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

ORDER PO-2892

Appeal PA09-42

Ministry of Community Safety and Correctional Services

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

BACKGROUND:

According to information provided by the Ministry of Community Safety and Correctional Services (the Ministry), the Private Security and Investigative Services Branch (PSISB) of the Ministry regulates the private security industry by licensing security guards, private investigators and agencies that sell investigative and security services, as well as registering businesses that employ in-house security personnel. The PSISB also enforces the *Private Security and Investigative Services Act, 2005* (*PSISA*), which came into force on August 23, 2007. Prior to this date, the activities of the PSISB were governed by the *Private Investigators and Security Guards Act (PISGA)*.

Part IV of the *PSISA* sets out the specific legislative requirements in relation to the licensing of applicants, including private investigators. Specifically, the legislation gives the Registrar of Private Investigators and Security Guards the authority to issue, decline to issue, suspend, or revoke a license. Applicants or licensees may request a hearing before the Registrar after receiving written notice of the Registrar's intention to refuse to issue or renew a license, or to apply conditions to or revoke a license. Following the conclusion of a hearing, an applicant or licensee may appeal the Registrar's decision to the Licence Appeal Tribunal.

Part V of the *PSISA* provides for receiving complaints about, and conducting investigations of, private investigators and agencies that sell investigative and security services. Should a member of the public have a complaint about the conduct of a private investigator or agency, he or she may file a formal complaint with the Registrar. The Investigation and Enforcement Unit of the PSISB employs Ontario Provincial Police officers, whose purpose is to investigate the activities of private investigators, whether they be individuals or agencies, to ensure compliance with the *PSISA* and its regulations.

The *PSISA* also contains provisions in regard to offences and penalties relating to both individual private investigators and agencies. The penalties include fines and/or imprisonment (in the case of individuals).

NATURE OF THE APPEAL:

The Request

The Ministry received a request for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to complaints made against private investigators and security guards. The request stated:

1. Please provide me with the number of complaints filed against this group of licensees in the last three and one half years. That is from January 2005 to today's date. Please give me the number of investigations that were commenced in that time period, and the number of suspensions or dismissals that came as a result of investigations by the government agency that oversees them (Private Security and Investigative Services).

2. Please provide me with a copy of each of these complaints and copies of the suspensions or dismissals issued as a result of your investigations. I understand

> that you will have to, in some cases, redact personal information. However, you should not redact the name of the private investigator or the agency, since they are licensees.

The request was subsequently clarified by the requester who stated that he sought access to the records relating to complaints filed with the PSISB involving private investigators only, and not records relating to security guards.

The Ministry issued a decision letter disclosing the number of complaints filed, the number of investigations commenced, and the number of suspensions or dismissals of private investigators from January 1, 2005 to October 2, 2008. As a result, part one of the request is no longer at issue in this appeal.

The Ministry denied access to the records it identified under part two of the request, which consist of copies of the complaints and suspensions or dismissals in their entirety, pursuant to sections 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(d), 14(1)(e), 14(1)(g), 14(1)(i) and 14(1)(l) (law enforcement); 15(b) (relations with other governments); and 21(1) (personal privacy). The Ministry also stated that in relation to the section 21(1) exemption, it relies on the factors set out in sections 21(2)(e), 21(2)(f), 21(2)(h) and the presumptions set out in sections 21(3)(b) and 21(3)(d) of the *Act*.

The requester (now the appellant) appealed the decision of the Ministry to this office.

During mediation, the Ministry provided the appellant and this office with an index of records. The appellant raised the possible application of the public interest override and, as a result, section 23 of the *Act* was added as an issue in this appeal. In addition, the appellant advised that he was not seeking access to the "personal identifiers" relating to individual complainants (as opposed to business complainants) such as their names, home addresses, and telephone numbers.

Also during mediation, the parties confirmed that the request had been clarified at the request stage as follows:

- The request does not include security guards and is limited to private investigators.
- The request includes records of complaints dated from January 1, 2005 to October 2, 2008.

No further issues were resolved and this appeal was moved to the inquiry stage of the adjudication process. I began my inquiry by inviting the Ministry and 29 affected parties to submit representations. I received representations from the Ministry and 11 affected parties.

The Ministry's representations advised that all of the investigations in relation to the complaints have been completed. Therefore, the Ministry no longer relies on sections 14(1)(a) and 14(1)(b) in this appeal. In addition, the Ministry no longer relies on sections 14(1)(d) and 14(1)(g) for record 44 (pages 147 to 149 of the records). The Ministry subsequently notified a staff member at this office that it no longer relies on sections 14(1)(d), 14(1)(i) and 14(1)(l) for record 1 (page 1 of the records).

In addition, the Ministry advised that portions of record 40 (part of page 138 and pages 141 to 144) include information relating to the training of security guards. As the appellant has clarified that he is not seeking information relating to security guards, I find that the portions of the records relating to security guards are non-responsive to the request and I will not deal with them further in this appeal. Similarly, I find that portions of record 7 (page 20) contain information relating to security guards. This information is also non-responsive to the request and I will not deal with it further in this appeal.

I subsequently sent the appellant a modified notice of inquiry, with copies of the Ministry's representations, and the representations of 8 affected parties. I also provided a summary of the remaining affected parties' representations to the appellant. I received representations from the appellant and, as I determined that they raised issues to which the Ministry should be given an opportunity to respond, I sent a copy of them to the Ministry and sought reply representations. I then received reply representations from the Ministry.

I subsequently had a staff member from this office contact the Ministry. I asked the Ministry to provide better copies of records 47 and 56 since the copies I had reviewed were illegible. In addition, records 54 and 56 make reference to "attached letters," which had not been provided to this office. I asked the Ministry to produce the two letters. The Ministry responded and provided copies of two complaint letters, which I have appended to records 54 and 56. In addition, the Ministry advised that the portions of the original copies of records 47 and 56 are also illegible and, therefore, better copies do not exist.

RECORDS:

The records at issue are comprised of 208 pages of complaints. The Index of Records is attached to this Order as Appendix A.

DISCUSSION:

LAW ENFORCEMENT

The Ministry relies on parts of section 14(1) to deny access to records 1, 2, 27, 44, 47 and 51.

The parts of section 14(1) claimed by the Ministry state as follows:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(i) 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;

(l) facilitate the commission of an unlawful act or hamper the control of crime.

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

The Ministry submits that the records at issue fall within part (b) of the definition of "law enforcement," as the records were created and/or used in relation to the investigation of potential violations of the *PSISA* or its predecessor and its regulations. The representations of the appellant and the affected parties did not address this issue. I find that the records fall within part (b) of the definition of "law enforcement" under the *Act*. As previously described, under the *PSISA*, complaints made about private investigators may lead to disciplinary proceedings within the PSISB, and to an administrative tribunal on appeal where sanctions could be imposed.

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

In order to qualify for exemption under this section, 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 onus is on the institution to 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.)].

This exemption normally will not apply where the technique or procedure is generally known to the public [Orders P-170, P-1487].

Record 51

The Ministry claims the exemption at section 14(1)(c) with respect to record 51, a 15-page investigation report. The Ministry submits that this record documents a criminal investigation conducted by a police agency into the alleged unauthorized disclosure of personal information

contained in a government database, and that parts of the record contain information that would reveal the types of law enforcement investigative techniques and procedures used in these types of investigations. In addition, the Ministry states that the investigative techniques would not be generally known to members of the public, and that release of this information may reasonably be expected to undermine the effectiveness of the law enforcement techniques and procedures reflected in the records.

The appellant states:

> As to special "investigative techniques" employed by either police or the private investigator branch, I can guarantee you they are nothing more than the type of techniques known to anyone who watches police dramas or reads the Toronto Star. Police do wiretaps, they interview suspects, they tail people, do credit checks, bank checks, etc.

The appellant also noted that the Ministry is reluctant to disclose information relating to the alleged unauthorized disclosure of personal information from a government database, as it would be embarrassing to the Ministry. In reply, the Ministry submits that the Ministry is not protecting itself from embarrassment, but is simply relying on an exemption available under the *Act*. The affected parties did not provide representations on this section of the *Act*.

I have carefully reviewed the record at issue and I find that the Ministry has not provided detailed and convincing evidence that the record contains investigative techniques, which may reasonably be expected to undermine the effectiveness of law enforcement techniques and procedures. I agree with the submission of the appellant that the techniques described in the record are known to the public and, therefore, section 14(1)(c) has no applicability to this record. I also note that the Ministry has provided no evidence from the police service that created the record to support its position. I am therefore satisfied that the disclosure of record 51 would not hinder or compromise the effective utilization of any of the investigative techniques described in that record.

The Ministry has claimed other exemptions with respect to this record, which I will address later in this order.

Section 14(1)(e): life or physical safety

Section 14(1)(e) provides an exemption from disclosure where disclosure of a record could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

The institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and*

Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor) (1999), 46 O.R. (3d) 395 (C.A.)].

Records 2, 44 and 47

The Ministry claims this exemption in relation to the above records. The Ministry submits that the Court of Appeal, in the case cited above, interpreted reasonable expectation of harm for the purposes of section 14(1)(e) and stated:

> The expectation of harm must be reasonable, but it need not be probable.… It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes [section 14(1)(e)] to refuse disclosure.

The Ministry states that the content of the three records at issue supports its position that the release of the information contained in the records may reasonably be expected to endanger the life and physical safety of individuals.

The appellant submits that the Ministry has not clarified who would be in danger, for example, the private investigators, their clients or staff at the Ministry. In addition, the appellant states that the Ministry has not provided proof that harm would result from the disclosure of the records. As noted above, however, the standard of proof under this exemption is not that "harm would result." Rather, those seeking to withhold the records must provide a reasonable basis for believing that endangerment will result from their disclosure, and that the reasons for withholding access are not frivolous or exaggerated. The expectation of harm must be reasonable, but it need not be probable (*Office of the Worker Advisor*, cited above.) This is the standard that I will apply.

The affected parties did not provide representations on this section of the *Act*.

I have reviewed the three records at issue. The records consist of complaints made by individuals against private investigators. The Ministry submits that it is self evident from the content of the records that there may be a reasonable expectation that an individual's life or safety may be endangered. I disagree with the Ministry. There is no evidence in the content of these records that their disclosure could reasonably be expected to endanger the life and physical safety of individuals, including the complainants or the private investigators. In addition, the Ministry and the affected parties have not provided such evidence. Therefore, I find that this exemption does not apply to the records. The Ministry has claimed other exemptions with respect to these records, which I will address later in this Order.

Section 14(1)(g): law enforcement intelligence information

Section 14(1)(g) provides an exemption from disclosure where disclosure of a record could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons. The Ministry claims this exemption for record 1.

The term "intelligence information" means:

> Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from information compiled and identifiable as part of the investigation of a specific occurrence [Orders M-202, MO-1261, MO-1583].

The Ministry submits that record 1 is clearly identifiable as an intelligence record. Intelligence information is gathered for purposes relating to the maintenance of law and order and for ensuring the safety of communities. The gathering of intelligence information assists the police in taking a pro-active approach to targets and criminal activities of interest. The Ministry submits that this type of information, therefore, is treated as highly confidential, and that the value of this type of information would be seriously compromised if it was publicly disclosed.

In particular, the Ministry submits that the identification of the sources of intelligence reflected in the record could compromise the continued sharing of such information in the future, interfering with the PSISB's ability, and the ability of other law enforcement agencies, to continue gathering valuable intelligence information. The Ministry states that maintaining the confidentiality of law enforcement information provided by, or supplied to, sources is essential to the ongoing partnership between the PSISB and other investigating agencies.

The appellant submits that the intelligence information should be provided to the public in order to "expose" the Ministry's behaviour. The appellant submits that the Ministry has had a breach of security and has provided CPIC related and other information to a licensee. The appellant concludes that releasing this "so-called intelligence information" will shed light on a problem at the PSISB. The affected parties did not provide representations on this section of the *Act*.

In Order M-202, Inquiry Officer Asfaw Seife had the occasion to consider six of the exemptions contained in section 8(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), which is equivalent to section 14(1) of the *Act*. He stated with respect to 8(1)(g) of MFIPPA (the equivalent of section 14(1)(g) of the *Act*):

> In my view, in order for a record to qualify for exemption under section 8(1)(g) of the *Act*, the Police must establish that disclosure of the record could reasonably be expected to:
>
> a) interfere with the gathering of law enforcement intelligence information respecting organizations or persons, or
>
> (b) reveal law enforcement intelligence information respecting organizations or persons.
>
> The term "intelligence" is not defined in the *Act*. The *Concise Oxford Dictionary*, eighth edition, defines "intelligence" as "the collection of information, [especially] of military or political value", and "intelligence department" as "a [usually] government department engaged in collecting [especially] secret information".

The Williams Commission in its report entitled *Public Government for Private People, the Report of the Commission on Freedom of Information and Protection of Privacy/1980*, Volume II at pages 298-99, states:

> Speaking very broadly, intelligence information may be distinguished from investigatory information by virtue of the fact that the former is generally unrelated to the investigation of the occurrence of specific offences. For example, authorities may engage in surveillance of the activities of persons whom they suspect may be involved in criminal activity in the expectation that the information gathered will be useful in future investigations. In this sense, intelligence information may be derived from investigations of previous incidents which may or may not have resulted in trial and conviction of the individual under surveillance. Such information may be gathered through observation of the conduct of associates of known criminals or through similar surveillance activities.

In my view, for the purposes of section 8(1)(g) of the *Act*, "intelligence" information may be described as information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation of a specific occurrence.

I agree with this definition, which has been applied in a number of subsequent orders of this office [Orders PO-2330, PO-2459 and PO-2517].

Having carefully reviewed record 1, I am satisfied that this record is not the type of information that qualifies as "intelligence information" under section 14(1)(g). In my view, the information was compiled and identifiable as part of the investigation of a specific occurrence, and, therefore, this exemption is not applicable. Nor is there any evidence that the information was gathered in a covert manner or by means of surveillance aimed at the detection of crime or to assist future investigations. I am also not satisfied that disclosure of this record will reveal any law enforcement techniques that would interfere with any further intelligence gathering efforts. Accordingly, I find that record 1 is not exempt under this section.

The Ministry has relied on other exemptions with respect to record 1, which I will address later in this order.

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

Section 14(1)(i) provides an exemption from disclosure where disclosure of a record could reasonably be expected to endanger the security of a building, vehicle, system or procedure established for the protection of items.

The Ministry relies on this exemption for record 51. The Ministry submits that the release of this information may reasonably be expected to endanger the ongoing security of a government

database, referenced in the record, by revealing information that would make it easier for an unauthorized person to gain access to the contents of the database.

The appellant and the affected parties did not make representations with respect to section 14(1)(i).

As previously indicated, this record documents a criminal investigation conducted by a police agency into the alleged unauthorized disclosure of personal information contained in a federal government database. I have carefully reviewed the record at issue and it does refer to a government database that contains individuals' Social Insurance Numbers.

While I agree that the protection of this information is reasonably required, including protection from tampering or unauthorized access or modification, I am not satisfied that disclosing this record could reasonably be expected to endanger its security.

The record simply refers to the database by its name. It does not set out procedures established for the protection of the information contained in the system, nor does it contain detailed, specific information about the system, its operational procedures, or other information that could be used to compromise the security of the database. Therefore, I am not satisfied that disclosure of the record could reasonably be expected to endanger the security of the system or any procedures established for the protection of the information, and I find that section 14(1)(i) does not apply to this record.

The Ministry relies on further exemptions with respect to this record, which I will address later in this order.

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

Section 14(1)(l) provides an exemption from disclosure where disclosure of the record could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

Records 27 and 51

The Ministry relies on this exemption for records 27 and 51. The appellant and the affected parties did not make representations on this section of the *Act*.

Record 27 contains information about a suspected breach of a particular section of the *PSISA* by a licensed private investigation agency. The Ministry submits that release of the investigative information in this record could reasonably be expected to help facilitate the commission of an illegal act, in particular, a breach of the *PSISA* by others. The Ministry does not provide any further explanation of how this is the case, and appears to assume that this is self-evident. In this regard, I note that the method allegedly used to breach the *PSISA* has been the subject of recent media comment.

Based on the contents of the records, I do not accept this submission. While there is a brief discussion of a possible breach of the *PSISA*, I find nothing in the records that would reasonably be expected to help facilitate the commission of an illegal act by others. As I have already noted,

the method allegedly used to breach the *PSISA*, which is alluded to in record 27 has already been made public. It is therefore not a novel or unique practice that would be revealed through disclosure of this record. Accordingly, I find that section 14(1)(l) is not applicable to record 27. The Ministry has claimed further exemptions with respect to this record, which I will address later in this Order.

With respect to record 51, the Ministry submits that disclosure could reasonably be expected to endanger the ongoing security of a government database, referenced in the record, by revealing information that would make it easier for an unauthorized person to gain unauthorized access. As previously mentioned, the record contains the name of the database, which contains individuals' Social Insurance Numbers. There is nothing in the record that would reasonably be expected to help facilitate unauthorized access to the database or the commission of an illegal act. The fact that individuals may maliciously attempt to gain access to a database is not a novel concept. Disclosure of this fact, in my view, would not facilitate the commission of further unlawful acts.

For all these reasons, I find that section 14(1)(l) is not applicable to record 51. The Ministry has claimed further exemptions with respect to this record, which I will address later in this order.

RELATIONS WITH OTHER GOVERNMENTS

Section 15(b): information received from another government

The Ministry relies on Section 15 (b) to deny access to records 41, 42 and 51. That section states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (b) reveal information received in confidence from another government or its agencies by an institution;

Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. The purpose of section 15(b) is to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern [Order PO-1927-I; see also Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

For this exemption to apply, the institution must demonstrate that disclosure of the records "could reasonably be expected to" lead to the specified result. To meet this test, 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 [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of the records would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received [Order P-1552].

Records 1, 41 and 51

The Ministry submits that disclosure of records 1, 41 and 51 would reveal sensitive law enforcement information provided in confidence to the PSISB by federal and municipal law enforcement agencies.

In addition, the Ministry takes the position that the release of the requested information would jeopardize the conduct of relations between the PSISB and these law enforcement agencies, as these agencies would be unwilling to disclose similar information in the future. In turn, the PSISB's law enforcement responsibilities would be hampered by the withholding of information from other law enforcement agencies.

On the issue of confidentiality of the records, the Ministry states:

> Previous orders by the IPC suggest that the substance and nature of a record could infer that the record was submitted in confidence. The sensitive content of the records at issue concerns matters that are directly related to the substance of the confidential communications between the PSISB and other law enforcement agencies in relation to the particular matter.

In his representations, the appellant states:

> …We have here a situation, according to the Ministry's representations, where the PSISB may have released information to another government agency. They are the agency that has made a mistake… This is a situation where the government has a right to scrutinize the workings of government.

The affected parties did not make representations on section 15(b) of the *Act*.

For a record to qualify for exemption under section 15(b), the institution must establish that:

- the records reveal information received from another government or its agencies; and
- the information has been received by an institution; and
- the information has been received in confidence [Order P-210, Order P-343].

Record 41 was received by the PSISB from a municipal police service in Ontario. Previous orders of this office have consistently found that municipal entities do not constitute "another government or its agencies" for the purposes of section 15(b) of the *Act*. In Order PO-2456, Adjudicator John Swaigen addressed the issue of whether a municipal police force could be regarded as a "government agency" for the purpose of section 15(b). Adjudicator Swaigen reviewed Order 69, issued by former Commissioner Sidney B. Linden, in some detail, and, among other passages, quoted the following from that decision:

> In the clause-by-clause review of Bill 34 by the Standing Committee on the Legislative Assembly, the comments of the Attorney General with respect to the

purpose of the section 15 exemption were unequivocal. The Attorney General stated that the purpose of the exemption was "to protect intergovernmental relations between the provinces or with the feds or with international organizations". The Attorney General explicitly stated that a municipality was not intended to be a "government" for the purposes of section 15. (March 23, 1987, Comments made after second reading of the Bill.)

Adjudicator Swaigen went on to state:

> I agree with Commissioner Linden's conclusion [set out in Order 69] that the intent of the Legislature, as evidenced by the Williams Report and the statements of the Attorney General during legislative debates on the *Act*, was that municipalities are not "governments" for the purpose of section 15 of the *Act*. In particular, the statements of the Attorney General make it clear that the Legislature turned its mind to the question of whether municipalities are governments for the purpose of section 15.
>
> When the Legislature passed the *Municipal Freedom of Information and Protection of Privacy Act* in 1991, it included a parallel provision to section 15 of the *Act*. Section 9 of the *Municipal Freedom of Information and Protection of Privacy Act* provides:
>
> > (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
> >
> > (a) the Government of Canada;
> >
> > (b) the Government of Ontario or the government of a province or territory in Canada;
> >
> > (c) the government of a foreign country or state;
> >
> > (d) an agency of a government referred to in clause (a), (b) or (c); or
> >
> > (e) an international organization of states or a body of such an organization.
> >
> > (2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.
>
> Under the *Municipal Freedom of Information and Protection of Privacy Act*, it is clear that a municipality cannot claim the "relations with governments" exemption for information it receives from another municipality or municipal

> board. That is, section 9 does not apply to information received from another municipality.
>
> It would be inconsistent with the overall scheme of the two freedom of information statutes if a provincial institution could claim the "relations with other governments" exemption for information received from a municipality when a municipality cannot.
>
> Therefore, the Legislature implicitly reaffirmed its intention that information received from municipalities is not covered by this statutory regime when it passed the *Municipal Freedom of Information and Protection of Privacy Act*, incorporating section 9.
>
> Accordingly, I find that the municipal police service that provided these records to the Ministry is not an agency of another government for the purposes of section 15 of the *Act*. Therefore, I find that the exemption claimed under section 49(a) in conjunction with section 15(b) does not apply to these records.

I adopt the approach to this issue taken by Adjudicator Swaigen in Order PO-2456, which was applied by Adjudicator Frank DeVries in Order PO-2474 and Adjudicator Donald Hale in Order PO-2715. Applying this analysis to Record 41, which was received by the PSISB from a municipal police service, I find that section 15(b) does not apply.

Record 1 was received by the PSISB from an Ontario Provincial Police (OPP) Intelligence Unit. On my review of the record, it is clear that it was prepared by the OPP in the course of conducting an investigation into a private investigator. In addition to municipal police forces, section 15(b) does not apply to information that originates from another Ontario government institution or agency. The Ministry's responsibilities include the oversight of policing services throughout Ontario, including the OPP. There is no indication that any of the information contained in the record was received by the PSISB from another government or its agencies. Accordingly, I find that the section 15(b) exemption does not apply to this record.

Turning to Record 51, I find that this record meets the threshold criteria of section 15(b). This report, which is an investigation report, was received by the PSISB from the Royal Canadian Mounted Police, a federal agency. On a careful review of the record and its contents, I am satisfied that it was sent to, and received by, the PSISB, in confidence. Accordingly, I find that Record 51 is exempt from disclosure under section 15(b) of the *Act*.

PERSONAL INFORMATION

The Ministry has claimed that all of the records contain the "personal information" of identifiable individuals and, as a result, are exempt in their entirety. In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "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].

Sections 2(3) and (4) also relate to the definition of personal information and may be relevant in this appeal. These sections state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

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 and 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 and MO-2344].

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.)].

Analysis and Findings

My analysis of the application of section 21 will be divided into two parts. The first part will consider the personal information of the complainants and other individuals, other than the private investigators complained about, identified in the records. The second part will consider the personally identifiable information about the private investigators who were the subjects of the complaints.

Personal Information of the Complainants and Other Individuals

Representations

The Ministry submits that none of the records contain the appellant's personal information. The Ministry also submits that the records include detailed personal information relating to a number of complainants. The Ministry states that it is aware that the appellant has indicated that he does not seek access to the "personal identifiers" of individual complainants. However, the Ministry states that even if the names and addresses of complainants were severed, due to the high level of detail in regard to the incidents described in the records, and other aspects of the records, including that some are handwritten, the records still constitute the personal information of complainants. In addition, the Ministry argues that, if disclosed, it would be reasonable in the circumstances that complainants could ultimately become identifiable to some parties. The Ministry cites Orders 11 and P-230 in support of its position.

The appellant submits that he has already agreed to the redaction of the complainants' names as well as their street addresses and reference to those that live in a "small town."

In reply, the Ministry states, in part:

- Complaints can contain highly sensitive personal information. They may, for example, reveal criminal activity, and they may be written by individuals who have suffered harm or wrong doing, which can be traumatic.

- Complaints can be highly detailed. This means that redacting personal identifiers does not necessarily anonymize who wrote the complaint, particularly if the details of the complaint are subsequently reported in the media. Anyone who is familiar with the complaint (e.g., the private investigator being complained about)

will likely know who the complainant is, even if personal identifiers such as name and address are removed.

- Complainants had no idea when they submitted their complaints that they might be subsequently disclosed to a media outlet. In fact, they still have no idea this might happen. The Ministry submits that complainants will cease to report to the Ministry when they have been harmed by a private investigator knowing that such complaints could be released to the media.

- The Ministry is not aware of any precedent in the *Act's* jurisprudence for the release of records such as the records that are the subject of this appeal.

I have carefully reviewed the records and find that all of the records, other than records 3, 40 and 48, contain the personal information of complainants and other individuals (other than the private investigators). Records 3, 40 and 48 do not contain the personal information of complainants, but contain the personal information of other individuals. As noted by the Ministry, none of the records contain the appellant's personal information.

The type of personal information, as defined in section 2(1) of the *Act*, includes identifiable information relating to: the marital or family status of the individuals (paragraph (a)); the medical, psychiatric, psychological, criminal or employment history of the individual, or information relating to financial transactions in which the individual has been involved (paragraph (b)); the address and telephone number of the individual (paragraph (d)); correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature (paragraph (f)); the views or opinions of another individual about the individual (paragraph (g)); and the individual's name where it appears with other personal information relating to the individual (paragraph (h)).

Most of the personal information contained in the above records relates to the complainants, although the personal information of other individuals is also present. The appellant has taken the position that the redaction of the complainants' names and contact information such as address and telephone number from the records would, essentially, remove all personal information relating to them. The Ministry has taken the position that there is a considerable amount of sufficiently detailed personal information, which could lead to the identification of a given individual even in the absence of his/her name on the record.

Having reviewed the records, I agree with the Ministry. The complaints contain significant amounts of detail in addition to name and contact information. If disclosed, this detail could reasonably be expected to identify complainants and other individuals. Severing only names and contact information will not remove all personal information and "anonymize" the records, as submitted by the appellant. However, the severance of information that could assist in identifying the complainants and other individuals, in addition to their names and contact information, would, in my view, result in the remainder of the information no longer constituting the personal information of the complainants and other individuals because the individuals would not be identifiable.

In Order MO-2337, the appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for, amongst other records, a copy of Minutes of Settlement,

which contained the personal information of a number of firefighters, who had been disciplined due to an on-the-job incident involving the theft of a fire truck. I found that if the names and contact details of these individuals contained in the record were severed, the record would no longer constitute their "personal information." I stated:

> Previous orders of this office have consistently held that information about individuals named in employment contracts or settlement and/or severance agreements, including name, address, terms, date of termination and terms of settlement, concern these individuals in their personal capacity, and therefore qualifies as their personal information (Orders M-173, P-1348, MO-1184, MO-1332, MO-1405, MO-1622, MO-1749, MO-1970 and PO-2519). I adopt the same approach in the circumstances of this appeal. The Minutes of Settlement executed by the four fire fighters include their names and information relating to the disciplinary action taken by the City against them. As such, I find that these records contain their personal information as it is defined in section 2(1) of the *Act*.
>
> However, contrary to what is suggested by the affected parties, having carefully reviewed the Minutes of Settlement, I also find that if the names of the individuals are severed from these records, the individual affected parties are not identifiable from the remaining information. In these circumstances, the remaining information would not qualify as personal information as it would not be reasonable to expect that the individuals may be identified if the remaining information is disclosed. As the appellant has clearly indicated that the personal information in the records can be severed, I will order that the names be severed pursuant to section 4(2) of the *Act* which states:
>
> > If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.
>
> Therefore, applying section 4(2) to the Minutes of Settlement, I will order that the names of the fire fighters be severed from the records and the remaining information in the records be disclosed.
>
> I acknowledge that there will be a limited number of individuals who are already aware of the identities of the affected parties; for example, other co-workers and supervisors. However, this does not affect my decision with regard to the ability to sever their names from the Minutes of Settlement. Such individuals will have been aware of the affected parties' identity independent of the disclosures made pursuant to this appeal. They will also be aware that the affected parties were subject to discipline as a result of the theft of the unattended fire truck. For the vast number of individuals who are unaware of the identity of the affected parties, the removal of their names from the Minutes of Settlement will not identify them

> and will provide relevant information about the manner in which the TFS [Toronto Fire Service] handled a high profile incident.
>
> Further, in my view, the disclosure of the severed Minutes of Settlement is supported by the application of the public interest override found at section 16 of the *Act* [the Municipal *Act*]. That section reads as follows:
>
> > An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]
>
> The theft of the fire truck received a significant amount of publicity and, as a result, achieved a high profile in the community. The fact that the records reflect a significant amount of time and energy expended by the TFS on dealing with the media issues raised by the incident, attests to this high level of public interest. This included public interest in the manner in which the TFS dealt with the cause of the incident, including the actions of the four employees. In my view, there is a compelling public interest in shedding light on the manner in which the incident was handled by the TFS. Only through providing the public with details of the disciplinary actions taken against the employees, and the penalties assessed against them, can the public determine the appropriateness of the TFS's response. In this instance, greater transparency in terms of the actions taken by the TFS is necessary to hold that institution accountable to the public.
>
> As noted above, there are a limited number of individuals who are aware of the identity of the affected parties. Disclosure of the severed Minutes of Settlement may allow these individuals to draw accurate conclusions as to the exact penalty agreed to by each employee. However, to the extent that such a disclosure would constitute an unjustified invasion of personal privacy under section 14, I am satisfied that such a disclosure is justified by section 16. Any invasion of privacy would be extremely limited; e.g. restricted to the small group of individuals who are aware of the identity of the affected parties. I am satisfied that the public interest in the disclosure of the severed Minutes of Settlement discussed above outweighs the limited invasion of the personal privacy of the affected parties.

In my view, the approach taken in Order MO-2337 is equally applicable in this appeal. By carefully severing the complainants' and other individuals' names, addresses, telephone numbers and other identifiers, including information that may lead to the identification of the individual, I am satisfied that it will not be possible to identify these individuals and, therefore, the remaining information will not constitute their personal information as defined in section 2(1) of the *Act*. I note that, in some cases, this will require severing some details of the complaint itself in cases where those details may assist in identifying the complainant, or other involved individuals.

Section 10(2) of the *Act* states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the

> institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Therefore, applying section 10(2) to the records, I will order the Ministry to sever references to the names and contact information of complainants and other individuals from these records in my order provisions. I will also order the Ministry to sever information about the complainants and other individuals such that the identity of the complainant or other individuals cannot be inferred from the information.

As was the case in Order MO-2337, I acknowledge that there will be a very limited number of individuals who may already be aware of the identities of the complainants and other individuals. However, this does not affect my decision with regard to the ability to sever their names and contact information from the records. Such individuals will have been aware of these individuals' identity independent of the disclosures made pursuant to this appeal. For the vast number of people who are unaware of the identity of these individuals, the removal of their names from the records will not identify them, and will provide relevant information about the type of complaints received by the PSISB in regard to private investigators.

Private Investigators' Personal Information

Representations

The Ministry submits that the identities and other information of the private investigators who are the subject of the complaints constitute the private investigators' personal information. In particular, the Ministry is of the view that the information contained in the records relating to the private investigators does not fall within the scope of the business identity exclusion from the definition of personal information set out in section 2(1) of the *Act*. The records at issue, the Ministry argues, reveal more than the name, title, contact information or designation of individuals in a business, professional or official capacity as private investigators.

The Ministry relies on Orders PO-2524, PO-2633 and in particular, PO-2778, to support its position. The Ministry submits that the records include documents alleging criminal activity, violations of the *PSISA* or the *PISGA* and its regulations, dishonesty, threatening behaviour, and/or discriminatory actions on the part of identifiable private investigators. The Ministry submits that in such instances the information in regard to these identifiable individuals constitutes their personal information.

The appellant submits that the activities of private investigators, who are licensed by the government, are "very much" of a professional, official or business capacity and so should be subject to disclosure. The appellant is of the view that information related to the conduct of private investigators is of vital importance.

In reply, the Ministry submits that private investigators are entitled to privacy under the *Act* and states that complaints are unproven allegations, the release of which could stain a private investigator's reputation. In addition, the Ministry submits that the disclosure of this type of information would have a chilling effect on the cooperation the Ministry currently receives from private investigators in the course of investigating complaints made against them.

As previously referred to, 11 affected parties provided representations. In all cases, the affected parties objected to the disclosure of any information relating to them, because they did not know the specific content contained in the applicable record, did not know the identity of the requester and why the request was made, and/or were of the view that the records contained their personal information, which should not be disclosed under the personal privacy provisions of the *Act*.

Analysis

In Order PO-2225, former Assistant Commissioner Tom Mitchinson, set out the following two-step process applicable to a determination of whether information is "about" an individual in a business rather than a personal capacity, and therefore does not constitute personal information:

> …the first question to ask in a case such as this is: *"in what context [does the information] 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? [emphasis added]

In Order PO-2778, Adjudicator Steven Faughnan analysed whether records relating to a complaint made into the conduct of a lawyer was personal information. He stated:

> Although the information in the records relates to an examination into the conduct of the identified lawyer in that individual's professional role, I find that because this individual was the focus of an investigation into whether their conduct was appropriate, it has taken on a different, more personal quality. As such, I find that disclosure of this information would reveal something personal about the identified lawyer and that it qualifies, therefore, as personal information within the meaning of that term in section 2(1). In that regard, I am following a long line of orders of this office that have held that information in records containing a complaint about the conduct of an individual and an examination of that conduct contains that individual's personal information under the definition at section 2(1) of the *Act* [See, in this regard Orders P-165, P-448, P-1117, P-1180 and PO-2525].
>
> In my view, therefore, the records contain information about the identified lawyer that meets the definition of "personal information" in paragraphs (g) (views of other individuals about the identified lawyer) and (h) (the identified lawyer's name along with other personal information relating to them).

I agree with and adopt Adjudicator Faughnan's approach on this issue and note that it was also followed by Adjudicator Smith in Order PO-2633.

Applying the approaches taken by former Assistant Commissioner Mitchinson and Adjudicator Faughnan to the records in this appeal, I find that the records contain the "personal information" of the applicable private investigators. These individuals were the focus of complaints and investigations as to whether their conduct violated the applicable statute governing the actions of private investigators. As such, the disclosure of complaint details regarding the private investigators would reveal something personal about them and, therefore, qualifies as personal information within the meaning of that term in section 2(1). I also note that, in some cases, disclosure of the identity of the private investigator who was the subject of the complaint might allow observers to identify the complainant, and thus disclose the complainant's personal information.

Consequently, I will use the same approach I did in relation to the personal information of the complainants and other individuals. Pursuant to section 10(2) of the *Act*, I will order the Ministry to carefully sever the names, addresses, telephone numbers and other contact information of the private investigators from the records. Having done so, it will not be possible to identify these individuals and, therefore, the remaining information will not constitute the private investigators' personal information as defined in section 2(1) of the *Act*.

In summary, given that the information contained in the records, in severed form, does not constitute the personal information of the complainants, private investigators or other individuals, section 21(1) of the *Act* is not applicable. As the Ministry is not relying on any further exemptions, I will order the disclosure of the records, subject to the severances, and excluding Record 51, which I have found to be exempt under section 15(b) of the *Act*.

EXERCISE OF DISCRETION

I have upheld the Ministry's decision to withhold Record 51 under section 15(b) of the *Act*. The section 15(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, 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)].

The Ministry submits that it is mindful of the major purposes and objects of the *Act* and that it considers each request for access to information on a case-by-case basis.

The Ministry submits that it gave careful consideration to the appellant's right of access to general records held by the Ministry and considered releasing the information to the appellant notwithstanding that the discretionary law enforcement and intergovernmental relations exemptions from disclosure applied.

The Ministry states that it took into consideration the highly detailed personal information contained in the records, the nature of the complaints, and the complainants' expectation of privacy. In addition, the Ministry took into consideration the fact that confidentiality of law enforcement information in some instances in necessary for public safety and protection.

The Ministry also advised that it attempted to provide a level of transparency in relation to the complaints received during the time period set out in the request by providing the appellant with total access to the statistical information set out in Part 1 of his request.

The appellant submits that the Ministry improperly used its discretionary powers in withholding the requested records. The appellant believes that the release of the records would embarrass the Ministry and the PSISB. The appellant cited as an example the PSISB's inaction with respect to a named private investigation agency that had been "manufacturing false evidence for clients." According to the appellant, the PSISB had been aware of this practice for years and did nothing about it.

The affected parties did not make representations relating to the Ministry's exercise of discretion.

In my view, the Ministry exercised its discretion under section 15(b) based on proper considerations. I am not persuaded that it failed to take relevant factors into account or that it considered irrelevant factors in applying section 15(b) to record 51. In addition, there is no evidence before me to suggest that the Ministry exercised its discretion in bad faith or for an improper purpose. Consequently, I find that the Ministry exercised its discretion properly in withholding record 51 under section 15(b) of the *Act*.

PUBLIC INTEREST OVERRIDE

As noted above, during mediation, the appellant raised the application of the public interest override in section 23 of the *Act* to the records. As a result, I made section 23 an issue in this appeal. Before I turn to consider the application of section 23, it is important to reiterate that I have only upheld the severance of the personal information of, or other information that would identify, the complainants, private investigators or other individuals. In addition, I have upheld the Ministry's application of section 15(b) to exempt record 51 from disclosure. The remaining information in the records is to be disclosed to the appellant.

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.

There are two requirements for the application of section 23. There must be a compelling public interest in disclosure and the interest must clearly outweigh the purpose of the exemption. 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 not to exist where, for example, a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

Representations

In support of his position that section 23 should be applied to require the disclosure of the severed portions of the records, the appellant submits that the records are not in relation to private matters between private investigators and private parties. The appellant is of the view that the public interest lies in allowing scrutiny of the activities of licensed investigators and the lack of enforcement by the PSISB. The appellant states:

> It rises to "compelling" because of the egregious nature of the alleged activities and the gross incompetence of this government department. Imagine, for a moment, if a person invented detailed financial records showing that you had $3 million stashed offshore. Imagine then that these documents were submitted to a court, and admitted to a court as fact. Imagine that you then spent several years and many thousand dollars in legal fees trying to convince the court that you had not absconded with funds…
>
> This is the situation that some people have found themselves in. The government did not protect them against this. I have not viewed other complaints, but I believe there are many other serious issues raised therein.
>
> …
>
> While I have written a story on one case [named agency], I do not think that this means that a wide public coverage or debate of the issue has taken place. The Ministry responded to the story by transferring [named individual], but I do not think they have fixed the internal problems at the PSISB. By releasing information to the public, showing the true extent of the problem, I believe the public interest will be served.

The Ministry submits that there is a public interest in regard to public safety issues, including matters such as the regulation of the private security industry, and notes that a "considerable" amount of information concerning the regulation of the private security industry by the PSISB is contained on the Ministry's internet site. The information contained on the site includes information about the governing legislation, licensing requirements, hearings and appeals, the complaints process, and training and testing.

Notwithstanding the Ministry's position stated above, it also submits that the records at issue in this appeal are not in relation to matters of compelling public interest, but essentially reflect private matters involving complainants, private investigators and others. The Ministry does not believe that the disclosure of the records outweighs the purpose of the exemptions that have been claimed.

Eight of the affected parties provided representations in regard to section 23 of the *Act*. In general, they submit that there can be no compelling public interest in disclosing complaints against private investigators, a number of which have been, or will be, investigated and dismissed. As any member of the public can make a complaint in the absence of evidence, the records will provide no meaningful or reliable information about the performance of a private investigator. The affected parties also state that a public interest does not exist where the interests being advanced are essentially private in nature, and that the information contained in the records could only be of interest to an individual trying to advance a private agenda against the private investigation industry.

Analysis and Findings

Having carefully reviewed the records and the representations of the parties, I am satisfied that there is a public interest in the effective licensing and monitoring of the activities of private investigators and the effectiveness of the oversight function performed by the PSISB. As the appellant has noted, the role of that office has been brought into question publically, albeit through anecdotal stories, rather than through a systematic review of its functions. While I accept the Ministry's position that some information is available on the Ministry's website about the governance and licensing scheme for private investigators, I do not accept its position that this is sufficient for the public to assess the extent to which the PSISB performs its duties in a competent manner. Information regarding the handling of specific complaints is necessary for that level of scrutiny, particularly to assess the validity of allegations of systemic problems of oversight.

However, having found a public interest in the disclosure of information regarding complaints filed with the PSISB, I am satisfied that this public interest is satisfied by the disclosure that I will be ordering; that is, the disclosure of the complaints with personally identifiable information severed. This will allow for scrutiny of how the PSISB handled various kinds of complaints and the decisions it made in terms of how to respond to those complaints. As in Order MO-2337, if that information, with the severances I have ordered, were personal information exempt from disclosure under section 21(1), I would conclude that such a disclosure was justified under section 23.

Beyond that, however, I am not satisfied that overriding the privacy interests of complainants or others will allow for greater scrutiny of PSISB activities. I appreciate that severing the identities of the private investigators who were the subject of complaints may, to some extent, impact on the ability to assess the role played by the PSISB. However, on balance, I am not satisfied that the privacy interests of these individuals must yield to the public interest, particularly given the level of disclosure that I will be ordering and the fact that disclosure of the identity of a particular private investigator may lead to the identification of the complainant.

In summary, I am satisfied that the public interest will be met in the absence of disclosure of the personal information of the complainants, private investigators and other individuals. The purpose of the public interest override is to significantly shed light on the workings of government, which in this case is the PSISB. The disclosure of other's personal information will not shed further light on how the PSISB conducts its investigations and/or enforces the *PSISA* and is not outweighed by these individuals' personal privacy. The appellant has already been provided with statistical information, such as the number of complaints to, number of investigations initiated by, and number of suspensions/revocations imposed by the PSISB. This information, in conjunction with the information I will be ordering disclosed is sufficient to subject the activities of the PSISB to public scrutiny while not sacrificing the personal privacy of individual complainants, private investigators and others.

Finally, I find that section 23 does not apply to override the application of section 15(b) to record 51. In my view, the purpose of section 15(b) is to allow the Ontario government and its ministries, to assure other governments that it is able and prepared to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern. I note that record 51 represents one of some 60 complaints filed with the PSISB. I am not satisfied that disclosure of the details of this particular complaint is critical to shedding light on the activities and effectiveness of the PSISB.

ORDER:

1. I uphold the Ministry's decision to withhold Record 51 in its entirety.

2. I order the Ministry to disclose portions of the remaining Records by **June 30, 2010** but not before **June 25, 2010**. I have enclosed a copy of the records and have highlighted the portions of the records that are not to be disclosed to the appellant.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the portions of the Records disclosed to the appellant.

Original signed by: May 26, 2010
Brian Beamish
Assistant Commissioner

Appendix A

Record	Pages	Document	Exemptions
1	1	Complaint	14(1)(g),15(b),21(1),21(2)(f),21(3)(b)
2	2 to 6	Complaint	14(1)(e),21(1),21(2)(f), 21(2)(e),21(2)(h),21(3)(b)
3	7 to 9	Complaint	21(1),21(2)(f),21(3)(b)21(3)(d)
4	10 to12	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
5	13 to15	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b),21(3)(d)
6	16 to 19	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
7	20	Complaint	21(1),21(2)(f),21(3)(b),21(3)(d)
8	21 & 22	Complaint	21(1),21(2)(f),21(3)(b)
9	23 to 26	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b),21(3)(d)
10	27 to 29	Complaint	21(1),21(2)(f),21(3)(b)
11	30 to 33	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)
12	34	Complaint	21(1),21(2)(f),21(3)(b),21(3)(d)
13	35 to 37	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
14	38 to 40	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
15	41 to 43	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
16	44	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)

Record	Pages	Document	Exemptions
17	45 to 47	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)
18	48 to 50	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
19	51 to 53	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b)
20	54 & 55	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
21	56 to 59	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
22	60 to 62	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
23	63 to 69	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
24	70 to 78	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
25	79	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)
26	80 & 81	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
27	82 to 89	Complaint	14(1)(l),21(1),21(2)(f),21(3)(b),
28	90 & 91	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
29	92 & 93	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b),21(3)(d)
30	94 & 95	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
31	96 to 99	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)

Record	Pages	Document	Exemptions
32	100	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b)
33	101	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
34	102-108	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
35	109-117	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
36	118	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b)
37	119-122	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
38	123-124	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)
39	125-136	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
40	137	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
41	138-144	Complaint	15(b),21(1),21(2)(e),21(2)(f),21(3)(b)
42	145	Complaint	15(b),21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
43	146	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
44	147-149	Complaint	14(1)(e),21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
45	150-151	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
46	152	Complaint	21(1),21(2)(e),21(2)(f),21(3)(b)
47	153-159	Complaint	14(1)(e),21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b)
48	160-161	Complaint	21(1),21(2)(f),21(3)(b)

Record	Pages	Document	Exemptions
49	162	Complaint	21(1),21(2)(f),21(3)(b)
50	163	Complaint	21(1),21(2)(f),21(3)(b)
51	164-178	Complaint	14(1)(c),14(1)(i),14(1)(l),15(b),21(1),21(2)(f),21(2)(h), 21(3)(b),21(3)(d)
52	179	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b)
53	180-187	Complaint	21(1),21(2)(f),21(3)(b)
54	188-190C	Complaint	21(1),21(2)(f),21(3)(b)
55	191-192	Complaint	21(1),21(2)(f),21(3)(b)
56	193-195G	Complaint	21(1),21(2)(f),21(3)(b)
57	196-198	Complaint	21(1), 21(2)(f), 21(2)(h),21(3)(b)
58	199-200	Complaint	21(1), 21(2)(f), 21(3)(b)
59	201-203	Complaint	21(1),21(2)(f),21(2)(h),21(3)(b),21(3)(d)
60	204-208	Complaint	21(1),21(2)(e),21(2)(f),21(2)(h),21(3)(b), 21(3)(d)