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

ORDER PO-2545

Appeal PA-050085-1

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

The requester submitted a request to the Ministry of Community Safety and Correctional Services (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all police reports in relation to an investigation conducted by the Ontario Provincial Police (OPP) into allegations made by the requester.

By way of background, the investigation concerns complaints brought by the appellant against certain persons involved in the construction of his home and the decision as to whether his home was eligible for registration in the Ontario New Home Warranty Program (the Program).

The Ministry issued a decision providing partial access to the following four records:

- occurrence summary, dated September 28, 2003 (Record 1)
- general occurrence report, dated September 28, 2003 (Record 2)
- supplementary occurrence report, dated December 29, 2003 (Record 3)
- supplementary occurrence report, dated January 18, 2004 (Record 4)

The Ministry denied access to the non-disclosed portions of Records 1 and 2 pursuant to the application of section 49(a) (discretion to refuse requester's own information), read in conjunction with section 14(1)(l) (commission of an unlawful act or control of crime) and section 19 (solicitor-client privilege), and section 49(b), read in conjunction with section 21(1) (invasion of personal privacy). Regarding the application of the section 49(b)/21(1) exemption, the Ministry indicated that it is relying on the presumption in section 21(3)(b) (information compiled as part of an investigation) and the factor in section 21(2)(f) (highly sensitive personal information). With regard to Records 3 and 4, the Ministry disclosed the records in their entirety to the appellant with the exception of some information which it found to be non-responsive to the request. The Ministry also indicated that some information contained in Records 1 and 2 was non-responsive to the requester's request and it denied access to this information as well on the same basis.

The requester (now the appellant) appealed this decision, stating that the disclosure of this information is of "profound public importance", thereby raising the possible application of the "public interest override" provision in section 23 of the *Act*.

During the mediation stage of the appeal process, the Ministry undertook another search for responsive records, and located the following three additional records:

- occurrence summary, dated May 26, 2000 (Record 5)
- general occurrence report, dated May 30, 2000 (Record 6)
- supplementary occurrence report, dated June 26, 2000 (Record 7)

The Ministry disclosed Records 5 and 7, in their entirety, with the exception of information marked "non-responsive". The Ministry provided partial access to Record 6, also denying access to information marked "non-responsive" and other portions pursuant to section 49(a), read in conjunction with section 14(1)(l), and section 49(b), read in conjunction with section 21(1). Again, in regard to the section 49(b)/21(1) exemption, the Ministry indicated that it is relying on sections 21(3)(b) and 21(2)(f).

Following the partial disclosure of Records 5, 6 and 7 to the appellant, the Ministry undertook a further search, but states that it found no other responsive records.

Also during mediation, the appellant agreed to remove from the scope of the appeal the police codes, severed under section 49(a), read with section 14(1)(l), and the information marked "non-responsive". Therefore, the police codes along with the application of section 49(a), read with section 14(1)(l), is no longer at issue, as is the information marked non-responsive. Accordingly, Records 3, 4, 5 and 7 are no longer at issue. However, the appellant reiterated his view that disclosure of the information remaining at issue is in the public interest, and he took the position that more records should exist.

Further mediation was not possible, and the file was transferred to me for an inquiry.

At issue is the application of section 49(b), read with section 21(1), to the severed portions of Records 1, 2 and 6, and section 49(a), read with section 19, to the severed portions of Record 2. Reasonable search also remains at issue. In addition, in light of the appellant's position regarding the public importance of the disclosure of the information at issue, I will also consider the application of section 23 (public interest override) to all three records.

I commenced my inquiry by sending a Notice of Inquiry to the Ministry, seeking representations on all of the above issues. The Ministry responded with representations and agreed to share them, in their entirety, with the appellant. I then sought representations from the appellant and included with the Notice of Inquiry a complete copy of the Ministry's representations. The appellant provided representations in response.

RECORDS:

The un-disclosed portions of three records remain at issue. The Records and the exemptions claimed are described in the following table:

Record #	Description	Exemptions Claimed
1	Occurrence Summary, dated September 28, 2003 (1 page)	49(b)/21(1)
2	General Occurrence Report, dated September 28, 2003 (5 pages)	49(a)/19 49(b)/21(1)

6	General Occurrence Report, dated May 30, 2000 (2 pages)	49(b)/21(1)

DISCUSSION:

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,
>
> …
>
> (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,
>
> …
>
> (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

The Ministry states that the records remaining at issue contain the personal information of the appellant and the "individuals about whom he has complained." With regard to the individuals who are the subject of the appellant's complaints, the Ministry states that while they were "acting in their professional capacity in relation to the building of the appellant's home, in light of the nature and focus of the appellant's allegations, the information contained in the requested OPP reports should be considered these individuals' personal information."

The appellant does not address this issue in his representations.

Analysis and findings

On my review of the records I am satisfied that they contain the personal information of the appellant, including his name, date of birth, address, telephone number and his personal opinions or views regarding his allegations against various individuals and the Program, as contemplated by paragraphs (a), (d) and (e) of the definition of "personal information" in section 2(1).

With regard to individuals other than the appellant, I am satisfied that the records contain information about these individuals in their personal capacity, despite the fact that the information concerns the professional or business activities of these individuals.

In reaching this conclusion, I rely on Adjudicator Diane Smith's interpretation of this issue in Order PO-2525. In that case, Adjudicator Smith dealt with a request involving the same parties and relating to the same OPP investigation that is at issue in this appeal. The only notable difference is that in Order PO-2525 the request was for copies of "police officers' notes" prepared during the course of the investigation, while in this appeal the request was for "police reports" prepared during the investigation.

In Order PO-2525 Adjudicator Smith found that while the information in the records is about individuals other than the appellant in their professional capacity, the information "relates to an

investigation into or assessment of the performance or alleged improper conduct of these individuals." As a result, Adjudicator Smith concludes that the "characterization of this information changes and becomes personal information." In reaching this conclusion, Adjudicator Smith relies on the interpretation of this issue in previous decisions of this office, specifically Orders P-1180 and PO-2271.

I accept the reasoning of Adjudicator Smith in Order PO-2525 and apply it to the circumstances of this case. The records at issue in this appeal contain the names of individuals against whom the appellant has clearly alleged improper conduct. Most, if not all, of these individuals are the same individuals against whom the appellant made allegations in regard to the records at issue in Order PO-2525. Under the circumstances, I am satisfied that the records contain the personal information of these other individuals, including in the case of one individual his name, date of birth, address and phone number, and in the case of all of the others, the appellant's views or opinions about them and their names where it appears with other personal information about them, as contemplated by paragraphs (a), (d), (g) and (h) of the definition of "personal information" in section 2(1).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/SOLICITOR-CLIENT PRIVILEGE

General principles

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,) read in conjunction with section 19, in regard to portions of Record 2.

Because section 49(a) is a discretionary exemption, even if the information falls within the scope of section 19, the Ministry must nevertheless consider whether to disclose the information to the requester.

I will consider whether the information at issue in Record 2 qualifies for exemption under section 19, subject to my discussion below as to the Ministry's exercise of discretion under section 49(a).

Section 19

General principles

When the request in this matter was filed, section 19 stated as follows:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 was recently amended (S.O. 2005, c. 28, Sched. F, s. 4). However, the amendments are not retroactive, and the original version (reproduced above) applies in this appeal.

Section 19 contains two branches, common law privilege and statutory privilege. The institution must establish that one or the other (or both) branches apply. In this case, the Ministry takes the position in its representations that the information at issue in Record 2 falls within both branches of the solicitor-client exemption.

I will first deal with the branch 1, common law privilege.

Branch 1: common law privilege

Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue. [Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 457 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

The privilege applies to "a continuum of communications" between a solicitor and client:

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Representations

The Ministry states that the exempt information consists of "confidential communications which directly relate to the seeking of legal advice by the OPP and the provision of legal advice by Crown counsel." The Ministry submits that privilege has not been waived with respect to those portions of Record 2 to which it has claimed the application of the exemption.

The appellant's representations do not address the application of the section 19 solicitor-client privilege exemption to the information at issue.

Analysis and findings

The information at issue consists of two discrete portions of Record 2, which was written by a named OPP detective. The first portion (at page 2) documents the details of a conversation between the named OPP detective and a named Crown Attorney regarding issues relating to the OPP's investigation of the appellant's allegations. The second portion (at page 5) sets out advice given by the named Crown Attorney to the named OPP detective, and conclusions reached as a result of this advice, in regard to one of the appellant's allegations.

On my review of the Ministry's representations and those portions of Record 2 that are at issue, I am satisfied that the severed information qualifies as confidential solicitor-client communications made for the purpose of seeking and receiving legal advice. These portions of the record contain information concerning communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. There is no evidence before me to suggest that privilege has been waived with respect to this information. I find that the information at issue under section 19 qualifies for the common law solicitor-client communication privilege (branch 1) and is, therefore, exempt under section 49(a), read with the branch 1 solicitor-client communication privilege in section 19.

Having found these portions of Record 2 exempt under the common law solicitor-client communication privilege (branch 1) of section 19, I am not required to consider the application of common law litigation privilege or the branch 2 statutory privileges.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

Introduction

I have found above that the records at issue contain the personal information of the appellant and other individuals.

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 consider whether disclosure of the personal information in the records would result in an unjustified invasion of the personal privacy of other individuals and is, therefore, exempt from disclosure under section 49(b).

Section 21(1) requires that I determine whether disclosure of the personal information of the other individuals would result in an unjustified invasion of their personal privacy. Sections 21(2), (3) and (4) provide guidance in determining whether the "unjustified invasion of privacy" threshold under section 49(b) is met. 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 49(b). 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].

In this case, the Ministry relies on the application of the presumption in section 21(3)(b).

The Ministry has claimed that disclosure constitutes an unjustified invasion of personal privacy by reason of the application of 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.

Representations

The Ministry states that the information remaining at issue consists of highly sensitive personal information that was compiled and is identifiable as part of an OPP investigation into possible violations of law under the *Criminal Code*, including criminal breach of trust, an offence under section 236 of the *Criminal Code*.

While the appellant provides lengthy representations, he does not directly address the issue of whether disclosure of the undisclosed portions of the records would be presumed to constitute an unjustified invasion of personal privacy. The appellant suggests that complete disclosure of the records is necessary to examine whether the OPP concluded its investigation prematurely or the propriety of the manner in which the investigation was carried out. The appellant seems to be relying on the exception in section 21(3)(b), suggesting that disclosure is necessary to prosecute a violation of law or to continue the investigation into a possible violation of law.

Analysis and findings

The information at issue in this case flows from the same OPP investigation of the appellant's allegations that was addressed in Order PO-2525. Not surprisingly, the parties' representations in this case are similar, if not identical, to those presented in Order PO-2525.

In Order PO-2525, Adjudicator Smith concluded that the personal information at issue in several of the records before her was compiled and is identifiable as part of an OPP investigation into a possible violation of law under section 236 of the *Criminal Code*. Having found that a presumed unjustified invasion of personal privacy had been established under section 21(3)(b), Adjudicator Smith concluded that she could not consider whether the factor in section 21(2)(d) (fair determination of rights) might apply.

In addition, in addressing the appellant's reliance on the exception in section 21(3)(b), Adjudicator Smith referred to previous decisions of this office (Orders MO-1410 and MO-1449) to conclude that the exception contained in the phrase "continue the investigation" refers to the investigation conducted by the OPP, not the resumption or commencement of a new investigation by the appellant.

I find that Adjudicator Smith's reasoning applies equally to the circumstances of this case. I am satisfied that the personal information remaining at issue in the records in this case was compiled and is identifiable as part of an investigation into a possible violation of law. In particular, I am satisfied that the information contained in the records was compiled during the course of an investigation into the appellant's allegations concerning criminal breach of trust, under section 236 of the *Criminal Code*. Accordingly, I find that the section 21(3)(b) presumption applies in the circumstances and that it cannot be overcome by the exception in section 21(3)(b) or the exceptions in section 21(4).

Subject to my discussion of the "public interest override" and the "absurd result" principle, below, I conclude that disclosure of the personal information in the records at issue would constitute an unjustified invasion of personal privacy and is exempt under section 49(b).

ABSURD RESULT PRINCIPLE

Where the requester originally supplied the information at issue, or the requester is otherwise aware of it, the 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].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]

- the requester was present when the information was provided to the institution [Orders M-444, P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principal may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

This office has applied the "absurd result" principle in situations where the basis for finding that information qualifies for exemption under section 21(1) would be absurd and inconsistent with the purpose of the exemption [OrderPO-2451].

The "absurd result" principle was found to also be applicable where the information is clearly within the requester's knowledge, such as where the requester already had a copy of the record or where the requester was the intended recipient of the record [Orders MO-1196, PO-1679, MO-1755].

Representations

The Ministry does not directly address the issue of whether the absurd result principle should be applied to allow disclosure of the undisclosed portions of the records. The closest the Ministry comes to addressing this issue is its statement that it is "mindful that much of the information remaining at issue was created as a result of the allegations the appellant has brought forward concerning various other individuals."

Although the appellant provided lengthy representations, he did not directly address the application of the absurd result principle to the circumstances of this case. However, he does indirectly address this issue in his representations. Included in a "factum" that he attached to his representations, the appellant provides the names of the individuals that appear in the undisclosed portions of the records and their respective involvement in this matter.

Analysis and findings

Much of the information remaining at issue concerns the names and personal identifiers of individuals who were involved in the OPP investigation of the appellant's allegations. On my review of the appellant's representations and the records themselves, I am satisfied that many of the names of these individuals were provided by the appellant to the OPP during the course of interviews conducted with him as part of the investigation into his allegations.

In Order MO-1704, Adjudicator Shirley Senoff addressed a request for an occurrence report that had been created as a result of an extortion complaint made by the appellant in that case to the Toronto Police Services Board. In finding that the absurd result principle applied to some of the information at issue, Adjudicator Senoff stated:

> It is apparent from the record and the surrounding circumstances that the appellant himself provided much of this information to the Police when he made his complaint. The appellant clearly supplied the Police with the suspect's name and the basis for the appellant's complaint. Denying the appellant access to this information simply would not make sense.

Adopting the analysis of Adjudicator Senoff, I recently applied the absurd result principle in Order MO-2110, in regard to the first name of a suspect that the requester in that case had given to the Toronto Police Services Board.

I also note that in Order PO-2525 Adjudicator Smith applied the absurd result principle to several categories of information, including the names of individuals that the appellant had himself supplied to the OPP.

To the extent that information in the records was either provided by the appellant to the OPP or is otherwise within his knowledge, I find that it would be absurd not to disclose this information to him. Therefore, in keeping with the application of the absurd result principle in similar circumstances, as set out above, I will order the release of the names of individuals that the appellant either provided to the OPP during the course of the aforementioned interviews or that the appellant made reference to in his representations and, as a result, are within his knowledge. However, I find that the absurd result principle does not apply to information severed from the records that contains the views of the investigating officers regarding the appellant's allegations about certain named individuals, the personal identifiers of certain named individuals or information derived from the statements of individuals other than the appellant.

To conclude, as a result of the application of the absurd result principle, I will order the disclosure of portions of the severed information in Records 1 and 2 and all of the severed information in Record 6 to the appellant.

EXERCISE OF DISCRETION

I must determine whether the Ministry properly exercised its discretion in not disclosing the information I have found to be not exempt under section 49(a), read with section 19, and section 49(b), read with section 21(1).

The section 49(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner 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

The Ministry provides detailed submissions on this issue. To a large extent the Ministry's representations mirror those it provided in Order P-2525. Briefly, the Ministry states that it considers every request for access on a case-by-case basis and that it weighs a requester's right of access to the personal information of other individuals in each case. The Ministry submits that it went through this exercise in this case and has provided the appellant with substantial information. In exercising its discretion to deny access to the remaining information, the Ministry states that it considered the following factors:

- with regard to the information claimed to be exempt under section 19, whether disclosure could lead to a reluctance to exchange information between Crown counsel and police investigators
- the potential benefit of disclosure to the appellant weighed against the harm to individuals named in the records should the severed information be disclosed
- whether disclosure would increase public confidence in the delivery of public services
- the age of the exempt information and its connection to matters that the appellant continues to pursue

The Ministry states that in weighing the above factors it carefully considered the possibility of releasing additional information and concluded that, in the circumstances of this case, to do so would be inappropriate.

The appellant does not directly address the Ministry's representations on the exercise of discretion issue. However, the appellant does stress the need for access to the information at issue to pursue his allegations against certain individuals.

Analysis and findings

I am satisfied that the Ministry properly exercised its discretion in denying access to the information I have found exempt under section 49(a), read with section 19, and under section 49(b), subject to my findings above regarding the application of the absurd result principle to certain portions of the information contained in the records. In making this finding, I conclude that the Ministry considered relevant factors and did not consider irrelevant ones in the exercise of its discretion.

PUBLIC INTEREST OVERRIDE

As mentioned above, the appellant takes the position that the non-disclosed information in the records is of public importance. Accordingly, I will also consider the application of section 23 (public interest override) to those portions of Records 1 and 2 that I have found exempt under section 49(b), read in conjunction with section 21.

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. Therefore, I am not in a position to consider the application of section 23 to the information I have found exempt under section 49(a), read with section 19.

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, 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. Mitchinson*, [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]

Representations

Regarding the first requirement under section 23, the Ministry submits that the appellant's request and the exempt information in the records do not appear to give rise to a compelling public interest. The Ministry states that while there is a "general public interest" in regard to law enforcement and public safety matters, the release of the information remaining at issue is "not likely to have significant implications for the broader public interest or safety at this point in time." The Ministry believes that the appellant has a "private interest" in the information at issue.

Regarding the second requirement under section 23, that the compelling public interest must clearly outweigh the purpose of the applicable exemption, the Ministry states that the personal information at issue is "highly sensitive" and it believes that the disclosure of this information would be "inconsistent" with the purposes of the section 49(b) exemption.

The appellant provides detailed representations on the application of the public interest override. The main thrust of his argument is that the Ministry should not be permitted to use the *Act* to shield individuals who he alleges have broken the law. In this vein, he specifically mentions "a rogue law enforcement official, a rogue building inspector (or anybody in turn who attempts to shield him)" who he suggests "may have made a false statement to police in order to obstruct the investigation by the OPP into why that building inspector had failed to police a rogue builder in Ontario who himself had flaunted the law by building illegally for 8 years…"

The appellant goes on to state that it is "clearly…self-evident" in light of his allegations that there is a compelling public interest in the disclosure of the information at issue that outweighs the application of any exemptions under the *Act*. The appellant submits that there is "clearly…a direct relationship between the full record of the OPP's investigation in this case and the *Act*'s central purpose of shedding light on the operations of government." The appellant suggests that the "integrity of law enforcement in Ontario in relation to the new home building industry is being called into question in this case, and along with it, the integrity of both the civil and criminal justice systems."

The appellant concludes that the public needs to know the full extent of the OPP investigation in this case to deter like minded individuals from doing the same thing to others that he has experienced.

Analysis and findings

In Order PO-2525, Adjudicator Smith also addressed the application of section 23 in regard to the information at issue in that case. Adjudicator Smith concluded that section 23 did not apply in the circumstances of that case. In making this finding she stated:

> I find that there is no compelling public interest in the disclosure of the personal information in this case as the appellant is requesting the information for a predominantly personal reason [Order M-319]. The appellant requires the information to pursue his legal remedies against the builder of his home and the government officials who were instrumental in the issuance of a building permit and associated documents connected to the building of his home. The appellant seeks to pursue these remedies as a result of the denial of coverage of his home under the government-sponsored insurance program, the former Ontario New Home Warranty Program (now known as the Tarion Program). In my view, even the appellants' comments about the possible "premature" ending of the investigation relate to a personal interest, rather than a public one, in the particular circumstances of this appeal.

In regard to this appeal, while I acknowledge the appellant's stated desire to secure the non-disclosed information at issue in order to shed light on the operations of government and inform the public about the issues he has been pursuing, I concur with the analysis and conclusions of Adjudicator Smith in Order PO-2525. I also view the appellant's interest in the information at issue in this case as being essentially private, as between himself and various individuals, the Program and the OPP, in relation to his property. While there may be some public interest in the non-disclosed information, on the evidence before me, any such public interest does not outweigh the application of the personal privacy exemption in the circumstances of this case.

Accordingly, I conclude that section 23 does not apply to the undisclosed portions of the records at issue.

REASONABLE SEARCH

The Ministry states that it has undertaken two searches for records responsive to the appellant request. However, the appellant takes the view that further responsive records should exist. Therefore, the adequacy of the Ministry's search is at issue and I must determine whether the Ministry has conducted a reasonable search for records within its custody or control [Orders P-85, P-221, PO-1954-I].

If I am satisfied that the searches carried out were reasonable in the circumstances, I will uphold the Ministry's decisions. If I am not satisfied, I may order further searches.

The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, the Ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [see Order M-909].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [PO-2409].

Representations

Despite being invited to do so, the appellant did not provide representations that address the reasonable search issue.

The Ministry provided detailed representations on its search efforts, contained in the sworn affidavit of the Deputy Coordinator in the Ministry's Freedom of Information and Privacy Office (FOI Office). The Deputy Coordinator's affidavit documents two separate searches conducted in the following OPP locations:

- OPP Anti-Rackets Section
- OPP Central Region

The Deputy Coordinator states that when the appellant's request was received a Program Analyst with the FOI Office was assigned to manage the processing of the appellant's request. The Deputy Coordinator states that the appellant's request was sufficiently clear and did not require clarification.

With regard to the OPP Anti-Rackets Section, the Deputy Coordinator states that the Program Analyst contacted a Detective Staff Sergeant, who was the OPP Freedom of Information Liaison Officer for the Investigation Bureau, and asked him to undertake a search for responsive records. The Detective Staff Sergeant subsequently reported back to the Program Analyst that the Anti-Rackets Section had not commenced an investigation into this matter and that, as a result, there were no responsive records in the Anti-Rackets Section.

The Deputy Coordinator states that the Program Analyst then contacted an OPP inspector, who was the OPP FOI Liaison Officer for the Central Region, and asked him to coordinate a search for responsive records. The Deputy Coordinator submits that a search was completed and four records were identified as being responsive, to which the appellant was granted partial access.

The Deputy Coordinator states that a second series of searches were completed after the appellant filed his appeal. These included another search of the OPP Anti-Rackets Section where again no reports relating to the appellant were located. In addition, the Deputy Coordinator states that the OPP undertook another search of the OPP Central Region, by checking the OPP's former records management system, the Ontario Municipal Provincial Police Automated Cooperative. The Deputy Coordinator submits that a second occurrence was located along with three other records relating to this occurrence. The Deputy Coordinator states that the Ministry issued a supplementary decision letter, in which it agreed to provide partial access to the reports associated with this occurrence.

The Deputy Coordinator states that the appellant had subsequent conversations with the Program Analyst about the existence of additional records. The Deputy Coordinator states that as a result further efforts were made to locate additional records, but that no additional responsive records were identified.

Analysis and findings

As stated above, the appellant must provide a reasonable basis for concluding that additional records exist. The appellant has not provided me with evidence to support his contention that additional records should exist.

I have reviewed the records that have been located, along with the affidavit of the Ministry's Deputy Coordinator on the issue of whether a reasonable search has been conducted for

responsive records. The Ministry has provided a detailed sworn affidavit from a knowledgeable employee concerning its search efforts to locate records responsive to the appellant's request.

On the strength of the evidence before me, I am satisfied that the searches carried out by the Ministry were reasonable in the circumstances.

ORDER:

1. I uphold the Ministry's application of the section 19 exemption, read with section 49(a), to portions of Record 2.

2. I order the Ministry to disclose Record 6 in its entirety, with the exception of the information marked non-responsive, by **March 1, 2007** but not before **February 23, 2007**.

3. I order the Ministry to disclose Records 1 and 2 in part, in accordance with the highlighted version of these Records included with the Ministry's copy of this order by **March 1, 2007** but not before **February 23, 2007**. To be clear, the Ministry should not disclose the highlighted portions of these records.

4. I uphold the Ministry's searches for responsive records.

5. I order the Ministry to provide me with copies of the records ordered disclosed in provisions 2 and 3 of this order.

Original signed by: January 25, 2007
Bernard Morrow
Adjudicator