Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3225

Appeal PA11-541

Ministry of Community Safety and Correctional Services

June 26, 2013

Summary: The appellant sought access to information relating to the apprehension of his mother under the *Mental Health Act*. The appeal form was accompanied by a power of attorney for personal care given to the appellant by his mother. The ministry identified responsive records and withheld some information as exempt under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*). The ministry also took the position that the appellant could not rely on the power of attorney for personal care to obtain access to his mother's personal information under section 66(b) of the *FIPPA*. A number of issues were raised in the ministry's decision and appeal, but were resolved as the appeal proceeded through the mediation and adjudication process. In this order the adjudicator finds that the records contain the personal information of a health care provider, the appellant and his mother and that appellant can rely on section 66(b). He also finds that only the personal information of the health care provider qualifies for exemption under *FIPPA*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 14(1)(d), 14(1)(e), 21(2)(f), 21(3)(a), 21(3)(b), 49(a), 49(b) and 66(b).

Orders Considered: PO-1939, PO-2040, PO-2642

Cases Considered: *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.); *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

OVERVIEW:

[1] The access request at issue in this appeal was filed with the Ministry of Community Safety and Correctional Services (the ministry) after the requester's mother was apprehended pursuant to a Form 1 under the *Mental Health Act*[1] and transported to hospital for a medical assessment. The request is for access under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) to "any documentation - police report, etc." related to the apprehension. The request was accompanied by a copy of a power of attorney for personal care given to the requester by his mother.

[2] The ministry identified records responsive to the request and granted partial access to them. The ministry relied on sections 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(l) (facilitate commission of an unlawful act) and 14(2)(a) (law enforcement report), as well as section 49(b) (personal privacy) to deny access to the portion of the records it withheld. The ministry also indicated that other portions of the records were not responsive to the request.

[3] The requester (now the appellant) appealed the decision.

[4] During the course of mediation the ministry issued a supplementary decision letter indicating that it was also seeking to rely on sections 14(1)(d) (confidential source of information) and 14(1)(e) (endanger life or safety), in conjunction with section 49(a), to deny access to the withheld information.

[5] Mediation did not resolve the matter and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the ministry. The ministry provided responding representations. In its representations, the ministry advised that it was no longer relying on section 14(2)(a) to deny access to the withheld information. Accordingly, the possible application of that section of the *Act* is no longer at issue in the appeal. The ministry asked that portions of its representations be withheld due to confidentiality concerns. The ministry's confidentiality concerns were addressed in a sharing decision. I then sent a Notice of Inquiry to the appellant along with the ministry's non-confidential representations. The appellant provided responding representations. In his representations, the appellant indicated that he was not interested in seeking access to any police codes that may be contained in the records. Accordingly, that information, and the possible application of section 14(1)(l), are also no longer at issue in the appeal. As a result, that information should be severed from any pages of records that I may ultimately order disclosed.

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[1] R.S.O. 1990, c. M.7.

[7] In the course of adjudication, I determined that a Notice of Inquiry should also be sent to a health care provider whose interests could be affected by disclosure of the requested information (the affected party). The affected party provided representations in response to the Notice.

RECORDS:

[8] At issue in this appeal are the withheld portions of an Occurrence Summary, General Occurrence Report and a Police Officer's notes.

ISSUES:

[9] I have reviewed the appeal file and the following issues remain to be determined in this appeal:

A. Can the appellant exercise a right of access on behalf of his mother on the basis of a power of attorney for personal care?

B. Do the records contain personal information?

C. Does the discretionary exemption at section 49(a), in conjunction with sections 14(1)(d) and 14(1)(e) of the *Act*, apply to the records?

D. Does the discretionary exemption at section 49(b) apply to the personal information in the records?

E. Did the ministry appropriately exercise its discretion?

DISCUSSION:

A. Can the appellant exercise a right of access on behalf of his mother on the basis of a power of attorney for personal care?

[10] Section 66(b) of the *Act* states:

> Any right or power conferred on an individual by this *Act* may be exercised,
>
> > by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property.

[11] As set out above, the request was accompanied by a copy of a power of attorney for personal care given to the requester by his mother. The appellant submits that the information he requests should be provided to him as he is "her power of attorney and living with her and as [he is] her caregiver and family member".

[12] The ministry provided confidential and non-confidential submissions in support of its position that the appellant cannot rely on section 66(b) in the circumstances of this appeal.

[13] In its non-confidential submissions, the ministry submits that:

- the appellant does not appear to require the records for the purpose of discharging his duties as attorney for personal care. The records relate to a police incident, and appear to have nothing to do with the appellant making decisions about personal care being provided to the patient

- in denying access to certain information, the ministry is treating the attorney for personal care much the same at it would have treated his mother

[14] The ministry also provides confidential submissions in support of its position on this issue.

[15] Section 66(b) provides that "any right or power conferred on an individual by this *Act*" may be exercised by the individual's attorney under a power of attorney for personal care. The requester provided a copy of a power of attorney for personal care given to him by his mother. While the circumstances surrounding the apprehension are concerning, I am satisfied that the requester is requesting the information to determine why it occurred. As a result, I find that it is related to the objects of the power of attorney for personal care.

[16] Accordingly, I find that the requester is entitled to rely on section 66(b) of the *Act* and exercise his mother's right of access to the records at issue in this appeal.

[17] Because of the application of section 66(b), the appellant stands in the shoes of his mother and is entitled to receive any information to which she would have a right of access under the *Act*. I am also treating the request, where applicable, as encompassing a request for access to any of the appellant's own personal information that may also be contained in the records at issue.

B. Do the records contain personal information?

[18] The discretionary personal privacy exemptions in sections 49(a) and 49(b) of *FIPPA* apply to "personal information". Consequently, it is necessary to determine

whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> (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,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where 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
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> (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;

[19] Sections 2(3) and 2(4) of the *Act* also relate to the definition of personal information. These sections state:

> 2(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.
>
> 2(4) For greater certainty, subsection 2(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.

[20] In addition, previous IPC orders have found that 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.[2]

[21] However, previous orders have also found that 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.[3]

[22] The ministry submits that the records contain the appellant's mother's personal information as well as the personal information of the affected party.

[23] In her representations, the affected party consents to her identity being disclosed, but does not consent to the release of other personal information relating to her, which she asserts includes information relating to any of her observations, views or opinions that may appear in the records.

Analysis and finding

[24] In my view, at all material times the affected party was acting as a health care provider in a professional, not personal capacity. Although it is possible for information provided by individuals in the role of the affected party to cross the threshold from professional to personal information, this, in my view, is not one of those occasions.

[25] Furthermore, paragraphs (e) and (g) of the definition of personal information provide that the personal opinions or views of an individual are that individual's personal information, except where they relate to another individual and that the view and opinions of another individual about an individual are the second individual's

[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.

personal information. In light of my conclusion above, the net effect of these paragraphs, in the circumstances of this appeal, is that any view or opinions held by the affected party about the appellant or his mother are the personal information of the appellant or his mother, as the case may be, and not the affected party.

[26] Therefore, with certain limited exceptions, the information provided by the affected party is not her personal information. The information that I find to be her personal information is information related to her home address and home phone number, along with other similar information that I have highlighted on a copy of the records provided to the ministry along with a copy of this order. In my view, that highlighted information qualifies as the affected party's personal information, only.

[27] In conclusion, I find that the records at issue contain the personal information of the affected party but only to the extent that I have set out above. I also find that the records contain the personal information of the appellant and his mother.

B. Does the discretionary exemption at section 49(a), in conjunction with sections 14(1)(d) and 14(1)(e) of the *Act*, apply to the records?

[28] Section 47(1) of *FIPPA* gives individuals a general right of access to their own personal information held by an institution. Sections 49(a) and (b) of *FIPPA* provide a number of exemptions to this general right of access. Section 49(a) states:

> 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 [emphasis added];

[29] Sections 14(1)(d) and (e) state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
> >
> > (e) endanger the life or physical safety of a law enforcement officer or any other person.

[30] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[4]

[31] Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[5]

[32] In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.[6]

[33] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.[7]

Section 14(1)(d): confidential source

[34] In order to establish that the exemption in section 14(1)(d) applies, the ministry must establish a reasonable expectation that the identity of the source, or the information given by the source, would remain confidential in the circumstances.[8] Further, the institution must provide evidence of the circumstances in which the informant provided the information to the institution in order to establish confidentiality.[9]

[35] In its non-confidential submissions, the ministry sets out the following grounds in support of their position that section 14(1)(d) applies to certain information in the records:

- the records are extremely sensitive
- there is an implicit expectation that the records would be kept confidential given that they were collected for law enforcement purposes

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[4] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).
[5] Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[6] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).
[7] Order PO-2040; *Ontario (Attorney General) v. Fineberg*, above.
[8] Order MO-1416.
[9] See Order MO-1383.

[36] The ministry also provides confidential submissions on the application of section 14(1)(d).

[37] The affected party does not expressly address the application of section 14(1)(d), although she does state that she did not disclose her personal information with the expectation that it would be released publicly. She does, however, state that she consents to releasing her name to the appellant.

[38] The purpose of the section 14(1)(d) exemption is to protect confidential informants.[10] I accept that in many law enforcement situations, such as when an individual directly makes an anonymous complaint regarding a by-law infringement, section 14(1)(d) can apply.[11] However, the affected party in the present appeal consents to the disclosure of her name. In addition, both she and the appellant provided documentation relating to a formal complaint process the appellant initiated with a health regulatory body, which demonstrates the appellant's awareness of the affected party's involvement with matters pertaining to him and his mother in relation to the subject matter of the request.

[39] Accordingly, I find that the ministry has not satisfied its onus under section 14(1)(d) with respect to the remaining withheld portions of the records. As a result, I find that the discretionary exemption at section 49(a), in conjunction with 14(1)(d), does not apply.

Section 14(1)(e) endanger life or phsyical safety

[40] The ministry submits that this section applies to all of the records at issue in the appeal. The ministry submits that in Order PO-2642, Adjudicator Catherine Corban found that intimidation was a basis for the application of section 14(1)(e). In support of this position the ministry relies on the following excerpt from the discussion of the potential application of section 14(1)(e), in that order:

> … In my view, there is sufficient evidence before me to conclude that the appellant's motives for seeking access to this information are not benevolent and that he has demonstrated a history of intimidating behaviour. I accept that the University, as well as the affected parties, are legitimately concerned that disclosure of the information in the records remaining at issue could reasonably be expected to worsen the situation and I agree.

[10] See Order MO-2424.
[11] See, for example Orders MO-1805 and MO-2043.

[41] The ministry also provides confidential submissions on the application of section 14(1)(e).

[42] The affected party expresses concerns about her safety should personal information, other than her name, be disclosed. She also does not consent to the disclosure of any of her observations that may be contained in the records. That said, as noted above, both she and the appellant provided documentation relating to a formal complaint process the appellant initiated with a health regulatory body. In my view, this indicates the appellant's awareness of the affected party's involvement in the matters which are the subject matter of the request.

Analysis and Finding

[43] In order for section 14(1)(e) to apply, the institution must provide evidence to establish a reasonable basis for believing that endangerment to the life or physical safety of a law enforcement officer or any other person will result from *disclosure of the record* [emphasis added].

[44] In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable[12] A person's subjective fear, while relevant, may not be sufficient to establish the application of the section 14(1)(e) exemption.[13]

[45] As set out above, to qualify for exemption under this section the ministry must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. Past orders of this office relating to this exemption have emphasized the need to consider both the type of information at issue and the behaviour of the individual who is requesting the information. The lead authority on this exemption is *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (*Ontario (Ministry of Labour)*.[14]

[46] In *Ontario (Ministry of Labour),* the Court of Appeal refers to consideration of the quality of the information contained in the record and, more specifically, any "potentially inflammatory" character.

[47] In considering the perceived risk of threat from the appellant under this exemption, the Court of Appeal in *Ontario (Ministry of Labour)* noted that, in that case,

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[12] *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).
[13] See, in this regard Order PO-2003.
[14] Cited above.

there was a strong evidentiary foundation for assertions of threatening behaviour by the appellant in that case. In that case, the Court noted that the institution had:

> … provided a sworn affidavit indicating that the Requester had threatened persons in the OWA [Office of the Worker Advisor], including the deponent, and that the Requester had been legally restrained from entering certain premises of the WCB [Worker's Compensation Board]. The deponent was also familiar with the medical portion of the Requester's WCB file, which included reports expressing concerns that the Requester would act out his/her threats of violence against WCB staff. The evidence provided by the [Ministry of Labour] was uncontroverted.

[48] It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with "difficult" individuals. In a postscript to Order PO-1939, Adjudicator Laurel Cropley stated the following with regard to sections 14(1)(e) and 20 of the *Act*:

> In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20 or 14(1)(e) claim.

[49] Instead, she found that there must be "… evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed."

[50] I agree with Adjudicator Cropley's comments.

[51] As appears from the full paragraph from Adjudicator Corban's Order PO-2642, there was sufficient evidence before her to conclude that section 14(1)(e) applied in the circumstances before her:

> The evidence before me indicates that the appellant has not been physically violent towards the affected parties, or any other individuals. However, based on the University's representations (including the confidential portions that I have withheld from the appellant), as well as the confidential submissions of the affected parties, I find that the University has provided sufficient evidence to establish a reasonable basis that endangerment to the life or physical safety of the affected parties and other individuals referred to in the records could reasonably be expected to occur were the information at issue disclosed. I am satisfied that the concerns expressed by the University and the affected parties, with respect to the physical safety of the individuals referred to in the

> records, are neither frivolous, nor exaggerated. In my view, there is sufficient evidence before me to conclude that the appellant's motives for seeking access to this information are not benevolent and that he has demonstrated a history of intimidating behaviour. I accept that the University, as well as the affected parties, are legitimately concerned that disclosure of the information in the records remaining at issue could reasonably be expected to worsen the situation and I agree.

[52] In the circumstances of the present appeal, however, I am not satisfied that the appellant's behaviour meets the required threshold for exemption under section 49(a), in conjunction with 14(1)(e).

[53] Based on the confidential and non-confidential representations submitted by the ministry and the affected party, I accept that they have concerns about the appellant's behaviour and the manner in which he has conducted himself. I also note that the appellant uses injudicious language at times. However, through the formal complaint process before the health regulatory board the appellant is aware of the affected party's involvement with matters pertaining to him and his mother in relation to the subject matter of the request. In my view, even with the evidentiary standard established in *Ontario (Ministry of Labour)*, and the great difficulty in predicting future events in the law enforcement context (as established in *Ontario (Attorney General) v. Fineberg*[15] and followed in PO-2040), I am not satisfied that sufficient evidence has been provided to establish that *disclosure of the information in the records* could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

[54] Accordingly, I find that the ministry has not satisfied its onus under section 14(1)(e) with respect to the remaining withheld portions of the records. As a result, I find that the discretionary exemption at section 49(a) in conjunction with 14(1)(e) does not apply.

C. Does the discretionary exemption at section 49(b) apply to the personal information in the records?

[55] Section 49(b) states:

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

[15] Cited above.

[56] Because of the wording of section 49(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in the records which also contain the appellant's and/or his mother's personal information.[16]

[57] In other words, where a record contains personal information of the appellant and/or his mother 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 appellant.

[58] 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 appellant. This involves a weighing of the appellant's and/or his mother's right of access to their own personal information against the other individual's right to protection of their privacy.

[59] I have found above that certain withheld information pertains only to the appellant and/or his mother and qualifies as their personal information only. As a result, disclosing this information to the appellant would not constitute an "unjustified invasion" of another individual's personal privacy. Accordingly, I will order that this information be disclosed to the appellant.

[60] I will now address the balance of the withheld information sought by the appellant, being what I found above to be the affected party's personal information, only.

[61] In determining whether the exemption in section 49(b) applies,[17] 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 another individual'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).

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[16] Order M-352.

[17] In determining whether information was exempt under section 49(b), *in Grant v. Cropley* [2001] O.J. No. 749, the Divisional Court said the IPC could:

> . . . consider the criteria mentioned in s.21(3)(b) in determining, under s.49(b), whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

[62] The ministry submits that section 49(b) applies to the withheld affected party's personal information. They provide representations on the presumptions in sections 21(3)(a) and 21(3)(b) and the factor at section 21(2)(f) in support of their decision. The affected party refers to the potential application of section 21(3)(b).

[63] 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 the relevant circumstances, including whether,
>
> > the personal information is highly sensitive.

[64] Sections 21(3)(a) and (b) read:

> 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;
> >
> > (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.

[65] The personal information of the affected party is not the type of information that falls within the scope of the section 21(3)(a) presumption. Accordingly, it is not necessary to consider this presumption any further.

[66] The ministry submits that the records are the type of records that created in the course of a law enforcement investigation. The ministry further submits that the records contain highly sensitive information that falls within the scope of section 21(2)(f).

[67] The affected party also submits that the personal information in the records was compiled as part of an investigation into a possible violation of law. As set out above, the affected party expresses concerns about her safety should personal information, other than her name, be disclosed.

[68] The appellant does not specifically address the possible application of sections 21(3)(b) or 21(2)(f). Nor does the appellant specifically discuss any factors or circumstances in section 21(2) that may favour disclosure. That said, the appellant submitted that he is requesting the information to help him understand what happened that day and why his mother was apprehended.

[69] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[18] In my view, the affected party's personal information, that I have highlighted in the records provided to the ministry along with a copy of this order, falls within the scope of section 21(2)(f). The appellant did not raise any factors or circumstances in section 21(2) that favour disclosure, and in my view none would apply. Therefore, I find that the disclosure of the affected party's personal information in the records would constitute an unjustified invasion of her personal privacy. In light of this conclusion, it is not necessary to consider whether the presumption at section 21(3)(b) might also apply. Accordingly, I find that the personal information that relates solely to the affected party is exempt from disclosure under section 49(b) of the *Act*.

Did the ministry appropriately exercise its discretion?

[70] The section 49(b) exemption is discretionary and permits the ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the ministry's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.[19]

[71] In addition, the Commissioner may find that the ministry erred in exercising its discretion where, for example,

- they do so in bad faith or for an improper purpose
- they take into account irrelevant considerations
- they fail to take into account relevant considerations.

[72] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[20] This office may not, however, substitute its own discretion for that of the institution.[21]

Analysis and Finding

[73] I have reviewed the circumstances surrounding this appeal and the ministry's representations on the manner in which it exercised its discretion. I am satisfied that the ministry has not erred in the exercise of its discretion not to disclose to the appellant the remaining withheld personal information of the affected party contained in the records that I have found to qualify for exemption under section 49(b) of the *Act*.

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[18] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[19] Orders PO-2129-F and MO-1629.
[20] Order MO-1573.
[21] Section 54(2).

ORDER:

1. I order the ministry to disclose to the appellant the remaining withheld portions of the responsive records (with the exception of the police codes and non-responsive information) which are not highlighted in green on a copy of the pages of the records that I have enclosed with this order by sending it to him by **August 1, 2013** but not before **July 26, 2013**. For greater certainty, the ministry is not to disclose the highlighted portions of the records to the appellant.

2. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the pages of the records as disclosed to the appellant.

Original Signed by: June 26, 2013
Steven Faughnan
Adjudicator