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

ORDER PO-2582

Appeal PA-060172-1

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*), for the following information:

> All information including but not limited to all notes, correspondence, telephone calls, memos, photos, applications, reports, statements, etc. with respect to [the requester] in the hands of the [Ministry's] Chief Firearms Office (CFO).

This request followed a determination by the CFO that the requester was a threat to public safety and that he should not possess a firearm license.

The Ministry issued a decision granting partial access to the records from the Chief Firearms Office. Access was denied to parts of the responsive information pursuant to section 49(a), in conjunction with sections 14(1)(a), (c) and (l) and 14(2)(a) (law enforcement); section 49(b) (invasion of privacy) in conjunction with the consideration in section 21(2)(f) and the presumption in section 21(3)(b); and section 15(b) (relations with other governments).

The Ministry further advised that information contained in the records relating to other matters that do not involve the appellant had been removed from the records on the basis that such information is not responsive to the request.

The requester (now the appellant) appealed the Ministry's decision. During mediation, the issue of non-responsiveness of some portions of the records was discussed with the appellant who agreed that this information is no longer at issue in this appeal.

With respect to the responsive records, the appellant maintained that their disclosure is relevant to a hearing he was scheduled to attend, raising the possible application of the factor listed in section 21(2)(d) (fair determination of rights) of the *Act*.

Also during the course of mediation, the Ministry explained that section 14(1)(a) of the *Act* was inadvertently raised in the decision letter in error and that it is not relying on the application of this exemption to the responsive records.

As no further mediation was possible, the file was transferred to me to conduct the inquiry. I sent a Notice of Inquiry to the Ministry outlining the background and issues in the appeal, and inviting the Ministry to provide representations, which it did. At this time, the Ministry issued a supplementary decision letter to the appellant and provided the appellant with access to further information from the records, along with two pages (89 and 90) of additional information from the Chief Firearms Office of Ontario.

In its supplementary decision letter, the Ministry withdrew its claim to section 49(a), in conjunction with sections 14(2)(a) and 15(b), to the records remaining at issue. The Ministry also withdrew its claim to section 49(a), in conjunction with section 14(1)(c), with respect to pages 12, 35, 37, 38 and 39. The Ministry also claimed, for the first time, the application of section 49(a) in conjunction with the law enforcement exemption in section 14(1)(i), to pages 41, 45, 46, 84, 86 and 87. I will address the late raising of this exemption in my discussion below.

I then sent a Notice of Inquiry to the appellant along with a complete copy of the Ministry's representations and the Ministry's revised Index of Records, seeking the appellant's representations. The appellant did not provide representations in response.

RECORDS:

The records remaining at issue consist of the undisclosed portions of the Canada Firearms Centre reports and notes, and the withheld Toronto Police Service reports, more particularly described in the following chart:

Record #	Ministry Page #	Description of Record	Exemptions claimed
1	5 to 12	Appellant's Firearm Application	49(b) with 21(2)(f) for pages 5 and 9
			49(a) with 14(1)(c) and (l) for pages 6 to 8 and 10 to 11
			49(a) with 14(1)(l) for page 12
2	16	notes	49(b) with 21(2)(f)
3	18	notes	49(a) with 14(1)(l) for code; 49(b) with 21(2)(f) for remainder of entry
4	20 to 21	notes	49(b) with 21(2)(f)
5	28	Canadian Firearms Information System form	49(a) with 14(1)(c) and (l)
6	31	Recognizance to Keep Peace form	49(b) with 21(2)(f)
8	35	notes	49(a) with 14(1)(l)
9	37 to 39	3 CPIC/FIP Event reports	49(a) with 14(1)(c) and (l);
10	41, 42, 45 to 49, 51, 52, 59 to 62, 64, 65, 72, 73, 76, 78, 80, 84, 86 to 87	Toronto Police Services Reports	49(a) with 14(1)(i) and (l) for pages 41, 45, 46, 84, 86 to 87;
			49(b) with 21(2)(f) and 21(3)(b) for pages 42, 47, 48, 49, 51, 59 to 62, 64, 65, 72, 73, 76, 78 and 80;
			49(b) with 21(3)(b) for page 52.

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

The Ministry submits that the records contain the personal information of the appellant and other identifiable individuals, pursuant to each of the paragraphs of the definition, except paragraph (f).

Analysis/Findings

I have reviewed the contents of the records at issue and find that they contain the "personal information" of the appellant and other identifiable individuals. The personal information about the appellant and other identifiable individuals includes information relating to their age, sex, marital or family status (paragraph (a) of the definition), identifying numbers (paragraph (c)), addresses and telephone numbers (paragraph (d)), the views or opinions of another individual about them (paragraph (g)), and their names where it appears with other personal information relating to them (paragraph (h)).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

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.

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.)].

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.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

In order for information to qualify for an exemption under "law enforcement", the exempt information must fit the definition of law enforcement in section 2(1) of the *Act*. The Ministry maintains that the records fall within paragraphs (a) and (b) of the definition which read:

> "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

The Ministry submits that the exempt law enforcement information at issue was created during the course of authorized investigations undertaken by the CFO and the Toronto Police Service. The Ministry has claimed that section 49(a), in conjunction with the exemptions in sections 14(1)(c), (i) and (l), applies to portions of the records.

Section 14(1)(c): investigative techniques and procedures

Section 14(1)(c) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > reveal investigative techniques and procedures currently in use or likely to be used in law enforcement

The Ministry has applied section 14(1)(c) to the undisclosed portions of pages 6, 7, 8, 10 and 11 of Record 1 and of Record 5 which represent the Client Eligibility Checks undertaken by the CFO in relation to the appellant's firearm license. The Ministry states that:

> It should be noted that eligibility requirements are not only applicable at the time of review of an application, but continue to apply to the holder of a license throughout the whole term of the license. Violation of these requirements may result in the revocation of an existing license. There is also an automatic revocation of the license where a prohibition order has been made preventing the holder from the possession of a thing to which the license relates. The revocation is effective from the moment the prohibition order is made.
>
> The first eligibility requirement is that public safety must be maintained. No applicant is eligible to hold a license if public safety is jeopardized by issuing a license to such an applicant. The second basic requirement is that the applicant must not be subject to a prohibition order.
>
> Section 5 of the *FA* outlines the test to determine eligibility to hold a license: Before issuing a license, the CFO must determine whether there might be a threat to public safety if the individual or business applicant is allowed to possess any of the items for which a license is required. Public safety includes the safety of the applicant as well as the safety of any other individual…
>
> Public release of the components of the Client Eligibility Checks would undermine the effectiveness of the eligibility assessment investigative techniques used by the CFO to ensure that it is not contrary to the interests of public safety to grant or continue the firearms license of an individual. Public disclosure of the Client Eligibility Checks would enable individuals to identify the types of information to conceal or misrepresent before the CFO where the existence of such information might restrict the individual's ability to obtain and retain a firearms license.

Analysis/Findings

In order to meet the "investigative technique or procedure" test, the institution must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective utilization. The exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487].

The techniques or procedures must be "investigative". The exemption will not apply to "enforcement" techniques or procedures [Orders PO-2034, P-1340].

I find that disclosure of the undisclosed portions of pages 6, 7, 8, 10 and 11 of Record 1 and of Record 5, which contain the techniques for checking eligibility to obtain or maintain a firearm license, could reasonably be expected to reveal law enforcement investigative techniques currently in use. In my view, disclosure of these techniques could reasonably be expected to hinder or compromise their effective utilization as it would enable individuals to modify his or her behaviour and activities in order unlawfully obtain or retain firearms. As such, I conclude that disclosure of this information would hinder the ability of the CFO to carry out its responsibilities in relation to the *Firearms Act*.

Subject to my discussion of the absurd result principle and the Ministry's exercise of discretion below, I find the undisclosed portions of pages 6, 7, 8, 10 and 11 of Record 1 and of Record 5 to be exempt under section 49(a), in conjunction with section 14(1)(c).

Section 14(1)(i): security of a building, vehicle, system or procedure

Section 14(1)(i) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

The Ministry has applied section 14(1)(i) to the undisclosed portions of Record 9 and pages 41, 45, 46, 84, 86 and 87 of Record 10. The Ministry has raised this discretionary exemption late, namely, more than 35-days after the Confirmation of Appeal was sent to the parties by this office.

The *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act* (the *Code*) sets out basic procedural guidelines for parties involved in an appeal. Section 11 of the *Code* (New Discretionary Exemption Claims) sets out the procedure for institutions wanting to raise new discretionary exemption claims. Section 11.01 is relevant to this issue and reads:

> In an appeal from an access decision an institution may make a new discretionary exemption within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

In this case, the Confirmation of Appeal is dated July 6, 2006. The Ministry was advised in the Confirmation of Appeal that it had until August 11, 2006 to raise any new discretionary exemptions. The section 14(1)(i) exemption was raised by the Ministry on November 17, 2006.

The prompt identification of discretionary exemptions is necessary in order to maintain the integrity of the appeals process. Unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement of the appeal under section 51 of the *Act* and could require a re-notification of the parties in order to provide them with an opportunity to submit representations on the applicability of the newly claimed exemption, thereby delaying the appeal. Appellants could be prejudiced by delays

arising from the late raising of new exemptions, as the value of the information to appellants could diminish with time [Orders P-658 and PO-2394].

The Ministry submits that the late raising of this discretionary exemption from disclosure does not compromise the integrity of the appeals process and does not prejudice the interests of the appellant, as the exemption was raised prior to the appellant being invited to submit representations. The Ministry submits that this additional discretionary exemption has been claimed with respect to only small parts of the nine pages of records.

I agree with the Ministry's representations that the late raising of the exemption in section 14(1)(i) has not prejudiced the interests of the appellant. In this case, I find that the integrity of the process would not be compromised by allowing the Ministry to rely on section 14(1)(i). The appellant did not make representations on this exemption in response to the Notice of Inquiry sent to him. As a result, I cannot conclude that this appeal would have proceeded in a different manner had this exemption been raised earlier. I will, therefore, permit the Ministry to raise the application of the discretionary exemption in section 14(1)(i).

The Ministry submits that disclosure of the exempt information in the records to which it has applied section 49(a), in conjunction with section 14(1)(i), may reasonably be expected to endanger the security of a specific building and the computerized system known as the Canadian Police Information Centre (CPIC).

With respect to the security of a building, the Ministry submits that the exempt information reveals the details of the security arrangements of a specific building. Public release of this information may reasonably be expected to jeopardize the ongoing security of the assets contained in this building.

The Ministry describes the CPIC system as a tool that assists the Canadian law enforcement community in combating crime by providing information on crimes and criminals. CPIC is operated by the Royal Canadian Mounted Police under the stewardship of the National Police Services, on behalf of the Canadian law enforcement community. The Ministry submits that unauthorized access to the CPIC system has the potential to compromise investigations and other law enforcement activities and the privacy and safety of individuals. The Ministry further submits that release of certain CPIC access/transmission codes has the potential to compromise the ongoing security of the CPIC system and facilitate unauthorized access to the CPIC system.

Upon review of the records, I agree with the Ministry that disclosure of those portions of the records claimed to be exempt pursuant to section 49(a) in conjunction with 14(1)(i), could reasonably be expected to endanger the security of the building and the integrity of the CPIC system. With respect to the CPIC coding information in particular, I agree with the findings of Senior Adjudicator David Goodis in Order PO-1921, where he found that disclosure of CPIC information relating to the codes required to access the CPIC database could lead to individuals abusing these communication tools, thus hampering the control of crime by causing harm to the CPIC system.

Subject to my discussion of the absurd result principle and the Ministry's exercise of discretion below, I find the undisclosed portions of Record 9 and of pages 41, 45, 46, 84, 86 and 87 of Record 10 to be exempt under section 49(a), in conjunction with section 14(1)(i).

Section 14(1)(l): commission of an unlawful act or control of crime

Section 14(1)(l) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

The Ministry has applied section 49(a) in conjunction with 14(1)(l), to the undisclosed portions of page 12 of Record 1, the police code in Record 3, and Record 8. It has also applied this exemption to the undisclosed portions already dealt in my discussion of section 14(1)(c). However, there is no need for me to consider the applicability of section 14(1)(l) to those portions of the records that I have found to be exempt under section 14(1)(c).

With respect to the undisclosed portions on page 12 of Record 1, the police code in Record 3, and Record 8, I agree with the Ministry that disclosure of these records could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. As stated by the Ministry in its representations, disclosure of this information would reveal to the appellant aspects of the CFO assessment and analysis of investigative and enforcement matters involving the appellant. As a result, the appellant could use this information to modify his behaviour and activities in such a way as to interfere with CFO officials seeking to control crime.

Therefore, subject to my consideration of the Ministry's exercise of discretion and the absurd result principle, below, I find that page 12 of Record 1, the police code in Record 3, and Record 8, to be exempt under section 49(a), in conjunction with section 14(1)(l).

I will now consider the applicability of the exemption in section 49(b) to the remainder of the records, namely, pages 5, 9 and 12 of Record 1, the remainder of Record 3, Records 2, 4, 6, and pages 42, 47, 48, 49, 51, 52, 59 to 62, 64, 65, 72, 73, 76, 78 and 80 of Record 10.

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

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion"

of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

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

Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met.

The Ministry has claimed that disclosure of pages 42, 47, 48, 49, 51, 52, 59 to 62, 64, 65, 72, 73, 76, 78 and 80 of Record 10 constitutes a presumed unjustified invasion of personal privacy by reason of the application of section 21(3)(b). Section 21(3)(b) provides that:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Ministry submits that:

> …the exempt personal information was compiled and is identifiable as part of law enforcement investigations into a possible violation of law. As described and detailed in the responsive records, the appellant was charged with several serious *Criminal Code* offences as a result of the investigations.

Upon my review of Record 10, I find that the personal information in pages 42, 47, 48, 49, 51, 52, 59 to 62, 64, 65, 72, 73, 76, 78 and 80 of Record 10 was compiled and is identifiable as part of investigations by the Toronto police into possible violations of law. The already disclosed information from this record reveals that Record 10 consists of various police reports documenting *Criminal Code* charges and potential charges against the appellant, including those of break and enter, possession of stolen property, theft, failure to comply with a recognizance, and assault. I find that the information in Record 10 was compiled during the course of various investigations into these charges or potential charges. There is, therefore, a presumed unjustified invasion of personal privacy in connection with the disclosure of these records.

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 v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. 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,* cited above]. Section 23 has not been raised by the appellant and section 21(4) is inapplicable in this appeal.

Section 21(3)(b) still applies even if criminal proceedings were not commenced against the appellant. The presumption in section 21(3)(b) only requires that there be an investigation into a possible violation of law [Order P-242].

The presumption in section 21(3) has not been claimed for pages 5, 9 and 12 of Record 1, the remainder of Record 3 and for Records 2, 4, and 6, in their entirety. With respect to these records, the factors in section 21(2) may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The list of factors under section 21(2) is not exhaustive. The Ministry must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99].

The Ministry has claimed that the remaining records, namely, pages 5 and 9 of Record 1, the remainder of Record 3, and all of Records 2, 4 and 6, are exempt from disclosure by reason of the factor in section 21(2)(f), which reads:

> 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,
>
> > the personal information is highly sensitive.

To be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518].

The Ministry submits that the personal information to which it has applied section 49(b), in conjunction with section 21(2)(f), consists of highly sensitive personal information that was compiled and is identifiable as part of Toronto Police Service investigations into possible violations of law involving the appellant. The personal information in the remaining records is information concerning identifiable individuals other than the appellant. This information includes these individuals' names, addresses, dates of birth, telephone numbers, marital status, and their name where it appears with other personal information relating to these individuals.

I find that the factor in section 21(2)(f) is a relevant factor weighing in favour of the Ministry's position denying the appellant access to the records for which this exemption has been claimed. Disclosure of these records could reasonably be expected to cause significant personal distress to identifiable individuals other than the appellant.

The appellant took the position during the mediation stage of his appeal that the factor in section 21(2)(d), which weighs in favour of the disclosure of the records at issue, also applies. The

appellant maintained at the mediation stage of his appeal that he required the responsive records in connection with a scheduled hearing that he was required to attend. The appellant has not provided me with any other information concerning the type of hearing he was required to attend or the relevance of the records to this hearing. Although the appellant has not made representations on this issue, I will consider whether this factor favouring disclosure outweighs the privacy protection factor in section 21(2)(f).

Section 21(2)(d) states:

> 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,
>
> > the personal information is relevant to a fair determination of rights affecting the person who made the request.

For section 21(2)(d) to apply, the appellant must establish that:

(1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

(2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

(3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

The appellant has not provided me with representations concerning how the disclosure of the personal information of other identifiable individuals that remains undisclosed in Record 10 could be relevant to a fair determination of his rights. In particular, he has not provided me with representations that the personal information which he is seeking access to has some bearing on or is significant to the determination of a legal right and that he requires this information in order to prepare for a proceeding or to ensure an impartial hearing. Therefore, I find that the factor in section 21(2)(d) favouring disclosure is not relevant factor favouring disclosure in this appeal.

I found above that the remaining records contain highly sensitive personal information and that the factor weighing against disclosure in section 21(2)(f) applies. Therefore, subject, to my discussion of the Ministry's exercise of discretion and the absurd result principle, below, I find the remaining records exempt from disclosure under section 49(b), in conjunction with section 21(2)(f).

Absurd result

Where the requester originally supplied the information, 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]

With respect to the possible application of the absurd result principle, the Ministry submits that the absurd result principle does not apply in the particular circumstances of the appellant's request. It argues that it would be inconsistent with the purposes of the privacy exemption that I have found to apply to release the personal information at issue.

On my review of the records, I find that some of the undisclosed personal information in Record 1, the firearms application, may have originally been supplied by the appellant. In addition, the appellant may be aware of some of the undisclosed information in the police reports in Record 10. I find, however, that not all of the information in these particular records is clearly within the appellant's knowledge. With respect to the information that the appellant is aware of, I agree with the findings of Adjudicator Laurel Cropley in Order MO-1524-I, where she stated that:

> The privacy rights of individuals other than the appellant are without question of fundamental importance. One of the primary purposes of the *Act* (as set out in section 1(b)) is to protect the privacy of individuals. Indeed, there are circumstances where, because of the sensitivity of the information, a decision is made not to apply the absurd result principle (see, for example, Order PO-1759). In other cases, after careful consideration of all of the circumstances, a decision is made that there is an insufficient basis for the application of the principle (see, for example, Orders MO-1323 and MO-1449). In these situations, the privacy rights of individuals other than the requester weighed against the application of the absurd result principle.

I also adopt the findings of Adjudicator Frank DeVries in Order PO-2440, where he stated:

> I have carefully reviewed the circumstances of this appeal, including the specific records at issue, the background to the creation of the records, the unusual circumstances of this appeal, and the nature of the allegations brought against the police officer and others. I also note that the Ministry has, in the course of this appeal, disclosed certain records to the appellant. I find that, in these circumstances, there is particular sensitivity inherent in the personal information contained in the records, and that disclosure would not be consistent with the fundamental purpose of the *Act* identified by Senior Adjudicator Goodis in Order MO-1378 (namely, the protection of privacy of individuals, and the particular sensitivity inherent in records compiled in a law enforcement context). Accordingly, the absurd result principle does not apply in this appeal.

I conclude that owing to the sensitivity of the information in the records, a compelling reason exists for not applying the "absurd result" principle, since the disclosure would be "inconsistent with the purpose of the exemption", which must include the protection of individuals in the law enforcement context. I agree with the Ministry that the absurd result principle does not apply in this appeal.

EXERCISE OF DISCRETION

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

The Ministry submits that:

> [It] took into account that the appellant has submitted his request as an individual rather than an organization. The Ministry considered providing the appellant with total access to the information remaining at issue. The historic practice of the Ministry when responding to personal information requests for records is to release as much information as possible in the circumstances.
>
> In this particular instance, the Ministry has issued two separate decision letters to the appellant providing him with full or partial access to the vast majority of the requested records held by the CFO. The withheld information is quite minimal.

> Given the highly sensitive nature of the incidents that resulted in serious Criminal Code charge against the appellant, the Ministry was satisfied that release of the personal information remaining at issue would cause personal distress to other identifiable individuals. The Ministry was also satisfied that the information remaining at issue was compiled and identifiable as part of an investigation into a potential violation of law.
>
> With respect to information withheld in accordance with law enforcement exemptions, the Ministry was satisfied that release of this information may reasonably be expected to hamper the responsibilities law enforcement officials in relation to the *Firearms Act* and the *Criminal Code* and help facilitate the commission of illegal acts.
>
> In view of the particular circumstances of the appellant's request, the Ministry in its exercise of discretion concluded that the level of disclosure being provided was appropriate. The Ministry submits that release of the withheld information is not appropriate.

I find that the Ministry disclosed as much of each responsive record as could reasonably be severed without disclosing material which is exempt. I find that in denying access to the undisclosed portions of the records, the Ministry exercised its discretion under sections 49(a) and (b) in a proper manner, taking into account relevant factors and not taking into account irrelevant factors.

ORDER:

I uphold the Ministry's decision.

Original signed by: May 30, 2007
Diane Smith
Adjudicator