Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3407

Appeal PA12-539-2

Ministry of Community Safety and Correctional Services

October 7, 2014

Summary: The ministry received a request for access to the probation case file relating to a specified individual following his conviction in 2005. The ministry denied access under the mandatory personal privacy exemption in section 21(1) and the discretionary law enforcement exemption in section 14(2)(d). The appellant appealed this decision, arguing that the public interest override provision in section 23 applied. In this order, the adjudicator upholds the ministry's decision to deny access to the personal information in the records under section 21(1) and finds that the public interest override in section 23 does not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1)(d) and (f), 21(2)(f), 21(3)(a), (b), (d) and (f), 23; *Archives and Recordkeeping Act,* 2006 R.S.O. 2006 c.34; *Victims Bill of Rights, 1995.*

Order Considered: PO-3260.

Case Considered: *The Queen v. Canadian Broadcasting Corporation, Canadian Press Enterprises Inc., the Globe and Mail and Shaw Television Limited Partnership* April 2, 2013, Toronto Doc. 05/40045174 (Ontario Court of Justice).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request dated July 24, 2012, pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

> A copy of progress reports, assessments and closing summaries connected to the conditional sentence and probation orders given to [a named individual] on June 7, 2005 for a guilty plea to fraud charges in [a named court case in Ontario].

[2] The appellant subsequently clarified her request in a telephone call with the ministry on September 11, 2012. The appellant clarified that she was seeking the probation case records with respect to the named individual (the affected person).

[3] The Ministry of Community Safety and Correctional Services issued its access decision on November 15, 2012, denying access to the requested information, on the basis of section 65(5.2) of the *Act*.

[4] In its decision, the ministry stated:

> Section 65(5.2) states that the Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.
>
> The ministry is of the opinion that section 65(5.2) is applicable in the circumstances of your request. As you may be aware, a criminal prosecution involving the named individual is currently in progress in Quebec. As a result, the records you have requested fall outside the scope of the Act.

[5] The appellant filed an appeal with this office, asserting that section 65(5.2) is not applicable. On October 2, 2013, I issued Order PO-3260 in which I did not uphold the ministry's decision respecting the application of section 65(5.2) to the records. In Order PO-3260, I ordered the ministry to provide the appellant with an access decision, which was ultimately issued on December 18, 2013. In its decision, the ministry claimed the application of the discretionary exemptions in sections 14(2)(d) (correctional record) and 19 (solicitor-client privilege), as well as the mandatory personal privacy exemption in section 21(1) of the *Act*.

[6] The appellant appealed that decision to this office, and raised the possible application of the "public interest override" provision in section 23 of the *Act*. However, I note that section 23 cannot apply to information that is exempt under either section 14 or 19. As a result, I am unable to consider whether this section has any application

to the records which may be exempt under either of these sections. Mediation was not successful in resolving the appeal and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[7] I sought and received representations from the ministry, initially. In its representations, the ministry withdrew its reliance on the discretionary solicitor-client privilege exemption in section 19 and I will not, accordingly be addressing it further. The representations of the ministry were shared, in their entirety, with the appellant, who also provided me with submissions.

[8] In this order, I uphold the ministry's decision to deny access to the personal information contained in the records under the mandatory personal privacy exemption in section 21(1). I also find that the public interest override provision in section 23 has no application to the records.

RECORDS:

[9] The records at issue consist of 86 pages of probation and parole records that are contained in the affected person's probation file.

ISSUES:

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

B: Does the mandatory exemption at section 21(1) apply to the information at issue?

C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption?

DISCUSSION:

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

[10] 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;

[11] 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].

[12] Sections 2(3) and (4) also relate to the definition of personal information. 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.

[13] 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[1]. 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[2].

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed[3].

[15] Based on my review of the records, I find that they all contain information that qualifies as the personal information of the affected person, the individual who is the subject of the supervision by the ministry. The records contain information that satisfies the requirements of paragraphs (a), (b), (d), (f), (g) and (h) of the definition of "personal information" in section 2(1).

[16] In addition, the records also contain the personal information of other identifiable individuals who were associated with the affected person at the time of his arrest and supervision. This information qualifies as "personal information" relating to these individuals under paragraphs (a), (b), (d) and (h) of the definition of that term in section 2(1).

[17] Finally, the records also contain information about ministry staff, such as caseworkers and probation officers responsible for supervising the affected person during the time of his conditional sentence and probation. The records refer to these individuals by name and give their employment locations and telephone numbers. I find that this information does not relate to these individuals in their personal capacities and its disclosure would not reveal anything of a personal nature about them. Accordingly, I find that the records do not contain the "personal information" of any ministry staff within the meaning of the definition of that term in section 2(1) of the *Act*.

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

Issue B: Does the mandatory exemption at section 21(1) apply to the information at issue?

General principles

[18] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[19] In this appeal, the appellant argues that the exception in section 21(1)(d) applies because the records fall under "an Act of Ontario or Canada that expressly authorizes the disclosure." The appellant submits that the legislation which applies is the *Archives and Recordkeeping Act, 2006*.[4] Section 21(1)(d) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > under an Act of Ontario or Canada that expressly authorizes the disclosure;

[20] In support of this position, the appellant submits that:

> Under the *Archives and Recordkeeping Act*, selected case files from the Ontario Board of Parole and the Probation and Parole Field Offices of the Ministry are kept in the Archives of Ontario and available to the public under an access request. An online search of the archives shows that the probation and parole files include 'memoranda, correspondence and reports, judicial orders, probation and parole assessments and psychologists' examinations. The files document the offender's previous criminal behavior, education, employment and family history and future plans, as well as prospects for rehabilitation and integration in the community.' For Toronto and Belleville probation and parole offices, the most recent files in the archives are from 1992. However, there is no timetable for when the probation and parole files can be forwarded to the archives. According to an information bulletin from the archives, 'records should come to the archives only after the ministry has no more operational need for the information.' The Ministry's supervision of [the affected person] ended in 2006, nearly one decade ago. The records being sought in this appeal are no different than the probation records kept in the Archives of Ontario. It is clear from the probation records sent

[4] R.S.O. 2006 c.34.

> to the archives that there is value in making probation and parole records public – a value that has been established by the Ontario government.

[21] I note that the archives probation and parole record which the appellant refers to cover the period from 1956 to 1992. The Archives of Ontario website also indicates that "only 20% of the case files for inmates whose surname began with the letter 'C' were selected for retention." The website goes on to state that "Access to these records is governed by the *Freedom of Information and Protection of Privacy Act*.

[22] It must be noted that any access which might be granted under the *Act* remains subject to the *Act.* Unfettered access to all of the probation and parole records maintained by the archives is not granted without a consideration of the possible application of the privacy protection provisions in section 21(1). As a result, it cannot be said that the *Archives and Recordkeeping Act, 2006* "expressly authorizes the disclosure" of personal information because any personal information sought remains subject to the privacy provisions in the *Act.* Accordingly, I find that the exception in section 21(1)(d) has no application to the personal information contained in the records at issue in this appeal.

[23] In the circumstances, it appears that the only other exception that could apply is section 21(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy. The factors and presumptions in sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

[24] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[5]

[25] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).[6] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[7] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.[8]

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[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[6] *John Doe v. Ontario (Information and Privacy Commissioner)*, cited above.
[7] Order P-239.
[8] Orders PO-2267 and PO-2733.

[26] The ministry relies on the application of the presumptions in sections 21(3)(a) (medical history), (b) (investigation into a violation of law), (d) (employment history), (f) (financial history) and the consideration listed in sections 21(2)(f) (highly sensitive information) and an unlisted factor which it describes as the application of the *Victims Bill of Rights* to some of the information contained in the records. These sections state:

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
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> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
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> (b) 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;
>
> (d) relates to employment or educational history;
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
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> . . .
>
> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> (f) the personal information is highly sensitive;

Section 21(3)(a): medical history

[27] The ministry argues that records 2, 4, 6, 12-29, 32-34, 43-46, 72 and 79 contain information that qualifies as the medical history of the affected person. I have reviewed each of these records and agree that the information they contain relates directly to the affected person's medical and psychiatric history, diagnosis, condition, treatment or evaluation. Accordingly, I find that the presumption in section 21(3)(a) applies to the personal information in records 2, 4, 6, 12-29, 32-34, 43-46, 72 and 79 and its disclosure is presumed to constitute an unjustified invasion of personal privacy.

Section 21(3)(b): investigation into violation of law

[28] The ministry argues that records 68 to 86 fall within the ambit of the presumption in section 21(3)(b) because they were compiled and identifiable as part of an investigation into a possible violation of law. These records originated with the Toronto Police Service and are entitled "Record of Arrest" and "Supplementary Record of Arrest". They describe in detail the nature of the offences with which the affected person was charged and the circumstances surrounding their commission. Personal information of both the affected person and another identifiable individual are included in these documents. I find that records 68 to 86 contain information that meets the requirements of the presumption in section 21(3)(b) and that the disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy.

Section 21(3)(d): employment or educational history

[29] Information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption.[9] In addition, information contained in resumes[10] and work histories[11] falls within the scope of section 21(3)(d).

[30] The ministry argues that portions of records 16, 20, 21, 26 and 57, as well as all of record 52, contain information that falls under the presumption in section 21(3)(d) as it relates to the affected person's employment history. Based on my review of this personal information, I agree that it qualifies as this individual's employment history and that its disclosure is presumed to constitute an unjustified invasion of his personal privacy.

Section 21(3)(f): finances

[31] To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.[12] Records 13, 14, 15, 17, 18, 27, 52 and 59 contain information pertaining to the affected person's financial activities, his creditworthiness and liabilities. As a result, the personal information contained in records 13, 14, 15, 17, 18, 27, 52 and 59 meets the requirements of the presumption in

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[9] Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.
[10] Orders M-7, M-319 and M-1084.
[11] Orders M-1084 and MO-1257.
[12] Order PO-2011.

section 21(3)(f) and its disclosure is presumed to constitute an unjustified invasion of the affected person's personal privacy under section 21(1).

Section 21(2)(f): highly sensitive information

[32] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[13] I have reviewed the records at issue and I find that much of the personal information relating to the victim of the affected person's offences is highly sensitive within the meaning of section 21(2)(f), owing to the very disturbing nature of the information. The narratives contained in the Supplementary Record of Arrest provided by the Toronto Police to the ministry describe in detail the nature of the offences, which include information about the victim whose disclosure could reasonably be expected to result in considerable personal distress to this individual, if it were to be disclosed. Accordingly, I find that the personal information relating to this individual which is contained in records 73 to 86 is properly characterized as "highly sensitive" within the meaning of section 21(2)(f). Because of the nature of this information, I find that this factor ought to be given significant weight when balancing the appellant's access rights against the victim's privacy interests.

[33] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[14]

Unlisted consideration: application of the Victims Bill of Rights, 1995

[34] The ministry relies on section 2 of the *Victims Bill of Rights, 1995* which prescribes that victims of crime "should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials." The ministry argues that as a "justice system official", the CSD is bound by this provision and any consideration under section 21(1) of the *Act* must consider whether disclosure would violate the *Victims Bill of Rights, 1995* and "the likelihood that it would increase the suffering of a victim."

[35] In the circumstances of this appeal, I find that this factor, which favours the protection of the privacy of victims of crime, has some relevance in balancing the appellant's right of access against the victim's privacy interests.

[36] The appellant has not raised the possible application of any of the factors weighing in favour of disclosure in section 21(2) and I find that none are applicable. The remainder of the appellant's submissions are focussed on the possible application of the public interest override provision in section 23.

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[13] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[14] Order P-99.

[37] Balancing the appellant's right of access against the presumptions in sections 21(3)(a), (b), (d) and (f) and the considerations favouring privacy protection in section 21(2)(f), as well as the unlisted factor relating to the rights of victims, I find that there are no factors weighing in favour of the disclosure of the personal information contained in the records. As a result, I conclude that their disclosure would give rise to an unjustified invasion of the personal privacy of the individuals whose personal information is contained in the records. The personal information is, therefore, exempt under section 21(1).

[38] I further find that certain information in the records does not consist, strictly speaking, of "personal information". The disclosure of this information, consisting of various forms prescribed by the ministry upon which personal information is recorded, would result in the release of "unconnected snippets of information" which are meaningless without the context given by the addition of the completed personal information. As a result, I will not order that the ministry disclose these documents in a severed form.

[39] The appellant relies on two decisions of this office in which probation records were ordered disclosed to a requester, Orders 98 and PO-2395. In both of these cases, however, the personal information requested in the records related only to the requester and the analysis took place under sections 49(a) and (b) in Part III of the *Act* which govern requests for one's own personal information, rather than a request for another individual's personal information under Part II of the *Act*, as is the case in the present appeal.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption?

General principles

[40] 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.

[41] 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.

[42] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of

reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[15]

Compelling public interest

[43] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[16] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, 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.[17]

[44] A public interest does not exist where the interests being advanced are essentially private in nature.[18] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[19] A public interest is not automatically established where the requester is a member of the media.[20]

[45] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[21]

[46] Any public interest in *non*-disclosure that may exist also must be considered.[22] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[23]

[47] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation[24]

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[15] Order P-244.
[16] Orders P-984 and PO-2607.
[17] Orders P-984 and PO-2556.
[18] Orders P-12, P-347 and P-1439.
[19] Order MO-1564.
[20] Orders M-773 and M-1074.
[21] Order P-984.
[22] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[23] Orders PO-2072-F, PO-2098-R and PO-3197.
[24] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

- the integrity of the criminal justice system has been called into question[25]

- public safety issues relating to the operation of nuclear facilities have been raised[26]

- disclosure would shed light on the safe operation of petrochemical facilities[27] or the province's ability to prepare for a nuclear emergency[28]

- the records contain information about contributions to municipal election campaigns[29]

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

- another public process or forum has been established to address public interest considerations[30]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations[31]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding[32]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter[33]

- the records do not respond to the applicable public interest raised by appellant[34]

[49] The appellant argues that the affected person is accused of a particularly "heinous crime" which has achieved international notoriety. The affected person is

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[25] Order PO-1779.
[26] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[27] Order P-1175.
[28] Order P-901.
[29] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[30] Orders P-123/124, P-391 and M-539.
[31] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[32] Orders M-249 and M-317.
[33] Order P-613.
[34] Orders MO-1994 and PO-2607.

currently on trial in another Canadian jurisdiction on serious charges related to that crime. The appellant argues that much media attention has already focussed on the affected person's "medical and financial history and his previous run-in with the law." She then goes on to submit that there exists a compelling public interest in the disclosure of the probation and parole records relating to the affected person because:

> What is unknown is whether Ontario's correctional system and the Toronto Police Service fulfilled their public obligation to supervise [the affected person] and influence behavioural change. Did they do all they could and should to reintegrate [the affected person] into the community? Given what [the affected person] stands accused of, there is without a doubt a compelling public interest in releasing the records and determining whether the ministry fulfilled its public obligation to Ontarians and to [the affected person]. As Justice O'Donnell noted [in *The Queen v. Canadian Broadcasting Corporation, Canadian Press Enterprises Inc., the Globe and Mail and Shaw Television Limited Partnership*[35]], 'transparency is the lifeblood of democratic states.' Indeed, the federal parole system is not afraid of public scrutiny. Media representatives can apply to attend parole board hearings and receive copies of the board's decisions, which include personal details and medical histories.

[50] The ministry submits that it is not been made aware of any compelling public interest in the disclosure of these correctional records, and in particular none that would override protecting highly sensitive personal information, including personal information belonging to a victim.

Is there a compelling public interest in the disclosure of these records?

[51] As noted above, the first question to be asked is whether there is a relationship between the information contained in the records and the *Act*'s central purpose of shedding light on the operations of government. In this case, the records document the ministry's supervision of the affected person following the disposition of his criminal charges in 2005 and 2006. Some of the records, particularly those which describe the affected person's offences involving the victim of the crime, are often graphic and intimate in nature, and relate directly to details of the personal lives of these individuals. I find that the disclosure of the information in the records would shed some measure of light on the manner in which the affected person was supervised during his parole and probation by the ministry in 2005 and 2006.

[52] The affected person has achieved international notoriety for a crime allegedly committed in 2012. There has been extensive media coverage of the circumstances surrounding the police investigation and the affected person's arrest. His trial is

[35] April 2, 2013, Toronto Doc. 05/40045174 (Ontario Court of Justice).

currently underway and the media interest in it remains undiminished. Clearly, there exists a compelling public interest in information pertaining to the events which gave rise to the current charges against the affected person.

[53] However, the records at issue in this appeal relate to charges that were brought in 2004 and disposed of in 2005. The circumstances surrounding the laying of the charges that resulted in the affected person receiving a suspended sentence and probation that are reflected in the current records have also been well-publicized. The public records relating to the disposition of those earlier charges have received a great deal of public scrutiny in the time since his re-arrest in 2012. The affected person's probation and parole records which are the subject of this request and appeal have not, however, received the same level of attention and they have remained undisclosed. For this reason, I find that the public interest in the disclosure of the records before me is less than compelling. Even if I were to find that the public interest in the disclosure of the personal information in the records was a compelling one, I find that the appellant has not provided me with evidence which would substantiate its argument that the disclosure of the records would enable the public to evaluate the ministry's supervision of the affected person and determine whether it dealt with the affected person appropriately during his probation. The appellant's representations point out that a great deal of information about the affected person's activities around the time of his 2004 arrest has already been made public. In addition, the factual circumstances surrounding the 2004 charges and the disposition by the court, as well as the information made available to the sentencing judge, have been publicly disclosed. Clearly, a great deal of information about the affected person's actions and state of mind have been disclosed publicly and have received widespread circulation.

[54] While I agree with the appellant that the subject matter of the records would generate some degree of public interest, I cannot agree that there has been any significant public discussion or concerns raised about the manner in which the ministry supervised the affected person during his probation and supervision periods in 2005 and 2006. Accordingly, I find that the disclosure of the information in the records at issue in this appeal would not serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies; nor would disclosure add 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. While I acknowledge that the disclosure of the information in the records would shed some measure of light on the manner in which the affected person was supervised during his parole and probation by the ministry in 2005 and 2006, I conclude that there does not exist the requisite *compelling* public interest in the disclosure of *these records*.

Does the public interest in disclosure outweigh the purpose of the section 21(1) exemption?

[55] Finally, even if I were to find that the public interest in disclosure of the information was sufficiently compelling, I conclude that this interest does not clearly outweigh the purpose of the personal privacy exemption in section 21(1). I have found in my discussion of section 21(1) that the personal information in the records, which relates to the affected person and to other identifiable individuals, is highly sensitive and its disclosure is presumed to constitute an unjustified invasion of personal privacy under sections 21(3)(a), (b), (d) and (f). Privacy protection is one of the enumerated purposes set out in section 1(b) of the *Act*. I find that the appellant has not provided sufficiently convincing evidence that the public interest, compelling or otherwise, that exists in the disclosure of the information relating to the manner in which the affected person was supervised while on probation in 2005 and 2006 sufficiently outweighs the privacy protection purpose extant in the section 21(1) exemption.

[56] Therefore, I find that the public interest override provision in section 23 has no application in the present appeal.

[57] Because of the manner in which I have addressed the application of section 21(1) to the records, it is not necessary for me to also consider whether the records are also exempt under section 14(2)(d) of the *Act*.

ORDER:

I uphold the ministry's decision to deny access to the records and dismiss the appeal.

Original signed by: October 7, 2014
Donald Hale
Adjudicator