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

ORDER PO-2443

Appeal PA-040178-1

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) that stated, in part:

> We would like to renew our request for any reports prepared by your office regarding the fire which claimed the life of [named individual] on August 22, 2003 at the [specified location].

The Ministry denied access to the responsive record in full pursuant to sections 14(1)(a), (b), (f), (l), 19, and section 21(1) in conjunction with sections 21(2)(f), 21(3)(a) and (b) of the *Act*.

The requester, now the appellant, appealed the Ministry's decision.

Mediation did not resolve the appeal and it was moved on to adjudication.

I initially sent a Notice of Inquiry to the Ministry. The Ministry provided representations in response. I then sent a Notice of Inquiry to the appellant along with the complete representations of the Ministry. The appellant also provided representations which were then shared in their entirety with the Ministry. The Ministry provided representations in reply.

A Notice of Inquiry was then sent to four individuals whose interests may be affected by the outcome of this appeal (affected persons). I received representations from one of the affected persons.

RECORD:

The record at issue is a 23-page fire investigation report.

DISCUSSION:

In the Ministry's representations, the Ministry withdrew its claim to the exemptions at sections 14(1)(b), 14(1)(f), 14(1)(l) and 19. Therefore, the only exemptions remaining at issue are sections 14(1)(a), 14(2)(a) and 21(1).

LAW ENFORCEMENT: Section 14(1)(a)

General principles

Sections 14(1)(a) states:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;

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)

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.)].

In the case of section 14(1)(a), 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(1)(a): law enforcement matter

The law enforcement matter in question must be a specific, ongoing matter. The exemption does not apply where the matter is completed, or where the alleged interference is with "potential" law enforcement matters [Orders PO-2085, MO-1578].

Representations

The Ministry submits the record at issue falls within the definition of law enforcement found in section 2(1) of the *Act*. Specifically, the Ministry states:

> The Ministry submits that the record at issue was prepared by the Office of the Fire Marshal (OFM). The record at issue relates to the external law enforcement and regulatory functions of the OFM. The Ministry submits that the OFM is a public sector law enforcement agency responsible for conducting regulatory investigations and inspections that may lead to legal proceedings in a court or tribunal where a penalty or sanction may be imposed.

The Ministry submits the following in support of its position that the law enforcement matter is specific and ongoing.

> The Ministry has applied section 14(1)(a) to withhold the requested record from disclosure. The responsive record documents a fire investigation that resulted in the building owner being charged and convicted of committing an offence under section 28(1)(c) of the *FPPA*. The conviction has been appealed and is currently before the Court.
>
> Additionally, it should be noted that the Office of the Chief Coroner (OCC) is currently investigating the circumstances of the death of the appellant's mother…
>
> Public release of the requested OFM report could influence the information provided by witnesses and other individuals who may be interviewed by the coroner during the course of the investigation. This would have the effect of hampering or hindering the effectiveness of the coroner's investigation, a circumstance that could have significant implications in terms of public safety.
>
> The OCC has not yet decided whether or not to hold an inquest into the death of the appellant's mother. An inquest is a public hearing held under the authority of the *Coroner's Act* for the purpose of presenting evidence to a jury of five members of the community in which a person died…
>
> Should the OCC decide to call an inquest into the death of the appellant's mother, the premature and unrestricted dissemination of potential inquest evidence (such as the OFM fire investigation report) could interfere with effectiveness of the inquest proceedings and the ability of a jury, chosen from members of the community, to be impartial.

In response, the appellant submitted the following:

> It is submitted that the ruling in Order PO-1833 (to the effect that the FMO investigation is not "law enforcement") is a complete answer to the Ministry's submissions in this regard. Therefore, the Appellant's first submissions with regard to this issue is that subsection 14(1)(a) and (2)(a) are not applicable.
>
> …
>
> The Ministry submits that subsection 14(1)(a) is applicable for two reasons, namely, (1) that the conviction against the owner of the [named] Apartments has been appealed and (2) that the Office of the Chief Coroner is currently considering whether or not to hold an inquest. With respect to the matter of the appeal, the Appellant cannot understand how disclosure of the document sought could possibly interfere with that appeal. The appeal is based on the record generated by the court below and new evidence can be admitted only under very strict conditions.

> With respect to the potential for a Coroner's Inquest, the Appellant submits that a Coroner's Inquest does not fit within the definition of "law enforcement" set out in subsection 2(1) of FIPPA, inasmuch as it does not involve policing, any proceedings that could lead to a penalty or sanction, or the conduct of such proceedings. As the Ministry admits in its submissions, the Coroner's Inquest can only answer certain questions and make recommendations. It cannot impose any penalty or sanction.

Analysis

As stated above, in order to establish the harm under section 14(1)(a) "could reasonably be expected" to result from disclosure of the records, the Ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm".

The Ministry must also establish that the law enforcement matter, is a specific and ongoing matter.

The Ministry argues that disclosure of the record could reasonably be expected to interfere with two ongoing law enforcement matters, namely the building owner's appeal and a possible coroner's inquest.

Regarding the building owner's appeal of his conviction, I accept the Ministry's submission that this is an ongoing law enforcement matter. However, I am unable to find that disclosure of the record would cause the harm alleged by the Ministry. The Ministry has not provided "detailed and convincing" evidence to establish that disclosure of the record could reasonably be expected to interfere with the appeal of the owner's conviction. As the appellant states above, the appeal of the owner's conviction is based on the record generated by the court below, which would include the record at issue. I am not satisfied that disclosure of the record would interfere with the owner's appeal.

The Ministry's argument that disclosure of the record could reasonably be expected to interfere with a coroner's inquest, should one be held, is also not established. Firstly, the Ministry is not able to establish that the inquest is an ongoing matter. Secondly, I agree with the appellant's argument that a coroner's inquest is not "law enforcement" for the purposes of section 14(1)(a). A coroner's inquest is not a proceeding that could lead to the imposition of penalties or sanctions such as required by the definition of "law enforcement" (Order P-1117).

Accordingly, I find that section 14(1)(a) does not apply to the record at issue.

LAW ENFORCEMENT: Section 14(2)(a)

General principles

Section 14(2)(a) states:

> (2) A head may refuse to disclose a record,
>
> > (a) 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;

Section 14(2)(a)

The word "report" 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].

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

Representations

The Ministry submits the following in support of its position that section 14(2)(a) applies.

> The Ministry submits that section 9(2)(a) of the *FPPA* legally requires the Fire Marshal of Ontario to investigate fires. The Ministry submits that in the context of conducting fire investigations, the OFM is enforcing and regulating compliance with the provision of the FPPA and its regulations…
>
> Fire investigations undertaken by the OFM in accordance with the section 9(2)(a) of the FPPA may reveal possible violations of law relating to federal *Criminal Code* offences, such as arson, provincial offences, such as violations of the *Fire Code*. While enforcement of the *Fire Code* is generally the responsibility of the fire service of the jurisdiction, under section 32(1)(b) of the *FPPA*, the OFM has the authority to apply to Court for an order requiring a person to remedy any contravention of a provision of the *Fire Code*.
>
> …
>
> The Ministry submits that the OFM fire investigation report at issue is a formal record of the regulatory fire investigation undertaken by the OFM, the police service of jurisdiction and the fire service of jurisdiction into the circumstances of the fatal apartment fire.

> The OFM is a law enforcement agency that has the function of enforcing and regulating compliance with the *FPPA* and the *Fire Code*. Additionally, the OFM possesses expertise in the area of fire investigations that helps other law enforcement agencies carry out their responsibilities. The OFM has a mandate to protect public safety so that future harms are averted, particularly in reference to criminal fire-related investigations, *Fire Code* violations and identification of environmental dangers. The OFM has the authority to monitor and, if necessary, take appropriate action to correct fire-related threats to public safety in a community.
>
> The OFM investigation was undertaken as a result of the serious nature of the August 22, 2003 fire. The fire scene examination was conducted pursuant to the authority contained in the *FPPA* in conjunction with the *Coroner's Act*. The report may be viewed as a formal, final report containing a synopsis of the events leading up to the fire, the investigation of the incident and the findings of the OFM investigator. As noted earlier the circumstances of the fire resulted in the building owner being charged under section 28(1)(c) of the FPPA for violating several sections of the Fire Code. The charges were laid by the fire service of jurisdiction. OFM staff were called as expert witnesses at the trial and testified in respect to the fire investigation and the fire evaluation report on building and occupant performance.

Analysis

As noted above, the appellant cites Order PO-1833 as addressing the Ministry's claims under section 14(2)(a). In that order, Senior Adjudicator David Goodis found that a Fire Marshal's investigation into the cause of a fire under the *FPPA* does not qualify as "law enforcement" for the purposes of section 14. In finding that section 14(2)(a) did not apply to the fire investigation reports at issue in that appeal, Senior Adjudicator Goodis stated:

> In my view, in conducting its investigations into the cause of the fire under either the old or new statute, the OFM was not carrying out the function of enforcing or regulating compliance with a law. Neither the *FMA* nor the *FPPA* contains penalties or any other enforcement provisions which arise from this specific investigatory power (although there are such provisions in relation to enforcement or inspection orders and the fire code – see Part VII of the *FPPA*).
>
> OFM investigations of this nature may reveal possible violations of law, but the law to be enforced in such a case would be the arson provisions of the *Criminal Code*. Most significantly, any criminal investigations or prosecutions in these circumstances are under the purview of the local police and the Crown Law Office – Criminal of the Attorney General for Ontario, not the OFM. If, for example, the OFM determined that a fire resulted from "carelessness or design", criminal charges could be laid, but they would be laid and prosecuted by the police and the Crown, as was the case here. Moreover, nothing would prevent the

> police and the Crown Law Office – Criminal from laying and prosecuting arson charges, even in the face of an OFM finding that arson was not a cause, or that the cause could not be determined…
>
> By this finding I do not suggest that the OFM cannot or does not routinely cooperate with the police and the Crown in certain cases, by sharing information at various stages throughout the criminal investigation and prosecution, and by providing expert testimony. However, the fact remains that, in this role, the OFM does not carry enforcement or regulatory responsibility. As in Order P-352, upon completion of its investigation, the OFM was not in a position to enforce or regulate compliance with the *FMA*, the *FPPA* or any other law in these circumstances.

In this case, the OFM conducted the fire investigation, and as the Ministry states, charges were laid by the local fire service and not the OFM. The Ministry notes, in its representations that enforcement of the *Fire Code* is generally done by the fire service in the jurisdiction although the Fire Marshal can enforce the *Fire Code* by applying to court for an order requiring a person to remedy a contravention of the *Fire Code*.

In this case, it is clear that although contraventions of the *Fire Code* may have been found during the OFM's investigation of the fire, the charges were laid by the local fire service. Thus, it was the local fire service and not the Fire Marshal who was responsible for enforcing the *Fire Code* in this case.

As in Order PO-1833, I find that the OFM did not have the function of enforcing or regulating compliance with a law in conducting this fire investigation. Accordingly, section 14(2)(a) does not apply to the record at issue and thus does not exempt the record from disclosure.

PERSONAL INFORMATION

General principles

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). The Ministry submits that the following paragraphs in section 2(1) are relevant in this appeal:

> "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,

(d) the address, telephone number, fingerprints or blood type of the individual,

(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;

The meaning of "about" the individual

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].

Analysis

The Ministry submits that the record contains recorded personal information about various identifiable individuals in their personal capacity. I have reviewed the record and find that it contains the personal information of four occupants of the building, in particular, information relating to their age and sex (paragraph (a)), medical history (paragraph (b)), address (paragraph (d)), and disclosure of their names would reveal other personal information about these individuals (paragraph (g)).

The Ministry also submits that the records contain numerous references to various individuals in their professional capacity, including representatives of the building owner, the police service and the fire service.

As stated above, even if information relates to an individual in a business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.

In this case, I find that disclosure of the information relating to those individuals who were acting in a professional or business capacity would not reveal anything of a personal nature about those individuals, and therefore does not qualify as personal information.

I provided the owner of the building with notice of the appeal and an opportunity to make representations on this issue. I did not receive representations from this individual. While the fire investigations report discloses information about the apartment building and its owner, this information does not relate to the owner in a personal nature and is not personal information.

In conclusion, I find that only the information relating to the four occupants is personal information within the meaning of section 2(1) of the *Act*.

PERSONAL PRIVACY

General principles

Where an appellant seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In this case, the exceptions at paragraphs (a) and (f) appear to apply:

> 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;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

21(1)(a): consent

For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723].

As stated above, I received written consent from one of the occupants of the building to the disclosure of the personal information relating to her.

I am satisfied that this consent meets the requirements of section 21(1)(a) and this information is not exempt under section 21(1).

The personal information relating to this individual should be disclosed to the appellant.

21(1)(f): disclosure not an unjustified invasion of personal privacy

In applying section 21(1)(f), section 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. In this case, the Ministry and the appellant have raised the following provisions, which may be relevant in this particular appeal:

> (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,
>
> (b) access to the personal information may promote public health and safety;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (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;

Section 21(2) lists criteria for the institution 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 the disclosure of which 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.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2) [*John Doe*, cited above]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

Section 21(3)

Representations

Regarding section 21(3) the Ministry states:

> Section 21(3)(a)
>
> The Ministry submits that parts of the personal information at issue contain medical information relating to identifiable individuals. The Ministry submits that release of this personal information would constitute an unjustified invasion of the personal privacy of these individuals.
>
> Section 21(3)(b)
>
> The requested record documents the investigation undertaken by the OFM, the police and the local fire service into the circumstances of the fatal apartment fire. The Ministry is of the opinion that the exempt information contains highly sensitive personal information that was compiled and is identifiable as part of an investigation into a possible violation of law. Fire investigations may reveal possible violations of law relating to federal *Criminal Code* offences, such as arson, and provincial offences, such as violations of the *Fire Code*.
>
> In this particular instance, the circumstances of the fire resulted in the building owner being charged with committing an offence under section 28(1)(c) of *FPPA* as a result of several violations of the *Fire Code*.

The appellant submits that section 21(3)(b) is not relevant and that factors at sections 21(2)(b) and (f) should be considered.

Analysis

As stated above, the only information that I have found to be personal information is the information relating to the four occupants of the building. One of these occupants is deceased and she was not contacted for her representations.

The personal information relating to these individuals is contained on pages 2, 3, 4, 5 and 23 of the record.

With respect to section 21(3)(a), I agree with the Ministry's submission that the personal information relating to the deceased individual and the other occupants of the building does relate to medical history, diagnosis and condition. This information is contained on pages 4, 5 and 23 of the record. Disclosure of this personal information is presumed to constitute an unjustified invasion of the personal privacy of these individuals.

With respect to the other personal information relating to the occupants on pages 2, 3 and 5 of the record, none of this information is medical history and section 21(3)(a) does not apply. However, I find that section 21(3)(b) does apply to this information. The personal information relating to the other occupants included in the record was compiled and is identifiable as part of an investigation into the possible violation of the *FPPA* and the *Fire Code*. As such, I find that the presumption at section 21(3)(b) applies and disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy.

As the presumptions at sections 21(3)(a) and (b) apply to the personal information contained in the record, I find that the exception at section 21(1)(f) is not established and the information is exempt under section 21(1) of the *Act*.

PUBLIC INTEREST OVERRIDE

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.

Section 23 does not apply to records exempt under sections 12, 14, 14.1, 14.2, 16, 19 or 22.

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.

Compelling public interest

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, 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].

A public interest is not automatically established where the requester is a member of the media [Orders M-773, M-1074].

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]

Representations

In support of his position that section 23 applies, the appellant submitted the following:

> The apartment building in which the Appellant's mother died was owned by the [named corporation], a local housing corporation within the meaning of the provisions of the *Social Housing Reform Act*, *2000*. As such, it was created for the purpose of carrying out a public function on behalf of members of the municipality which it served.
>
> The Appellant submits, therefore, that there is a compelling public interest in production of the entire record comprising the investigation of the Ontario Fire Marshal's Office into the management of the apartment building in question.

In response, the Ministry provided the following.

> It has been established in a number of previous IPC orders that for the section 23 "public interest override" to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the requested records. Second, this interest must clearly outweigh the purpose of the applicable exemption from disclosure.
>
> With regard to the first requirement, the meaning of the phrase "compelling public interest" has been considered in a number of IPC and court decisions. It is the Ministry's position that the appellant's request and the personal information contained in the OFM report at issue do not appear to give rise to any compelling public interest as required under section 23.
>
> The Ministry agrees that there is a general public interest in regard to fire safety issues. However, the Ministry submits that release of the OFM report to the

> appellant is not likely to have significant implications for the broader public interest or safety at this point in time. Relevant public safety issues were publicly reviewed during the September 2004 trial…
>
> The Ministry submits that the appellant's client appears to have a private interest in the personal information contained in the OFM report at issue. The Ministry is aware from the appellant's representations that the OFM report is being requested in connection with a possible civil action. The Ministry submits that this does not constitute a compelling public interest within the meaning of section 23.

I agree with the points raised by the Ministry. The personal information which I have found to be exempt under section 21 relates to the name, sex, age, and address of three individuals, as well as the medical history of other individuals. I find that there is no compelling public interest in the disclosure of this information such that it would clearly outweigh the purpose of the section 21 exemption.

Secondly, I find that the appellant's interest in the information while tangentially relating to public fire safety is clearly a private matter. The requirement that of a "compelling public interest" has not been met.

Accordingly, I find that section 23 does not apply to override the section 21 exemption which I have found applies to exempt the personal information at issue.

ORDER:

1. I uphold the Ministry's decision to withhold the personal information in the record as identified in the highlighted copy of the record included with the Ministry's copy of this order. To be clear, the Ministry is not to disclose the highlighted information.

2. I do not uphold the Ministry's decision to withhold the balance of the information in the record.

3. I order the Ministry to disclose the record to the appellant, with the exception of the information highlighted on the copy of the record to be severed included with the Ministry's copy of this order by **February 2, 2006** but no later than **February 7, 2006**.

4. In order to ensure compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the material sent to the appellant.

Original Signed by: January 3, 2006
Stephanie Haly
Adjudicator