



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2482

Appeal PA-050230-1

Ministry of Labour



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NATURE OF THE APPEAL:

The Ministry of Labour (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to the Ministry's health and safety records for the period from January 1, 2002, to the date of the request relating to a specified sawmill complex where the requester is employed.

The Ministry issued a decision letter in which it granted access to 195 pages of records. Access to two responsive records was denied on the basis that the information which they contained was exempt under the mandatory exemption in section 21(1) of the *Act*. These records consist of the following:

- a four-page Workplace Safety and Insurance Form 7 relating to an accident suffered by an individual on September 19, 2003; and,
- a four-page statement provided by one individual (the affected person) during the Ministry's investigation of a complaint by the requester in June 2003.

The requester (now the appellant) appealed the Ministry's decision to deny access to these two records.

During mediation, the appellant indicated that he was no longer seeking disclosure of the Workplace Safety and Insurance Form 7, but that he continues to seek access to the four-page statement provided by the affected person during the Ministry's investigation. He maintains that he is entitled to this information as its disclosure may promote public health and safety, as contemplated by section 21(2)(b) of the *Act*. The Ministry's written notice to the affected person pursuant to section 28 of the *Act* was returned as moved/unknown. The mediator was also unsuccessful in contacting the affected person by telephone.

Because it appears that the record may contain the personal information of the appellant, in addition to that of another individual or individuals, the Ministry issued a revised decision letter in which it claimed the application of the discretionary exemption in section 49(b) (personal privacy) in conjunction with the presumption in section 21(3)(b).

As further mediation was not possible, the appeal was moved to the adjudication stage of the process. This office sought and received the representations of the Ministry. These representations were shared with the appellant, who also provided representations. This office then invited the Ministry to provide further representations on the issue of whether the record contains personal information of the affected person or whether the information relates to the affected person strictly in an employment or professional capacity. The Ministry provided the representations by way of reply.

RECORD:

The remaining record at issue consists of a four-page statement provided by the affected person during the Ministry's investigation of the appellant's complaint.

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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

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].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.)].

Representations of the Ministry

The Ministry submits that the record contains the personal information of the appellant and the affected person. The Ministry, in particular states:

The information contained in the record in issue is a statement provided by an individual during the course of an investigation under the *Occupational Health and Safety Act* (the *OHSA*) triggered by a complaint made by the appellant.

The record in issue contains the birth date, home address, home telephone number, employment history and certain personal views and information of the affected individual. The Ministry submits that the record clearly contains "personal information" as defined in section 2(1) in respect of the affected individual.

The personal information in the record would make the individual identifiable to the appellant and others who would have access to the information.

Section 21(1) prohibits the disclosure of a document containing personal information unless one of the exceptions in that subsection applies. The Ministry submits that none of the exceptions apply. As the Ministry noted ... it was unable to obtain consent of the affected individual to release the record in question.

Representations of the Appellant

The appellant maintains that the affected person was providing the record at issue in his professional capacity. The appellant submits that the affected person, as the worker representative on the joint health and safety committee, may be required by the worker he represents to make statements for the purpose of establishing a Workplace Safety and Insurance Board (WSIB) claim or for other legal purposes. He further indicates that the position of the worker representative is voluntary and that upon assuming this position, the representative

knows that any statements he makes may affect his fellow worker, who may require access to these statements.

The appellant also relies on the findings of Assistant Commissioner Tom Mitchinson in Order MO-1478-F, in support of his claim for disclosure of the statement made by the affected person, on the basis that this individual is the worker representative and co-chair of the joint health and safety committee at the appellant's workplace.

Reply Representations of the Ministry

The Ministry was asked to address the findings in Order MO-1478-F in its reply representations. It states as follows:

With respect to Order MO-1478-F, the Ministry submits that the case is very different from the factual situation upon which the statement was taken in this case, and as such, is neither applicable nor useful in the determination of whether the statement in the present case should be disclosed.

In MO-1478-F the record in question was an audiotape of a telephone call placed by the affected person to the City's Fire Department. That is, the record was created at the initiation of the affected person in his capacity as the Chair of the Health and Safety Committee to the Fire Department to report a workplace situation.

The record in the present case is a statement taken by an Occupational Health and Safety Inspector, who requested an interview with the affected person, in the course of an investigation into a complaint to determine whether there was a violation of the law, specifically the *Occupational Health and Safety Act (OHSA)*. The statement here was not initiated by the affected person.

Further, in MO-1478-F the adjudicator found that it was clear that, "the call was made by the affected person to the Fire Department in his capacity as the Chair of the Health and Safety Committee..." and as such, found that the statements were made in a professional capacity. The Adjudicator found that the affected person made the call because he was originally contacted by a co-worker in his capacity as the Chair, to report the co-worker's concerns to the Fire Department. The information conveyed to the Fire department regarding the fire at the workplace was not "about" the affected person in any personal sense.

The statements made in this case by the affected person were not made in his capacity as a certified member of the joint health and safety committee at [named sawmill complex], nor was the affected person being asked to speak on behalf of the worker representatives of the committee. Instead, the affected person was interviewed to obtain personal views on the incidents about which the appellant was complaining. In this case, the affected person provided statements about himself as opposed to simply conveying information which another worker asked

him to pass on to the Ministry. As with any other witness statements provided to an inspector, consent from the affected person is sought before the Ministry discloses such documents under the *Freedom of Information Protection of Privacy Act (FIPPA)* as it is the position of the Ministry that these statements contain personal information.

Finally, in the Discussion portion of Order MO-1478-F reference is made to Reconsideration Order R-980015 in respect of the issue of whether the statement was made in a professional or business capacity. In deciding that the information was not personal in nature in that case, Adjudicator Hale found that the information related only to the individuals in their capacities as officials with the organizations which employed them or was made in their association or involvement in the issues and the interests of the organizations that they were representing. He found that,

...essentially, the information is not about these individuals and therefore, does not qualify as their "personal information"... In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. Individuals expressing the position of an organization act simply as a conduit between the intended recipient of the message and the organization. The voice is that of the organization, as opposed to the personal opinions or views of the individual..

Here, the affected individual was not being interviewed in his capacity as joint health and safety committee member or union representative. He was being interviewed as a worker, and, in the Ministry's submission, his personal capacity. He was not a conduit expressing the position of the committee or the union, but was expressing his personal understanding and views on the situation being investigated. It cannot be said that he was giving voice to the views of the committee or the union, or indeed of any worker asking that a committee member contact the Ministry on his/her behalf.

In all of the above ways, the factual situation in Order MO-1478-F is not the same to the present case, and cannot be applied to support the appellant's position that the information in question is not personal information, and ought to be disclosed.

Findings

In determining whether the statements made by the affected person were made in his professional or personal capacity, I have looked at the legislative scheme in the *OHSA* surrounding the creation and mandate of the joint health and safety committee at the appellant's workplace. I have also considered the Ministry's description of the manner and reason the information from the affected person was being gathered pursuant to the *OHSA*. The Ministry states that:

The *OHSA* has been in force since 1979, the purpose of the *OHSA* is to protect workers against health and safety hazards on the job. One of the fundamental principles of the *OHSA* is that workers and employers must share the responsibility for occupational health and safety at the workplace. The concept of an "internal responsibility system" is based on the principle that the workplace parties are in the best position to identify health and safety problems and to develop solutions together.

The role of the Ministry is to enforce the *OHSA* and the regulations, primarily by conducting inspections and investigations, in response to complaints, accidents and work refusals. The Ministry inspectors have the power to make orders to enforce the *OHSA* and can consider prosecution under the Provincial Offences Act for contraventions of the *OHSA*. Upon conviction, the Court may issue fines of up to \$500,000 to a corporation or \$25,000 to an individual with the possibility of imprisonment of up to 12 months.

The Ministry inspectors attend workplaces in response to complaints, accidents, fatalities or work refusals to gather information about possible violations of the *OHSA*. In order to gather relevant information, the workplace parties must feel free to provide statements to the inspector about the state of health and safety at the workplace. Without this information, the inspector cannot perform his/her function.

In its characterization of the record throughout its representations, the Ministry maintains that the record is a statement taken from a worker in his personal capacity. I do not agree with the Ministry's position concerning the role of the worker who made this statement. I have reviewed the record at issue, as well as the other records already disclosed to the appellant, and in particular, the one page Investigation Report of the Ministry's investigation of the appellant's complaint of June 2003. A copy of this Report was provided by the appellant with his representations. The Investigation Report contains the following information:

Brief Summary of Events:

The Ministry of Labour has received numerous complaints from [the appellant] beginning in early 1998. Allegations of contraventions of the *Occupational Health and Safety Act* and the *Regulations for Industrial Establishments* at the [named] Sawmill Complex have compelled this investigation.

The Ministry of Labour has diligently perused all of the many complaints that have been sent in writing to the [named] District Office.

Information taken in a statement from [the appellant] on June 20, 2003, centered around the concerns of ventilation and return air at the Complex. Other noted concerns were supervisor retaliations and toxic fumes in the workplace.

On June 23, 2003 due to the persistence of [the appellant]'s continuous letter writing, the Ministry of Labour brought [name], CIH, ROM, a Ministry Regional Hygienist to the [named] Sawmill Complex to complete an evaluation of the ventilation and return air systems. (a copy of this report is included).

A statement was taken from [the affected person] [i.e., the record remaining at issue in this appeal], who is the union worker co-chair of the workplace joint health and safety committee.

Information on file and obtained from this investigation would conclude that there is concerns with ventilation and return air at the Complex. The employer has been directed to review the recommendations on [the inspector]'s report and submit a plan to the Ministry on compliance. [The named Sawmill Complex] responded to the report with a schedule of a course of action to meet the requirements of the recommendations in [the inspector]'s report. The course of action dated July 16, 2003 is included in this report. [The named Sawmill Complex] has announced that the Sawmill Complex will close permanently on October 11, 2003.

As noted, the statement referred to in the Investigation Report is the record at issue in this appeal. This statement was taken from the affected person, who is the union worker co-chair of the workplace joint health and safety committee.

Based upon my review of the record, I find that the affected person was interviewed in his capacity as a certified member of the joint health and safety committee at the named sawmill complex and he was being asked to speak on behalf of the workers as their representative on the committee. He was not asked for his personal views on the situation. As explained in more detail below, there is nothing else about the circumstances that render the affected person's information "personal".

According to section 9(1)(a) of the *OHS*A, a joint health and safety committee is required at a workplace at which twenty or more workers are regularly employed. Section 9(4) of the *OHS*A provides that the employer shall cause a joint health and safety committee to be established and maintained at the workplace. The excerpt from the Investigation Report of the Ministry also confirms that this committee is required by the *OHS*A at the appellant's workplace.

The *OHS*A provides in section 9(8) that the members of a committee who represent workers shall be selected by the workers they are to represent or, if a trade union or unions represent the workers, by the trade union or unions. Section 9(11) of the *OHS*A provides that two of the members of the committee shall co-chair the committee, one of whom shall be selected by the members who represent workers. "Committee" is defined in section 1(1) of the *OHS*A as the joint health and safety committee.

As the Ministry states in its reply representations, the Ministry inspectors attend workplaces in response to complaints, accidents, fatalities or work refusals to gather information about possible violations of the *OHS*A. In this case, the Ministry attended at the workplace as a result of a workplace health and safety complaint made by the appellant. The inspector is mandated by the

OHSA to investigate the state of health and safety at the workplace. The inspector required that the affected person provide a statement in order to carry out his duties to inspect the workplace.

Section 50(1) of the *OHSA* contemplates that, in order for the Ministry to effectively carry out its enforcement duties under the *OHSA*, individuals in the position of the affected person must be able to speak freely to the inspector in order for the inspector to ascertain the true state of occupational health and safety at a workplace.

Section 50(1) of the *OHSA* states that:

No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations...

Section 65(1)(d) of the *OHSA* is also of assistance. This section provides that:

No action or other proceeding for damages, prohibition or mandamus shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is,

- (d) a health and safety representative or a committee member;

The affected person was the union worker co-chair of the workplace joint health and safety committee at the named sawmill complex. In the record in issue, the affected person was asked a number of questions, including questions about the procedures used by the joint health and safety committee to address workers' health and safety concerns. He was also asked about the health and safety situation of the appellant and other workers at the workplace and the health and safety conditions and processes followed at the workplace.

The mandate and composition of the health and safety committee is set out in the *OHSA*. By section 18 of the *OHSA*, one of the functions of the committee is to identify situations that may

be a source of danger or hazard to workers. By that same section, of the *OHSA*, the committee may have a designated member representing workers present during any testing done in the workplace for the purpose of occupational health and safety.

After considering the representations of both the appellant and the Ministry regarding the application of Order MO-1478-F, I agree with and adopt, for the purposes of this appeal, the following findings of Assistant Commissioner Mitchinson with respect to statements made by a co-chair of a workplace health and safety committee:

Having reviewed the contents of the audiotaped telephone call (the record), I do not accept the position put forward by the affected person. It is clear from the content of the tape that the call was made by the affected person to the Fire Department in his capacity as Chair of the Health and Safety Committee, and it is reasonable to conclude that he was contacted by the co-worker because of his role in representing the union on workplace health and safety issues. Although the affected person is correct in stating that he is neither employed by his union nor the Committee itself, I do not find this distinction to assist his argument. His role as Chair of the Committee is exclusively associated with his professional responsibilities as an employee and representative of his union on issues relating solely to the workplace setting. There is no personal component to this role, and the information provided by the affected person to the fire department regarding the fire at his workplace is not "about" him in any personal sense. Rather, it is "about" his work-related responsibilities to deal with health and safety issues, and I find that this information is professional not personal, and does not fall within the scope of the definition of "personal information" in section 2(1) of the *Act*.

Upon review of the entire record, I find that this statement was taken from the affected person in his capacity as co-chair of the health and safety committee and not in his personal capacity. The record is entitled "Ministry of Labour Statement Form". The affected person is identified on this form not under the category of "Witness", but under the category of "Other" and is described as the "Worker certified Co-Chair Joint Health and Safety Committee at the [named] Sawmill Complex". The form also contains a statement that a copy of the affected person's statement may be obtained by a Freedom of Information request after the case is closed.

I find that the affected person was interviewed by the Ministry's inspector because of his role in representing the workers on workplace health and safety issues. The affected person's role as co-chair of the committee is exclusively associated with his professional responsibilities as a representative of the workers on issues relating to the workplace setting. There is no personal component to this role. The information provided by the affected person to the inspector regarding the appellant's complaint concerning the conditions at the workplace is not "about" the affected person in any personal sense. Rather, it is "about" his work-related responsibilities to deal with health and safety issues. I find that the information about the affected person in the record is professional not personal, and does not fall within the scope of the definition of "personal information" in section 2(1) of the *Act*.

Subject to the exception outlined below, therefore, I find that the record in issue is a statement by the affected person in his professional or employment capacity and that it does not, accordingly, qualify as his personal information within the meaning of section 2(1).

Although the information is about the affected person in his professional capacity, it does reveal some information of a personal nature about him. Specifically, I find that the affected person's date of birth (section 2(1)(a)), his home address and telephone number (section 2(1)(d)) and his name (section 2(1)(h)) qualifies as his personal information for the purposes of section 2(1) of the *Act*.

The record also contains the personal information of the appellant, including his medical or employment history (section 2(1)(b)) and the personal opinion or views of another individual about the appellant (section 2(1)(g)), for the purposes of section 2(1) of the *Act*. I note that this information has been withheld under the mandatory "personal privacy" exemption at section 49(b) of the *Act*. This exemption can only apply to personal information of individuals *other than* the appellant. Accordingly, the appellant's information is not exempt under section 49(b) and, as no other exemptions are claimed, I will order that it be disclosed.

Other individuals' information is also included in the record, specifically the names of the affected person's supervisors. As this is information of these individuals in their professional or employment capacity, it does not, accordingly, qualify as their personal information within the meaning of section 2(1).

I will now consider whether the affected person's name, home address and telephone number are exempt under section 49(b).

INVASION OF PRIVACY

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.

Section 49(b) is one of those exceptions to that right. That section reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

- (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

In my discussion on personal information I found that the record at issue contains both the personal information of the appellant and the affected person. Under section 49(b), where a record contains the 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 has the discretion to refuse to disclose that information to the requester. I will therefore consider whether disclosure of the personal information in the record

would result in an unjustified invasion of the personal privacy of the affected person and is, therefore, exempt from disclosure under section 49(b).

Sections 21(1), (2), (3) and (4) provide guidance in determining whether disclosure would be an “unjustified invasion of 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].

Representations of the Ministry

The Ministry relies on section 21(3)(b) in conjunction with section 49(b) as the basis for its refusal to disclose the record to the appellant. Section 21(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (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;

In its representations, the Ministry states:

...that disclosure of the statement (the record) is a presumptive unjustified invasion of personal privacy of the affected individual pursuant to section 21(3)(b) because the record was compiled as part of an investigation into the possible violation of the *OHSA*.

It is now clearly established that the Ministry of Labour's enforcement of the *OHSA* qualifies as "law enforcement" under the *FIPPA*, the pivotal point being that enforcement of the *OHSA* can result in prosecutions in criminal court with the possibility of fines and imprisonment. The Orders reaching this conclusion are Orders P-1011, P1119, and P-1527.

In addition, Orders P-1301, P1519, and PO-1669 have upheld the Ministry's position in withholding documents that were collected from affected persons in the context of an *OHSA* investigation based on the 21(3)(b) presumption. It is respectfully submitted that the rationale in those decisions applies equally to the record in issue.

The Ministry submits that none of the exceptions in section 21(1) would allow the Ministry to release the record in question. In particular, consent to release the record was not obtained from the affected party...

Representations of the Appellant

The appellant does not directly address the issue of his obtaining access to the personal information of the affected person in his representations. However, the appellant did provide a document, the Investigation Report, which has the affected person's name on it.

Findings

I find that the presumption in section 21(3)(b) is applicable to the undisclosed personal information in the record. Disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy of the affected person under section 21(3)(b). I find that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. In particular, the information was compiled during the course of an investigation into alleged contraventions of the *OHSA* and the Regulations for Industrial Establishments at the appellant's workplace. As a result, disclosure of the affected person's name, address, telephone number and date of birth is presumed to constitute an unjustified invasion of personal privacy pursuant to section 21(3)(b). Subject to the discussion of "Absurd Result", below, disclosure of this information would therefore constitute an unjustified invasion of personal privacy for the purposes of section 49(b).

As noted previously, only "personal information" can qualify for exemption under section 49(b), those portions of the record that do not contain the affected person's personal information are not exempt under section 49(b) and I will order that they be disclosed.

Absurd Result

Where the requester originally supplied the information, or the requester is otherwise aware of it, the personal information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

Representations of the Ministry

The decision not to disclose this record would not lead to an absurd result but rather a result consistent with the *FIPPA*. The presumption of invasion of personal privacy pursuant to section 21(3)(b) protects the personal information of affected individuals who provide information in the context of an investigation into a possible violation of the law and can only be disclosed where it is necessary to prosecute the violation or continue the investigation. In this case, the disclosure of the record in question is not necessary for either of these exceptions...

Findings

This office has applied the "absurd result" principle in situations where the basis for finding that personal information qualifies for exemption under section 21(1) would be absurd and

inconsistent with the purpose of the exemption [Order PO-2451].

In my view, the affected person's name is clearly within the appellant's knowledge. It was included in a document that was disclosed to him by the Ministry, namely the Investigation Report, which he provided to me. For this reason, I find that it would be absurd to withhold the affected person's name since it is clearly within the appellant's knowledge. The affected person's name is, accordingly, not exempt under section 49(b). I find, however, that withholding the affected person's address, telephone number and date of birth would not be an absurd result. Disclosure of this information would constitute an unjustified invasion of personal privacy of the affected person, and it is therefore exempt under section 49(b).

Exercise of Discretion

Section 49(b) allows an institution to not 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. This exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

In addition, this office may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

Representations of the Ministry

The Ministry provided the following representations regarding its exercise of discretion:

In addition to the consideration of section 21(3)(b) in making the decision to exercise its discretion under section 49(b), the Ministry also considered other factors which support its decision to withhold the record.

In making its decision, the Ministry reviewed all documents which were responsive to the request. The Ministry reviewed those documents and disclosed all documents which did not contain personal information. The Ministry sought consent to disclose all documents which contained personal information of affected individuals and was unable to do so. The Ministry disclosed 195 pages of documents responsive to the request.

For those documents for which consent could not be obtained, (the record) the Ministry considered previous IPC Orders related to similar documents (Orders PO-1669, P-1519 and P-1301) which upheld the Ministry's decision to withhold such documents. In following those decisions, the Ministry was bound by the statutory presumption that disclosure was an invasion of the affected person's privacy.

Findings

The appellant has not directly addressed the issue of the exercise of the Ministry's discretion in his submissions. I have upheld the Ministry's exemption claim for the affected person's home address, telephone number and date of birth *only*. I find that in denying access to this personal information, the Ministry did exercise its discretion under section 49(b) in a proper manner, taking into account all relevant factors. Disclosure of this information would constitute an unjustified invasion of the affected person's privacy.

ORDER:

1. I uphold the Ministry's decision to deny access to the date of birth, home address and telephone number of the affected person contained in the record.
2. I order the Ministry to disclose the remaining information in the record to the appellant by August 3, 2006 but not before July 31, 2006.

Original Signed By _____

Diane Smith
Adjudicator

June 30, 2006 _____