



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-1959

Appeal PA-010016-1

Ministry of the Attorney General



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of the Attorney General (the Ministry), under the *Freedom of Information and Protection of Privacy Act*. The requester (now the appellant) had sought access to the full investigation file of the Special Investigations Unit (the SIU), including the report of the Sarnia Police Services Board, about a motor vehicle accident involving the appellant and a police officer with the Sarnia Police Service. The appellant remains in a coma as a result of this accident (he is represented by counsel in this appeal). The SIU investigated the accident, and the Director of the SIU ultimately determined that criminal charges were not warranted against the police officer.

The Ministry located 56 records, including correspondence, witness statements, police officers' notes, audiotapes, videotapes, photographs, maps and diagrams. Access was granted to Records 40, 45 and 47 in their entirety, and Record 6 in part. The Ministry denied access to the remaining portion of Record 6 and all remaining records, relying on the discretionary exemption in section 14(2)(a) of the *Act* (report prepared in the course of law enforcement), and the mandatory exemption in section 21 (unjustified invasion of privacy), with reference to the presumption in section 21(3)(b).

A Notice of Inquiry was sent to the Ministry and to four affected parties, initially, inviting their representations on the facts and issues raised by the appeal. In the Notice, I also made reference to sections 49(a) and (b) of the *Act* which, on my review, may also be relevant. The Ministry's representations and the Notice of Inquiry were then sent to the appellant, who has also provided representations. Although I refer to representations from the appellant in this order, clearly, because of his condition, counsel has made these representations on his behalf.

I received no response from three of the four affected parties. One affected party responded by providing partial consent to release of her information, with the exception of her address and telephone number. The only record to which this consent is relevant is Record 15 (see discussion below). The appellant has provided me with consents from his parents and his spouse (who was a passenger in the car at the time of the accident), to the release of their information.

CONCLUSION:

I uphold the Ministry's decision to withhold Records 1 to 4, 7, 11, 28 to 30, 32, 35, 36, 38, 41 to 44, and 49 to 53 in their entirety.

I order disclosure of Records 6, 8 to 10, 12, 14, 16, 17, 20, 27, 39, 46, 48 and 54 to 56 in their entirety.

I order disclosure of Records 13, 15, 18, 19, 21 to 26, 29, 31, 33, 34 and 37 with the exception of exempt portions which shall be severed from the records.

RECORDS:

The records in issue are listed in the attached Appendix "A". The use of the word "report" in Appendix "A" is based on the terminology used in the Index of Records provided by the

Ministry and does not reflect a conclusion by me that the records constitute "reports" within the meaning of section 14(2)(a) of the *Act* (see discussion below).

DISCUSSION:

PERSONAL INFORMATION

It is necessary to decide, firstly, whether the records contain personal information, and if so, to whom that personal information relates, for the answers to these questions determine which parts of the *Act* may apply.

Under section 2(1) of the *Act*, "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 the disclosure of the name would reveal other personal information about the individual.

The Ministry submits, in general, that the records in issue contain personal information relating to persons other than the appellant. These persons include such individuals as the subject officer, the witness officers, the civilian witnesses, and other persons involved in the investigation. These materials include the SIU Director's Report to the Attorney General, the SIU Intake Form, correspondence, reports generated by the Sarnia Police Service and the SIU, the transcript of the police communications tape, witness list, notebook entries of police witnesses (including the subject officer) and the audiotapes of witness statements.

The Ministry submits that the records also contain information which may or may not constitute personal information relating to the appellant.

The appellant submits that some of the records may contain personal information which relates to persons other than the appellant, such as civilian witnesses, witness officers, the subject officer and other persons involved in the investigation. The appellant states that he has been provided with no information regarding the contents of these records in order to comment on whether the information in each record at issue qualifies as personal information and if so, to whom that information relates. However, based on the brief description of the records provided, the appellant submits that a number of records do not contain personal information, such as the map, coefficient of friction of various roadway surfaces, Sarnia Police Service Exhibit List, Towing Invoice, Technical Collision Investigation Notes, Correspondence from the SIU to the Freedom of Information Co-ordinator, photographs, videotape of vehicles, oversize scene diagram and correspondence between the Sarnia Police Service and the SIU.

My findings on this issue are as follows:

1. Records 1 to 4, 6 to 11, 15,19, 21 to 26, 28 to 32, 34 to 38, 41, 43 to 44, 46 and 50 to 53 contain the personal information of the appellant, along with that of other identifiable individuals, including civilian witnesses, the subject officer and other persons.

2. Record 27 contains the personal information of the appellant only, and not of any other individuals.
3. Records 13, 18, 33, 42 and 49 contain the personal information of individuals other than the appellant, and do not contain personal information of the appellant.
4. Records 5, 12, 14, 16, 17, 20, 39, 48 and 54 to 56 do not contain any information which qualifies as “personal information” within the definition of that term in section 2(1).

Previous decisions of this Office have held that information about an individual in his or her professional or employment capacity does not constitute that individual’s personal information where the information relates to the individual’s employment responsibilities or position (see Reconsideration Order R-980015 and Order PO-1663). However, where information about the individual involves an evaluation of his or her performance as an employee or an investigation into his or her conduct as an employee, then these references are considered to be the individual’s personal information (see Orders P-721, P-939, P-1318 and PO-1772). In Order PO-1912, information about OPP and other police officers in records originally created in these officers’ professional duties was found to constitute their personal information where the conduct of the officers was later called into question by a lawsuit.

Applying these principles to the facts of this appeal, although Records 4, 8, 9, and 10 contain information about the appellant as well as of other individuals, most of the information about the other individuals is not their “personal information”. The SIU file number assigned to the investigation is the personal information of the subject officer (see Order P-1315). However, information about other police officers is not their personal information. In Records 8, 9 and 10, certain officers of the Sarnia Police Service are notified by the SIU that they are being designated as “witness officers”. They are requested to forward copies of their notes to the SIU. These police officers were not involved in the accident, but arrived on the scene following the accident to investigate. Although I am satisfied that information about the “subject officer” is that officer’s personal information (see Order PO-1912), I find that information about the witness officers does not relate to them in a personal but, rather, in a professional capacity. It is about their involvement in the motor vehicle accident and ensuing SIU investigations in a professional capacity only and not as the subjects of investigation. In this respect, the facts of this case are distinguishable from those in Order PO-1912, as well as those in Order P-1155, referred to by the Ministry, in which it was found that information relating to three police witnesses constituted their personal information “as their actions...have been called into question and investigated.”

The same principles distinguishing personal from professional information apply to the information about identifiable individuals in Records 5, 12, 14 and 39. Record 5, for example, names the lead investigator in the SIU investigation, and notes that this individual is bringing the file to the office on a specified date. Record 12 is a cover letter to certain information provided by one of the witness officers to the investigator from the SIU. Any information about these individuals is only in relation to activities in a professional or employment capacity.

DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

Section 47 of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access. Under section 49(a), the Ministry has the discretion to deny access to records which contain an individual's own personal information where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include section 14(2)(a) (law enforcement report), on which the Ministry has relied in this case.

Law enforcement report

Section 14(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

Introduction

In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the Ministry must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[See Order 200 and Order P-324]

The appellant acknowledges that the SIU investigations meet the definition of "law enforcement". He submits, however, that the records at issue do not meet the definition of a "report". Further, the appellant submits that the Ministry has failed to justify the application of section 49(a). The appellant also states that the records containing personal information must be released once the consent of the individual has been obtained, and which the Ministry has an obligation to do. It is said that "there is no blanket exemption to all of these records under the rubric of an 'investigative brief'."

I am satisfied that, with the exception of Record 46, the records were prepared in the course of law enforcement, inspections or investigations, by an agency (either the Sarnia Police Service or the SIU) which has the function of enforcing and regulating compliance with a law. However, I

find that most of the records, including Record 46, do not meet the definition of a “report” for the purposes of section 14(2)(a).

Report

The word “report” is not defined in the *Act*. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (See Order 200).

I agree with this approach and will apply it to the records at issue in this appeal.

Apart from Record 46, the Ministry submits that the records are all part of the SIU’s “investigative brief” of the incident. Record 2, the SIU Director’s Report to the Attorney General of Ontario constitutes a summary of some of the more material information contained in the other records, together with the SIU Director’s analysis of that information and ultimate decision in respect of whether criminal charges should be laid. The Ministry submits that the records in total provide an overview of the incident and a description of the events prior to, during and subsequent to the occurrence which was investigated. Further, it is said that all of the records form an integral part of the SIU’s Director’s Report in that it is these materials which are reviewed by the Director in arriving at an ultimate disposition of the case, which is then formally articulated in the Report. It is submitted that these materials are more than “mere observations or recordings of fact.” The Director’s Report and the rest of the records, considered together, comprise a formal statement of the results of the collation and consideration of information and, consequently, the information contained in these records constitutes a “report” for the purposes of part 1 of the section 14(2)(a) test.

Essentially, the Ministry’s submission is that all of the records must be considered together for the purposes of the application of section 14(2)(a). I am unable to accept this submission, and I find that section 14(2)(a) requires consideration of whether *each* record at issue falls within that exemption. The Ministry has enclosed copies of two prior orders of this office in support of its position. In Order P-1315, it appears that a group of records described as the SIU’s final investigative report, and which included witness statements, expert reports, summaries of forensic testing and other evidence gathered in the course of the police investigation into an accident, was considered as one record and found as a whole to constitute a “report” for the purposes of section 14(2)(a). A similar approach was applied in Order P-1418. More recently, however, in PO-1819, section 14(2)(a) was applied to each record which formed part of the SIU investigation file.

On my reading of these orders, it is clear that even in P-1315, there were a large number of records in the SIU investigation file which were considered separately by the adjudicator for the purposes of section 14(2)(a). Some of these records, such as interview notes, a motor vehicle accident report and vehicle examination and damage report, are similar to those before me which the Ministry asserts form part of an overall SIU “investigation brief”.

Order P-1418 is less easily reconciled with Order PO-1819, and with the approach I have taken in this order. I am satisfied that, if there is any inconsistency between the approaches in some of the orders in this area, the analysis in PO-1819 is more in keeping with the intent of this section of the *Act*. Although I find that Record 2 (the Report of the Director) meets the requirements of section 14(2)(a), it does not follow that all the material which may have been gathered together, placed before and considered by the Director before arriving at his conclusions is also exempt, without further analysis. In this respect, I agree with the appellant that section 14(2)(a) does not provide a “blanket exemption” covering all records which the Ministry views as constituting part of the SIU’s “investigative brief.”

In the case before me, the SIU investigation file consists of numerous different records from diverse sources. As the representations of the Ministry describe, they are essentially a compilation of information obtained during the course of the SIU’s investigation and the steps taken by SIU staff in the discharge of that investigative jurisdiction, and include documentary materials obtained by the SIU or generated by the SIU. The Director’s decision is based upon a review of all the records, but his analysis and decision is contained in Record 2 (the Director’s Report) alone.

I accept, and it is not seriously disputed by the appellant, that Record 2 qualifies as a “report” for the purposes of section 14(2)(a), in that it consists of a formal statement of the results of the collation and consideration of information. I also find that Record 4, the cover letter to Record 2, qualifies for exemption, as the two records together can reasonably be viewed as forming the report to the Attorney General from the SIU Director.

I also accept that Records 3, 11, 38, 43a and 44 qualify as “reports”. Rather than consisting of mere observations or recordings of fact, they also include some consideration of the information collected during the course of the investigation in question.

I find that none of the remaining records at issue meet the definition of a “report”. To elaborate further on some of these, Records 15, 19, 23 to 27 and 29 to 37 consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers’ notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of “report” under the *Act*, in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1341, M-1141 and M-1120. In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a “report”.

On my review of the incident reports, supplementary reports and police officers’ notes at issue in this appeal, I am satisfied that they also do not meet the definition of a “report” under the *Act*, in

that they consist of observations and recordings of fact rather than formal, evaluative accounts. The content of these records is descriptive and not evaluative in nature.

Record 21 is an internal Sarnia Police Service memo, to which is attached a press release and a computer printout. The memo provides an update to the Chief of Police as to the events following the accident as well as a brief overview of the accident. Again, this record conveys factual information, and has no evaluative element.

Although Record 43 is entitled "Special Investigations Unit Follow Up Report", I find that it does not qualify as a report, in that it consists of a witness statement (see Order P-1315, which came to the same finding on similar records).

My finding that other records, such as the Technical Collision Investigation Notes (Record 39), photographs (Record 48) and videotapes of the accident scene and vehicle (Records 54 and 55), do not qualify as "reports" is consistent with Orders PO-1819 and P-1315, which came to similar conclusions on similar records.

In summary, my conclusion is that Records 2, 3, 11, 38, 43a and 44 qualify for exemption under section 14(2)(a). I am also satisfied, on the basis of the Ministry's submissions and my review of the records, that the Ministry properly exercised its discretion in deciding against the release of the information in Records 2, 3, 11, 38, 43a and 44 pursuant to section 49(a) of the *Act*, in conjunction with section 14(2)(a).

With respect to one aspect of the appellant's submissions, I am satisfied that the consent of individuals whose personal information is found in these records does not affect the applicability of the section 14(2)(a)/49(a) exemption. Section 14(2)(a), unlike section 21(1) (discussed below), does not provide for consent as an exception to the exemption. Further, I find, having regard to the different purposes served by the exemptions in sections 14(2)(a) and 21(1), that consent to the release of personal information is not a factor having much bearing on the exercise of discretion under section 49(a).

None of the remaining records meets the definition of a "report"; they therefore do not qualify for exemption under these sections. I will accordingly turn to consider whether these remaining records are nonetheless exempt from disclosure under the provisions of sections 21 and/or 49(b) of the *Act*.

INVASION OF PRIVACY

General

Section 49(b) of the *Act* provides another exception to the general right of individuals to have access to their own personal information, in the following terms:

A head may refuse to disclose to the individual to whom the information relates personal information, if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. Accordingly, I will consider whether the disclosure of the personal information in Records 1, 6 to 10, 15, 19, 21 to 26, 28 to 32, 34 to 37, 41, 43, 46 and 50 to 53 would be an unjustified invasion of the personal privacy of other individuals and is exempt from disclosure under section 49(b).

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information, unless one of the exemptions set out in that section applies. Therefore, I will consider whether the disclosure of Records 13, 18, 33, 42 and 49 would be an unjustified invasion of personal privacy under section 21(1).

In both these situations (where the record contains the personal information of the appellant and of others, and where the record contains the personal information of others only), 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 a determination as to 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(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.

With respect to section 21(3), 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 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In other words, once section 21(3) is found to apply, the factors in section 21(2) cannot be resorted to in favour of disclosure.

As I have found that Record 27 contains the personal information of the appellant only, and not of any other individuals, its disclosure would not result in an unjustified invasion of another

individual's personal privacy under either section 21(1) or 49(b). This record shall therefore be disclosed to the appellant.

Also, as Records 5, 12, 14, 16, 17, 20, 39, 48 and 54 to 56 do not contain any personal information, they also do not qualify for exemption under either section 21(1) or 49(b), and shall also be disclosed.

Effect of Consent to Disclosure

Section 21(1)(a) of the *Act* provides an exception to the general principle which precludes the disclosure of personal information to individuals other than the individual to whom the information relates, in the following terms:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

In the present situation, four persons have provided their written consent to the disclosure of their personal information to the appellant. One of these persons is a police officer employed with the Sarnia Police Service, who was involved in a motor vehicle accident described in the January 29, 1999 report which forms part of Record 15. This individual has consented to the release of her information in that report, with the exception of her home address and telephone number. I find that the disclosure of the personal information of this police officer, with the exception of her home address and telephone number, falls within the exception contained in section 21(1)(a).

The three other individuals who have provided consent to disclosure of their personal information are the parents and spouse of the appellant (a passenger in his vehicle at the time of the accident). Their personal information is found in Records 15, 19, 21, 24, 25, 26, 29, 31, 34, 37, 41 and 43. Again, the disclosure of the personal information of these individuals falls within the exception contained in section 21(1)(a), and may be disclosed. Although there is also personal information of at least one of these individuals in the audiotapes (Records 50 to 53), I find it impracticable to sever this information from the information of others in those records.

The appellant has submitted that any records containing personal information qualify for disclosure upon obtaining the prior written consent of the individual. Further, it is submitted that the "Freedom of Information Office" or the Ministry must communicate with all persons involved in the file to obtain their consent to release the portions of the record containing their personal information. The appellant has also referred to section 21(2)(d) of the *Act* (fair determination of rights) in support of his position, and states that it is necessary to obtain the records at issue in order to determine the circumstances surrounding the motor vehicle accident, the civil liability of the drivers, and the rights of the appellant. The appellant also submits that section 21(2)(h) (supplied in confidence) must also be considered, the impact of which can only

be determined by contacting the individuals directly in an attempt to obtain their consent to a release of their information.

In Order MO-1449, Adjudicator Laurel Cropley, found that there is no requirement under the municipal *Act* that an institution notify an affected party in order to obtain consent, unless it is considering the disclosure of personal information in the records. In any other case, such notification is at the discretion of the head of the institution. I am satisfied that the same applies under the provincial *Act*.

Accordingly, although I will order disclosure of the personal information for which consent has been obtained, I will now turn to a discussion of whether the personal information for which consent to disclosure has not been obtained is exempt under the provisions of sections 21(1) and 49(b) of the *Act*.

Sections 21(3)(b) and 49(b)

For all the records under consideration in this part, the Ministry has submitted that the presumption in section 21(3)(b) applies. This section provides:

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;

The Ministry submits that the personal information in the records was compiled by the SIU as part of an investigation into a possible violation of law, specifically the *Criminal Code*. The appellant does not disagree with this specifically, but submits that as it has not been provided with the date of the SIU's final report to the Attorney General, he is prejudiced in addressing whether any of the records were created *following* the investigation.

Records containing the personal information of individuals other than the appellant and not of the appellant – section 21(1)

Based on the submissions of the Ministry and my review of the records, I find that the personal information contained in Records 13, 18, 33, 42 and 49 was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code*. The fact that no criminal proceedings were commenced thereafter has no bearing on the issue, since section 21(3)(b) only requires that there be an investigation into a possible violation of law (Order PO-1849). Therefore, I find that the section 21(3)(b) presumption of an unjustified invasion of personal privacy applies, and section 21(1) prohibits the disclosure of this information.

As indicated above, the appellant has referred in his submissions to sections 21(2)(d) and 21(2)(h) of the *Act*. In my discussion above, I referred to the decision in *John Doe, supra*.

Because of that decision, I am precluded, having found that section 21(3)(b) applies, from considering the application of any of the factors weighing for or against disclosure under section 21(2).

Records containing the personal information of the appellant as well as of individuals other than the appellant – sections 21(1) and 49(b)

I also find that the personal information in Records 1, 6 to 10, 15, 19, 21 to 26, 28 to 32, 34 to 37, 41, 43 and 50 to 53 was compiled and is identifiable as part of an investigation into a possible violation of law, specifically the *Criminal Code*. Their disclosure would therefore be deemed to constitute an unjustified invasion of the personal privacy of the individuals to whom that information relates. Again, having regard to this finding, I am precluded from considering the application of the factors under section 21(2) referred to by the appellant.

Turning to the balancing of interests under section 49(b), the Ministry has made representations as to its policy reasons for the protection of the personal information contained in the records. Among other things, it states that it is necessary that an investigative law enforcement agency be able to protect personal information compiled as a component of an investigation into potentially criminal conduct. Central in any such investigation is the willingness of witnesses to come forward and provide information that they may have which is relevant to an investigation. This type of information, particularly in the context of a criminal investigation involving potential criminal liability on the part of police officers, is often of a very sensitive nature whose provision is often only forthcoming where confidentiality can be assured.

The Ministry submits that the concern is shared equally between police officers and civilians. It states that in respect of the former, it should be noted that pursuant to section 113(9) of the *Police Services Act*, all members of police forces are required to cooperate fully with the SIU in the conduct of a SIU investigation. In order to ensure that cooperation from police officers in the course of SIU investigations continues to be fostered, it is necessary, it is submitted, that police officers retain a measure of confidence that their cooperation with the SIU, in the form of information they provide, will remain confidential and will not be disclosed to third parties.

With respect to civilian witnesses, it has been the experience of the SIU that there are many occasions when they will only provide the SIU with a statement of their evidence if they believe that all communications will be kept in confidence. Many are fearful of police reprisal, whereas others are worried that what they say may at some point be used against them in a legal proceeding. Accordingly, it is said, it has historically been the policy of the SIU to retain information provided by witnesses in strict confidence and not to disclose such information to third parties in the absence of consent on the part of the witness who provided the information, except where such disclosure is compelled by judicial process.

I am satisfied on the basis of the Ministry's submissions, that it has properly exercised its discretion under section 49(b) to deny access to the personal information in Records 1, 7, 15, 19, 21 – 26, 28 to 32, 34 to 37, 41, 43 and 50 to 53.

I find, on an application of the “absurd result” principle (see Order PO-1819), that the absurdity in not disclosing the information in Records 6 and 8 to 10 clearly outweighs the privacy protection principles at stake. The only personal information of individuals other than the appellants in these records consist of the SIU file number assigned to its investigation, and the fact of the investigation, which may arguably be treated as the personal information of the subject police officer. It is apparent, however, that these facts are well known to the appellant.

There is also information about witness police officers in Records 8 – 10. However, I have found that the information about police officers in the records, other than the subject officer, is not personal information. In view of this, this information does not qualify for exemption under sections 21(1) and 49(b), and it is not necessary to consider the Ministry’s submissions on the exercise of its discretion under section 49(b) to this type of information.

My conclusion with respect to Records 6 and 8 to 10, therefore, is that they may be disclosed in their entirety.

Record 46

In Orders M-734 and M-841, Adjudicator Donald Hale found that records which are created following an investigation into a possible violation of law cannot fall within the ambit of the presumption in section 14(3)(b) (the municipal equivalent to section 21(3)(b)).

I agree with approach of Adjudicator Hale, and find that Record 46 was generated after the completion of the investigation. It therefore falls outside the scope of section 21(3)(b) of the *Act*. I note that in its submissions with respect to section 14(2)(a), the Ministry has acknowledged that Record 46 was created after the conclusion of the SIU’s investigation.

Even if the presumption under section 21(3)(b) does not apply to Record 46, it may still be exempt from disclosure if a consideration of other factors leads to a conclusion that its disclosure would constitute an unjustified invasion of personal privacy. On my review of the record, I find that the information in it is not highly sensitive within the meaning of section 21(2)(f), and there is no evidence that the information contained in it was supplied to the Ministry with an expectation of confidentiality (section 21(2)(h)). I am satisfied that the disclosure of the information in this record would not be an unjustified invasion of personal privacy. Record 46 accordingly does not qualify for exemption under sections 21 and 49(b).

Summary of findings under sections 21(1) and 49(b)

I have found that Records 13, 18, 33, 42 and 49 qualify for exemption under section 21(1) of the *Act*, by application of the presumption in section 21(3)(b). I have also found that Records 1, 7, 15, 19, 21 to 26, 28 to 32, 34 to 37, 41, 43 and 50 to 53 qualify for exemption by application of sections 21(1) and 49(b).

Records 6, 8 to 10 and 46 do not qualify for exemption.

Severance

Section 10(2) of the *Act* obliges institutions to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

The Ministry submits that in the event that some of the records are found to contain information which constitutes personal information related to the appellant in addition to persons other than the appellant, no reasonable severance is possible, given the intertwining, amalgamation and collation of information which constitutes the personal information of more than one individual. This applies, it is submitted, to the documentary portion of the records and with more force, to the audiotapes. In order to avoid disclosing information which is properly exempted from disclosure, any such attempt at severance would result, it is submitted, in the disclosure of information which is substantially unintelligible and, therefore, meaningless. The Ministry requests an opportunity to make further submissions on the issue of severance in the event that some of the records are found not to be subject to the exemptions at issue.

The appellant submits that he is entitled to all records, with severances made for individuals declining to provide consent to the release of their personal information.

I have reviewed the records and conclude that some of the personal information exempt from disclosure under sections 21(1) and 49(b) is readily severable from non-exempt information in Records 13, 15, 18, 19, 21 to 26, 29, 31, 33, 34 and 37. Where this is the case, the remaining information is either non-personal, about the appellant, or about individuals who have consented to disclosure, and may be disclosed.

I find that it is not practicable to sever exempt personal information in the audiotapes (Record 50 to 53) or in Records 1, 7, 28, 30, 32, 41 to 43 and 49 from other information in those records; these records are therefore exempt in their entirety.

In arriving at these findings, I do not disagree with the Ministry's position that no purpose would be served by the severance of exempt information which is so intertwined with non-exempt information that what is disclosed is substantially unintelligible. The key question raised by section 10(2) is one of reasonableness. 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.)].

I do not accept the Ministry's request for an opportunity to make further submissions on the issue of severance. This was an issue raised squarely in the Notice of Inquiry, and there is no reason why the parties could not reasonably make those submissions in the normal course of this inquiry.

ORDER:

1. I uphold the Ministry's decision to withhold Records 1 to 4, 7, 11, 28 to 30, 32, 35, 36, 38, 41 to 44, and 49 to 53 in their entirety.
2. I order disclosure of Records 5, 6, 8 to 10, 12, 14, 16, 17, 20, 27, 39, 46, 48 and 54 to 56 in their entirety.
3. I order disclosure of Records 13, 15, 18, 19, 21 to 26, 29, 31, 33, 34 and 37 with the exception of exempt portions which shall be severed from the records. With my order, I have sent the Ministry a copy of these records, highlighting the portions to be withheld.
4. I order the Ministry to disclose the Records in Provisions 2 and 3 of this order to the appellant, with the exception of the severed exempt portions, by **November 21, 2001** but not before **November 16, 2001**.
5. I reserve the right to require the Ministry to provide me with a copy of the records disclosed.

Original signed by:
Sherry Liang
Adjudicator

October 17, 2001

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART
1	Intake Form, Special Investigations Unit (SIU)
2	Report of the Director of the SIU to the Attorney General
3	Letter to Chief of Police, Sarnia Police Service from Director of SIU, February 9, 2000
4	Letter to Attorney General from Director of SIU, February 8, 2000
5	Circulation of Directors Reports form
6	SIU Notification Form
7 - 10	SIU Designation Letters to four police officers, December 21, 1999
11	Letter from Sarnia Police Service Traffic Division to SIU with attachments (scene diagrams, mechanical inspection reports), January 19, 2000
12	Letter from Sarnia Police Service Traffic Division to SIU, January 7, 2000
13	Letter from Chief of Police, Sarnia Police Service to SIU, January 6, 2000
14	Letter from Chief of Police, Sarnia Police Service to SIU with attachments (vehicle work orders), January 6, 2000
15	Motor Vehicle Accident Reports, January 29, 1999 and December 21, 1999
16	Map
17	Coefficients of friction of various roadway surfaces
18	Transcript of police communications tape, December 20, 1999
19	Supplementary Report, Sarnia Police Service, December 21, 1999
20	Sarnia Police Service exhibit list
21	Sarnia Police Service internal correspondence, December 21, 1999
22	Towing invoice

APPENDIX "A" CONTINUED

INDEX OF RECORDS AT ISSUE

23 - 27	Supplementary Reports, Sarnia Police Service, December, 1999
28	Letter from counsel to SIU with attachments (police officer's notes), January 19, 2000
29 - 37	Police officers' notes
38	Letter from Sarnia Police Service, Traffic Division with attachments (collision synopsis and speed-slide to stop calculations), January 7, 2000
39	Technical Collision Investigation Notes, Sarnia Police Service
41	Civilian witness list with attached civilian statement, December 20, 1999
42	Witness Control List
43, 43a	SIU, Follow-Up Reports
44	Email correspondence, February 2, 2000
46	Letter from SIU to Freedom of Information/Protection of Privacy Co-ordinator with attachments (correspondence regarding request for information), March 9, 2000
48	Photographs
49	Police communications tape
50 - 53	Audio tapes of witness statements
54	Video tape of accident scene, December 20, 1999
55	Video tape of vehicles, December 23, 1999
56	Oversize scene diagrams prepared by police service