Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3086

Appeal PA10-332

Ministry of Community Safety and Correctional Services

June 11, 2012

Summary: The appellant sought access to her deceased daughter's probation records. The Ministry of Community Safety and Correctional Services granted partial access to the responsive records. The ministry's decision was partially upheld. The appellant cannot exercise the right of access on behalf of her deceased daughter by virtue of section 66(a) of the *Act*. Some of the information severed as not responsive, is responsive to the appellant's request. The records contain the personal information of the appellant, her deceased daughter and other identifiable individuals. The remaining withheld information qualifies for exemption under section 49(a), read with section 19, and section 49(b), having considered section 21(4)(d), the presumption at 21(3)(b), and the factor at section 21(2)(f). The ministry's exercise of discretion was reasonable. Section 23 does not to apply to the exempt information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of personal information), 19(a), 19(b), 21(1), 21(2)(f), 21(3)(b), 21(4)(d), 23, 49(a), 49(b), 66(a).

Orders Considered: P-541, P-984, MO-2237, MO-2245.

Cases Considered: *Liquor Control Board of Ontario v. Magnotta Winery Corporation,* 2010 ONCA 681.

OVERVIEW:

[1] The appellant filed a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to her deceased daughter's probation records held by the Ministry of Community Safety and Correctional Services (the ministry). Specifically, the appellant sought access to:

> [C]opies of all documents and written materials contained in my now deceased daughter's probation client files with the [ministry] … dating from May 2007 until January 2010 inclusive, to aid in my family's personal and painful journey through our grieving process.

[2] The ministry identified 333 pages of records responsive to the request and issued a decision letter granting partial access to them. The ministry withheld portions of the records citing the application of the discretionary exemption at section 49(a) (discretion to refuse a requester's own information), read in conjunction with sections 14(1)(l) (facilitate commission of an unlawful act), 14(2)(d) (person under the control or supervision of a correctional authority), 15(b) (relations with other governments) and, 19 (solicitor-client privilege) of the *Act*. The ministry also advised that it had withheld portions of the records pursuant to the discretionary exemption at section 49(b) (personal privacy), read with reference to the factor at section 21(2)(f) (highly sensitive) of the *Act*. Finally, the ministry advised that it had withheld portions of the records pursuant to section 49(e) (confidential correctional record) of the *Act*. The ministry also advised that some information had been severed as it was not responsive to the request.

[3] The appellant appealed the ministry's decision.

[4] During mediation, the appellant advised that she is not interested in either the information that the ministry identified as not responsive to her request or the information that was severed pursuant to section 14(1)(l). Accordingly, the mediator removed this information from the scope of the appeal.

[5] As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process for me to conduct an inquiry.

[6] On my review of the file, I determined that it was not clear as to whether the appellant was seeking access to the requested information in her own capacity or on behalf of her deceased daughter. As a result, I included the issue of right of access in the scope of the appeal.

[7] I began my inquiry into this appeal by sending a Notice of Inquiry to the ministry, initially. The ministry provided representations in response.

[8] Prior to submitting representations, the ministry issued a supplementary decision letter granting access in full or in part to some of the records remaining at issue. As a result, those portions that have been disclosed to the appellant have been removed from the scope of the appeal.

[9] In its representations, the ministry advised that it was withdrawing its reliance on the discretionary exemption at section 49(a) applied in conjunction with sections 14(2)(d) and 15(b). It also advised that it was withdrawing its reliance on the discretionary exemption at section 49(e). Accordingly, those sections are no longer at issue.

[10] The appellant was provided with an opportunity to respond to the Notice of Inquiry as well as the complete representations submitted by the ministry. In her representations, the appellant advised that although during mediation she did not wish to pursue access to the records identified by the ministry as not responsive to her request, due to the large number of pages identified as such, she would appreciate further explanation regarding records deemed as non-responsive to her request. Although it is the usual practice of this office not to reintroduce an issue that has been removed from the scope of the appeal in mediation, taking into consideration the compassionate circumstances surrounding this appeal, I have decided to include a discussion on the issue of responsiveness below.

[11] In this order, I uphold the ministry's decision to withhold the information that remains at issue, in part. In the discussion that follows, I reach the following conclusions:

- the appellant cannot exercise a right of access on behalf of her deceased daughter;
- some of the information in the responsive records is not responsive to the appellant's request;
- the records contain the personal information of the appellant, the appellant's deceased daughter and other identifiable individuals;
- disclosure of some of the withheld portions of the records would reveal information that is subject to solicitor-client privilege as contemplated by section 19(a) and (b) and therefore, qualify for exemption under section 49(a);
- disclosure of some of the withheld portions of the records would amount to an unjustified invasion of individuals' personal privacy and therefore, qualify for exemption under section 49(b);

- the ministry's exercise of discretion to deny access to portions of the records pursuant to sections 49(a) and (b) should be upheld; and

- the section 23 public interest override does not apply to overcome the application of either of sections 49(a) or (b).

RECORDS:

[12] At the start of the inquiry process there were 333 pages of records at issue. As a result of the ministry's supplementary decision letter, a large portion of those pages have been released, in whole or in part, to the appellant. The records or portions of records that have not been disclosed to the appellant remain at issue in this appeal.

ISSUES:

A. Can the appellant exercise a right of access on behalf of her deceased daughter by virtue of section 66(a)?

B. Is some of the information in the responsive records not responsive to the appellant's request?

C. Do the records contain "personal information" as defined in section 2(1), and if so, to whom does it relate?

D. Does the discretionary exemption at section 49(a) read in conjunction with section 19 apply to the information because the information is subject to solicitor-client privilege?

E. Does the discretionary exemption at section 49(b) apply to the records because disclosure of the information would constitute an unjustified invasion of an individual's personal privacy?

F. Should the ministry's exercise of discretion to deny access under section 49(a) and (b) be upheld?

G. Is there a compelling public interest in the disclosure of the information at issue that clearly outweighs the purpose of the exemption at sections 21(1) and 49(b)?

DISCUSSION:

A. Can the appellant exercise a right of access on behalf of her deceased daughter by virtue of section 66(a)?

[13] Section 66(a) states:

> Any right or power conferred on an individual by this act may be exercised,
>
> > if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

[14] Under this section, the requester can exercise the deceased's right of access under the *Act* if she can demonstrate that:

- she is the personal representative of the deceased, and
- the right she wishes to exercise relates to the administration of the deceased's estate.

[15] If the requester meets the requirements of this section, then she is entitled to have the same access to the personal information of the deceased as the deceased would have had. The request for access to the personal information of the deceased will be treated as though the request came from the deceased him or herself.[1]

Personal representative

[16] The term "personal representative" means and executor, and administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate.[2] The term "estate trustee" is also used to describe such an individual.[3]

[17] Generally, to establish that she is the deceased's personal representative, the requester should provide written evidence of her authority to deal with the estate of the deceased, including a certificate of appointment of estate trustee.[4]

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[1] Orders M-927 and MO-1315.
[2] *Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-20 (Ont. Div. Ct).
[3] Order MO-1449 and Rule 74 of the Rules of Civil Procedure under the *Courts of Justice Act*.
[4] Order MO-1449.

Relates to the administration of the estate

[18] The requester must also demonstrate that the request "relates to the administration of the estate." To meet this test, the requester must demonstrate that she is seeking access to the records for the purpose of administering the estate.[5]

[19] Requests have been found to "relate to the administration of the estate" where the records are:

- relevant to determining whether the estate should receive benefits under a life insurance policy,[6]
- relevant to the deceased's financial situation and allegations of fraud or theft of the deceased's property,[7]
- required in order to defend a claim against the estate, or[8]
- required to prepare an action on behalf of the estate for damages for injuries caused to the deceased person prior to death, where the damages would be recoverable by the estate, rather than the surviving family members.[9]

[20] Requests have been found *not* to "relate to the administration of the estate" where the records are:

- sought to support a civil action on behalf of a deceased's estate for the wrongful death of that individual, as section 38(1) of the *Trustee Act* precludes recovery by the estate of damages for the death or loss of expectation of life by the deceased,[10]
- sought to support a civil claim by family members under the *Family Law Act*, where any damages would be paid to the family members and not to the estate, or[11]
- sought for personal reasons, for example, where the requester "wishes to bring some closure to . . . tragic events."[12]

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[5] Order MO-1315; *Adams v. Ontario (Information and Privacy Commissioner)* (1996), *supra, 2.*
[6] Order MO-1315.
[7] Order MO-1301.
[8] Order M-919.
[9] Order MO-1803.
[10] Orders M-400 and PO-1849.
[11] Order MO-1256.
[12] Order MO-1563.

Representations

[21] The ministry submits that the appellant provided it with a sworn affidavit indicating that she did not intend to apply to the Ontario Superior Court of Justice to be appointed as the estate trustee without a will for her deceased daughter. As a result, the ministry submits that section 66(a) does not apply.

[22] In her representations, the appellant submits that although at the time that she submitted her request to the ministry she had no intention of applying for appointment as estate trustee without a will for her daughter, she subsequently did so as she was required to in order for her to act on her daughter's behalf. With her representations, the appellant enclosed a copy of her Certificate of Appointment as Estate Trustee without a Will endorsed by the Ontario Superior Court of Justice.

[23] Addressing the second required component for the application of section 66(a), that access relates to the administration of her daughter's estate, the appellant submits:

> There is actually no monetary estate to administer, in the contextual meaning of "estate." Unless the lifetime responsibility of care and custody of her young child could be considered as relating, in an administrative context in some abstract, but connected manner to an estate which my daughter leaves in my care.

Analysis and findings

[24] As previously mentioned, if section 66(a) is found to apply, the request for access to the personal information of the deceased will be treated as though the request came from the deceased herself.[13] If the section is found not to apply, the appellant may seek access to records containing the personal information of the deceased but the analysis must include a determination of whether disclosure may amount to an invasion of the deceased's personal privacy.

[25] Based on the appellant's representations and supporting documentation, I am satisfied that she is her deceased daughter's personal representative for the purpose of section 66(a) of the *Act*. However, as noted previously, for section 66(a) to apply, in addition to being the deceased's personal representative, the requester must also demonstrate that she is seeking access to records for the purpose of administering the estate.

[26] In her representations, the appellant makes it clear that she is seeking access to the requested information in the hopes that they will address the "many, remaining

[13] Orders M-927 and MO-1315.

unanswered questions" in relation to her daughter's death. While this is certainly an understandable and sympathetic reason for seeking access to records, as noted above, previous orders have made it clear that for the purpose of the application of section 66(a), personal reasons, such as an attempt to bring closure to a tragic event, have not been found to "relate to the administration of the estate" as contemplated by that section. Moreover, the appellant concedes that there is no monetary estate to administer. Accordingly, based on the appellant's representations and my review of the records themselves, I do not accept that that the records that she seeks through this access request are required for the purpose of administering her daughter's estate.

[27] Therefore, based on the evidence before me, I find that while the appellant qualifies as the "personal representative" of her deceased daughter, the request for access in the present appeal is not "related to the administration" of the deceased's estate, as required by section 66(a). As the second requirement of section 66(a) is not met, I find that the section does not apply and the appellant is not entitled to exercise the same right of access to the information in the records as the deceased would have had.

B. Is some of the information in the identified records not responsive to the appellant's request?

[28] The ministry indicated that portions of the information contained in the identified records are not responsive to the appellant's request. As noted above, although during mediation the appellant removed the issue of responsiveness from the scope of the appeal, in her representations she expressed concern at the large amount of information that has been designated in this manner. She advised that she would appreciate further explanation of the information designated as not responsive to her request.

[29] Generally, this office will not reintroduce issues that have been removed from the scope of appeal during mediation. However, given the compassionate circumstances of this appeal, I have decided to address the appellant's concerns.

[30] I have reviewed all of the information that the ministry has identified as not responsive to the appellant's request carefully. While I disagree with the appellant's suggestion that a "large" amount of information has been withheld on this basis, I do not accept the ministry's position that most of this information should be withheld.

[31] First, on pages 13, 14, 38 and 65, the ministry has severed a sentence that identifies the individual who updated the relevant case note related to a staff member's interaction with the appellant's daughter. Not only do I disagree with the ministry's position that this information is not responsive to the appellant's request, I also note that in other instances in the records this type of information has been disclosed; for

example, on pages 16, 70, 71 and 91. Accordingly, although this does not provide the appellant with a significant amount of additional information, I will order it disclosed.

[32] Second, on pages 132 and 196 the ministry has severed a three letter identifier after the names of the recipient and/or sender of email messages. While I find that this information is not responsive to the appellant's request, the same information has been disclosed in other portions of the records; for example, pages 158 and 160. Again, although this doesn't provide the appellant with a significant amount of additional information, for the sake of consistency, I will order this information disclosed.

[33] Finally, on pages 260 to 262, 264, 273, 274, 282, 283, 287, 288, 304, 330, and 331, the ministry has severed information and the top and/or bottom of the page that appears to be information that identifies the office from which it was faxed. I accept the ministry's position regarding this information and find that it is not responsive to the appellant's request. Accordingly, I will not order it disclosed.

C. Do the records contain "personal information" as defined in section 2(1), and if so, to whom does it relate?

[34] Under the *Act*, different exemptions may apply depending on whether or not a record contains the personal information of the requester. Where records contain the requester's own information, access to the records is addressed under Part III of the *Act* and the discretionary exemptions at section 49 may apply. Where the records do not contain the personal information of the appellant, access to the records is addressed under Part II of the *Act* and the exemption at sections 12 to 22 may apply.

[35] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[36] 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.[14]

[37] 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.[15]

[38] 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.[16]

[39] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[17]

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[14] Order 11.
[15] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[16] Orders P-1409, R-980015, PO-2225 and MO-2344.
[17] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe* [2002] O.J. No. 4300 (C.A.).

[40] The ministry submits that the records at issue contain the types of personal information identified in paragraphs (a), (b), (d), (e) and (h) of the definition at section 2(1) with respect to the appellant, the appellant's daughter, and other individuals.

[41] The appellant does not dispute the fact that the records contain the types of personal information listed under paragraphs (a), (b), (d), (e) and (h) of the definition of "personal information" found in section 2(1). She agrees, given the nature of the records, that this personal information belongs to herself, her daughter and other individuals.

[42] The records at issue are the appellant's daughter's probation records and consist primarily of case supervision notes compiled by individuals in one of the ministry's probation and parole offices. However, the records also include police records, court documents and information from service providers. Having reviewed them carefully, I accept that all of the records contain the personal information of the appellant's daughter, as well as that of the appellant. Some of the records also contain the personal information of other individuals who were acquainted with the appellant's daughter. Specifically, the personal information includes information relating to age, sex, and marital or family status [paragraph (a)], medical, psychiatric, psychological, or criminal history [paragraph (b)], addresses and telephone numbers [paragraph (d)], personal opinions or views of individuals [paragraph (e)], and the names of individuals together with other personal information about them [paragraph (h)].

[43] As described above, given that the appellant's personal information is mixed with her daughter's personal information, as well as that of other identifiable individuals, Part III of the *Act* applies. Therefore, I will consider whether the information at issue is exempt from disclosure under the discretionary exemptions at sections 49(a) or (b).

D. Does the discretionary exemption at section 49(a) read in conjunction with section 19 apply to the information because the information is subject to solicitor-client privilege?

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

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[45] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[18]

[46] In this case, the ministry relies on section 49(a) in conjunction with section 19, to withhold information on pages 56, 81, 257 to 259, 301 to 303, and 326 to 328.

Solicitor-client privilege: general principles

[47] Section 19 of the *Act* states as follows:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege;
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
>
> (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

[48] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b), or in the case of an educational institution, from section 19(c). The ministry must establish that at least one branch applies.

[49] In the circumstances of this appeal, the ministry submits that both branch 1 and branch 2 apply.

Branch 1: common law privilege

[50] Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.[19]

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[18] Order M-352.

[19] Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

[51] In the circumstances of this appeal the ministry submits that the common law solicitor-client communication privilege applies.

Solicitor-client communication privilege

[52] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[20]

[53] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[21]

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

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach.[22]

[55] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[23]

[56] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[24]

Loss of privilege - waiver

[57] Under branch 1, the actions by or on behalf of a party may constitute waiver of common law solicitor-client privilege.

[58] Waiver of privilege is ordinarily established where it is shown that the holder of the privilege:

- knows of the existence of the privilege, and
- voluntarily evinces an intention to waive the privilege[25]

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[20] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[21] Orders PO-2441, MO-2166 and MO-1925.
[22] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[23] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[24] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).
[25] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

[59] Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.[26]

[60] Waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.

Branch 2: statutory privileges

[61] Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

[62] The ministry submits that branch 2 applies to some of the records at issue.

Statutory solicitor-client communication privilege

[63] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution, "for use in giving legal advice."

Statutory litigation privilege

[64] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution, "in contemplation of or for use in litigation."

[65] Records that form part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt under the statutory litigation privilege aspect of branch 2.[27] However, "branch 2 of section 19 does not exempt records in the possession of the police, created in the course of an investigation, just because copies later become part of the Crown brief."[28]

[66] Documents not originally created in contemplation of or for use in litigation, which are copied for the Crown brief as the result of counsel's skill and knowledge, are exempt under branch 2 statutory litigation privilege.[29]

[67] Termination of litigation does not affect the application of statutory litigation privilege under branch 2.[30]

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[26] J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S. C.).
[27] Order PO-2733.
[28] Orders PO-2494, PO-2532-R and PO-2498, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2009] O.J. No. 952.
[29] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 290 D.L.R. (4th) 102, [2008] O.J. No. 289; and Order PO-2733.
[30] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)*, *supra,* 28.

Loss of Privilege

[68] The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution,* and
- the lack of a "zone of privacy" in connection with records prepared for use in or in contemplation of litigation.[31]

Representations

[69] The ministry submits that branch 1 applies to all of the records as they represent communications of a confidential nature between a solicitor and their client (or their agents or employees) that is for the purpose of obtaining or giving legal advice. It submits that branch 1 covers a continuum of communication between a client and his or her legal advisor on matters of mutual interest and ensures a client may confide in his or her legal counsel without reservation.

[70] With respect to the application of branch 2, the ministry submits that the records that contain the exempt information in pages 81, 257 to 259, 301 to 303, and 326 to 328 "include correspondence directed to Crown counsel in the form of Crown brief materials that were prepared in relation to a probation-related enforcement prosecution." The ministry submits that this "information is exempt from disclosure under branch 2 of section 19 in accordance with the Court of Appeals ruling in *Magnotta* and Order PO-2871."[32]

[71] With respect to the withheld information in page 56, the ministry submits that it "reflects confidential communications between crown counsel and probation and parole staff" and that this information is exempt from disclosure in accordance with branch 1 and branch 2 of section 19.

[72] The ministry submits that it has not waived privilege in relation to these records.

[73] The appellant states that she does not feel that she possesses the legal knowledge to comment on the application of this exemption, however, she highlights two points of information outlined in the Notice of Inquiry:

- Branch 2 of section 19 does not exempt records in the possession of the police, created in the course of an investigation, just because copies later became part of the crown brief; and

[31] *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.).
[32] *Liquor Control Board of Ontario v. Magnotta Winery Corporation,* 2010 ONCA 681.

- documents not originally created in contemplation of or for use in litigation, which are copied for the crown brief as the result of counsel's skill and knowledge, are exempt under branch 2 statutory litigation privilege.

[74] The appellant states that she is uncertain if either of the above could be applied to the information at issue in this appeal.

Analysis and finding

[75] Having carefully reviewed all of the information for which the ministry claims section 49(a) read in conjunction with section 19(a) and (b), I accept that this information is subject to solicitor-client privilege. I also accept that privilege has not been lost due to waiver or lack of a "zone of privacy".

[76] Page 56 is a case note entered by a staff member at the probation and parole office and its disclosure would reveal confidential communications, namely, legal advice, provided to that office, by crown counsel. Accordingly, I find that both the common law solicitor-client communication privilege of branch 1, outlined in section 19(a), and the statutory solicitor-client communication privilege of branch 2, outlined in section 19(b) apply to this information.

[77] The ministry cites the *Magnotta*[33] decision to support its claim that pages 81, 257 to 259, 301 to 303, and 326 to 328 are exempt under branch 2 of the solicitor-client privilege exemption, outlined in section 19(b). The Court of Appeal in the *Magnotta* decision states:

> Once litigation is understood to include mediation and settlement discussions, it is apparent that the Disputed Records -- both those prepared by Crown counsel and those prepared by Magnotta -- fall within the second branch and are exempt from disclosure. Nothing more need be said to explain why the materials prepared by Crown counsel fall within the second branch. As for the materials prepared by Magnotta and delivered to the Crown, in my view, they were "prepared for Crown counsel" because they were provided to Crown counsel for use in the mediation and settlement discussions. To limit the second branch to records prepared by, or at the behest or on behalf of, Crown counsel is contrary to the plain meaning of the language of the second branch.[34]

[78] Pages 81, 257 to 259, 301 to 303, and 326 to 328 are all documents that are addressed to the Crown and were prepared specifically for inclusion in the crown brief in relation to a probation related enforcement prosecution. Therefore, it is clear that

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[33] *Ibid.*
[34] *Supra, 32.*

these records were prepared for use in contemplated litigation and possibly, for use in mediation or settlement discussions related to that prosecution. These records were originally created for the purpose of inclusion in the crown brief; they were not originally created for another purpose and subsequently copied into the crown brief. Accordingly, I find that this information is exempt from disclosure under branch 2, outlined in section 19(b),

Conclusion

[79] I have found that section 19(a) and/or (b) apply to the information for which the ministry claims section 49(a). Accordingly, section 49(a) applies to that information for which it was claimed and, subject to my review of the ministry's exercise of discretion and the possible application of the compelling public interest override provision at section 23 (both of which I will consider below), that information should not be disclosed.

E. Does the discretionary exemption at section 49(b) apply to the records because disclosure of the information would constitute an unjustified invasion of an individual's personal privacy?

[80] As noted above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right, including section 49(b). That section reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where the disclosure would constitute and unjustified invasion of another individual's personal privacy.

[81] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

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

[83] For section 49(b) to apply, on appeal I must be satisfied that disclosure of the information *would* constitute an unjustified invasion of another individual's personal privacy.

[84] In determining whether the exemptions in section 49(b) apply, sections 21(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 21(2) provides some criteria for the ministry to consider in making this determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy under section 49(b).

Section 21(4)(d)

[85] The ministry states that it found that section 21(4)(d) warranted consideration in the circumstances of this appeal and that it disclosed substantial portions of the records to the appellant based on this section. However, it also concluded that section 21(4)(d) did not apply to the portions of the records that it withheld. Section 21(4)(d) states:

> Despite subsection 3, a disclosure of personal information does not constitute an unjustified invasion of personal privacy if it,
>
> > discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[86] The term "close relative" is defined in section 2(1) of the *Act* and includes a parent.

[87] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is intertwined with the personal information of another individual or individuals. The facts and circumstances referred to in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).[35]

[88] After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process.[36] The task of

[35] Orders MO-2237, MO-2270, MO-2290, MO-2306, MO-2387 and MO-2615.
[36] Order MO-2245.

the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."[37]

[89] The application of section 21(4)(d) requires a consideration of the following questions all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?

2. Is the requester a spouse of "close relative" of the deceased individual?

3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?[38]

Representations

[90] The ministry submits that given that the records contain information which relates to the appellant's deceased daughter, it is satisfied that disclosure of sensitive personal information relating to the appellant's daughter is desirable for compassionate reasons. It submits that it "has relied upon section 21(4)(d) as the basis for the disclosure of a substantial number of records to the appellant." It further states that "these records provide the appellant with a copious amount of information that may assist her to 'retrace the last years of [her daughter's] life to gain understanding and knowledge of what happened to her." The ministry goes on to submit that disclosure of the withheld portions is not desirable for compassionate reasons, in its view.

[91] In her representations, the appellant queries how the ministry can find that section 21(4)(d) has been met and only provided partial disclosure of the records. She states that she seeks access to the withheld portions of the records to understand the circumstances of her daughter's death and the events leading up to it, in the days and weeks prior.

Section 21(4)(d) – analysis and finding

[92] The ministry has applied section 21(4)(d) to the records at issue and has disclosed a significant amount of the responsive information on the basis of compassionate grounds. Specifically, the ministry has disclosed all of the appellant's own personal information to her, including any of her own personal information where

[37] *Ibid.*
[38] Orders MO-2237 and MO-2245.

it is mixed with that of her daughter. The ministry has also disclosed, pursuant to this section, her daughter's personal information where it is not intertwined with that of other individuals.

[93] Having reviewed the remaining information closely, I agree with the ministry that although the records contain the personal information of the appellant's daughter and the appellant is a "close relative" as is required by the section, the disclosure of the remaining personal information is not desirable for compassionate reasons, in the circumstances of this request. I therefore find that the information that remains at issue in the responsive records is not subject to section 21(4)(d).

[94] While all of the withheld information consists of the personal information of the appellant's daughter, given that it relates to her oversight by the probation and parole office, some portions of it is inextricably intertwined with the personal information of other individuals. I appreciate the appellant's hope that the severed portions of these records would provide her with additional information that might help her to understand the circumstances of her daughter's death and the events leading up to it "in the days and weeks prior." However, given the nature of the withheld information, I accept the ministry's position that its disclosure will not better inform the appellant about those circumstances and, even if portions of it might provide a small amount of additional information, in the context of the records its disclosure does not outweigh the privacy rights of the other individuals whose personal information appears in the records.

[95] As section 21(4)(d) does not apply to the information remaining at issue, I will now consider whether the presumption at section 21(3)(b) or the factor weighing against disclosure at section 21(2)(f) applies to that information.

Section 21(3)(b)

[96] The ministry has raised the application of section 21(3)(b) of the *Act* to information found in some of the records, including pages 166, 169, 181 to 183, 190 and 272. Section 21(3)(b) reads:

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

Representations

[97] The ministry submits that the information at issue consists of highly sensitive personal information that was compiled and is identifiable as part of an investigation conducted by the London Police Service into a possible violation of law involving the appellant's deceased daughter. The ministry submits therefore, that its disclosure would constitute a presumed unjustified invasion of privacy within the meaning of the presumption at section 21(3)(b).[39]

[98] The appellant requests that the application of the absurd result principle be considered in response to the ministry reliance on section 21(3)(b). I will address the possible application of that principle below.

Section 21(3)(b) – analysis and finding

[99] The information that has been severed by the ministry pursuant to section 21(3)(b) appears on occurrence reports prepared by the London Police Service in relation to incidents involving the appellant's daughter. The ministry has applied its discretion to disclose much of this information. However, it has severed portions that contain the personal information of individuals other than the appellant or her deceased daughter. I agree with the ministry that section 21(3)(b) applies to the information at issue in these records as it was compiled and is identifiable as part of an investigation into a possible violation of law, in particular, a violation of law under the *Criminal Code of Canada.* Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[40]

[100] Therefore, I find that the information severed from the remaining records is subject to the presumption in section 21(3)(b).

Section 21(2)(f)

[101] With respect to all of the remaining information, the ministry has severed portions of it after having taken into consideration the application of the factor in section 21(2)(f). Section 21(2)(f) reads:

> A head in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all relevant circumstances, including whether,
>
> > the personal information is highly sensitive.

[39] Orders P-223, P-237 and P-1225.
[40] Orders P-242 and MO-2235.

[102] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[41]

Representations

[103] The ministry submits that it is of the view that the undisclosed personal information may be viewed as highly sensitive information within the meaning of section 21(2)(f). It submits that the release of the undisclosed information in the probation case file records would cause other individuals significant personal distress.

[104] As with section 21(3)(b), the appellant requests that the application of the absurd result principle be considered in response to the ministry reliance on section 21(2)(f). I will address the possible application of that principle below.

Section 21(2)(f) – analysis and finding

[105] Having reviewed all of the information that has been severed taking into consideration the factor at section 21(2)(f), I accept the ministry's position and find that all of this information can be considered as "highly sensitive." Given the nature of this information that relates to individuals other than the appellant, I accept that it could reasonably be expected to cause significant personal distress to those individuals, were it disclosed. Accordingly, I find that the factor at section 21(2)(f) applies and weighs against disclosure of the records.

Absurd result

[106] The appellant suggests that the absurd result principle might apply in the circumstances of this appeal. This principle states that where the requester originally supplied the information or where the requester is otherwise aware of it, the information may be found not to be exempt because to find otherwise would be absurd and inconsistent with the purpose of the exemption.[42]

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

- the requester sought access to his or her own witness statement;[43]
- the requester was present when the information was provided to the institution;[44]

[41] Orders PO-2518, PO-2617, MO-2262, and MO-2344.
[42] Orders M-444 and MO-1323.
[43] Orders M-444 and M-451.
[44] Orders M-444 and P-1414.

- the information is clearly within the requester's knowledge.[45]

[108] If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.[46]

[109] The ministry also submits that, with respect to the absurd result principle, given the sensitive circumstances of the appellant's request and the nature of the particular information that remains at issue, disclosure of the exempt personal information would be inconsistent with the purpose of section 49(b).

[110] The appellant submits that the absurd result principle applies in the circumstances of this appeal because:

> 1. I am fully aware of my daughter's health, lifestyle and legal issues.
>
> 2. The written information of any criminal charges in question has already been released to me by London Police Services. This matter is no longer an investigative or prosecutable matter.
>
> 3. I have been in very close contact with the probation office since 2007, and as records show, the information is clearly within my knowledge.

[111] In previous orders, this office has emphasized that the absurd result principle ought to be applied only in the clearest of cases. In my view, despite the appellant's assertions, in the circumstances of this appeal it is not clear whether the particular information that has been severed pursuant to section 49(b) is indeed within the appellant's knowledge. Additionally, the information at issue is highly sensitive information that involves the personal information of individuals other than the appellant. I find therefore that its disclosure would be inconsistent with the purpose of the exemption at 49(b) and the privacy rights of those individuals.

[112] Accordingly, I find that the absurd result principle does not apply in the circumstances of this appeal.

Conclusion

[113] I have found that the presumption at section 21(3)(b) or the factor at section 21(2)(f) applies to all of the information that remains at issue. Accordingly, section

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[45] Orders MO-1196, PO-1679, and MO-1755.
[46] Orders M-757, MO-1323, and MO-1378.

49(b) applies to that information and, subject to my review of the ministry's exercise of discretion and the possible application of the compelling public interest override provision at section 23 (both of which I will consider below), that information should not be disclosed.

F. Should the ministry's exercise of discretion to deny access under section 49(a) and (b) be upheld?

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

[115] In this order, I have found that some records and parts of records qualify for exemption under the discretionary exemptions at sections 49(a) and (b). Consequently, I will assess whether the ministry exercised its discretion properly in applying this exemption to the portions of records that have been withheld.

[116] This office may find that the institution erred in exercising its discretion where, for example:

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

[117] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[47] This office may not, however, substitute its own discretion for that of the institution.[48]

[118] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:

- the purposes of the *Act*, including the principles that,
    - information should be available to the public,
    - individuals should have a right of access to their own personal information,

[47] Order MO-1573.
[48] Section 43(2) of the *Act.*

  - exemptions from the right of access should be limited and specific,
  - the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking his or her own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,
- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.[49]

Representations

[119] The ministry submits that it has exercised its discretion appropriately in the particular circumstances of this appeal. It submits that it considers each request on a case-by-case basis and for this particular request it decided to exercise its discretion to release a "substantial portion of the requested information to the appellant." It states that it has weighed the appellant's right of access to the withheld portions and considered disclosing the information notwithstanding that discretionary exemptions apply. It submits:

> The ministry has considered the appellant's request in accordance with the compassionate disclosure provisions in section 21(4)(d) and disclosed a large number of sensitive records to assist the appellant in the grieving process. In its exercise of discretion, the ministry carefully considered the potential benefits to the appellant should additional information be disclosed.

[49] Orders P-344 and MO-1573.

> The historic practice of the ministry in regards to requests from individuals seeking access to probation case records is to disclose as much information as may possibly be disclosed without compromising public safety interests.
>
> Given the nature of the personal information remaining at issue, the ministry was satisfied that release of the withheld information would constitute an unjustified invasion of the privacy of other individuals.
>
> With respect to the records that are subject to the solicitor-client privilege exemption from disclosure in section 19, the ministry has exercised its discretion to protect a very small amount of information. The ministry took into consideration that the prosecution against the appellant's daughter has concluded. The ministry considered whether dissemination of Crown brief materials could lead to an inhibition of the free exchange of information between Crown counsel and Probation and Parole Officers that is necessary to ensure the effective handling of probation-related enforcement activities and prosecutions. This was a factor for the ministry in its exercise of discretion.
>
> The ministry ultimately came to the conclusion in its exercise of discretion that the release of the information remaining at issue in the circumstances of the appellant's request was not appropriate.

[120] The appellant submits that she "does not believe that the ministry has exercised its full discretion under section 49(b) regarding all relevant considerations surrounding [her] request." She submits that they were not supplied with enough factors to aid in their considerations. More specifically, she states:

> I submit that the ministry failed to take into *full* account all *relevant* considerations in their decision to deny access to my information request as in:
>
> - failing to fully consider the potential benefit this grieving parent could realize from the full disclosure of the records they hold pertaining to the circumstances surrounding her child's life and death;
>
> - failure to give section 21(4)(d) the full extent of its purpose in the context it is written.

[121] She further submits that it is her understanding that section 21(4)(d) of the *Act* was specifically designed to allow families to have the records and information they feel they need in order to grieve in a way they see fit. She states:

> I alone should be allowed to decide on my own sensitivity level of what I am prepared to see or hear regarding my own child. I am an adult and fully capable accepting what I am asking for. I know what I need, in order to try and accept the tragic hand I have been dealt.

Analysis and findings

[122] I have reviewed the circumstances surrounding this appeal and the ministry's representations on the manner in which they exercised their discretion. Based on this information, as well as my review of the records that have been severed, I accept that the ministry's exercise of discretion not to disclose the information was proper and made in good faith.

[123] As previously mentioned, the ministry applied section 21(4)(d) to disclose a significant amount of information to the appellant to assist her in understanding the circumstances of her daughter's death. There is very little information that remains at issue. I note again that the information that these records contain do not include information or observations about her daughter's circumstances prior to her death. That information has been disclosed.

[124] The small amount of information that has been withheld pursuant to section 49(a) is information that is protected by the solicitor-client privilege exemption at section 19. I accept the ministry's decision to exercise their discretion to withhold crown brief materials and confidential communications between crown counsel and probation and parole officers and I find it to be reasonable.

[125] The remaining info has been withheld is the personal information of other identifiable individuals. Where it appears in a record together with the personal information of the appellant, it has been withheld under section 49(b). In considering the nature of the information, as well as the privacy rights of the other identifiable individuals, the ministry exercised its discretion to withhold the information. I am satisfied that, in the circumstances, its exercise of discretion was appropriate.

[126] Accordingly, I find the ministry's exercise of discretion was appropriate and the withheld portions of the records qualify for exemption under sections 49(a) or (b).

G. Is there a compelling public interest in the disclosure of the information at issue that clearly outweighs the purpose of the exemption at sections 49(a) and/or (b)?

[127] In her representations, the appellant submits that there exists a public interest in the disclosure of the records within that contemplated in section 23 that operates to "override" the operation of the exemptions at section 49(a) and (b). 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.

[128] The discretionary exemptions at section 49(a) and (b) of the *Act* are not listed as any of the exemptions that can be overridden by section 23. However, this matter has been previously considered in Order P-541, where Inquiry Officer Anita Fineberg made the following finding with respect to whether the public interest override in section 23 of the *Act* applied to section 49(b):

> In my view, where an institution has properly exercised its discretion under section 49(b) of the *Act*, relying on the application of sections 21(2) and/or (3), an appellant should be able to raise the application of section 23 in the same manner as an individual who is applying for access to the personal information of another individual in which the personal is considered under section 21. Were this not to be the case, an individual could theoretically have a lesser right of access to his or her own personal information than would the "stranger". This would result if section 23 could be used to override the exemption in section 21 of the *Act*, but not if the institution denied access to the information pursuant to section 49(b) as it contained the appellant's own personal information, as well as that of other individuals.

[129] I agree with this finding and find that the reasoning is equally applicable to the inclusion of section 49(a) within the scope of section 23. Therefore, I will consider the possible application of section 23 to those portions of the records that I have found qualify for exemption under sections 49(a) and (b) of the *Act*.

[130] For section 23 to apply, two requirements must be met. First there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

[131] 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 records and the *Act's* central purpose of shedding light on the operations of government.[50] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the records must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to

[50] Orders P984 and PO-2607.

the information the public has to make effective use of the means of expressing public opinion or to make political choices.[51]

[132] A public interest does not exist where the interests being advance are essentially private in nature.[52] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[53]

[133] The words "compelling" has been defined in previous orders as "rousing strong interest or attention."[54]

Purpose of the exemption

[134] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[135] An important consideration in balancing a compelling public interest in disclosure again the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[55]

Representations

[136] The appellant submits that the public interest override provision at section 23 applies in the circumstances of this appeal. Specifically, she submits she relies on section 23 for the following reasons:

- as there is a compelling public interest to know that every citizen in this country of Canada is afforded the same rights and freedoms as contained under the Canadian Charter of Human Rights…;

- as there is a compelling public interest to feel confidence in the abilities of probation services to effectively supervise their client and perform to the utmost of their abilities in protecting our communities by fulfilling their mandated duties as directed by the Ministry of Community Safety and Corrections;

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[51] Orders P-984 and PO-2556.
[52] Orders P-12, P-347 and P-1439.
[53] Order MO-1564.
[54] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.); Order P-984.
[55] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*(1999), 118 O.A.C. 108 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.); see also Orders PO-1927-I, PO-2569, PO-2647, and PO-2666.

- as there is a compelling public interest to ensure that each and every ministry service, as supported by the citizens of this country, are effective, efficient and reliable in the service that they provide;

- as there is a compelling public interest to know that our justice and law enforcement systems are strongly connected and accountable to the citizens they serve.

Analysis and findings

[137] As noted above, the word "compelling" has been defined in previous orders as "rousing strong interest or attention."[56] In Order P-984, Adjudicator Holly Big Canoe discussed this requirement:

> "Compelling" is defined as 'rousing strong interest or attention.' In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act*'s general purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a 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.

[138] In the present case, the compelling public interest that is alleged by the appellant in her representations can be summarized as: every citizen has the right to be informed of the activities of government (in this case she specifies, probation services, ministry services, and justice and law enforcement systems) to ensure that they are effective, efficient and reliable in the service that they provide, as well as to ensure that they are accountable to the citizens that they serve.

[139] I understand the appellant's need to obtain access to as much information about her daughter's death and I understand her position that in order to have faith in their government, citizens should be informed of its activities. However, in my view, her evidence regarding the accountability of the various services involved in the creation of the records at issue is not sufficient to establish that there exists the requisite "compelling public interest" as required for the application of this section. In my view, the evidence does not substantiate a publically held concern in the conduct of any these specific services "rousing strong interest or attention."

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[56] *Supra,* 26.

[140] Moreover, having considered the specific information that remains at issue, its disclosure 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." The information that has been withheld amounts confidential communications between a Crown and a probation officer of a routine nature, as well as excerpts of personal information that belongs to individuals other than the appellant or her deceased daughter.

[141] Accordingly, as sympathetic as the appellant's interest may be, I find that her evidence does not substantiate a publicly held concern, "rousing strong interest or attention" in the disclosure of the specific information that remains at issue as required by the "compelling public interest" component of the section 23 override. As no compelling public interest has been established, it is not necessary for me to determine whether the appellant's interest outweighs the purpose of the exemption claims at sections 49(a) and (b). I find, therefore, that section 23 does not apply**.**

ORDER:

1. I order the ministry to disclose to the appellant by **July 12, 2012** the information that I have found to be responsive to the appellant's request. Specifically, I order the ministry to disclose the portions of pages 13, 14, 38, 65, 132, and 196, that the ministry has identified as not responsive to the appellant's request.

2. I uphold the ministry's decision to withhold the remaining information.

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 information disclosed to the appellant pursuant to order provision 1.

Original Signed by: June 11, 2012
Catherine Corban
Adjudicator