Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1878

Appeal Numbers:
PA-000042-1; PA-000043-1; PA-000044-1; PA-000045-1; PA-000050-1; PA-000051-1 and PA-000052-1

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NATURE OF THE APPEAL:

Introduction

The appellant, a journalist, wrote to the Ministry of the Solicitor General (the Ministry) seeking access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to certain named individuals (the affected persons). The requests, decisions and appeals are organized into two different groups, based on the type of records involved. All of the requests relate to allegations of sexual abuse in Cornwall, Ontario.

OPP Records: Appeals PA-000042-1, PA-000043-1, PA-000044-1, PA-000045-1 (the OPP Appeals)

In these appeals, the appellant sought access to records held by the Ontario Provincial Police (OPP) relating to the OPP's investigation of named and unnamed individuals in relation to allegations of misconduct by parole officers.

The Ministry refused to confirm or deny the existence of records responsive to these requests, pursuant to section 14(5) (law enforcement) and 21(5) (personal privacy) of the *Act*.

The appellant appealed these decisions to this office.

During the mediation stage of these appeals, the appellant raised the possible application of the "public interest override" at section 23 of the *Act*. In addition, the appellant clarified with the Ministry that she was specifically seeking access to any police reports and any associated issue notes which may exist. Although the appellant has now submitted that she did not make this clarification, because of the outcome of this appeal, it is not necessary for me to make a finding on this point.

Coroner Records: Appeals PA-000050-1, PA-000051-1, PA-000052-1 (the Coroner appeals)

In these appeals, the appellant sought access to records held by the Office of the Chief Coroner in relation to the investigation into the death of three named individuals.

The Ministry advised that it was denying access to the records on the basis of the exemptions at sections 14 (law enforcement) and 21 (personal information) of the *Act*. In particular, the Ministry referred to sections 14(1)(a), (b) and (f), and 21(2)(f), (3)(a) and (3)(b). The Ministry in its representations indicated that it was no longer relying on the section 14 exemption for these records.

The appellant appealed these decisions to this office.

During the mediation stage of these appeals, the appellant raised the possible application of the Apublic interest override" at section 23 of the *Act*. Also during the mediation stage the appellant clarified with the Ministry that she was specifically seeking access to the coroner's investigation reports and any associated

issue notes. The appellant now submits that she did not make this clarification. Because the Ministry has identified records that arguably go beyond this clarification, I will not make a ruling on this point. If the appellant believes that the Ministry should have identified additional records as responsive to the request, she may make another request for these additional records.

ISSUES:

OPP Records

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF RECORDS AND THE PERSONAL INFORMATION EXEMPTION

Introduction

The Ministry relies on section 21(5) of the *Act* as the basis for its decision to refuse to confirm or deny whether any responsive records exist. This section reads:

> A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 21(5) situation is in a very different position from other requesters who have been denied access under the *Act*. By invoking section 21(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power which should be exercised only in rare cases [Order P-339].

An institution relying on this section must do more than merely indicate that the disclosure of the record would constitute an unjustified invasion of personal privacy. An institution must provide sufficient evidence to demonstrate that disclosure of the mere existence of the requested record would convey information to the requester, and that the disclosure of this information would constitute an unjustified invasion of personal privacy [Orders P-339, P-808 upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 1669, leave to appeal refused [1996] O.J. No. 3114 (C.A.)]

Before the Ministry may be permitted to exercise its discretion to invoke section 21(5), it must provide sufficient evidence to establish that:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and

2. Disclosure of the fact that record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy [Order MO-1179].

Part one: disclosure of the records (if they exist)

Definition of Personal Information

Under part one of the section 21(5) test, the Ministry must demonstrate that disclosure of the records, if they exist, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual [paragraph (h)].

These requests concerned information relating to any police investigation pertaining to several individuals whose identities are known to the appellant. This information, if it exists, clearly would constitute information "about" these individuals, and thus this information would fall within the section 2(1) definition of "personal information". In addition, the requests cover other, unnamed, individuals. Since any responsive records would reveal the identity of the subject individuals, I find that any additional responsive records also would constitute personal information.

Further, records of this nature, in the circumstances, likely would contain the personal information of any victims of the alleged crimes, as well as other involved individuals, such as witnesses.

Section 2(2) states:

> Personal information does not include information about an individual who has been dead for more than thirty years.

In the circumstances, I find that section 2(2) does not apply. None of the individuals in question would have been deceased for more than thirty years and, therefore, the records, if they exist, would constitute personal information.

Unjustified invasion of personal privacy

I must now determine whether disclosure of such records would constitute an unjustified invasion of the affected persons' privacy. Specifically, section 21(1)(f) of the *Act* reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767, the Divisional Court found that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of factors set out in section 21(2).

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption [Order PO-1764].

The presumption of an unjustified invasion of privacy in section 21(3) may be applicable in the circumstances. That section reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;

The Ministry submits:

> The [appellant] has asked to access OPP records, if they exist, which concern specific named and unnamed individuals. The OPP is an agency that has the function of enforcing the laws of Canada and the Province of Ontario. The *Police Services Act* (*PSA*) establishes the OPP and provides for its composition, authority and jurisdiction. The duties of a police officer include investigating possible law violations and apprehending criminals and others who may lawfully be taken into custody and crime prevention. The Ministry is of the opinion that the requested OPP records, if they exist, regarding named and unnamed individuals would consist of personal information that was compiled and is identifiable as part of an OPP investigation into a possible violation of law.

The appellant submits:

> [A] number of these individuals are now deceased, and . . . their right to privacy is consequently diminished, particularly in the case of [named affected person] who has now

> been deceased for over seven years. The appellant relies on Orders M-50 and P-679 in making this submission.

In my view, the records, if they exist, clearly would contain personal information, pertaining to the affected persons, and likely victims and other identifiable individuals, that was compiled and is identifiable as part of an investigation into a possible violation of law. The nature of the request and the fact that responsive records would be held by the OPP strongly support this conclusion. As a result, the section 21(3)(b) presumption would apply, and disclosure of the records, if they exist, would constitute an unjustified invasion of the privacy of the affected persons and any alleged victims or other individuals who would be identified in such records.

In some circumstances, the fact that an individual is deceased may constitute an unlisted factor under section 21(2) weighing in favour of disclosure [see, for example, Order PO-1736]. However, as I indicated above, neither one nor a combination of factors under section 21(2) may rebut a section 21(3) presumption. Accordingly, I accept the Ministry's position on this issue.

Part two: disclosure of the fact that records exist (or do not exist)

Under part two of the section 21(5) test, the Ministry must demonstrate that disclosure of the fact that a record exists (or does not exist) would in itself convey information to the appellant, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

The Ministry submits:

> . . . [D]isclosure of the fact that OPP records exist (or do not exist) regarding specific named and unnamed individuals would in itself convey personal information that would be subject to the privacy invasion presumption contained in section 21(3)(b). As a result, the Ministry submits that section 21(5) is relevant in the circumstances of the request.

The appellant submits:

> The appellant also states that in order to use the exemption at section 21(5), the Ministry must demonstrate that the mere mention of the records would cause the harm described at section 21(3)(b). The appellant further states that in the past, [named individual] of the OPP, who is also the head of Project Truth, has already confirmed to her orally that there are investigation records relating to the deceased individuals named in the requests, and that the Ministry should not therefore be permitted to use this exemption at this time. An affidavit pertaining to this information may be supplied by the appellant, if this is required.

In my view, if the Ministry were to reveal the fact that records do or do not exist pertaining to the named affected persons, that fact alone would reveal whether or not these individuals have been the subject of a police investigation. In my view, this information is itself highly sensitive within the meaning of section

21(2)(f) of the *Act* [Order MO-1179]. While the fact that some of the affected persons may be deceased may diminish those individuals' privacy interest to some degree, the appellant has not persuaded me that this factor entirely negates the sensitivity of the information, nor that any other factor under section 21(2) applies such that the privacy interests are outweighed by the interests in disclosure. In addition, the "diminished privacy interest after death" factor does not apply to any affected persons who may not be deceased.

With respect to the unnamed individuals, I find that disclosure of whether or not records exist pertaining to unnamed individuals has the potential to reveal information about the named individuals, given the circumstances, including the nature of the information already within the appellant=s knowledge.

While it may be the case that an OPP employee revealed that records relating to some or all of the affected persons exist, due to the inherent sensitivity of these matters, I find that disclosure of the existence or non-existence of the records, nonetheless, would constitute an unjustified invasion of the affected persons' privacy. It is important to note that under the section 21 privacy exemption, it is the interests of the individuals who are at stake, rather than the government institution. Thus, even if an OPP employee confirmed the existence of records, such confirmation may not have been appropriate and should not result in prejudice to the affected persons. As a result, it is not necessary for me to make a finding as to whether or to what extent an OPP employee may have disclosed relevant information.

Conclusion

With respect to the OPP appeals, both parts of the test for the application of section 21(5) have been met, and I uphold the Ministry's decisions in this regard. In the circumstances, it is not necessary for me to consider whether or not the Ministry's decisions to refuse to confirm or deny the existence of records under the law enforcement exemption (section 14(3)) should be upheld.

Coroner Records

PERSONAL INFORMATION

An unjustified invasion of personal privacy under section 21 can only result from the disclosure of personal information. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual [paragraph (h)].

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about the individual" within the meaning of section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

These requests concern information relating to any investigation into the death of three individuals (the affected persons) named by the appellant. The responsive records consist of Coroner's Investigation Statements, Reports of the Centre for Forensic Sciences (CFS), Warrants for Post Mortem Examination, Medical Certificate of Death, Reports of Post Mortem Examination, correspondence between the Ministry and next of kin, internal Ministry correspondence, correspondence between the Ministry and the College of Physicians and Surgeons of Ontario (the College) and correspondence between next of kin and the College.

The Ministry submits that the records consist of personal information of the affected persons and other individuals.

The appellant appears to concede that some of the information in the records would constitute personal information, but submits that other information, including that relating to individuals in their professional capacity, as well as "the description of the death scene or the conclusions of the Coroner" does not meet the section 2(1) definition.

All of these records contain information "about" the affected persons, as well as about other individuals in their personal capacity, within the meaning of the section 2(1) definition of "personal information". While the records contain some information pertaining to individuals in their professional capacity, this information is restricted to such information as the names of coroners, pathologists and OPP officers. I do not accept the appellant's submission that information such as the description of the death scene or the conclusions of the Coroner are not personal information. This information is "about" the affected persons, since it reveals the circumstances of their death, and cannot be said to be strictly professional, non-personal information.

Section 2(2) of the *Act* states:

> Personal information does not include information about an individual who has been dead for more than thirty years.

In the circumstances, I find that section 2(2) does not apply. None of the individuals in question would have been deceased for more than thirty years and, therefore, the records, if they exist, would constitute personal information.

INVASION OF PRIVACY

Introduction

Section 21(1) of the *Act* prohibits an institution from disclosing personal information, unless one of the exceptions in paragraphs (a) through (f) applies. In the circumstances of this case, the only exception which could apply is section 21(1)(f), which permits disclosure of personal information where the disclosure would not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.
The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In the case of the Coroner records, the Ministry has cited the factors weighing against disclosure at section 21(2)(e), (f) and (h) and the presumptions of an unjustified invasion of personal privacy at sections 21(3)(a) and (b). Those sections read:

> (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,
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> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
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> (f) the personal information is highly sensitive;
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> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
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> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
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> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (b) 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;

Representations

The Ministry submits:

. . . [D]isclosure of the responsive records would unfairly expose individuals identified in the records to pecuniary or other harm. The Ministry refers to the content of the records at issue in support of its position.

. . . [T]he responsive records contain information about the deceased individuals and other identifiable individuals that is intrinsically highly sensitive. The Ministry refers to the content of the records at issue in support of its position.

. . . [D]isclosure of the responsive records would reveal information that has been supplied by identifiable individuals implicitly in confidence to the Office of the Chief Coroner. The Ministry refers to the content of the records in support of its position.

. . . . .

. . . [The] responsive records contain medical information about the deceased individuals. The ministry refers to the content of the records in support of this position. Similar records were considered by former Assistant Commissioner Irwin Glasberg in IPC Order P-519. In upholding the application of section 21(3)(a) to the requested record Assistant Commissioner Glasberg commented as follows:

> The Ministry has also submitted that the presumption contained in section 21(3)(a) of the *Act* applies to the coroner's report. In Order P-362, Inquiry Officer Holly Big Canoe found that post-mortem forensic test results involving blood and urine analyses pertain to the medical condition of a deceased person and, accordingly, fall within the ambit of section 21(3)(a) of the *Act*. Similarly, in the circumstances of this appeal, I find that the coroner's report (which includes blood, urine and tissue sampling, and the coroner's observations about the cause of death) constitute personal information about the medical condition of the deceased. Thus, this information also falls within the section 21(3)(a) presumption and the disclosure of that information would constitute an unjustified invasion of the privacy interests of the deceased.

The appellant submits:

. . . [A] relevant factor in determining whether access would constitute an unjustified invasion of privacy is the fact that the individuals to whom the request relates are now deceased. The criteria established at section 21(2) are non-exclusive, and unlisted factors may be considered in determining whether or not the release of information constitutes an unjustified invasion of privacy. In decision M-50, Commissioner Tom Wright indicates that the death of an individual may be considered as a factor in determining whether the release of information would constitute an unjustified invasion of privacy. In that decision, he writes:

> In the circumstances of this appeal, I feel that one such unlisted factor is that one of the individuals whose personal information is at issue is deceased. Although the personal information of a deceased individual remains that person's personal information until thirty years after his/her death, in my view, upon the death of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. The disclosure of personal information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased.

In the case at hand, . . . the privacy concerns raised by the Ministry are diminished by the death of the individuals. With regards to the objection raised pursuant to section 21(2)(e), it is difficult to foresee the manner in which the release of the information could result in pecuniary or other harm to the individuals. Firstly, it is the appellant's submission that the information contained in the records at the Office of the Chief Coroner are not in the nature to cause pecuniary harm as they are deceased. With regards to "other harm", . . . the meaning of this term must be governed by the prior use of the term "pecuniary" such that the harm must be in the nature of a pecuniary or other legally sanctionable type of harm. If the harm relates to possible defamation, the law is clear that deceased persons have no enforceable right in defamation. If the harm is one related to privacy rights per se, the common law does not recognize privacy rights for the deceased. It must also be stated that an unjustified invasion of privacy is only presumed where the individuals will be exposed *unfairly* to pecuniary or other harm. If there is no unfair exposure to harm the presumption against disclosure does not apply. The Commissioner, finally, must also be satisfied that the release of information would be harmful. The final portion of these submissions will deal with the fact that the deaths of these individuals have led to questions relating to the circumstances of their deaths. The release of this information may well be seen as beneficial to these individuals if it demonstrates once and for all the facts surrounding their deaths, thereby ending such questioning.

With regards to section [21(2)(f)] the appellant concedes that the records may contain highly sensitive information such as the blood type and health history of the deceased individuals . . . [H]owever, . . . not all information contained in the records is *highly* sensitive and . . . the Commission must consider whether the death of the individual has rendered some of the information contained in the records less sensitive. Further, the definition of "highly sensitive" as stated in Order P-434 is that it must cause "excessive personal distress" to the person affected by the release . . . [T]he release cannot cause personal distress to the deceased themselves as they are no longer living, and . . . therefore this exemption does not apply.

> As regards section [21(2)(h)], the fact that the information may have been supplied in confidence is a relevant factor to consider. This concern, however, may be addressed by way of severance where disclosure would have the effect of unjustifiably invading the privacy of the individual supplying the information. Further if this information was provided by individuals who are now deceased, . . . there is a lesser privacy interest to protect.
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> . . . [T]he Commission must review these documents to ensure that all the records requested fall within these exemptions [at sections 21(3)(a) and (b)] . . . [R]egardless of the outcome of the arguments pursuant to section 23 of [the *Act*], the Commission must order the release of all information which does not fall clearly within the exemptions stated, such that all information which does not relate "to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation" must be released to the applicant (Order P-945). Likewise all information which was not compiled or is not identifiable as part of an investigation into a possible violation of the law must be released.
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> The appellant's final submission in relation to this issue flows from Order P-679, where it was decided that the longer a person is deceased, the less pressing is the need to protect privacy interests. In that situation it was decided that records could be released after a person had been deceased for 11 years. The appellant wishes to state that one of the series of records requested (those relating to [named affected person]) pertain to an individual who has been deceased for 7 years. While the deaths of all individuals to whom the records relate have diminished the privacy interest associated with the information contained within the records, the applicant stresses that this is especially true in relation to the [named individual] records, and that there are greater grounds to release these records.

Findings

The nature of the records is such that they clearly relate to the medical, psychiatric or psychological history of the affected persons, being detailed investigations into the circumstances surrounding their death. On this basis, I find that the section 21(3)(a) presumption applies to all of the personal information of the affected persons. Because a section 21(3) presumption cannot be rebutted by factors under section 21(2), the "diminished privacy interest after death" factor is not applicable to this information.

Further, the personal information relating to the other identifiable individuals is, in my view, highly sensitive, given the subject matter of the records, within the meaning of section 21(2)(f). Since I have no information before me to indicate that any of these individuals are deceased, the "diminished privacy interest after death" factor also is not applicable. Since the appellant has not raised any additional factors under section 21(2) weighing in favour of disclosure, I find that the information relating to the other identifiable individuals is exempt under section 21.

Severance

Where a record contains exempt information, section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information. A head will not be required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

It is arguable that some of the information contained in the records is not, taken in isolation, exempt under section 21. However, in my view, the record cannot reasonably be severed, since to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information, especially in light of the nature of the appellant's request (see Order). Examples include information of an administrative nature such as case numbers and clerical codes. As a result, I uphold the Ministry's decision not to sever information from the records for the purpose of disclosing it to the appellant. In addition, in the circumstances, it appears that no useful purpose would be served by disclosing the names and/or titles of individuals in the records acting in their professional capacity.

Conclusion

The records responsive to the Coroner records requests are exempt under section 21 of the *Act*.

PUBLIC INTEREST OVERRIDE

Introduction

Section 23 of the *Act* reads:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and *21* does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption [emphasis added].

In order for the section 23 "public interest override" to apply, two requirements must be met: (i) there must be a compelling public interest in disclosure; and (ii) this compelling public interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.)), leave to appeal refused [1999] S.C.C.A. No. 134 (note)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [Order P-1398, cited above].

The appellant claims that the public interest override applies with respect both to the OPP records and the Coroner records. The question to be determined with respect to the OPP records is whether or not the Ministry should be required to confirm or deny the existence of records, and to disclose them should they exist, despite the application of section 21. With respect to the Coroner records, the question to be decided is whether or not the records should be disclosed, despite the application of section 21. I will consider the application of section 23 to both categories below.

Representations

The Ministry submits with respect to the OPP records:

> . . . [T]he requests at hand and the responsive OPP records, if they exist, do not give rise to any compelling public interest as required under section 23. The [appellant] has sought access to OPP records with respect to named and unnamed individuals. These records, if they exist, could not be said to have any significant implications for the broader public interest.
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> . . . the purpose of the section 21 exemption is to protect the personal privacy of individuals with respect to their personal information. There is added sensitivity insofar as the responsive records, if they exist, would be records compiled and identifiable as part of an investigation into a possible violation of law.

The Ministry essentially repeats the above with respect to the Coroner records and further submits:

> . . . There is added sensitivity with respect to the responsive records in that the primary affected individuals are deceased. It is an important consideration to note that the exemption contained in section 21 is in fact a mandatory exemption. As former Assistant Commissioner Irwin Glasberg commented in Order P-568:
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> > . . . section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.
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> The Legislature in passing the [*Act*] intended that the privacy of individuals should be protected by making this exemption mandatory. It is noteworthy that the Legislature passed subsection 21(4) which takes certain personal information, to which the Legislature intended the public should have access, out of the mandatory section 21 exemption. In this sense, section 21 itself embodies the principle of balancing the rights of privacy to which individuals are entitled as against the rights of the public to have access to information under the control of [institutions].

> In the circumstances of the requests at issue, to withhold the personal information in the responsive records is consistent with the purpose of the exemption.
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> The Ministry submits that the section 23 public interest override does not apply to the responsive records and that there is no compelling public interest that clearly outweighs the purpose of the exemption.

The appellant submits with respect to the OPP records, if they exist:

> The issue of sexual abuse within the Probation Office and in other institutions in Cornwall has been the subject of great debate and controversy in Cornwall and elsewhere. There have been a number of Police investigations relating to allegations of widespread sexual abuse in Cornwall, including Project Truth. These investigations have led to charges against a number of individuals. The matters relating to these allegations of sexual abuse have been the subject of much media coverage (see Tab "A"). They have also been the object of debate at Queen's Park. A bill spearheaded by MPP Garry Guzzo which would see the creation of a Public Inquiry to look into the events at Cornwall recently passed second reading at Queen's Park. While Mr. Guzzo's bill is wide-ranging, the particular focus of it relates to a thorough analysis of the occurrence of sexual assaults by prominent citizens as well as the work conducted by Police forces in this matter (see Tab "B").
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> . . .[T]here is a compelling public interest in the release of the documents which form the subject matter of this request, much of it reflected in Mr. Guzzo's request for a Public Inquiry. It is important for the public to know whether the Police properly investigated the actions of the individuals named in the requests. There have been widespread reports of abuse by a number of the individuals listed in the request (see Tab "C"). Further, the government has recently been the subject of lawsuits relating to the alleged actions of [named affected persons], one of which (involving [named affected person]) has settled (see Tab "D"). In light of this, . . . it is important for the public to know whether Police investigations were ever initiated in relation to matters relating to these or other individuals. The appellant also believes that it is important for the public to know whether the Police was made aware of any allegations, and whether they acted pursuant to these allegations. This is particularly true in light of the fact that public funds have already been paid out in relation to one of these lawsuits, and may again be paid to possible victims. While these payments do not relate directly to the work of Police forces, . . . they were made by Her Majesty in Right of Ontario and . . . this creates an increased interest to scrutinize the broad scope of government activity, particularly in a matter as wide-ranging as the Cornwall matter. Tabs C and D contain transcripts of CBC news stories. An audio tape containing these stories will be sent to you shortly.
>
> . . .[Q]uite apart from scrutinizing the activities of the Police, there is a compelling public interest in knowing whether the claims made against these individuals in the lawsuits and

> elsewhere are well-founded. In the normal course the public would be informed of the allegations against the individuals whose records are being requested in the context of a trial (either criminal or civil). Three of these individuals, however, have passed away . . . [U]nless the records relating to these individuals and forming part of this request are released, the public will never fully know the circumstances surrounding the alleged incidents stated in the lawsuits and whether there was sufficient evidence to charge these individuals. This lack of information is further compounded by the fact that the government has previously settled its lawsuits before they proceeded to trial, and may do so again. This manner of proceeding, while legitimate, is one which keeps the public in the dark and does not allow it to understand the events which occurred in Cornwall.
>
> . . .[A]ccess to documents relating to other employees than the deceased [Appeal PA-000044-1] would also permit the public to understand the extent of sexual misconduct in the Cornwall Probation Office and elsewhere and whether the Police conducted a proper investigation into these matters.
>
> With regards to [the] second part of the test at section 23, . . . the public interest in disclosure clearly outweighs the purpose of the stated exemption. In this situation the interest to be protected is the privacy rights of the individuals. The appellant concedes that this is a valid interest to protect . . . [H]owever, . . . the public's right to be informed must supersede the right to privacy in this case, in light of the public demand for information, and the severity of the allegations in these matters . . . [I]n light of the death of many of the individuals concerned, this request constitutes the only opportunity of the public to be informed of the allegations. Finally, . . . the Act must be read in accordance with the principles of openness which are its raison-d'etre.
>
> In conclusion, . . . the fact that there has been a demand for a Public Inquiry should not be used [as] a premise to refuse . . . access to these documents. While demand for a Public Inquiry is symbolic of the fact that there is great public interest in the Cornwall matter, there is a great likelihood that the bill will not go beyond first reading and will die on the Order Paper. Secondly, the Public Inquiry may not address the issues and documents raised in this access request.

The appellant repeats much of the above with respect to the Coroner records, and also states:

> . . . [T]he public interest in understanding the "Cornwall matter" attaches to the records maintained by the Office of the Chief Coroner. [Named individuals] have been named in lawsuits initiated against the Government of Ontario relating to alleged sexual activity at the Cornwall Probation Office (see Tab "C"). Allegations against these individuals (particularly against [two named individuals]) place them at the middle of the whole issue of occurrences of sexual infractions against minors in Cornwall (see Tab D) . . . [T]he head of Project Truth . . . has previously confirmed to the appellant that [named individuals] were the object

> of active Police investigations and were on the verge of being charged with criminal offences at the time . . . of their death. An affidavit to this effect may be submitted by the appellant if this is required. The timing of the deaths of these and other individuals has lead to questions relating to their deaths (see Tab "E") . . . [I]t is in the public interest to release the records as they will inform the public as to the circumstances of the occurrence and investigation of the deaths of these individuals and in the process shed more light on the Cornwall matter. Tabs C, D and E contain transcripts of CBC news stories. An audio tape containing these stories will be sent to you shortly.
>
> As regards the second part of the test outlined at section 23, . . . the public interest in the records clearly outweighs the purpose of the exemption provided by section 21. The purpose of the release of these records is to shed light on matters relating to the "Cornwall matter" as a whole. This is clearly in keeping with one of the key purposes of the *Act* which is to keep the public informed. Further, . . . this *Act* should be read in accordance with the stated principles of openness, and that information should be released except where valid exemptions apply. In this situation, . . . the privacy rights of the individuals are significantly reduced by virtue of the fact that they are deceased. The appellant invokes the arguments made [under the section 21 exemption] in support of this position.

Is there a compelling public interest in disclosure of the information in question?

In Order P-1398, former Adjudicator John Higgins stated:

> Order P-984 relies on the Oxford dictionary's definition of "compelling" to mean "rousing strong interest or attention". I agree that this is an appropriate definition for this word in the context of section 23.

In upholding former Adjudicator Higgins's decision in Order P-1398, the Court of Appeal for Ontario in *Minister of Finance* (above) stated:

> . . . in our view the reasons of the inquiry officer make clear that in adopting a dictionary definition for the term "compelling" in the phrase "compelling public interest", the [adjudicator] was not seeking to minimise the seriousness or strength of that standard in the context of the section [at p. 1].

In light of the Court of Appeal's comments, I am adopting former Adjudicator Higgins's interpretation of the word "compelling" contained in section 23.

In my view, the appellant has established that there is a compelling public interest in disclosure of information pertaining to the Cornwall matter and, in particular, information which would shed light on how the authorities have responded to the allegations of abuse. More specifically, I am persuaded that there is a strong interest in the public knowing whether or not certain named individuals have been investigated, and in disclosing those investigation records, if they exist.

However, with respect to the Coroner records, I am not convinced that there is a compelling public interest in their disclosure. These records, as opposed to the OPP records (if they exist), are only indirectly connected to the investigation and would not shed a significant amount of light on the manner in which the investigation has been carried out.

To conclude, I find that there is a compelling public interest in disclosure with respect to the OPP records, but not with respect to the Coroner records. Therefore, the first part of the section 23 test has been met for the OPP records (if they exist) only.

Does the compelling public interest in disclosure with respect to the OPP records "clearly outweigh" the purpose of the section 21 exemption?

Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption.

Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

Commenting generally on the personal privacy exemption under the freedom of information scheme, the authors of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations which would generally be regarded as particularly sensitive in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature . . . the effect of the proposed exemption is to tip the scale in favour of non-disclosure" [see Order MO-1254].

I found above that, in the circumstances, disclosure of the fact that OPP records exist or do not exist would itself reveal highly sensitive personal information regarding the named and unnamed possible subjects of the investigation, whether or not they are deceased. I also found above that any records which may exist would reveal highly sensitive personal information about not only the subjects of the investigation, but about other involved individuals, such as victims, as well. In my view, in the particular circumstances of this case, there is a compelling interest in protecting the privacy of the individuals involved in this matter, which is of no less

force than the public interest in disclosure. Since, for section 23 to apply, the public interest in disclosure must *clearly outweigh* the purpose of the exemption, I find that section 23 does not apply here.

ORDER:

I uphold the Ministry's decisions in these appeals.

Original signed by: March 5, 2001
David Goodis
Senior Adjudicator