



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2414**

**Appeal PA-040352-1**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records maintained by the Special Investigation Unit (SIU) in relation to the death of the requester's common law spouse who died while in the custody of the London Police.

The Ministry located a large number of responsive records and granted partial access to them. Access to the remaining records and parts of records was denied pursuant to the discretionary exemption in section 14(2)(a) (law enforcement) and the mandatory exemption in section 21(1) of the *Act*, taken in conjunction with the presumption in section 21(3)(b) (information compiled as part of an investigation undertaken into a possible violation of law).

The requester, now the appellant, appealed the decision by the Ministry.

During the mediation stage of the appeal, the Ministry provided the appellant with a copy of its index of records. No other issues were resolved and the matter was moved into the adjudication stage of the process.

I sought and received the representations of the Ministry initially, and shared them, in their entirety, with the appellant. I also received representations from the appellant, which were in turn shared with the Ministry. In her submissions, the appellant raised the possible application of the "public interest override" provision in section 23 of the *Act* to the records. Accordingly, I asked for and received additional submissions from the Ministry on this issue.

## **RECORDS:**

The records at issue in this appeal are described in the index provided to the appellant by the Ministry during mediation. The records include the SIU Director's Report, witness statements, administrative correspondence, investigator's notes, medical records, police reports, photographs and CD photo images, communication recordings and scene video recordings. There are a total of 1012 pages of responsive records, along with approximately 56 audio and videotapes of various interviews and other recordings pertaining to the SIU's investigation. A portion of the records have been disclosed to the requester including information relating solely to her and SIU press releases and other publicly-available documents.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

All of the records relate directly to the incidents which led to the death of the appellant's spouse. They contain information about him that meets the definition of "personal information" in sections 2(1)(a) (age, sex and family status), (b) (medical, criminal and employment history), (c) (address and telephone number), (g) (views of other individuals about the deceased person) and (h) (the deceased's name along with other personal information relating to him). The audio and videotapes also describe the deceased person and his activities and the views of other individuals about him (sections 2(1)(g) and (h)).

In addition, many of the records also contain the personal information of those who witnessed the events involving the deceased person. This information qualifies as the personal information of these individuals as it includes information about their age, sex and marital or family status (section 2(1)(a)), their addresses and telephone numbers (section 2(1)(c)) and their names along with other personal information about their activities on the night in question (section 2(1)(h)).

The Ministry submits that the records also contain the personal information of the police officers who were the subject of the SIU investigation. It argues that because the information pertains to an examination of the conduct of the officers, it falls within the ambit of the definition of personal information as it relates to the officers in their personal, rather than their professional, capacities. The appellant takes the contrary position, arguing that the information in the records only relates to the subject police officers in their professional, and not their personal, capacity. As a result, she submits that the information does not qualify as their “personal information” within the meaning of section 2(1).

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

In my view, because the information in many of the records was used as part of an examination into the conduct of the subject officers, it has taken on a different, more personal quality. As such, I find that its disclosure would reveal something personal about the individual officers, specifically whether their conduct in apprehending the deceased person was appropriate. As such, I find that those records which include an examination of the manner in which the subject officers conducted themselves also contain the personal information of those officers under section 2(1)(h).

Finally, I find that several of the records contain the personal information of the appellant. This information relates to her age, sex and family status (section 2(1)(a)) and her name along with other personal information about her (section 2(1)(h)). Specifically, I find that portions of Records 1, 2, 8, 10, 11, 83 to 85, 94, 195 to 198, 199, 203, 206-207, 268 and 270 and audiotape 277 contain the personal information of the appellant. I note that, with the exception of pages 8, 10 and 11 of Record 7 to 32, the appellant has been granted access to those portions of the records that contain her own personal information.

In addition, I find that a number of internal London Police policies and procedures listed on Record 283 and contained in Records 284 to 419 do not contain any personal information within the meaning of section 2(1).

#### **LAW ENFORCEMENT REPORT/DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION**

**Is the Director’s Report exempt under section 49(a), taken in conjunction with section 14(2)(a)?**

In my discussion of personal information above, I found that portions of pages 8, 10 and 11, which comprise part of the Director's Report identified as Record 7 to 32, included the personal information of the appellant. Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information. In this case, the Ministry relies on section 49(a) in conjunction with section 14(2)(a).

### **General principles governing section 14**

The Ministry claims the application of the discretionary exemption in section 14(2)(a) for all of the records, with the exception of Records 2 and 4. This section reads:

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;

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children's aid society investigation under the *Child and Family Services Act* [Order MO-1416]

- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997* [Order MO-1337-I]

The term “law enforcement” has been found *not* to apply in the following circumstances:

- an internal investigation to ensure the proper administration of an institution-operated facility [Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.)]
- a Coroner’s investigation under the *Coroner’s Act* [Order P-1117]
- a Fire Marshal’s investigation into the cause of a fire under the *Fire Protection and Prevention Act, 1997* [Order PO-1833]

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

### **Section 14(2)(a)**

The word “report” in section 14(2)(a) means “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I]. In order for a record to qualify for exemption under section 14(2)(a), 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.

[Orders 200 and P-324]

### **The representations of the parties on the application of section 14(2)(a) to the records**

The Ministry takes the position that the SIU Director's Report which comprises Records 7 to 32 clearly falls within the ambit of the exemption in section 14(2)(a), as does all of the remaining records (except Records 2 and 4) as they represent the *investigative brief* containing the information upon which the Report was prepared. The Ministry argues that the investigative brief, essentially all of the records except Records 2 and 4, represents a compilation of all of the materials and information gathered during the course of the SIU's investigation of the incidents that led to the death of the appellant's spouse. It argues that all of the investigation material was reviewed by the Director in preparing his report and that it documents the steps taken by SIU staff in the course of exercising its statutory mandate to conduct an investigation into the circumstances surrounding the deceased person's death.

With respect to the three-part test set out above, the Ministry submits that the records which comprise the investigative brief, all of the documents at issue except Records 2 and 4, constitute a "formal statement or account of the results of the collation and consideration of information" since they "provide an overview of the incident and a description of the events prior to, during and subsequent to the incident that was investigated." It goes on to add that the Director's Report, which comprises Records 7 to 32, was prepared in accordance with section 113(8) of the *Police Services Act* (the *PSA*) and provided to the Attorney General. The Ministry submits that:

. . . the Director's Report and investigative brief considered together comprise a formal statement of the results of the collation and consideration of information and that, consequently, the information in these records constitutes a 'report' for [the] purposes of part 1 of the section 14(2)(a) test.

It goes on to state the section 113 of the *PSA* sets out the statutory scheme creating the SIU and, at section 113(5), charges the SIU with the conduct of the investigation of "the circumstances of serious injuries and death that may have resulted from criminal offences committed by police officers". The Ministry outlines the steps taken during the investigation process which leads to the compilation of information into the investigative brief which is then reviewed by the Director in order to determine whether an officer has committed a criminal offence. Section 113(7) provides for a referral by the Director to the local Crown Attorney should the investigation give rise to a finding that charges ought to be laid, while section 113(8) requires that a Director's Report be submitted to the Attorney General describing the outcome of the investigation.

Accordingly, the Ministry argues that both the investigative brief and the Director's Report are prepared "in the course of a law enforcement investigation by an agency which has the function of enforcing and regulating compliance with the law, namely the criminal law."

In response, the appellant argues that the contents of the SIU's investigative report are no more than "mere observations or recordings of fact" and that the videotape recoding of the incident similarly does not qualify as a "report" for the purposes of section 14(2)(a).

### **Findings with respect to section 14(2)(a)**

Previous decisions of the Commissioner's office have addressed the application of section 14(2)(a) to the records compiled by the SIU in the course of an investigation undertaken pursuant to section 113 of the *PSA* (Orders P-1315, P-1418, PO-1819 and PO-1959). In Orders P-1315, P-1418 and PO-1959, it was found that the Director's Reports to the Attorney General, the cover letter to that document and other investigative documents that consist of "a formal statement of the results of the collation and consideration of information" qualify for exemption under section 14(2)(a).

In Order PO-1959, Adjudicator Sherry Liang reviewed the decisions relating to the application of section 14(2)(a) to records created during the course of an SIU investigation and made the following findings with respect to the contents of an SIU file, including investigative material and the Director's Report:

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 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.

I adopt the reasoning contained in the above quote and will apply it to the records at issue in this appeal. I specifically find that the Director's Report contained in Records 7 to 32 and the cover letter to the London Chief of Police at Record 5-6 consist of the required "formal statement of the results of the collation and consideration of information" set out in the definition of the term "report" referred to above. In addition, I find that applying the reasoning in Order PO-1959 to the remaining records, they do not qualify as "reports" as they represent instead a recording of facts and observations. This information is contained in various notes, witness statements and lists, SIU and London Police occurrence reports, medical records, London Police training manuals and procedures and the investigation notes and drawings compiled by the SIU's investigators and those of the London Police that comprise the other records. Further, I find that the video and audiotaped records at issue clearly do not qualify under section 14(2)(a) as they also do not include any consideration or analysis of the information which they contain.

However, I find that the forensic testing reports referred to as Records 890 to 903 and the "Summary of Decisions Reached" obtained from the Office of the Coroner and described as Record 959 qualify as "reports" under section 14(2)(a).

To summarize, I find that Records 5-6, 890 to 903 and 959 qualify for exemption under section 14(2)(a). In addition, because pages 8, 10 and 11 of the Director's Report at Record 7 to 32 include the personal information of the appellant, I find that it qualifies for exemption under section 49(a).

## **INVASION OF PRIVACY**

I have found above in my discussion of "personal information" that Records 1, 2, 8, 10, 11, 83 to 85, 94, 195 to 198, 199, 203, 206-207, 268 and 270 and audiotope 277 contain the personal information of the appellant. In my discussion of the application of sections 49(a) and 14(2)(a) to the records, I found that Record 7 to 32 is exempt from disclosure. I need not, accordingly, consider whether this record also qualifies for exemption under sections 21(1) or 49(b). I note that only those portions of Records 1, 2, 95, 199, 203, 206-207 and 270 containing the appellant's personal information have been disclosed to her. The remaining portions of these records remain undisclosed.

In addition, I found above that Records 283 to 419 do not contain any personal information and as such, cannot be exempt from disclosure under the invasion of privacy exemptions in sections 21(1) and 49(b). As I have found that they are not exempt under section 14(2)(a) and no other or mandatory exemptions apply to them, I will order that they be disclosed to the appellant.

## **General principles**

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

Under section 21, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of privacy”.

In both these situations, sections 21(1) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold is met.

## **Representations of the parties**

The appellant argues that because the records do not contain “personal information” as defined by section 2(1), their disclosure cannot constitute an unjustified invasion of personal privacy under section 21(1).

The Ministry submits that the disclosure of the personal information contained in the records would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b), which reads:

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;

It submits that the personal information was compiled and clearly is identifiable as “part of an investigation into a possible violation of law”, particularly the *Criminal Code*. The Ministry argues that the SIU is empowered to investigate criminal wrong-doing on the part of police officers and, under section 113(7), “shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for

prosecution.” As a result, the Ministry argues that the disclosure of the records which form the vast majority of the documents at issue in this appeal would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

## **Findings**

In Order PO-1959, Adjudicator Liang reached certain conclusions with respect to the application of the presumption in section 21(3)(b) to records compiled by the SIU in the course of an investigation. With respect to those records which did not contain the personal information of the appellant, she found that:

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.

Similarly, addressing those records which contained both the personal information of the appellant and other identifiable individuals (as is the case with Records 1, 2, 95, 199, 203, 206-207 and 270 in the present appeal), Adjudicator Liang found that:

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.

Addressing the manner in which the Ministry exercised its discretion not to disclose the records to the appellant under section 49(b), Adjudicator Liang made the following findings:

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.

In my view, the findings and conclusions reached by Adjudicator Liang are equally applicable to the facts of the present appeal. I adopt the reasoning contained in Order PO-1959 and find that those records which do not contain the personal information of the appellant were compiled and are identifiable as part of an investigation into a possible violation of the *Criminal Code* by the subject officers. As a result, I find that the records containing the personal information of individuals other than the appellant are exempt from disclosure under section 21(1).

Similarly, I reach the same conclusion with respect to those records that contain the personal information of the appellant, specifically Records 1, 2, 95, 199, 203, 206-207 and 270. I find that each of these records is exempt from disclosure under section 49(b). In the present appeal, the Ministry made nearly identical arguments to those addressed in Order PO-1959 with respect to the manner in which it exercised its discretion not to disclose the records to the appellant. I have reviewed those submissions and specifically find that the Ministry has properly exercised its discretion under section 49(b) not to disclose the remaining portions of Records 1, 2, 95, 199, 203, 206-207 and 270 to the appellant.

There remain several other records which do not fall within the ambit of the presumption in section 21(3)(b) as they were created following the conclusion of the SIU investigation process which Record 3 indicates took place on July 22, 2004. Records 2 and 3 are SIU internal documents describing those individuals who will receive notification of the Director's Report following its completion and the steps taken to complete the Report prior to its issuance. I note that they contain only the personal information of the deceased person. The Ministry has not made any specific representations respecting these two records. In my view, none of the considerations favouring the non-disclosure of this information listed in section 21(2) are present. Conversely, none of the factors favouring disclosure are present with respect to this information either. As these two records do not contain the personal information of the appellant, I find that the mandatory exemption in section 21(1) operates to require that I uphold the Ministry's decision to deny access to them.

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant takes the position that the "public interest override" provision in section 23 of the *Act* applies to those records that I have found to be exempt under section 21(1) and 49(b). The override provision does not apply to the records that I have found to be exempt under section 14.

### **General principles**

Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 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.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

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 [Order P-984]. Previous 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 the citizenry about the activities of their government, 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 [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, and P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984]. Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]
- the integrity of the criminal justice system has been called into question [Order P-1779]
- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]
- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province’s ability to prepare for a nuclear emergency [Order P-901]
- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The appellant argues that there exists a compelling public interest in the disclosure of the information contained in the records as it would “serve the purpose of informing the citizenry

about the activities of the local police” and the SIU. She suggests that without the records, her ability to pursue a potential civil action for the wrongful death of her spouse will be severely prejudiced.

Based on my review of the contents of the records, I cannot agree that there exists any compelling public interest in their disclosure. I find that the records are being sought by the appellant to pursue a possible private remedy against the Police and/or the SIU. Accordingly, in my view, there does not exist any public interest, compelling or otherwise, in their disclosure. As a result, I find that section 23 has no application in the present appeal.

**ORDER:**

1. I order the Ministry to disclose Records 283 to 419 to the appellant by providing her with a copy by **September 29, 2005**.
2. I uphold the Ministry’s decision to deny access to the remaining records.
3. In order to verify compliance with Order Provision 1, I reserve the right to require the Ministry to provide me with a copy of the records that are disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
September 8, 2005