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

ORDER MO-2343

Appeal MA07-69

Regional Municipality of Waterloo

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NATURE OF THE APPEAL:

The requester is a journalist. She submitted a request to the Regional Municipality of Waterloo (the Region) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the names, locations and details of the Orders against the farms in Waterloo Region ordered by Public Health to stop selling unpasteurized milk products in 2006.

In response, the Region identified five Orders issued by the Region's Public Health Department, and notified the individuals named in the Orders (the affected parties) pursuant to section 21(1) of the *Act* inviting them to comment on the possible release of the information. The Region received responses from three of the affected parties stating that they did not want their information released. Upon reviewing the affected parties' representations, the Region provided the requester with a decision letter in which it indicated that it was prepared to grant partial access to the records, severing some of the information pursuant to the mandatory exemption at section 14(1), with reference to the presumption at section 14(3)(b) (investigation into possible violation of law) of the *Act*.

The requester (now the appellant) appealed the decision. In doing so the appellant indicated that she believed that there is a compelling public interest in disclosure of the records. Accordingly, the public interest override in section 16 is also at issue in this appeal.

The records at issue contain the names, addresses and dates of birth of the affected parties. During the mediation stage of the process, the appellant confirmed that she was not seeking access to the dates of birth of the affected parties.

As no further mediation was possible, this file was transferred to the adjudication stage of the process. I decided to seek representations from the Region and affected parties, initially, and sent them a Notice of Inquiry setting out the facts and issues on appeal. The Region and two affected parties submitted representations in response. I then sent the Region's representations to the appellant, in their entirety, along with a copy of the Notice of Inquiry. I summarized the submissions made by the affected parties in the background section to the Notice that was sent to the appellant.

The appellant made submissions in response. After considering the appellant's submissions, I decided to seek submissions in reply from the Region and affected parties and sent them a Notice of Inquiry, along with the appellant's representations, in their entirety. The Region and affected parties were invited to respond to the appellant's representations, and were particularly asked to address the appellant's representations relating to the compelling public interest override and whether the records pertain to the individuals identified in them in their personal vs. business capacity. The Region and one affected party submitted representations.

RECORDS:

The records at issue consist of five Orders from Public Health, Region of Waterloo. The only information at issue is the names and addresses of the affected parties.

DISCUSSION:

PERSONAL INFORMATION

General principles

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term, as defined in section 2(1), means recorded information about an identifiable individual, including, but not limited to the individual's name if 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 (Order 11).

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.)].

As well, in order 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]. However, 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].

Effective April 1, 2007, the *Act* was amended by adding sections 2(2.1) and 2(2.2). These amendments apply only to appeals involving requests that were received by institutions after that date. Section 2(2.1) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity." Section 2(2.2) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1). As the request in this case was made prior to April 1, 2007, these amendments are not applicable in the circumstances and I will determine this issue in accordance with the law and jurisprudence as it existed at the time of the request.

Several orders of this office have considered whether information pertaining to certain types of business operations, such as some farming operations, constitutes personal information (Orders PO-2295, PO-1986, P-364, M-454). These orders have come to different conclusions regarding this issue depending on the circumstances of each case. In Order M-454, Senior Adjudicator John Higgins summarized the issue as follows:

> Many previous orders have held that information about businesses, including partnerships and sole proprietorships, does not qualify as personal information.

For example, in Order 16, former Commissioner Sidney B. Linden made the following comments in this regard:

> The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

Former Commissioner Linden went on to state in Order 113 that:

> It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

In Order P-364, former Assistant Commissioner Tom Mitchinson found that detailed information pertaining to farming operations carried out for profit by two individuals was the sort of circumstance contemplated by former Commissioner Linden in Order 113. In the appeal under consideration in Order P-364, the records contained detailed information about the condition and potential value of assets which were owned by the business but also, in effect, by the individuals in question.

In this appeal, the information pertaining to the business consists of the name, address and telephone number of the kennel, the name of one of the operators of the kennel, and information about an incident which occurred in the course of conducting the business of the kennel. In my view, this information relates to the ordinary operations of a business. By contrast, the information at issue in Order P-364 had the potential to provide information about the assets of individuals. Because of the nature of the information relating to the kennel business which appears in the record, I find that it does not fall within the category of information contemplated by former Commissioner Linden in the passage just cited from Order 113.

In Order PO-2225, former Assistant Commissioner Tom Mitchinson enunciated the approach taken by this office in determining the personal information/business information distinction:

> Based on the principles expressed in these [previously discussed] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

> …
>
> The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

I agree with this approach and will apply it in the circumstances of this appeal.

The parties were specifically asked to direct their minds to this issue.

All of the affected parties that responded to either the Region or the Notice of Inquiry indicate that the records contain their personal information. One affected party refers to his farm as a "family farm." In his reply representations, this affected party notes that his family grows fruits and vegetables to be sold at fresh markets, and that they follow farming guidelines in accordance with "the Nutrient Management Plan, Environment Farm Plan and Minimal Use of Pesticides and Herbicides with strict day to harvest intervals for safe and healthy food to the public." This affected party reiterates that they sold only a small amount of butter and that it was not a business venture.

By way of background, the Region indicates that it functions as the Board of Health for the Waterloo Health Unit and outlines its authority under the *Health Protection and Promotion Act* (the *HPPA*) to prevent, eliminate and decrease the effects of health hazards in the health unit (the geographical area for which it is responsible). Under section 13 of the *HPPA*, the Medical Officer of Health or a Public Health Inspector may issue an order to a person to refrain from taking any action that is specified in the order, in respect of a health hazard. Pursuant to section 100 of the *HPPA*, a person is guilty of an offence if he or she fails to obey an order made under that legislation. In enforcing an order made under section 13, a Public Health Inspector can lay a charge under the *Provincial Offences Act* against the individual named in the order, with the possible outcome of a penalty or sanction being applied by the courts.

In the circumstances that led to the Orders being issued against the farm owners in this case, the Region indicates that an investigation was triggered by the statutory report to the Public Health Unit of an enteric illness from someone who obtained milk from one of the farms subject to the Orders. During the subsequent investigation, it came to light that several farm owners were making unpasteurized milk products available. This investigation led to the issuance of the five Orders in question.

The Region indicates further that through further investigation following the issuance of the Orders, the Public Health Inspectors found that the individuals named in the Orders complied with them and no further enforcement was deemed necessary. Consequently no charges were laid against the individuals named in the Orders.

In responding to whether the records contain the farmers' personal information, the Region indicates that it consulted property assessment information. According to the ownership information in this database, the properties were owned by the individuals named in the Orders. The Region confirms that none of the ownership information listed for the five properties related to corporate or other non-personal entities.

In seeking to distinguish the findings of Senior Adjudicator John Higgins in Order M-454, the Region indicates further that the sale or distribution of unpasteurized milk or milk products did not relate to the "ordinary operation" of the farms in question as none of them were considered to be "dairy farms."

The Region notes that the records contain the names and addresses of individuals who were identified in Public Health Orders and takes the position that disclosure of the names would reveal other personal information about these individuals, that is, that these individuals are in contravention of a provincial statute, the *HPPA*.

The Region confirms that if the individuals named in the orders had not complied with the directions of Public Health staff, charges could have been laid against them as individuals.

The appellant challenges the Region's attempt to distinguish Order M-454, noting that information relating to home-based businesses, such as the dog kennel owner in order M-454 was not personal, but professional and that it "relates to the ordinary operation of the business."

The appellant continues:

> The Region has asserted that the name and address of the farms and their owners is not business information because it relates to an unsanctioned, illegal business activity occurring on the farm.
>
> They have emphasized the word 'ordinary' and drawn a conclusion that because the business practice was illegal, it was therefore personal information exempt from disclosure.
>
> However, the sale of raw milk to a wide variety of customers was 'ordinary' in the context of the situation, and the orders related to the professional operations of the farms and not the personal circumstances of the farmers themselves.
>
> In these cases, the farms milked their cows and then sold that milk to a broad customer base. In the eyes of the public who purchased the milk, this appeared to be an ordinary business practice.

The appellant provides additional cogent arguments regarding the commercial activities surrounding farming operations and the importance of making information about their operations open to public scrutiny since they are the primary food source for the public. The appellant

maintains that farms, despite their tendency to be "live-work" situations, are still businesses and should not be exempt from public scrutiny because they happen to be family-owned and operated.

In general, I find the appellant's arguments to be persuasive. In my view, it would be a very unique situation that would result in a finding similar to former Assistant Commissioner Tom Mitchinson's conclusions in Order P-364 that information detailing the history, management and health of cattle and the purchases and sales made by the farm presented a "sufficient nexus" between personal finances and the farm's business operations.

Family farms create a unique challenge in identifying the relationship between personal and private life, farming activities that are unrelated to the buying and selling of goods and services, and the "business" of farming, where personal and business activities are closely linked, frequently overlap and dividing lines are often murky. In the case of raw milk, for example, a grain farmer may have one cow producing milk for his family's own personal use. If he has excess and gives a bottle of milk or some butter to a neighbour or a member of his extended family, does that fall within the farm's "business" activity? I do not think so. I am not persuaded that even a one-time purchase by a non-family member would necessarily bring the activity within the realm of business activity. What distinguishes the one-time sale of a product that happens to have been produced on a farm from other similar types of financial transactions, such as a rural neighbour who is not a farmer, but has a cow and produces sufficient milk for family use, and perhaps sells the excess to a neighbour? In the farming context, as in other situations where individuals live and work at home, the activity must have a direct link to the individual's business at the home or farm. If the mere exchange of money were the criteria for such a determination, an individual homeowner who decides to sell a personal item at a garage sale or other venue would also be considered to be engaged in a business activity. Certainly, such activity would not fall within the concept of "business activity."

In the circumstances of this appeal, although not specifically dairy farmers, the farmers cited made the decision to offer raw milk to members of the public and receive income (however small in comparison to their actual farming businesses) in return. The evidence suggests that this was an on-going activity at the named farms. I find that in conducting transactions for the exchange of goods in this manner, the farmers were not acting in an inherently personal context, but rather, were engaged in a business activity.

Having come to this conclusion, I must now consider whether there is something about the information at issue that, if disclosed, would reveal something of a personal nature about the individual. In Order PO-2225, former Assistant Commissioner Mitchinson applied the following analysis in determining whether disclosure of the names of non-corporate landlords would reveal something of a personal nature about them:

> As far as the information at issue in this appeal is concerned, disclosing it would reveal that the individual:

1. is a landlord;

2. has been required by the Tribunal to pay money to the Tribunal in respect of a fine, fee or costs;

3. has not paid the full amount owing to the Tribunal;

4. may be precluded from proceeding with an application under the *TPA*.

> In my view, there is nothing present here that would allow the information to "cross over" into the "personal information" realm. The fact that an individual is a landlord speaks to a business not a personal arrangement. As far as the second point is concerned, the information at issue does not reveal precisely why the individual owes money to the Tribunal, and the mere fact that the individual may be personally liable for the debt is not, in my view, personal, since the debt arises in a business, non-personal context. The fact that monies owed have not been fully paid is also, in my view, not sufficient to bring what is essentially a business debt into the personal realm, nor is the fact that a landlord may be prohibited by statute from commencing an application under the *TPA*.

In Order MO-2342, issued simultaneously with this order, Adjudicator Colin Bhattacharjee applied the above approach in determining whether disclosure of the names of individuals who had been charged by the City of Toronto's licensing and standards department would reveal something of a personal nature about them. He found that disclosure would reveal that the named individuals owned or operated a business; that they were charged by the City's mobile enforcement team and the specific charge; the dates the charges were entered and how they were disposed of. He concluded that disclosure of this information, in conjunction with information already disclosed by the City, would not reveal something of a personal nature about these individuals. In essence, he found that "…the charges laid against individual defendants all relate to alleged misconduct in carrying out their business activities, not their personal activities." I agree with the rationale underlying his conclusions.

In the current appeal, disclosure of the names and addresses of the farmers that were cited under the *HPPA* would reveal that they were farmers, the locations of their farms (businesses), that they were engaged in selling raw milk, that an Order under the *HPPA* had been issued against them on a particular date as well as the reasons for the Order. Similar to the findings made by Adjudicator Bhattacharjee, I find that the Orders relate to allegations that the farmers were engaged in misconduct in carrying out their business activities, not their personal activities.

Accordingly, I find that the information at issue in the records pertains to the farmers in their business capacity. Consequently, section 14(1) cannot apply to the information contained in the records. As no other exemptions have been claimed for this information, it should be disclosed to the appellant.

Even if I had found that the records contained the personal information of the farmers and that the personal privacy exemption in section 14(1) applied, (a conclusion I have not reached, or fully considered here) I would have found the records not exempt from disclosure based on the public interest override in section 16. For the sake of completeness, I have included a discussion under that heading.

PUBLIC INTEREST OVERRIDE

General principles

Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)* (2007), 86 O.R. (3d) 259 (application for leave to appeal granted, November 29, 2007, File No. 32172 (S.C.C.)), the Ontario Court of Appeal held that the exemptions in sections 14 and 19 of the provincial *Act*, which are equivalent to sections 8 and 12 of the *Act*, are to be "read in" as exemptions that may be overridden by section 23, the provincial equivalent to section 16 of the *Act*. On behalf of the majority, Justice LaForme stated at paragraphs 25 and 97 of the decision:

> In my view s. 23 of the Act infringes s. 2(b) of the *Charter* by failing to extend the public interest override to the law enforcement and solicitor-client privilege exemptions. It is also my view that this infringement cannot be justified under s. 1 of the *Charter*. … I would read the words "14 and 19" into s. 23 of the *Act*.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

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

It should be noted that 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]

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

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The Region acknowledges that the distribution of food product that may cause illness is a matter of public interest, but does not believe that interest is compelling in the circumstances. The Regions states that in the circumstances surrounding the Orders that were issued, Public Health staff did not feel that the general public was at risk. Rather, staff believed the only persons at risk were those who voluntarily sought out the unpasteurized milk products and any persons who may have been exposed to them through the purchasers. The Region notes that the investigation into the sale of unpasteurized milk products did not establish that the farmers were providing the products to unsuspecting individuals, or that the products were put into the general food product distribution system and thus available to a wide population. Despite this, the Region notes that the health risk was evident and it took action to address the potential health hazard.

The appellant also takes the position that the distribution of food product known to cause serious illness is a matter of public interest. With respect to whether there is a "compelling" public interest in disclosure of the identities of the farmers cited in the Orders, the appellant refers to the definition established in previous orders of this office (noted above) and submits:

> …There can hardly be an issue that rouses stronger interest or attention than a recognized threat to public health and safety, such as the sale of illegal and harmful food to the community.

The appellant maintains that information about farms selling "illegal and dangerous food products to the general public" is a significant public health concern. She contends that disclosure of the information may facilitate debate and informed discussion about these dangers, and allow customers to decide whether or not they want to buy food from places that have operated as illegal dairy farms and whether they would like to feed those products to their children or vulnerable acquaintances and relatives.

The appellant notes that the Region promotes a "Buy Local" campaign and actively encourages the community to consume local food. She submits that if the Region wants to promote local farm operations to the community, it should also provide the public access to information on the safety of those farm operations.

The appellant submits that disclosure of the information at issue would shed light on how the Region ensures that food products sold in the community are safe and will lead to broader public discussion about this issue in the community. The appellant attached a copy of a newspaper article she wrote on this issue to her submissions. Referring to the article, she notes:

> …the investigation of the five farms a 15-year-old boy was hospitalized because of E.coli poisoning linked to milk from one of the farms. Another child was hospitalized with kidney failure from consuming a similar product not linked to the farms. A third child who consumed raw milk also contracted a serious stomach illness. The situation was so serious that the Ministry of Natural Resources initially investigated the farms on suspicion they were part of an underground "raw milk ring" across the province.

The article noted, however, that these suspicions were determined to be unfounded. The appellant continues:

> The Region argues against disclosure because it said its internal process was enough to mitigate the risk, without informing the public. It asserts that "Public Health staff did not feel that the general public was at risk - rather it was the person who sought out the products, as well as any persons who may have been exposed to the products through the purchasers."
>
> They further argue that consumers bought milk "voluntarily" and that the milk was not given to "unsuspecting individuals or that the products were put into the general product distribution system and so available to a wide population."
>
> The consumers who purchased from these farms were not part of an exclusive membership-only club. There were no requirements on how the milk could be used or distributed. In fact, there is evidence that unsuspecting individuals did consume the milk, as a child became seriously ill and was hospitalized.
>
> There are reasons why the sale of unpasteurized milk is heavily regulated. It must be sold by approved outlets only to facilities that are licensed to pasteurize the milk before it is then sent out for general distribution. The farms in question circumvented this process and sold milk to anyone who called or came by looking for it. This amounts to selling unpasteurized milk to the "general public."
>
> Neither the HPPA, nor the MFIPPA have placed a threshold for how many people need to consume dangerous food products before they can constitute "the general public." The milk was sold to any and all who asked.
>
> The Region suggests that because consumers bought the milk voluntarily, they were therefore making a fully informed choice about the safety of the milk. The fact that a child became seriously ill suggests that, in fact, consumers had little understanding that the product they were purchasing was both illegal and unsafe, or that the farms selling the milk were not authorized to do so. Unlike on regulated dairy farms, consumers had no guarantee that the milk they were purchasing had been properly processed and stored.

> The Region also did not give any public notice that it had uncovered a number of farms selling dangerous food products. The general disclosure came nearly six months later, prompted by a call from a newspaper reporter. The disclosure of the name of one farm that had been charged did not come from the Region, but from an alternate source under condition of anonymity.
>
> Because of a lack of information, there has been no wide public coverage or debate of the issue of the kind that satisfy the need for disclosure under section 16.
>
> These records will shed further light on this illegal practice and how it was handled by local public health authorities. It could, potentially, result in wide public debate in our community.
>
> By withholding the information for nearly a year, the Region has impeded the public understanding of food safety issues, denied the public informed choices of food that they eat and hampered the ability of [the] public to have full and informed debate about such an important public health issue affecting our local community

One affected party does not want any personal information disclosed to the media as they feel that it will be detrimental to their farming business. The other affected party expressed concern about being exposed to the news media. He noted that his is a family farm and the amount of butter sold was small and not a business venture. He stated further that he was asked not to sell the butter and he has complied.

In general, the appellant raises a number of health and safety issues that extend well beyond the information at issue in this appeal. In essence, her representations suggest that the Region should back up its promotion of local food sources with public documentation on the farming operations that produce the food. The appellant believes, and I would agree, that there is a public interest in having access to information pertaining to *inter alia* the health, the cleanliness, the results of inspections and concerns regarding any food related operation available to the consuming public. From a regulatory standpoint, public release of this type of information would increase the transparency of the activities and initiatives of the institution in fulfilling its responsibilities under the *HPPA*. It would also promote health and safety as well as the informed choice in the purchase of goods and services as the public would be able to take this information into consideration in deciding whether or not to purchase a particular item or become a customer of a particular store, farm or brand of products.

In Order MO-2019, Assistant Commissioner Brian Beamish recognized these interests as significant factors favouring disclosure of personal information under the balancing analysis in section 14(1) of the *Act* (personal privacy). He also found that consumer protection more generally was also a factor to consider in balancing the public's right to have information about a health and safety issue over that of the owner's of homes at which illegal drug operations were

discovered. Although not necessary in the circumstances of that appeal, Assistant Commissioner Beamish indicated that, based on the same analysis and factors discussed under the section 14(1) balancing of personal privacy rights and access, he would have found the public interest override in section 16 of the *Act* to apply.

In Order MO-2019, Assistant Commissioner Beamish considered the balancing of personal privacy interests and the public interest in deciding whether or not information that would disclose the specific locations of houses which have been used for illegal drug operations or illegal chemical labs. He acknowledged "the hazards presented to an 'unsuspecting' public by grow operations" as well as "the plight of current or prospective home owners potentially affected by the damage done to houses by such operations," and agreed that the threat to public health and safety posed by grow operations must be taken very seriously.

Moreover, he found that disclosure of some of the personal information at issue in that case would ensure public confidence in the integrity of the police, stating:

> …police activities and initiatives in combating illegal grow house operations are the subject of considerable public interest. I am of the view that the soundness of those initiatives and the ability of the Police to carry them out may be informed by, and made more transparent through public access to the information requested.

Order MO-2019 addressed a request for records relating to serious and on-going criminal activity, which had the potential of creating a significant health and safety risk to unsuspecting members of the public, either because they live in the vicinity of a grow house or because they purchase a house that was previously used for that purpose. In my view, this issue must be viewed in the context of the fight against crime and drugs. The arguments and concerns raised in that appeal centred on the on-going and future threats to members of the public at the specific locations of these grow houses and what the police were doing to combat the problem. In my view, the public interest concerns discussed by the Assistant Commissioner relate to imminent, recurrent and widespread health and safety issues.

Product liability and food source/preparation and distribution issues are also of significant public interest. One only needs to consider the media attention and public outcry surrounding contaminated foods being imported into or produced in this country to know that these are very serious concerns. The issues arising across the country relating to the public posting of restaurant inspections, and pass/fail notices visibly placed at restaurant entrances speak to the public's interest in enhancing consumer safety and promoting informed choice in the purchase of goods and services.

In the circumstances, I accept the appellant's position that these are matters of significant public interest. I must now determine whether that public interest is 'compelling."

Neither the evidence, nor the media discussion of this issue reveal a general or widespread trend in the distribution of unsafe food products. It is evident from the Region and affected parties' submissions that these farms are not in the business of producing milk products for general consumption, nor is this a primary aspect of their business. There is no evidence before me that unsuspecting stores or individuals purchased unpasteurized milk products from these farmers or that they would likely do so in the future. Rather, the evidence indicates that the farmers named in the Orders provided a discrete source for these products to a selective clientele.

According to a farmer interviewed for the newspaper article, through word of mouth people began to show up at their farm asking to purchase the raw milk. The evidence indicates that similar considerations likely arose at the farms that were cited in the Orders. The article discusses some of the reasons people choose to purchase raw milk, including cultural, philosophical and medicinal and points out, from a safety perspective, that the risks of using unpasteurized milk products far outweigh the benefits.

It is apparent from the comments made in the newspaper article that the challenge to government in dealing with the sale of unpasteurized milk centres on public education. I agree with the appellant that there is a public interest in the dissemination of information that promotes public discussion of the health issues relating to the consumption of unpasteurized milk products. Moreover, I accept the appellant's submissions that those who knowingly purchased such products might have offered the products to unsuspecting guests or family members, thus elevating these private transactions into public concerns. Applying the rationale in Order PO-2019, I find that in circumstances where the records relate to activities that have a direct and significant impact on public health and safety, any public interest in them would be compelling.

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

In Order PO-2054-I, former Assistant Commissioner Tom Mitchinson commented on the purpose of the mandatory exemption in section 21(1) of the provincial *Act* (the equivalent to section 14(1) in the *Act*):

> Section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is protected except where infringements of this interest are justified. The importance of this exemption, in the context of the *Act*, is underlined by its inclusion as one of the fundamental purposes of the *Act*, as stated in section 1(b):

> The purposes of this Act are,
>
> > to protect the privacy of individuals with respect to personal information about themselves held by institutions ...
>
> On this basis, I would conclude that the protection of individual privacy reflects a very important public policy purpose which is recognized in the section 21 exemption. However, it is important to note that the balancing exercise within section 21(2), the class-based exclusion of information from the reach of section 21 set out in section 21(4), and the inclusion of section 21 as an exemption that can be overridden by section 23 all indicate that this public policy purpose must, at times, yield to more compelling interests in disclosure identified by the legislature (Order P-1779).
>
> Commenting generally on the personal privacy exemption under the freedom of information scheme, the authors of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations that would generally be regarded as particularly sensitive, in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature . . . the effect of the proposed exemption is to tip the scale in favour of non-disclosure" (Order MO-1254).

I agree with the former Assistant Commissioner's assessment of this issue, and must now consider whether the compelling public interest in disclosure outweighs the purpose of the section 14(1) exemption. In doing so, I refer back to one of the first questions to ask in determining whether there is a compelling public interest in the disclosure of otherwise exempt information, that 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). I have also considered whether disclosure of the information in the record would 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).

I accept the appellant's position that these are matters of compelling public interest, and conclude that there is an overriding public interest in disclosure in the circumstances of this case that outweighs the privacy rights of the farmers cited in the Orders. I note that the circumstances that led to the findings in Order MO-2019 are somewhat different from those in the current

appeal, as in Order MO-2019, the public interest concerns relate to imminent, recurrent and widespread health and safety issues, whereas in the current appeal, the health and safety concerns appear to be more contained and the sale of unpasteurized milk by these farmers appears to have ceased. Nevertheless, the rationale for applying the public interest override in circumstances where activities have a direct and significant impact on public health and safety similarly applies in determining whether individual privacy rights must give way to the larger public interest.

The farmers identified in the records operate their farms within a regulated framework, clearly designed to protect the public from contaminated or improperly produced products (see: *HPPA*, section 18, in particular re: milk and milk products). Within that framework, individuals or companies affected by the actions of investigators acting under the *HPPA* may exercise their legal rights in challenging decisions made thereunder. It is clear from the Region's submissions that the Orders were issued as part of its obligations under the *HPPA* and that there is a relationship between the records and the *Act*'s central purpose of shedding light on the operations of government. I am satisfied that disclosure of the information in the record would serve the purpose of informing the citizenry about the activities of their government, and that it would add to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

In light of the minimal representations I received from some of the affected parties and the absence of representations from others, I find that their expectations of privacy must be limited by the nature of the work that they do, the importance to the public of a fully accountable food source system and the resultant consequences to the public for failure to adhere to the strict food safety requirements that have been clearly set out in legislation.

I find that the protection of unsuspecting consumers or recipients of improperly produced products and the disclosure of information that promotes public discussion of the health issues relating to the consumption of unpasteurized milk products outweighs the privacy interests the affected parties would have in maintaining anonymity in these circumstances, had I found that section 14(1) applied.

Accordingly, I find that the public interest override in section 16 applies to the names and addresses of the affected parties and section 14(1), therefore, does not apply to this information.

ORDER:

1. I order the Region to disclose the records at issue (the names and addresses of the affected parties) to the appellant by providing her a copy of the records with this information revealed by October 10, 2008 but not before October 6, 2008.

2. In order to verify compliance with this order, I reserve the right to require the Region to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, only upon request.

Original signed by: September 5, 2008
Laurel Cropley
Adjudicator