

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4735

Appeal PA23-00622

Ministry of the Solicitor General

September 29, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Solicitor General for access to a photograph of a specified murderer taken during their arrest. The ministry issued a decision denying access to the photograph under the mandatory personal privacy exemption at section 21(1) of the *Act*.

In this order, the adjudicator upholds the ministry's decision finding that disclosure would be an unjustified invasion of the personal privacy of an identifiable individual. She dismisses the appeal.

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(3)(b), and 23.

OVERVIEW:

[1] This order determines the issue of access to a photograph of a specified individual, convicted of murder, taken during their arrest. The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for electronic versions of "OPP [Ontario Provincial Police] mugshots/photographs of [named individual] that were taken" during their arrest on a specified date.

[2] The ministry issued a decision denying access to the photograph under section 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] During mediation, the appellant took the position that there is a compelling public interest in the disclosure of the photograph as described in section 23 of the *Act*.

[5] 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 conducted an inquiry in which I sought and received representations from the parties about the issues in the appeal.

[6] In this order, I uphold the ministry's decision to deny access to the photograph under section 21(1) and dismiss the appeal.

RECORDS:

[7] The record at issue in this appeal is a photograph taken of the named individual during their arrest.

ISSUES:

- A. Does the photograph 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 photograph at issue?
- C. Is there a compelling public interest in disclosure of the photograph that clearly outweighs the purpose of the section 21 exemption?

DISCUSSION:

Issue A: Does the photograph 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 mandatory personal privacy exemption at section 21(1) applies to the photograph at issue. 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.¹ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.²

[10] Section 2(1) of the *Act* gives a list of examples of personal information.³ 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.⁴

Representations, analysis and findings

[12] The ministry submits that the photograph contains "recorded information about an identifiable individual," which constitutes "personal information" under the *Act*.

[13] The appellant submits that the photograph is "about" an individual, only as a "byproduct" of Ontario's open court system and that the OPP routinely release such photographs with no reservations about the dissemination of "personal information." The appellant concedes that it is reasonable to expect that an individual may be identified from the photograph, because the OPP deliberately provided identifying information along with the photograph.

[14] The parties do not dispute, and I find, that the photograph contains the personal information of the named individual. The photograph contains the named individual's image taken at the time of their arrest and I find that it is "recorded information about an identifiable individual" as set out in the introductory wording of the *Act*. "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁵

[15] I also find that it meets the requirement of paragraph (a) of the definition of "personal information," as disclosure of the photograph could reveal the named individual's race or national or ethnic origin and would reveal their colour and sex.

[16] As noted above, the named individual is deceased, but they have not been deceased for more than 30 years, so their information continues to qualify as "personal

¹ 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.

² Sections 21(1) and 49(b).

³ 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."

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ See the definition of "record" in section 2(1).

information” under the *Act*.⁶

[17] Accordingly, I find that the photograph contains personal information within the meaning of the definition in section 2(1) of the *Act* and that personal information belongs to the named individual.

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

[18] 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.

[19] 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.

[20] 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.

[21] 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.

[22] 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.⁷ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[23] 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”).⁸

⁶ An individual’s personal information continues to qualify as “personal information” under the *Act* unless they have been deceased for more than 30 years.

⁷ 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.

⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[24] 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 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

[25] The ministry argues that disclosure of the photograph would be an unjustified invasion of the named individual's personal privacy, while the appellant argues that it would not.

Section 21(1)(c) exception: record available to the general public

[26] The appellant argues that section 21(1)(c) applies to the photograph, because it was collected and maintained for the purpose of creating a record available to the general public. The appellant submits that the photograph was created to be used in open court and for dissemination among the news media.

[27] The ministry argues that section 21(1)(c) does not apply, because the photograph was created at the time of the named individual's arrest as part of a law enforcement investigation into allegations that they committed homicide.

[28] Section 21(1)(c) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, personal information collected and maintained specifically for the purpose of creating a record available to the general public[.]

[29] There is no evidence before me that the OPP collected and maintained the photograph at issue specifically for the purpose of creating a record available to the public, as required under section 21(1)(c) of the *Act*.⁹ The photograph was created at the time of the named individual's arrest as part of a homicide investigation. The fact that the record was later used in open court or disseminated by the media does not retroactively convert the photograph into a record that was created to be available to the general public.¹⁰ The purpose when the record was created is determinative of whether section 21(1)(c) applies. Therefore, I find that the exception in section 21(1)(c) does not apply to the photograph at issue in this appeal.

[30] The parties did not argue that any of the other exceptions in section 21(1) or the exceptions in section 21(4) apply in the circumstances of this appeal. From my review, I

⁹ See Order P-1111.

¹⁰ Order PO-2109.

am satisfied that they do not apply, and I will not discuss them further in this order.

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

[31] The ministry submits that the section 21(3)(b) presumption applies to the withheld photograph. The ministry submits that the photograph was taken at the time of the named individual's arrest as part of the OPP's homicide investigation.

[32] 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[.]

[33] Based on my review of the withheld photograph, I am satisfied that it was created and is identifiable as part of an investigation into a possible violation of law, specifically an OPP homicide 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,¹¹ and in the circumstances of this appeal I am satisfied that an investigation occurred, resulting in the named individual being charged. Therefore, I find that section 21(3)(b) applies to the photograph at issue and that its disclosure is presumed to be an unjustified invasion of the named individual's personal privacy.

[34] In reviewing the mandatory personal privacy exemption in section 21(1), once a section 21(3) presumption has been established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.¹²

[35] I have found that the section 21(3)(b) presumption applies to the photograph and the exceptions in section 21(4) do not apply in the circumstances of this appeal. Therefore, I find that the mandatory personal privacy exemption at section 21(1) applies to exempt the withheld photograph from disclosure.

[36] As noted above, the appellant has argued that the "public interest override" at section 23 applies to the photograph at issue. I will now consider whether there is a compelling public interest in disclosure of the photograph that clearly outweighs the purpose of the section 21 exemption.

¹¹ Orders P-242 and MO-2235.

¹² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

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

[37] 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 where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[38] 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.

[39] 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.¹³

Representations, analysis and findings

[40] The appellant argues that there is a compelling public interest in the disclosure of the photograph at issue because the public has a right to a complete account of the murders, including the named individual’s actions, motivations, and the role of public agencies, all of which he alleges, were not fully addressed in court proceedings. The appellant submits that a “mugshot” is a necessary component of that account, both to humanize the events and to confirm the named individual’s identity in assessing government agencies’ conduct over time.

[41] The appellant notes that he is a journalist, while acknowledging that this status does not itself establish public interest. He points to the inquest conducted by the Chief Coroner’s Office, in which the named individual’s personal information and image were made publicly available, to underscore the importance of government accountability. He also points that the “hundreds” of media articles about the case, including the accounts of the named individual’s death in prison, indicates a broad public interest in the case.

[42] The appellant submits that the open court system promotes accountability by encouraging additional witnesses or victims to come forward and that withholding the photograph could impede this purpose. In response to any argument that the photograph already exists on the internet, the appellant submits that the provenance and copyright of those images are uncertain for journalistic purposes, so he requires access to the

¹³ Order P-244.

original image.

[43] The ministry submits that it does not understand how a single photograph, typical of the kind of photograph that is taken when someone is arrested, can result in the application of section 23 under the *Act*. The ministry submits that the photograph at issue does not come anywhere close to meeting the threshold for establishing that there is a compelling public interest in it.

[44] The ministry submits that the appellant is conflating the disclosure of the photograph with disclosure of information about the crimes committed by the deceased individual, as though they are one and the same. The ministry submits that the appellant has not explained why there is a compelling public interest in the disclosure of the photograph and how withholding it “can hinder accountability.”

[45] Based on my review of the parties’ representations, I find that there is not a compelling public interest in disclosure of the photograph the ministry has withheld under section 21(1) that clearly outweighs the purpose of that exemption.

[46] The appellant’s representations emphasize the seriousness of the crimes committed by the named individual and the broader societal interest in accountability. However, as the ministry points out, these arguments conflate the disclosure of information about the crimes committed by the named individual with the disclosure of the photograph itself. The question is not whether there is a compelling public interest in disclosure of information about the crimes committed by the named individual but in the disclosure of this specific photograph.

[47] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government.¹⁴ Previous IPC orders have 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.¹⁵

[48] I find that the photograph in question does not meet this threshold. A photograph by its nature provides no substantive information about government operations, decision-making, or accountability. It does not contribute to the public’s understanding of how the government performed its duties in relation to these crimes, nor does it assist the citizens in expressing public opinion or to make political choices. The photograph is simply an identification record created by the OPP during an investigation into a homicide.

[49] It is also significant that the named individual is now deceased. He has already

¹⁴ Orders P-984 and PO-2607.

¹⁵ Orders P-984 and PO-2556.

been tried and convicted of the crimes, and he remained incarcerated at the time of his death. The administration of justice has concluded, and the appellant has not established that disclosure of the photograph could meaningfully inform the public about the activities of their government or its agencies.

[50] For the reasons above, I find that there is not a compelling public interest in disclosure of the photograph withheld under section 21(1) that clearly outweighs the purpose of that exemption.

[51] Accordingly, I uphold the ministry's decision to withhold the photograph under section 21(1) and dismiss the appeal.

ORDER:

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

Original Signed by: _____

Anna Truong
Adjudicator

September 29, 2025