

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-4707

Appeal PA22-00546

Ministry of the Solicitor General

August 22, 2025

**Summary:** An individual made a request to the Ministry of the Solicitor General under the *Freedom of Information and Protection of Privacy Act* for access to two witness statements relating to a specified motor vehicle accident. The ministry issued a decision denying access in full to the two statements under the discretionary exemption at section 49(b) of the *Act* claiming that disclosure of the statements would be an unjustified invasion of the personal privacy of an individual other than the appellant.

In this order, the adjudicator orders the ministry to disclose the substance of the witness statements to the appellant, which she finds would not be an unjustified invasion of the witnesses' personal privacy under section 49(b).

**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(3)(b), 21(2)(d), 21(2)(f), and 49(b).

**Orders Considered:** Orders P-1618, MO-2890, PO-4295, and PO-3712.

### OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for Ontario Provincial Police (OPP) records relating to a specified motor vehicle accident, including a report, officer notes, driver/witness statements, and photographs and videos.

[2] The ministry issued a decision granting partial access to the responsive records. The ministry also withheld certain portions of the records as non-responsive.

[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] During mediation, the appellant advised he only seeks access to two witness statements contained in the records that were withheld in their entirety under the discretionary personal privacy exemption at section 49(b) of the *Act*. The IPC attempted to obtain consent from the two witnesses (the affected parties), but consent was not obtained.

[5] As no further mediation was possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator previously assigned to this appeal commenced an inquiry and sought and received representations from the parties about the issues in the appeal.<sup>1</sup> The appeal was then transferred to me, and I decided that I did not need to seek additional representations before making my decision.

[6] In this order, I do not uphold the ministry's decision to withhold the witness statements that remain at issue. Specifically, I find the section 49(b) exemption does not apply to exempt portions of the witness statements from disclosure and I order the ministry to disclose those portions to the appellant.

## **RECORDS:**

[7] The records remaining at issue in this appeal consist of two interview reports (witness statements) totaling five pages.

## **ISSUES:**

- A. Do the witness statements contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information in the witness statements?

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<sup>1</sup> The adjudicator sought representations from the affected parties, but they did not submit any.

## DISCUSSION:

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

[8] 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.

[9] The ministry claims that the discretionary personal privacy exemption at section 49(b) applies to the witness statements. 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.<sup>2</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>3</sup>

[10] Section 2(1) of the *Act* gives a list of examples of personal information.<sup>4</sup> Section 2(2) states: “Personal information does not include information about an individual who has been dead for more than thirty years.”

[11] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

[12] 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.<sup>6</sup> 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.

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<sup>2</sup> 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.

<sup>3</sup> Sections 21(1) and 49(b), as discussed below.

<sup>4</sup> 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.”

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>6</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

(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.

[13] 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.<sup>7</sup>

### ***Representations, analysis and findings***

[14] The ministry submits that the witness statements contain the personal information of the affected parties, specifically their names, addresses, residential phone numbers, and personal statements provided to the OPP in connection with a law enforcement investigation. The ministry submits that due to the circumstances in which the personal information was collected, even if identifying information such as their names were removed, the affected parties might still be identifiable. Finally, the ministry submits that while the affected parties were at work at the time they witnessed the appellant’s motor vehicle accident, there is no evidence to suggest that they were acting in a professional, official, or business capacity at the time the records were created.

[15] The appellant submits that none of the information at issue in this appeal consists of personal information. He argues that because the affected parties were working when they witnessed his accident, their information should not be considered personal information because it appears in a professional capacity.

[16] Based on my review of the witness statements, I find that they contain personal information about the appellant and the affected parties. I find that the witness statements contain the affected parties’ views and opinions about the appellant and his accident. I also find that they contain the affected parties’ names, addresses, residential phone numbers, driver licenses, and their views and opinions.

[17] I acknowledge the affected parties witnessed the accident while at work. However, this is not determinative of whether their information qualifies as personal information under the *Act*. The accident was unrelated to the affected parties’ work, and they provided their statements to the OPP in a personal capacity. Therefore, I find that the affected parties’ information in the witness statements qualifies as personal information under the *Act*.

[18] The appellant submits that if the affected parties gave their statements in a personal capacity, he would be satisfied with a copy of the witness statements with their personal information severed. Therefore, the portions of the witness statements containing the affected parties’ names, addresses, phone numbers, and views and opinions unrelated to the appellant’s accident are no longer at issue in this appeal.

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<sup>7</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

[19] Accordingly, as the witness statements contain the personal information of the appellant and the affected parties, I will consider the appellant's access to the withheld information under Part III of the *Act*.

**Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the information in the witness statements?**

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

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

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

[23] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[24] Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.<sup>8</sup>

[25] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[26] If any of the exceptions in section 21(1)(a) to (e) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b).

[27] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply.

[28] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker<sup>9</sup> must consider and weigh the factors and presumptions in sections 21(2)

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<sup>8</sup> Order PO-2560.

<sup>9</sup> The institution or, on appeal, the IPC.

and (3) and balance the interests of the parties.<sup>10</sup>

***Representations, analysis and findings***

[29] The ministry argues that disclosure of the witness statements would be an unjustified invasion of the affected parties' personal privacy, while the appellant argues that it would not.

[30] The appellant submits that he wants the statements the affected parties gave to the OPP about his accident.

[31] As noted above, the portions of the witness statements containing the affected parties' names, addresses, phone numbers, and views and opinions unrelated to the appellant's accident are no longer at issue in this appeal.

[32] The parties did not argue, and from my review, I am satisfied that sections 21(1) and 21(4) do not apply in the circumstances before me and I will not discuss them further in this order.

*Section 21(3)(b) presumption: investigation into a possible violation of law*

[33] The ministry submits that the section 21(3)(b) presumption applies to the withheld personal information. The ministry submits that the witness statements relate to an OPP investigation and the personal information was collected as part of that investigation.

[34] Section 21(3)(b) states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

[35] Based on my review of the withheld personal information, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. The personal information at issue relates to the affected parties' statements about the appellant's accident in an OPP investigation. Even if no criminal proceedings were commenced against an individual, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law,<sup>11</sup> and I am satisfied that an investigation has occurred. Therefore, I find that section 21(3)(b) applies to the personal information at issue in this appeal, and that its disclosure is presumed to be an unjustified invasion of the affected parties' personal privacy.

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<sup>10</sup> Order MO-2954.

<sup>11</sup> Orders P-242 and MO-2235.

[36] Under section 49(b), the presumptions in section 21(3) must be weighed and balanced with any factors in section 21(2) that are relevant.

[37] The appellant argues that the factor at section 21(2)(d) (fair determination of rights) applies to the withheld personal information. This factor weighs in favour of disclosure, if it is found to apply.

[38] The ministry argues that the factor at section 21(2)(f) (highly sensitive) applies to the withheld personal information. This factor weighs against disclosure, if it is found to apply.

[39] Sections 21(2)(d) and (f) state:

21(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request; and

(f) the personal information is highly sensitive;

#### *Section 21(2) factors*

#### Section 21(2)(d): fair determination of rights

[40] The appellant argues that the section 21(2)(d) factor applies in favour of disclosure of the witness statements. For this factor to apply in favour of disclosure, the appellant must establish all four parts of the following test:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>12</sup>

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<sup>12</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

[41] The appellant cites Order PO-4295 in support of his position that the section 21(2)(d) factor applies to weigh in favour of disclosure of the witness statements. In Order PO-4295, the adjudicator found that the section 21(2)(d) factor applied weighing in favour of disclosure and ordered disclosure of witness statements of an accident.

[42] The ministry argues that Order PO-4295 is distinguishable from this current appeal because in Order PO-4295, the witness statements were not produced despite the existence of discovery mechanisms within litigation. The ministry submits that it is unknown whether the appellant in this current appeal has attempted to obtain witness statements in the context of litigation, and unless the appellant can produce this evidence, Order PO-4295 is not applicable.

[43] I am not persuaded by the ministry's argument. It is not relevant whether the appellant has attempted to obtain the witness statements through other means. In Order MO-2980,<sup>13</sup> the adjudicator ordered disclosure of the name of the owner of a dog that bit the appellant so she could bring a civil claim for damages. With respect to discovery mechanisms available within litigation, he wrote:

In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

[44] I agree with the adjudicators' reasoning in both Order PO-4295 and MO-2980 and adopt it in this appeal.

[45] The appellant submits that he is seeking the witness statements to assist with a potential civil claim arising from his accident. I am satisfied that he has met the four-part test in section 21(2)(d) because:

1. his right to sue is drawn from common law;
2. the right is related to a potential civil claim for damages arising from an accident in which he was involved;
3. the witness statements have a direct bearing on findings of fact in the civil claim; and,

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<sup>13</sup> Also cited by the adjudicator in Order PO-4295.



4. the witness statements are required to ensure an impartial hearing because the witnesses' respective observations about the accident can reasonably be expected to assist the court in making findings of fact and fault and therefore damages.

[46] I therefore find that disclosing the affected parties' statements from the witness statements is relevant to a fair determination of the appellant's rights under section 21(2)(d), and that this factor weighs in favour of disclosing this information to him.

[47] The appellant was the only party in the accident, and he is permanently disabled because of the accident. He was unconscious at the scene of the accident and has no recollection of its occurrence or aftermath. There were no surveillance cameras in the area of the accident. The affected parties' accounts of the accident contained in the witness statements may be the only information available to the appellant to ascertain the facts of what happened.

[48] I accept and agree with the appellant's position that the witness statements are required to prepare for litigation and to ensure an impartial hearing. In addition to being directly related to the appellant's legal right to claim damages, I accept that witness statements are required to assist the court in making findings of facts at trial, including making findings regarding liability.

[49] For these reasons, I find that the factor at section 21(2)(d) applies to weigh in favour of disclosure of the witness statements in this appeal.

#### Section 21(2)(f): highly sensitive

[50] The ministry submits that the highly sensitive factor at section 21(2)(f) applies weighing against disclosure of the witness statements.

[51] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the personal information at issue is disclosed.<sup>14</sup>

[52] In arguing that the section 21(2)(f) factor applies, the ministry cites Order P-1618, in which the IPC held that personal information of complainants, witnesses, or suspects collected by the police was highly sensitive. The ministry also cited Order PO-3712, arguing that in that order, the IPC "upheld the application of section 21(2)(f) where consent had not been provided by [affected parties] in respect of the disclosure of their personal information contained in law enforcement investigation records."

[53] The ministry relies on orders that have found that information provided by witnesses to the police may be highly sensitive under section 21(2)(f) and should not be disclosed in circumstances where consent has not been obtained. Order PO-3712 involved information described as being of an "extremely sensitive nature" and involved 80 pages of police records, while Order P-1618 dealt with access to voluminous occurrence reports

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<sup>14</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

and a complaint to the police complaints commission. I find that these orders are not applicable because the records at issue in those orders differ from the records at issue before me and the involvement of the affected parties also differ.

[54] Section 21(2)(f) requires the party to demonstrate that disclosure of the information at issue could reasonably be expected to cause significant personal distress. The witness statements in this appeal were provided to the OPP by the two affected parties. They are unrelated to the appellant and were not involved in the accident. Neither the ministry nor the affected parties have provided me with any basis to conclude that the disclosure of the statements could reasonably be expected to cause the witnesses significant personal distress in the circumstances.

[55] Based on my review, I find that the two witness statements are not highly sensitive for the purpose of section 21(2)(f). Outside of the identifying information at the top of the two witness statements, which are no longer at issue in this appeal, the substance of both statements consists of the affected parties answering questions from an OPP officer about the appellant's accident. Both affected parties were invited to submit representations and neither have submitted representations to say that they could reasonably expect to experience any distress if their statements were disclosed to the appellant. Therefore, I find that the section 21(2)(f) factor applies to weigh against disclosure of the witness statements at issue.

[56] I find that no additional listed or unlisted factors apply to weigh against disclosure or to outweigh the factor at section 21(2)(d) favouring disclosure.

### *Conclusion*

[57] As noted above, I am satisfied that none of the situations in section 21(1) and 21(4) apply in the circumstances of this appeal. I have found that the section 21(3)(b) presumption applies weighing against disclosure and the section 21(2)(d) factor applies weighing in favour of disclosure. Balancing the interests of the parties, the facts of this appeal weigh in favour of disclosure, and I find that disclosure of the two witness statements to the appellant would not constitute an unjustified invasion of the affected parties' personal privacy under section 49(b). I come to this conclusion on the basis that the witness statements contain the appellant's personal information; without the identifying information that the appellant does not seek access to, it is unlikely that the affected parties could be identified; and the witness statements are required for the fair determination of the appellant's rights.

### **ORDER:**

1. I order the ministry to disclose the unhighlighted portions of the witness statements to the appellant by **September 26, 2025**, but not before **September**

**21, 2025.** For clarity, the ministry should withhold the highlighted portions of the witness statements.

2. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the witness statements disclosed to the appellant in accordance with provision 1.

Original Signed by: \_\_\_\_\_

Anna Truong  
Adjudicator

August 22, 2025 \_\_\_\_\_