discretionary law enforcement exemptions at sections 14(1)(a) (law enforcement matter), 14(1)(b) (law enforcement investigation) and 14(1)(f) (right to fair trial) of the

¹ As of April 1, 2024, the Independent Police Review Director (OIRPD) became the Law Enforcement Complaints Agency (LECA) under the *Community Safety and Policing Act, 2019*, S.O. 2019, c. 1, Sched. 1.

² Although all but the ministry's final (supplementary) representations refer to the OIRPD, I will be referring to LECA and using the current title of the director (Complaints Director) in this order.

³ The ministry relied on the exclusions at sections 65(6)1 and 65(6)3 (employment or labour relations) of the *Act*.

Act for certain lines in the field, in the alternative. Given my findings in this order about sections 21(1) and 23, I do not consider these alternative claims.

[6] The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). He raised the public interest override at section 23 of the *Act*.

[7] The adjudicators previously assigned to the file conducted an inquiry, during which the ministry and the appellant provided representations on the issues in the appeal. During the inquiry, the ministry narrowed the scope of the appeal, advising that it was no longer relying on the section 65(6) exclusions.

[8] When the appeal was transferred to me, I reviewed the file and determined that I should invite further representations.⁴ Later, after requesting and receiving the unredacted record, I invited supplementary representations regarding how exemptions applied to several thousand lines of the record, as these lines did not contain names or badge numbers of individual police officers. In response, the Complaints Director provided detailed explanations for this, issued a revised access decision about those lines, and released a version of the record to the appellant containing those lines.⁵

[9] Since these lines of spreadsheet have been disclosed to the appellant, they are no longer at issue in this appeal.

[10] For the reasons that follow, I uphold the ministry's decision to withhold the names and badge numbers at issue and dismiss the appeal.

RECORDS:

[11] The record is a spreadsheet of compiled data from the Complaints Director's Legal File System Database. The appellant received the information in all fields about each complaint except the field entitled "Respondent officer &/Badge Number." That is, he received the following information about each complaint:

- date the complaint was received,
- police service involved,

⁴ I also asked the ministry for an updated version of the record due to the time-sensitive nature of the law enforcement exemptions claimed. The ministry would not do so. I later determined that it was not necessary to further pursue this, given my decision about sections 21(1) and 23.

⁵ Since the Complaints Director's revised access decision did not contain the detailed explanations in its supplementary representations (and it did not oppose sharing them with the appellant), I shared a copy of these representations with the appellant, for his information.

- classification of the complaint (for example, if it was a complaint about conduct or a police service),
- screening outcome,
- screening date,
- allegations,
- most serious finding,
- closing reason, and
- current status.

[12] The remaining information at issue consists of the names and/or badge numbers of police officers withheld in the approximately 9,000 lines of a spreadsheet remaining at issue.

[13] The Complaints Director explained that several thousand lines of the record do not contain a name or badge number in the field for that information (for reasons explained in its representations). As mentioned, the appellant received a version of the record reflecting this.

[14] The Complaints Director explained that for a subset of these lines without names and/or badge numbers, it would unreasonably interfere with the Complaints Director's operations to extract that information from its archives or other sources. Since these portions of the record do not include responsive information, and I will not expand the scope of this appeal to include additional issues that may flow from them.⁶

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 at section 21(1) apply to the information at issue?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption?

⁶ For example, whether this information amounts to a "record" within the meaning of that term under the *Act* and the Regulation, or what fees the Complaints Director would be entitled to charge for processing such a request

DISCUSSION:

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

[15] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates. For the following reasons, I find that the information at issue in each line of the spreadsheet is personal information relating to the police officer(s) that were the subject of a complaint.

What is “personal information”?

[16] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

Recorded information

[17] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁷

About

[18] 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. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁸

[19] Sections 2(3) and (4) of the *Act* exclude some information from the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[20] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.⁹

⁷ See the definition of “record” in section 2(1).

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁹ Orders P-1409, R-980015, PO-2225 and MO-2344.

Identifiable individual

[21] 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.¹⁰

What are some examples of “personal information”?

[22] Section 2(1) of the *Act* gives a list of examples of personal information, which in part says:

“personal information” means recorded information about an identifiable individual, including,

(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, . . . and

(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.

[23] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”¹¹ For example, records reflecting interactions with an institution can constitute “personal information” under the introductory wording of the definition of that term (“recorded information about an identifiable individual”) in that they would show the *fact of* the individual’s interaction with the institution.¹²

Are the names and/or badge numbers at issue “personal information” within the meaning of that term in the Act?

The ministry’s position

[24] The ministry submits that although the names and badge numbers of police officers would not usually be considered “personal information,” the names and badge

¹⁰ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

¹¹ Order 11.

¹² See, for example, Orders MO-4429, MO-4473-I, and MO-4487 which involved information that would reveal the *fact of* interactions with police, or Order MO-3891 involving information that would reveal the fact of interactions with a town to complain about a business.

numbers at issue here exist in a different context: the context of a public complaints process where members of the public file complaints about the conduct of police officers, either in their professional capacity or in their private off-duty lives.

[25] The ministry relies on Orders PO-3075 and PO-4108 to submit that information relating to complaints about conduct is “personal information.” Briefly:

- In Order PO-3075, the IPC found that the information in the records relating to those police officers who were the subject of investigations¹³ into their conduct, takes on a different, more personal quality. The IPC held that this information qualifies as the personal information of these officers.
- In Order PO-4108, the records related to a complaint against police officers to the OIRPD relating to their conduct in the course of their employment. The IPC held that the officers were the focus of an investigation into a complaint filed by the appellant, the information in the records relating to them takes on a personal quality. The adjudicator noted that there is a long line of IPC orders that have held that information in records relating to a complaint about the conduct of an individual,¹⁴ and an examination of that conduct contains that individual’s personal information under the definition at section 2(1) of the *Act*.

[26] The ministry notes that the appellant relied on the Ontario Court of Appeal ruling¹⁵ (upholding Order PO-3617, or “the doctors’ billings case”) in filing his appeal. However, the ministry argues that the Court of Appeal did not make a blanket statement in that case, that doctors’ names should be released in any access request.

The appellant’s position

[27] Overall, the appellant’s view is that information about complaints against police officers is not their personal information. The appellant highlights police officers’ unique role, including their “monopoly on violence.” He argues that police officers are “not regular members of society,” that they are “never truly ‘off-duty.’”¹⁶ He points to high-profile news stories of individuals that died in interactions with police, and the practice in certain American jurisdictions to publish the names of police officers that have been the subject of complaints.

[28] The appellant argues that the names and badge numbers at issue here are not

¹³ Specifically, a police professional standards board investigation and subsequent Ontario Civilian Commission on Police Service review.

¹⁴ The adjudicator cited Orders M-757, P-165, P-448, P-1117, P-1180, PO-1912, PO-2525 and PO-3341.

¹⁵ *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673 (CanLII). Application to the Supreme Court of Canada to appeal from the judgment of the Court of Appeal for Ontario - *Ontario Medical Association, et al. v. Information and Privacy Commissioner of Ontario, et al.*, 2019 CanLII 29760 (SCC).

¹⁶ I note that the appellant does so by relying on court decisions discussing matters such as police officers’ duties if they are witnesses to a crime while off-duty.

personal information. In support of this, he relies on the doctors' billings case, characterizing that appeal as one "reflect[ing] something about [the doctors'] professional conduct."

[29] In addition, the appellant submits that this appeal is different from other appeals where the IPC found that information regarding complaints about conduct is personal information (such as Orders PO-4180 and PO-2525). He notes that, unlike in other appeals, he does not seek access to detailed case files, anything about the police officers' employment, any of the officers' views or opinions, or any narrative about the nature of the complaints. The appellant submits that his request is "far simpler in scope" than the orders cited by the ministry, in that he is seeking "tombstone" information, and not "[t]he complex matrix of information and request intent that affords the records a 'personal quality' in [Orders] PO-4180 and PO-2525."

[30] The appellant also submits that given the Complaints Director's role, the Complaints Director would have to reject all access requests on the basis that the information sought is personal information of police officers. He argues that this is the ministry "attempting to extend this exemption beyond all recognition."

[31] For the purpose of this order, it is not necessary to summarize the parties' further representations on this issue, as they reiterate or relate to their previously made points in a way that does not ultimately change my decision.

Analysis/findings

[32] As I explain below, I find that the name(s) and/or badge number(s) at issue in each line of the spreadsheet is the personal information of each individual to whom it relates.

[33] The information at issue in the spreadsheet consists of names and badge numbers. I find that disclosure of names may reasonably identify the individuals named from the spreadsheet itself. I also find that, where only a badge number has been withheld, an individual may still reasonably be identified from the badge number along with other information available to a reader. By disclosing the names and/or badge numbers at issue, the police officers that were subject to complaints are identifiable.¹⁷

[34] The question, then, is whether that information identifies these police officers in a personal capacity, and if not, whether the information may nevertheless qualify as "personal information" as that term is defined in section 2(1) of the *Act*. Order PO- 2225 established a two-step analysis for determining whether information should be

¹⁷ In my view, it is possible that a complainant may become identifiable too if a police officer's name and/or badge number is disclosed, in some situations (for example, in relation to complaints made to police services that received few complaints). However, this was not argued and it is not necessary to delve into this possibility, given my findings in this order.

characterized as “personal” or “business, professional or official.”¹⁸ This two-step analysis, which the IPC has consistently adopted and applied (including in the doctors’ billings case),¹⁹ is:

1. In what context do the names of the individuals appear? Is it in a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?²⁰

[35] I agree with the analysis and approach in these orders, and I adopt it here.

[36] As the ministry notes, for routine police records, the names and badge numbers of police officers engaging in various police functions would not normally be considered “personal information.”

[37] However, here, the record requested is not one generated in the course of the police officers’ official responsibilities (which is routinely disclosed by institutions or ordered to be disclosed by the IPC). Rather, it is a record compiled in response to the appellant’s request for a list of police officers that were the subject of complaints by the public to the Complaints Director. While this information would not exist but for the police officers’ employment status or history, that does not change the nature of the information requested or transform the context to a professional or official one.

[38] Although the appellant disagrees that there is any information that qualifies as personal information in this appeal, I am persuaded that the IPC orders cited by the ministry are relevant and applicable here. The appellant asks that his request and appeal be treated differently than those cases because, for example, he did not seek detailed case files and other types of information requested in those appeals. However, a request does not have to be one for detailed case files or for police officers’ views or opinions, or for narratives about a complaint to be “personal information,” as that term is defined in the *Act*. Accepting such a view would be to apply an overly narrow interpretation of the definition of “personal information” and misread the IPC’s many rulings about this issue.

[39] Rather, I agree with the reasoning in a long line of IPC orders finding that information relating to complaints about conduct is personal information, and I adopt that

¹⁸ As noted by the adjudicator in Order MO-3420, the quote from Order PO-2225 refers to “official” as “official government,” but the word “government” is not contained in the definition in the *Act*.

¹⁹ See, for example, Orders PO-3617, PO-3960-R, and MO-3449-I. See also *Ontario Medical Association v. (Ontario) Information and Privacy Commissioner*, 2018 ONCA 673.

²⁰ The IPC’s Notice of Inquiry, which was sent to both parties in the appeal, contains questions inviting parties to provide representations in this vein.

reasoning here.

[40] In addition, I find that the context of doctors' billings case is clearly distinguishable from the circumstances of this appeal. While the list in the doctors' billings case may have led to questions about the billing practices about some doctors, the record in that appeal was not one of doctors whose *conduct* had been the subject of conducts complaints. And as the ministry notes, the Ontario Court of Appeal did not rule that doctors' names could be disclosed in response to just any access request. I pause to note that the Supreme Court of Canada dismissed an application to appeal from the judgement of the Ontario Court of Appeal, thereby leaving the Ontario Court of Appeal ruling to stand.²¹

[41] I also do not accept the view that finding the names and badge numbers of the police officers in the record to be "personal information" is a simplistic approach to this issue. On the contrary, in my view, the position that police officers are a group of individuals who, due to their role (including the power that comes with it), cannot have information associated with them in a personal capacity, even off-duty, is too simplistic an approach to the question of whether information relating to an individual who happens to be a police officer is personal information under the *Act*. And it is under the *Act* that this question must be answered. The fact that police officers bear arms and can use force in the course of their work was true when the Legislature enacted the *Act* and turned its mind to the exemptions and exclusions within it. It was also true at all the times that the Legislature has amended the *Act* since then. Yet, the *Act* does not contain language that limits the protection of personal privacy – one of its main purposes – to only those individuals who are not police officers. As much as the *Act* exists to enhance transparency and accountability of government institutions, its other purpose of protecting the personal information of individuals in government-held records is equally important.

[42] Furthermore, while off-duty police officers may have certain ethical and professional responsibilities requiring them to use their policing skills in certain situations, this does not lead me to conclude that their names and badge numbers cannot be "personal information" regardless of the context in which that information exists. The requested record relates to complaints about police officers' conduct. Again, although it would not *exist* if the individuals identifiable in it were not police officers, this does not mean that the *context* in which these names and badge numbers appears is a business, professional, or official capacity. I do not find it reasonable to accept that this information reveals *nothing* personal about them. Nor am I persuaded that the nature of a police's officer's role removes the personal element from this type of information in the record before me.

[43] Therefore, based on my review of the request, the parties' representations, and the information at issue itself, I find that the context in which each police officer's name

²¹ *Ontario Medical Association, et al. v. Information and Privacy Commissioner of Ontario, et al.*, 2019, *supra*.

and/or badge number appears in the record is inherently personal.

[44] Given this context, I find that disclosure of each name and/or badge number would reveal something of a personal nature about each of the individuals named, referenced by badge number, and/or otherwise identifiable from the record. That is, disclosure would reveal the fact that a particular police officer was the subject of a complaint to the Complaints Director. This information qualifies as personal information of that police officer within the introductory wording of the definition of that term (“recorded information about an identifiable individual”). While the fact of a complaint neither proves nor disproves any improper conduct alleged, it is itself information that reflects some of a personal nature about the police officer.²² If a police officer’s name or badge number appears on the list more than once, that fact is also that police’s officer’s “personal information” under the introductory wording of the definition of that term.

[45] For these reasons, I uphold the ministry’s determination that the information at issue is personal information within the meaning of the *Act*. I find that the name and/or badge number in each line of the spreadsheet is the personal information of each police officer in the form of his or her name and/or badge number, under paragraphs (b), (c) and (h) of the definition of “personal information” at section 2(1) in the *Act*. It is also “personal information” within the meaning of the introductory wording of the definition of that term.

[46] I will consider whether the appellant has a right of access to the personal information of each individual to whom it relates under the mandatory personal privacy exemption at section 21(1) of the *Act*, next.

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

[47] The ministry withheld the information at issue as exempt from disclosure under the mandatory personal privacy exemption at section 21(1) of the *Act*. For the reasons that follow, I uphold the ministry’s decision.

[48] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[49] Section 21(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester.

[50] This general rule is subject to six exceptions. If any of the five exceptions covered

²² As an aside, although I am not obliged to follow rulings in other provinces interpreting different legislation, I note that even in the Alberta Information and Privacy Commissioner order (F2008-009) [Calgary (Police Service) (Re), 2008 CanLII 88728 (AB OIPC)] on which the appellant relies in his public interest override arguments, the adjudicator found that the information about police officers that were the subject of complaints was also the personal information of those police officers.

in sections 21(1)(a) to (e) exist, the institution must disclose the information. The parties agree, and I find, that none of the sections 21(1)(a) to (e) exceptions apply. Under the sixth exception, at 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 from disclosure. Sections 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

The parties' positions about the exception at section 21(1)(f)

[51] The ministry submits that the exception at section 21(1)(f) does not apply (in other words, that disclosure of the personal information of the police officers *would* be an unjustified invasion of their personal privacy). It also submits that the presumption against disclosure at section 21(3)(b) (investigation into possible violation of law) applies. The ministry also argued that several section 21(2) factors apply weighing against disclosure of the personal information at issue.²³

[52] The appellant submits that the presumption "likely applies." He did not cite any section 21(2) factors favouring disclosure (listed or unlisted). Although he provided extensive representations on the other issues in this appeal, his representations on section 21(1) were limited, noting that he would instead argue why the public interest override applies.

Analysis/findings

[53] Considering the nature of the personal information withheld (including the context in which it appears) and the parties' representations, I find that the names and badge numbers at issue are exempt from disclosure under the mandatory exemption at section 21(1).

Section 21(3) presumptions

[54] The section 21(3) presumptions outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of these presumptions applies, the personal information *cannot* be disclosed unless either section 21(4) or section 23 (public interest override) applies.²⁴ There is no suggestion that section 21(4) applies; I will consider section 23 under Issue C in this order.

Section 21(3)(b) – investigation into a possible violation of law

[55] Although the parties appear to agree that the presumption at section 21(3)(b) applies to certain lines in the record, I find that it does not.

²³ The ministry cited the factors listed sections 21(2)(e) to (i) and two unlisted factors: ensuring public confidence in an institution and the expectation of confidentiality.

²⁴ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[56] The ministry submits that investigations conducted as a result of public complaints filed with the Complaints Director qualify as an investigation into a possible violation of law for the purpose of the presumption at section 21(3)(b) of the *Act*. While I agree with that in principle, the IPC considers whether the personal information was *compiled* and is *identifiable as part of* an investigation into a possible violation of law, for section 21(3)(b).

[57] Based on the evidence before me, the spreadsheet at issue was generated in response to the appellant's request. It is a summary document covering several years and all police services across Ontario. It was neither "compiled. . . as part of an investigation into a possible violation of law," nor is it "identifiable" as part of any particular investigation into a possible violation of law for use in any such investigation compiled. Therefore, I find that none of the personal information in the record qualifies for the presumption at section 21(3)(b) of the *Act*.²⁵

Section 21(3)(d) – employment or education history

[58] Although the ministry did not claim the presumption at section 21(3)(d), I must consider it given the nature of the information requested and any right of access is considered under the mandatory (not discretionary) personal privacy exemption.

[59] The presumption at section 21(3)(d) of the *Act* covers several types of information connected to employment or education history, including, for example: start and end dates of employment and number of years of service.²⁶ Information contained in resumes²⁷ and work histories²⁸ also falls within the scope of section 21(3)(d).

[60] A person's name and professional title *alone* do not constitute "employment history" and are not covered by the presumption.²⁹

[61] However, in this appeal, as discussed, part of what is revealed by the person's name and/or badge number being disclosed in the record is the fact of a complaint (or complaints) about their conduct having been made about them. The ministry has also disclosed the rest of the fields in the spreadsheet so releasing the name and/or badge number withheld in each field would also reveal other details related to the fact of the complaint. These complaints, in turn, relate to each police officer's employment history. For complaints about off-duty conduct, these would still be part of the police officer's employment history, in my view, because the complaints were directed to a body connected to the police officer's employment (with the potential to affect that

²⁵ The IPC similarly rejected the argument that this presumption applies to such summaries in Orders MO-2019 and PO-4411-F, for charts summarizing "grow lab" and homicide information, respectively.

²⁶ Orders M-173, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

²⁷ Orders M-7, M-319 and M-1084.

²⁸ Orders M-1084 and MO-1257.

²⁹ Order P-216.

employment).

[62] In the circumstances, I find that the presumption at section 21(3)(d) applies to the personal information at issue in the spreadsheet. Disclosure of the personal information is presumed to be an unjustified invasion of the personal privacy of each police officer involved, and this cannot be overcome by any section 21(2) factors that may weigh in favour of disclosure. As a result, it is not necessary to consider the ministry's arguments regarding any of the factors it listed as weighing against disclosure.

[63] For these reasons, the section 21(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 21(1)(f) has not been proven.³⁰ The exemption at section 21(1) is mandatory. Therefore, the ministry cannot disclose the names and badge numbers in the record unless the public interest override applies. I consider that question next. Given my findings in this order, it is not necessary to also consider the ministry's alternate law enforcement exemptions claims over a few hundred of the lines in the spreadsheet.

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

[64] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[65] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records and
- this interest must clearly outweigh the purpose of the exemption.

[66] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.³¹

Public interest

[67] In considering whether there is a "public interest"³² in disclosure of the information

³⁰ Orders PO-2267 and PO-2733.

³¹ Order P-244.

³² A "public interest" does not exist where the interests being advanced are essentially private in nature (see Orders P-12, P-347 and P-1439). However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure (see Orders M-773 and M-1074).

at issue, the first question to ask is whether there is a relationship between the information and the *Act's* central purpose of shedding light on the operations of government.³³ In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.³⁴

[68] A public interest is not automatically established because a requester is a member of the media.³⁵

Is there a public interest in the disclosure of the names and/or badge numbers at issue?

The ministry's position

[69] The ministry submits that disclosing the names and badge numbers at issue would not inform the public about the workings or decision-making processes of the Complaints Director or the management of the police oversight process. Rather, it submits that the reasoning in Orders PO-3071, PO-3025, and P-1134 adapted to these circumstances applies here: disclosure would inform the public of the participation of these individuals in the complaints process, and not give insight into the government institutions involved themselves.

[70] The ministry also submits that there is already another public interest consideration process and forum that has been established to address any public interest for police oversight, which is a relevant factor to consider.³⁶ The ministry submits that sufficient information is available about the Complaints Director's process and outcomes (such as through the LECA's annual reports), and notes that disciplinary hearings are open to the public (including the media) and that decisions are posted publicly online. The ministry also notes that the information already disclosed to the appellant in this appeal can be used to subject the activities of the Complaints Director to public scrutiny (since the appellant has, for example, the names of the police service, the dates of complaints and the corresponding allegations raised, the Director's decisions on whether to screen in a complaint, and the outcomes of the complaints).

The appellant's position

[71] The appellant submits that there is a public interest in the names and badge numbers at issue to shed light on:

³³ Orders P-984 and PO-2607.

³⁴ Orders P-984 and PO-2556.

³⁵ Orders M-773 and M-1074.

³⁶ The ministry relies on Order M-1053.

- the individual police officers who were the subject of complaints,
- the LECA (headed by the Complaints Director), and
- the process of police oversight more generally.³⁷

[72] In the introduction to his representations, he essentially summarizes his overall position about a public interest in the names and badge numbers by quoting from an Alberta Court of Appeal case ("*Newton*"): "Because of the extraordinary powers they have to use force and to put restraints on liberty, the misconduct of police officers is always a matter of public interest."³⁸ (*Newton* is not a freedom of information case, but one where the court was considering a standard of review issue when one administrative decision-maker reviews the decision of another.) Flowing from this view about police powers, the appellant argues, for example, that:

- police officers "must be constantly checked and scrutinized," and "should be afforded fewer protections" (and have lessened expectations of privacy) given their role and power,
- despite their powers, police officers are not subject to the same scrutiny as people in other sensitive jobs (such as doctors and lawyers who are subject to a professional college) and have many tools at their disposal to lessen accountability (such as reassignment or calling on powerful unions to "stymie" disciplinary action),
- there is not enough information about the frequency of complaints about, and investigations into, police officers who exceed their authority,
- giving police officers the chance to "move on" from closed matters is "an incredible double-standard" as compared to civilians, for example, who have been arrested or charged with a crime likely carry a permanent criminal record, and
- police officers' disciplinary records should be public "much like a nearsighted person's driver's licence notes she must wear glasses behind the wheel."

[73] The appellant also sees disclosure of the names and badge numbers at issue as important to shed light on the LECA and the police misconduct oversight process more generally. He submits that there is not enough information about "the workings of the Complaints Director, police boards, and the provincial government, which are charged with holding police officers to the highest standards." The appellant submits that even for complaints listed in the spreadsheet as having been closed for being unsubstantiated,

³⁷ The appellant's representations were lengthy and heavily footnoted, exceeding the IPC's page-limitation for submitting representations. However, I reviewed the appellant's representations, attachments, and footnotes in full and summarize them as needed here.

³⁸ *Newton v. Criminal Trial Lawyer's Association*, 2010 ABCA 399. The CanLII citation for this is: *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399 (CanLII).

disclosure of the names and badge numbers would shed light on any systemic issues.” He relies on an order from the Alberta Information and Privacy Commissioner in a freedom of information case³⁹ (“*Calgary Police*”). In *Calgary Police*, the adjudicator considered disclosure of unsubstantiated charges and held that there may be reason to conclude that the personal information of the cited officers should be disclosed in certain circumstances. The appellant also attached several documents, including legal briefs, discussing systemic issues in police misconduct. As such, he rejects the ministry’s position that there is already publicly available information about police complaints and discipline, and that disclosure of the names and badge numbers at issue would not inform the public about the workings of the Complaints Director or the management of the police oversight process.

[74] The appellant also submits that in the final days of the previous Ontario government under Premier Kathleen Wynne, the *Safer Ontario Act* was passed (which he says would have enhanced the powers of both the Complaints Director and the Special Investigations Unit), in part to address police services’ own handling of misconduct cases. However, he notes that present government “scrapped” this before the law came into force.

[75] The appellant argues that disclosure of the names and badge numbers of police officers will give the public “a tool” to hold police officers accountable, asserting that this, in turn, would increase trust in police and their “legitimacy,” and promote public safety. He also argues that the release of names and badge numbers would “broadly provide an essential public service” as there is no professional police organization in Ontario or anything similar to the bodies that regulate doctors, dentists, tradespeople, and the like.

[76] The appellant also appears to raise a constitutional argument, albeit in passing (not having taken the steps required to raise constitutional questions), submitting that “the disclosure of documents that would serve the public interest is such an important concept that it was even recognized by the Supreme Court of Canada as a potential Charter right.”⁴⁰

[77] The appellant submits that one of the primary purposes of the *Act* is to allow government records to enter the public sphere for the purpose of accountability, but the ministry’s position in this appeal is “suffused with the dangerous idea that the public is incapable, or perhaps not intelligent enough, to handle knowing the names and badge numbers of police officers accused of misconduct.” As an example of this, he points to the ministry’s arguments about a law enforcement exemption that it had claimed (regarding risking witness tampering for open law enforcement matters). He submits that the ministry’s approach would logically conclude with the suggestion that there should be no public access to courts, and that our justice system function in entire secrecy. He asks

³⁹ Alberta Information and Privacy Commissioner order (F2008-009) [*Calgary (Police Service) (Re)*, 2008 CanLII 88728 (AB OIPC)].

⁴⁰ The appellant cites *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 (CanLII), [2010] 1 SCR 815.

that the ministry and the Complaints Director to “play by the rules the rest of us already follow.”

Analysis/findings

[78] For the following reasons, I find that there is no public interest in the disclosure of the names and badge numbers at issue.

[79] Although I accept and acknowledge that insight into the LECA and police oversight are matters of public interest, I am persuaded by the ministry’s representations that there are many already existing sources of information about this through the LECA and other parts of the police oversight process overall (such as public disciplinary hearings). I also note that the Complaints Director’s representations explaining why so much of the spreadsheet does not contain names and badge numbers is itself additional detailed disclosure about the LECA’s workings and to the extent that these details fit overall in the scheme of police oversight, they also serve as shedding light on that too. These details are too lengthy to set out here. It is unnecessary to do so though because what is important is that they were shared with the appellant and he can set them out in public if he chooses, to shed light on the LECA and police oversight overall.

[80] Based on my review of the information at issue and the appellant’s public interest submissions (and attachments) about police powers and power imbalances, I find that his public interest argument would not be addressed by disclosure of the names and/or badge numbers on the approximately 9,000 lines remaining at issue in this appeal. Rather, as the ministry submits, I find that the reasoning in Orders PO-3071, PO-3025, and P-1134 applies: disclosure of the names and badge numbers would inform the public of the participation of these individuals in the complaints process, and not give insight into the government institutions involved themselves.

[81] The *Newton* case on which the appellant relies is not helpful to his position. It does not involve freedom of information considerations at all, and in it, the court also rejects mere suggestions that any internal system of police discipline is essentially flawed.⁴¹ If anything, such and other remarks in *Newton* weigh in favour of finding that there is a public interest in *not* disclosing the information at issue in this appeal. For example, in *Newton* the court says: “Different complainants might have different motivations and be pursuing agendas which would not necessarily be consistent with the overall public interest.”⁴² I do not have such information behind each complaint reflected in the record before me to help me decide if disclosure would be consistent with the overall public interest.

[82] Similarly, the actual or relative power of police unions is not relevant to whether there is a public interest in the 9,000 names and/or badge numbers before me.

⁴¹ *Newton, supra*, para. 48.

⁴² *Ibid*, para. 74.

[83] The fact that the public may access certain types of information about other professionals, such as doctors and lawyers, through professional colleges is an argument that is also not grounded in the wording and purposes of the *Act* – and the actual names and badge numbers at issue – but in the existence or non-existence of other accountability mechanisms. Likewise, what other jurisdictions have decided to disclose under the authority of other laws is not relevant to whether there is a public interest in these 9,000 names and/or badge numbers such that they should be accessible under the *Act*.

[84] The *Calgary Police* case does not persuade me that there is a public interest in the names and badge numbers before me. (While it is a case in the freedom of information context, it is not binding on me and it interprets Alberta's law, not Ontario's.) It is distinguishable in important ways. For example, the Alberta request was for totally different information – a small number of *disciplinary decisions* made during a few months, after the police officers would have gone through some sort of process(es) before those disciplinary decisions were made. However, the record here is for a list showing the fact of complaints made against all police officers across Ontario within an 11-year period, involving thousands of individuals.

[85] I am also unpersuaded that disclosure of the names and badge numbers would give insight into patterns and/or frequency of complaints such that there would be a public interest in these names and badge numbers. Since most of the spreadsheet does not even contain names and badge numbers in the field of the spreadsheet meant for that information (for the reasons explained by the Complaints Director), insight into patterns or frequency of complaints is not possible. For example, there is no way to know whether a police officer whose name is at issue would also have had their name appear in the other lines of the spreadsheet if the field for names contained a name in all lines. And the reverse is true: there is no way to know if someone whose name does not currently appear in the spreadsheet would have been listed if the spreadsheet was complete.

[86] In any event, even if the whole spreadsheet contained names and badge numbers associated with each complaint, the police officers listed are not a group. Each one is an individual. Each is protected by the personal privacy exemption mandated by the *Act*.

[87] For these reasons, I find that there is insufficient evidence before me to accept that there is a public interest in the disclosure of each of the names and/or badge numbers in the lines of the spreadsheet remaining at issue. The appellant's public interest arguments contain general assertions or policy positions, and his views about the efficacy of current accountability structures in society (finding them lacking). However, I have found that these matters do not correspond to the personal information found in the personal information at issue such that I can conclude that there is a public interest in this specific personal information.

[88] Since there is no public interest in the specific names and badge numbers at issue,

I do not have to consider whether there is a public interest claimed is “compelling,” or whether there such an interest outweighs the purpose of the mandatory personal privacy exemption.

ORDER

I uphold the ministry’s decision and dismiss the appeal.

Original Signed by: _____

Marian Sami
Adjudicator

October 16, 2024 _____