

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4627

Appeal PA21-00618

Ministry of the Solicitor General

March 27, 2025

Summary: Under the *Freedom of Information and Protection of Privacy Act*, an individual requested access to a specified fire investigation report about the fire that killed his brother. The ministry issued a decision withholding information in the fire report under the mandatory personal privacy exemption at section 21(1) of the *Act*.

In this order, the adjudicator partially upholds the ministry's decision, finding that the personal privacy exemption applies to some information in the fire report but the compassionate reasons exception (section 21(4)(d)) applies to permit the ministry to disclose some of the information it withheld. She orders the ministry to disclose the additional information to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 21(1), 21(2)(f), 21(3)(b), 21(4)(d).

Orders Considered: Orders MO-2237, MO-2245, MO-2515, and PO-4087.

OVERVIEW:

[1] The appellant made a request to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a specified fire investigation report (fire report) about the fire that killed his brother.

[2] The ministry issued a decision granting partial access to the fire report withholding information under sections 14(1)(l) (facilitate commission of an unlawful

act) and 21(1) (personal privacy) of the *Act*.

[3] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] The ministry issued a supplemental decision disclosing additional information to the appellant based on the section 21(4)(d) compassionate reasons exception to the personal privacy exemption under the *Act*.

[5] During mediation, the appellant advised that he was seeking the information that the ministry withheld on page 12 of the fire report. The appellant asked the IPC to notify an affected party to obtain their consent to disclose their information in the fire report to him. However, the IPC notified the affected party but was unable to obtain their consent.¹

[6] The appellant advised that he seeks access to the withheld information on page 12 of the fire report for compassionate reasons. Accordingly, the remaining pages of the record and section 14(1)(l) are no longer at issue in this appeal.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.

[8] In this order, I partially uphold the ministry's decision to withhold information from the fire investigation report under the personal privacy exemption at section 21(1). I find that the compassionate reasons exception (section 21(4)(d)) applies to permit disclosure of some of the information the ministry has withheld from the fire investigation report and order the ministry to disclose it to the appellant.

RECORD:

[9] The information remaining at issue in this appeal is the information that the ministry has withheld from page 12² of the fire investigation report (fire report).

¹ During the inquiry, I asked the ministry for updated contact information of the affected party, but the ministry did not have this information. The appellant provided an obituary of the affected party with his representations. The IPC tried to contact the affected party's next of kin about this appeal, but they could not be reached.

² In his representations, the appellant states he also seeks access to the withheld information on page 13 of the fire report. However, because the ministry has already disclosed page 13 in full to the appellant it is not at issue in this appeal.

DISCUSSION:

- A. Does the fire report 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 withheld information in the fire report?

DISCUSSION:

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

[10] 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.

[11] The ministry claims that the discretionary personal privacy exemption at section 21(1) applies to the withheld information. For this section to apply, the IPC must first determine that the record contains “personal information,” and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the requester’s own personal information, their access rights are greater than if it does not.³ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁴

[12] Section 2(1) of the *Act* gives a list of examples of personal information.⁵ Section 2(2) states: “Personal information does not include information about an individual who has been dead for more than thirty years.”

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁶

[14] 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

³ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁴ Sections 21(1) and 49(b), as discussed below.

⁵ 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.”

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

capacity is not considered to be “about” the individual.⁷ See also sections 2(3) and 2(4), which 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.

[15] 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.⁸

Representations, analysis and findings

[16] The parties do not dispute, and I find, that the fire report contains the personal information of the appellant’s deceased brother and another identifiable individual. I will refer to the other identifiable individual as the affected party.

[17] I find that the fire report contains the name, date of birth, date of death, address, and other information about the appellant’s deceased brother, including information related to his death, that qualifies as personal information. I also find that the fire report contains the name, phone number, and other information that qualifies as personal information about the affected party. Both the affected party and the appellant’s brother have not been deceased for more than 30 years, so their information continues to qualify as “personal information” under the *Act*.⁹

[18] I considered whether the affected party’s personal information could be severed from the other information that has been withheld on page 12 of the fire report. However, based on my review of the withheld information, I find that the affected party’s personal information is inextricably intertwined with that of the appellant’s deceased brother and cannot be reasonably severed.

[19] The fire report also contains the name, title, professional address and telephone number of the Ottawa Fire Chief and an Ottawa Police Officer. However, as noted above, personal information does not include this type of information when it identifies the individual in a business, professional or official capacity. I also find that this information does not reveal something of a personal nature about the chief

⁷ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁹ An individual’s personal information continues to qualify as “personal information” under the *Act* unless they have been deceased for more than 30 years.

and officer. Therefore, I find that this information is not personal information under the *Act*.

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

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

[21] The section 21(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 21(1)(a) to (e) exist, the institution must disclose the information.

[22] The section 21(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 21 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

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

[24] Sections 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Sections 21(3)(a) to (h) should generally be considered first.¹⁰ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[25] If one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 21(4) that disclosure of the information would not be an "unjustified invasion of personal privacy," or
- there is a "compelling public interest" under section 23 that means the information should nonetheless be disclosed (the "public interest override").¹¹

[26] If the personal information being requested does not fit within any presumptions under section 21(3), one must next consider the factors set out in section 21(2) to determine whether disclosure would be an unjustified invasion of

¹⁰ If any of the section 21(3) presumptions are found to apply, they cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established.

¹¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

personal privacy. However, if any of the situations in section 21(4) is present, then section 21(2) need not be considered.

Representations, analysis and findings

[27] Based on my review of the withheld information and the parties' representations, I find that section 21(1) applies to some of the withheld information on page 12 of the fire report. However, I find that the section 21(4)(d) exception for compassionate reasons apply to some of the withheld information on page 12 of the fire report and I order the ministry to disclose it to the appellant.

[28] The ministry submits that disclosure of the withheld information on page 12 of the fire report would constitute an unjustified invasion of the affected party's personal privacy because the affected party would likely be identified from its disclosure.¹²

[29] The appellant submits that he already knows the identity of the affected party and the affected party has posted publicly about the fire on their public Facebook page, so it would not be an invasion of the affected party's personal privacy to disclose their personal information. The appellant further submits that the affected party is deceased and submitted the affected party's obituary with his representations.

[30] The parties have not argued that any of the section 21(1) exceptions or section 21(3) presumptions apply in the circumstances of this appeal. I agree and find that none apply. Therefore, I must consider and weigh the factors in section 21(2), the exceptions in section 21(4), and balance the interests of the parties.¹³

21(2)(f) highly sensitive

[31] The ministry argues that the factor in section 21(2)(f) applies to weigh against the disclosure of the withheld personal information on page 12 of the fire report because disclosure could reasonably be expected to cause the affected party significant personal distress.

[32] In order for section 21(2)(f) to apply, the information at issue must be considered to be highly sensitive, which means there must be a reasonable expectation of significant personal distress if the information were disclosed.¹⁴

[33] From my review of the fire report and the withheld information, I am satisfied that it contains information that is highly sensitive, because it is the affected party's

¹² The ministry claimed section 49(b) of the *Act* applies to the withheld information on page 12 of the fire report. However, from my review of the fire report, it does not appear to contain the appellant's personal information. Therefore, the appropriate exemption is section 21(1) of the *Act*. If the fire report did contain the appellant's personal information, the appropriate personal privacy exemption to consider would be the discretionary exemption in section 49(b).

¹³ Order MO-2954.

¹⁴ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

information relating to the fire that caused the appellant's brother's death. I am satisfied that there is a reasonable expectation that the affected party would experience significant personal distress if this information were disclosed to the appellant, the deceased's brother. Therefore, I find that the highly sensitive factor at section 21(2)(f) applies to the withheld information and weighs in favour of non-disclosure.

[34] The parties did not argue that any other factor in section 21(2), weighing either in favour or against disclosure, applies to the personal information at issue, and I find that none apply in the circumstances of this appeal. I have also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply and I find that none do.

[35] Since I have found that the factor at section 21(2)(f) applies and weighs against disclosure of the personal information in the fire report, I must consider whether any of the exceptions in section 21(4) apply to some or all of the withheld personal information.

Does the compassionate reasons exception at section 21(4)(d) apply?

[36] The appellant argues that the ministry should disclose the withheld information so that he and his family may have a better understanding of the circumstances of his brother's death. Therefore, I will consider whether the compassionate reasons exception in section 21(4)(d) applies to the withheld information on page 12 of the fire report because if it does, disclosure is not an unjustified invasion of personal privacy, and the information is not exempt under section 21(1).

[37] For section 21(4)(d) to apply I must consider the following questions, all of which must be answered in the affirmative:

1. Does the fire report contain the personal information of a deceased individual?
2. Is the requester a spouse or "close relative" of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?¹⁵

Parts 1 and 2: Does the fire report contain the personal information of a deceased individual and is the requester a spouse or "close relative" of the deceased individual?

[38] The terms "close relative" and "spouse" are defined in section 2(1) of the *Act* as follows:

¹⁵ Orders MO-2237 and MO-2245.

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption; (“proche parent”)

[39] I find that the fire report contains the personal information of a deceased individual, specifically, the appellant’s brother, and that the appellant is a “close relative” of this individual as defined in the *Act*. Accordingly, I find that the first two requirements for the application of section 21(4)(d) have been met.

Part 3: Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

[40] As noted above, the withheld information on page 12 of the fire report contains the mixed personal information of the appellant’s deceased brother and the affected party. The personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the “circumstances” to be considered would include the fact that the personal information of the deceased is also the personal information of another individual. The factors and circumstances referred to in section 21(2) may assist in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).¹⁶

[41] In Orders MO-2237 and MO-2245, former Commissioner Brian Beamish made the following findings:

... by using the words “in the circumstances” [in section 21(4)(d)]¹⁷ the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is “desirable for compassionate reasons.” In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one’s death is by its very nature compassionate.

[42] In Order MO-2515, the adjudicator ordered the disclosure of records relating to police involvement with a deceased individual in the weeks prior to the individual’s death, stating that:

In assessing the relevant circumstances of the current appeal, I give significant weight to the fact that the records at issue contain

¹⁶ Order MO-2237.

¹⁷ Or section 14(4)(c) in the case of the *Municipal Freedom of Information and Protection of Privacy Act*, which Commissioner Beamish was considering in those appeals.

information about the deceased's health and physical state within a short period of time prior to his death. This information sheds some light on the deceased's circumstances shortly before his death [...] I also attribute significant weight to the appellant's need for this information as part of her grieving process.

[43] I adopt a similar approach in this appeal. After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" regarding whether particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."¹⁸

[44] I accept the appellant's argument that he and his family require the information related to the specific circumstances of his brother's death to obtain closure. However, the ministry is denying access in the interest of the affected party, who cannot be reached for input. The adjudicator dealt with the balancing of competing interests under the compassionate reasons exception at section 21(4)(d) in Order PO-4087, where he stated:

. . . I accept that the deceased's father requires the information about the events surrounding his son's death for closure. However, section 21(4)(d) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeals, I find that the privacy interests of other individuals, including the deceased's spouse and her children, should not automatically yield to the compassionate reasons that may call for full disclosure to the deceased's father.

[45] I agree with the adjudicator's reasoning and adopt it in this appeal. Having considered all the circumstances of this appeal, including the competing interests of the parties, I find that the compassionate reasons exception at section 21(4)(d) applies to permit disclosure of some of the withheld information on page 12 of the fire report.

[46] In coming to this conclusion, I considered that this was an unexpected death, and the withheld information contains a description of the actions of the affected party before and during the deadly residential fire that led to the appellant's brother's death. It is clear from the appellant's representations that he and his family continue to struggle with the death of his brother. I give weight to the fact that the appellant is seeking disclosure to better understand the circumstances of his brother's death and to obtain closure. I have also considered the affected party's privacy concerns. While I understand that the ministry wants none of the personal information at issue

¹⁸ Order MO-2245.

to be disclosed and the affected party is unable to comment, I must weigh this against the appellant's right to access it under section 21(4)(d). In the circumstances of this appeal, I have concluded that the appellant's right to access some of the withheld information on page 12 of the fire report outweighs the privacy concerns about its disclosure. Based on all of this, I am satisfied that it is desirable, for compassionate reasons, to disclose some personal information of the deceased to the appellant in the circumstances of this appeal.

[47] With respect to the rest of the withheld information on page 12 of the fire report, I find that the exception at section 21(4)(d) does not apply. I considered the personal information that the ministry will be disclosing to the appellant through this request and what personal information will be withheld, and I find that the withheld information would not assist the appellant further in understanding the circumstances of his brother's death. I also considered the privacy rights of the affected party. The remaining portion of page 12 of the fire report contains the personal information of the affected party. All of this is personal information that I have found to be highly sensitive under section 21(2)(f). Balancing the interests of the parties, I find that the privacy rights of the affected party outweigh the appellant's right to this information under the exception at section 21(4)(d) because I am not satisfied that disclosure of the rest of the withheld information on page 12 of the fire report would be desirable for compassionate reasons in the circumstances of this appeal.

[48] Accordingly, I find that the section 21(4)(d) exception applies to some of the information on page 12 of the fire report that the ministry has withheld, and I order the ministry to disclose it to the appellant.

ORDER:

1. I partially uphold the ministry's decision to withhold information in the fire report under section 21(1) of the *Act*.
2. I order the ministry to disclose the highlighted portions of page 12 of the fire report to the appellant by **May 3, 2025**, but not before **April 28, 2025**. For the sake of clarity, I have highlighted the portions to be disclosed in the copy of the record that accompanies the ministry's copy of this order.
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 record disclosed to the appellant.

Original Signed by: _____

Anna Truong
Adjudicator

March 27, 2025 _____