Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3239

Appeal PA11-344

Human Rights Tribunal of Ontario

August 14, 2013

Summary: The appellant made a request to the Human Rights Tribunal of Ontario for a copy of two complaints filed by an individual. The tribunal withheld the records at issue on the basis of the mandatory personal privacy exemption in section 21(1) of the *Act*. The tribunal also advised the appellant that section 45(8) of the *Child and Family Services Act* applied, which prohibits disclosure of the information. The tribunal's decision on the application of the section 21(1) exemption is upheld, in part, and section 45(8) of the *Child and Family Services Act* is found to apply to prohibit disclosure of some of the information at issue.

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"), 21(1) and 67(2)2.

Child and Family Services Act, R.S.O. 1990, c. C.11, as amended, ss. 45(2) and (8).

Orders Considered: PO-3236.

OVERVIEW:

[1] This order disposes of the issues raised as a result of a decision made by the Human Rights Tribunal of Ontario (the tribunal) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) in response to a request for access to a copy of two complaints filed by a named individual (the applicant), alleging discrimination under the Human Rights Code (the *Code*) against two agencies.

[2] The tribunal notified of a number of affected parties, most of whom did not provide consent to the disclosure of the records. However, the applicant provided consent to disclose the records. The tribunal subsequently issued a decision letter to the requester, denying access to the records in their entirety on the basis of the mandatory personal privacy exemption in section 21(1). The tribunal also advised the requester that section 45(8) of the *Child and Family Services Act* (*CFSA*) may apply to some or all of the content of the requested records, with the possible effect of prohibiting their disclosure. In addition, the tribunal advised the requester that the records were reviewed for severance and it had determined that the personal information in the records was sufficiently extensive and integrated such that severing was not reasonable or practical.

[3] The requester (now the appellant) appealed the tribunal's decision to this office.

[4] During the mediation of the appeal, the appellant indicated that he did not believe that section 45(8) of the *CFSA* applies and instead argued that the records could be severed such that section 45(8) would not apply.

[5] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the tribunal, two agencies whose interests may be affected by the outcome of this appeal because they were the subject matter of the complaints to the tribunal (the affected parties), the applicant, and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] For the reasons that follow, I uphold the tribunal's decision, in part and order it to disclose portions of the records to the appellant.

RECORDS:

[7] The records consist of two application files with attachments.

ISSUES:

A. Does section 67(2)2 of the *Act* and section 45(8) of the *Child and Family Services Act* apply to the records?

B. Do the records contain "personal information" within the meaning of section 2(1) of the *Act*?

C. Would disclosure of the "personal information" be an unjustified invasion of an individual's personal privacy under section 21(1) of the *Act*?

D. Can the records be severed pursuant to section 10(2) of the *Act*?

DISCUSSION:

A. Does section 67(2)2 of the *Act* and section 45(8) of the *Child and Family Services Act* apply to the records?

[8] In its representations, the tribunal reverses its original position and submits that disclosure of the records is <u>not</u> prohibited by the confidentiality provision in section 45(8) of the *CFSA* and section 67(2)2 of the *Act*. Conversely, the two affected parties, who are the agencies that are the subject matter of the complaints, argue that the above sections apply to the records.

[9] Section 67(2)2 of the *Act* states:

> The following confidentiality provisions prevail over this Act:
>
> > 2. Subsections 45(8), (9) and (10), 54(4) and (5), 74(5), 75(6), 76(11) and 116(6) and section 165 of the *Child and Family Services Act*.

[10] Section 45(8) of the *CFSA* states:

> No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

[11] The tribunal states:

> After carefully reviewing the responsive records, as well as 97 pages of information contained in six published decisions issued by the Tribunal in relation to the two applications which comprise the responsive records . . . the [tribunal] does not seek to rely on 67(2)2 and 45(8) with respect to non-disclosure.
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> Although the underlying factual matrix of the responsive records arises from the removal of two foster children from the care of two foster parents, there is no indication in the responsive records or in the published decisions referred to above that this removal arose from "a proceeding" under the [*CFSA*].

[12] Both of the agencies who were the subject matter of the complaints provided representations on this issue and submit that disclosure of the records at issue is prohibited by section 45(8) of the *CFSA*. In particular, one affected party argues that:

- the purpose of section 48(5) is to protect the privacy of children involved in child protection cases by ensuring that they are not identified as children involved in child protection cases;

- the language of section 48(5) recognizes that it is possible to identify children who are the subject of child protection proceedings by identifying them indirectly, such as being placed in the care of individuals who are foster parents, and naming the foster parents. This is why there is a prohibition of making public information that would identify foster parents;

- the records are applications filed by a foster parent, in which allegations are made relating to her role as a foster parent and making reference to specific children placed in her care. Although the children are not identified by name, the identification of the foster parent will identify the children referenced in the records as children involved in child protection;

- the name, address and other identifying information about the foster parent and any other foster parent identified in the records should not be disclosed; and

- where there is an express statutory prohibition on disclosure of information, consent cannot override the prohibition.

[13] Similarly, the second affected party submits that disclosure of the records, even partially, would be in contravention of section 45(8) of the *CFSA* , as a plain reading of this section leads one to reasonably conclude that no information which identifies a child being the subject of a proceeding can be published or made public.

[14] The second affected party also submits that foster children are a particularly vulnerable sector in society and that allowing these types of records to be disclosed under freedom of information legislation would set a very dangerous precedent for all future foster children who are the subject of a proceeding. The affected party states:

> Any benefits to be realized from the release of records ought to be outweighed against the negative consequences which can arise from release of such highly sensitive information.

[15] The appellant submits that section 45(8) of the *CFSA* does not apply and argues that I should consider the context of section 45(8) within its own statute. The appellant submits that section 45(2) of the *CFSA* restricts the application of section 45(8) to "child protection" hearings. Section 45(2) of the *CFSA* states:

> This section applies to hearings held under this Part, except hearings under section 76 (child abuse register).

[16] The appellant states:

> Section 45 subsection 2 provides the definitive answer that not only did the legislature intend for subsection 8 to be confined to court applications under "PART III CHILD PROTECTION" of the CFSA but the legislation specifically added subjection 2 to clearly dictate that this was to be the case.
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> If the [tribunal] is found by the IPC to have the authority and jurisdiction to adjudicate Part III Child Protection hearings, by extension, Tribunals, such as: Workplace Safety and Insurance Appeals Tribunal (WSIAT), Pay Equity Hearings Tribunal (PEHT) etc. would also have this authority. It would be a shock to the public if Tribunals such as these suddenly had bestowed upon them the authority to adjudicate and conduct PART III CHILD PROTECTION hearings.
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> None of these bodies have the expertise to adjudicate child protection proceedings and they are not legislated to render Child Protection orders nor should they. It would be a false and dangerous precedent to ascribe to these Tribunals the powers to adjudicate and hold hearings regarding child protection matters for which they do not have the expertise to adjudicate, the resources to try, nor the legislated authority to hear.
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> …
>
> As the [tribunal] does not adjudicate nor preside nor issue orders concerning ***"Hearings held under Part III of the Child and Family Services Act"*** section 45(8), as per FIPPA and the CFSA legislation do not apply to Human Rights Proceedings as the Tribunal does not have the jurisdiction, expertise nor legislative duty to conduct such hearings. The [tribunal] has jurisdiction to conduct matters that deal with Human Rights Code violations. The Tribunal is not and should not be carrying out or even attempting to carry out adjudicating ***"Hearings held under Part III of the Child and Family Services Act"***. This is the sole purview of the court. [emphasis in original]

[17] The appellant also argues that the "factual matrix" of the responsive records would be different from that of the child protection hearing material.

[18] In Order PO-3236, Adjudicator Stephanie Haly dealt with an appeal relating to records similar in nature to those in this appeal. She conducted a thorough analysis of the application of section 67(2) of the *Act* and stated:

> This office recognizes that section 67(2) is not a jurisdiction-limiting provision that excludes certain categories of records from the *Act*'s application. Rather, it simply provides that the *Act* is not the controlling statute for protecting the confidentiality of information that falls within the scope of one of the listed confidentiality provisions of another statute.[1] Section 67(2)2 specifically includes section 45(8) among the listed confidentiality provisions that prevail over the *Act*.
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> Based on my review of section 45(8) of the *CFSA*, I find that the prohibition of publishing identifying information applies in instances where the information of children who were witnesses, participants or the subject of child protection hearings under section 45 would be disclosed. This prohibition also extends to the disclosure of information that would identify that child's parent, foster parent or a member of that child's family. Section 45(2) limits the prohibition in section 45(8) to those circumstances where someone seeks to publish or make public information relating to a child who has been the subject of a child protection hearing. I find that section 45(2) does not only prohibit disclosure of the impugned information during a child protection hearing.
>
> The confidentiality provision in section 45(8) is intended to protect the privacy of a child involved as a subject, participant or witness in a child protection proceeding. In interpreting section 45(8) in this matter, I am not finding that the tribunal has the jurisdiction or power to adjudicate child protection hearings. Instead, I find that where, in the course of a tribunal matter, disclosure of the type of information protected in section 45(8) could occur, then section 45(8) prohibits the publishing of this information.

[19] I agree with and adopt the approach taken by Adjudicator Haly. In this appeal, I find that the applications and the attachments contain information relating to various foster children that were in the applicant's care and the applicant's explanations for claims made against her. The applications and attachments also contain the applicant's basis for her discrimination claim which relates to her role as a foster parent. I accept that disclosure of some of the records at issue would have the effect of identifying the foster children. Although the children are not identified by name, given the extensive narrative in the applicant's complaints, disclosure of the information in the records could reasonably lead to their identification.

[20] I accept the tribunal's argument that the removal of the foster children from the applicant's care was not the result of a child protection hearing. However, as there is no evidence to the contrary, I also conclude that at some previous point in time the

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[1] Orders PO-2029, PO-2083 and PO-2411-I.

foster children were the subject of child protection hearings, which brought them into the foster care system in the first place. I make this finding bearing in mind the representations one of the affected parties, who stated that foster children are involved with the child protection system. As set out in section 45(8) of the *CFSA*, the publication of information that "has the effect" of identifying a foster child, the child's parents, foster parents or other member of the child's family is prohibited.

[21] Therefore, I find that the prohibition in section 45(8) prevents the disclosure of <u>any</u> information identifying the foster children or the children's foster parent. The prohibition against identifying a foster parent is not about identifying that an individual is a foster parent per se, but that the individual is the foster parent of a specific foster child. The purpose of the prohibition of the foster parent's identity is to prevent the identification the foster child. I find this despite the fact that this information is recorded in the context of the application files before the tribunal.

[22] Accordingly, I find that section 45(8) of the *CFSA* applies to these portions of the records and thus section 67(2)2 of the *Act* requires that the prohibition on disclosure in section 45(8) prevents the tribunal from disclosing this information in response to an access request under the *Act*.

[23] Conversely, I find that there are other portions of the applications whose disclosure would not have the effect of identifying the foster children. This is the information that the appellant argues could be severed so as not to engage section 45(8) of the *CFSA*. I will address the appellant's argument on severance of the records below. I will now address the application of the mandatory section 21(1) exemption to this information.

B. Do the records contain "personal information" within the meaning of section 2(1) of the Act?

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

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

financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[25] 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].

[26] 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]

[27] 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]

[28] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

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[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.

[29] The tribunal submits that the records at issue contain the personal information of the applicant, and other individuals, including four individuals who are respondents in the complaint before the tribunal.

[30] Regarding the applicant, the tribunal submits that applicant has consented to the disclosure of her personal information. However, the tribunal proposes to sever information such as her name, address and other contact information.

[31] The tribunal submits that the respondents of the applications are four individuals employed by a children's aid society and one of its service providers. These four individuals are identified in the published decisions as well as throughout the responsive records. The individuals were named as personal respondents in the applications. The tribunal submits that while some of the information in the records relates to these individuals in an employment capacity, other portions of the information relates to the individuals in a personal capacity. For example, the tribunal states that the records contain details about the allegations of discrimination that reveal information of a personal nature about the four respondents.

[32] In addition, the tribunal submits that there is personal information about other individuals contained in the records, including information related to:

- race, colour, religion [paragraph (a) of the definition of personal information in section 2(1)];
- medical and employment history [paragraph (d) of the definition];
- the views and opinions of an individual [paragraph (e)];
- the views and opinions of an individual about another individual [paragraph (g)]; and
- names with other information which would reveal other personal information about the individual [paragraph (h)].

[33] One of the affected parties submits that the records contain the personal information of the foster children, such as their personal characteristics, race, sexual orientation and the school they attended. The affected party goes on to argue that even with the names severed, it would be reasonable to expect that an individual may be identified from this information, given that there were few foster children in the foster parent's home.

[34] In addition, this affected party submits that there is personal information about cell phone numbers of the employees, which may relate to a personal, not business, device.

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[4] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[35] The applicant acknowledges that the records contain her personal information.

[36] The appellant's submissions focus on the need for the records to be public and not the issue of whether the records contain personal information.

[37] Based on my review of the records and the representations of the parties, I find that the records contain the personal information of a number of identifiable individuals and do not contain <u>any</u> information relating to the appellant. Specifically, I find that the records contain:

- Information relating to the applicant which qualifies as her personal information within the meaning of paragraphs (a), (b), (c), (d), (e), (g) and (h) of the section 2(1) definition of that term in the *Act*.

- Information relating to the four employees which qualifies as their personal information within the meaning of paragraphs (b), (d), (e), (g) and (h) of the section 2(1) definition of that term in the *Act*.

- Information relating to other identifiable individuals which qualifies as their personal information within the meaning of paragraphs (a), (b), (d), (g) and (h) of the section 2(1) definition of that term in the *Act*.

[38] I also find that the information relating to the four employees is information which relates to them in a personal capacity and not in a purely business or professional one. The applicant alleges that the employees discriminated against them in contravention of the *Code*. Consequently, I find that disclosure of that information would reveal something of a personal nature about these individuals. I further find that the employees would be identifiable even if their names were severed from the records, given that their names have been identified in the tribunal's published decision.

[39] I find that severance of the applicant's name would also not render the information unidentifiable to a particular individual. As the published decisions contain the applicant's name and file numbers and the appellant requested the application files by the applicant's name, the information would still be identifiable even if her name was severed.

[40] In addition, some of the information in the record does not contain personal information, as it relates solely to an individual in their professional capacity. This information is not exempt and I will order the tribunal to disclose it to the appellant.

[41] As I have found that the remaining information at issue contains the personal information of individuals other than the appellant, I will proceed to consider the appellant's access to records under the mandatory personal privacy exemption in section 21(1).

C. Would disclosure of the "personal information" be an unjustified invasion of an individual's personal privacy under section 21(1) of the *Act*?

[42] 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.

[43] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

[44] In the circumstances, it appears that the only exceptions that could apply are paragraph (a) which requires that the institution withhold the personal information unless it has received the prior written consent of the individual to whom it relates and paragraph (f) which requires that the institution withhold the personal information unless the disclosure does not constitute an unjustified invasion of the individual's personal privacy.

[45] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

[46] 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]

[47] 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]

[48] The tribunal submits that section 21(4) does not apply in this appeal and claims that the presumptions in sections 21(3)(a), (d) and (f) apply to the records. The tribunal further submits that the factors against disclosure in sections 21(2)(f) and (i) should be considered.

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

[49] The appellant submits that disclosure of personal information is supported by the factor in section 21(2)(a) and submits that the presumptions raised by the tribunal do not apply.

[50] The factors at issue in section 21(2) of the *Act* state:

> (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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (f) the personal information is highly sensitive;
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[51] The relevant presumptions in section 21(3) of the *Act* that may apply state:

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (d) relates to employment or educational history;
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[52] With respect to the presumptions in section 21(3), the tribunal states that the records include information related to an individual's medical history, to other individuals' employment history, and to the racial/ethnic origin and religious beliefs of individuals.

[53] In addition, the tribunal states that some of the information that falls under the presumption relates to the applicant, who has consented to the disclosure of her personal information.

[54] The tribunal further submits that the factors against disclosure in sections 21(2)(f) and (i) should be considered, as the records contain information that could be perceived as highly sensitive, particularly some of the details of the incidents that led to the discrimination allegations, and the information, if disclosed, has the potential to be used selectively to unfairly damage the reputations of the employees and other individuals.

[55] The tribunal also argues that the appellant has not established that any of the factors favouring disclosure in section 21(2) apply.

[56] The affected parties submit that disclosure of the personal information in the records would constitute an unjustified invasion of privacy, and that the information about the foster children in particular is highly sensitive.

[57] The applicant states that she consents to the disclosure of her original complaints, with the exception of personal contact information consisting of her address, telephone numbers and email address.

[58] The appellant submits that the tribunal cannot argue that the presumption in section 21(3)(d) applies as the tribunal earlier relied on the argument that the details of the application related to a child protection proceeding. The appellant's submission that disclosure is for the purpose of subjecting the activities of the tribunal and the CCAS to public scrutiny is as follows:

> The Human Rights Tribunal is quasi-judicial in nature. The documents and hence details upon which a tribunal's final decision rests, are not filed within the court system. As the documents are not filed within the court system the public cannot readily rely upon the common law established in the court system with this common law fully entrenching the public right to access to the details found in the documents filed in court proceedings.
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> Absent legislation the facts/details which give the publicized Human Rights Tribunal (HRT) decisions merit and indeed legitimacy are hidden. Without legislation to correct this, specifically FIPPA, this would essentially amount to a closed star-chamber type of environment. I would assert that without the public having access to these details/facts that enabled the tapestry of the decision to be woven no Human Rights Decision has any legitimacy in law. (emphasis in original)

[59] Based on my review of the records, I find that the personal information at issue relates solely to individuals other than the appellant. I find that the presumptions in sections 21(3)(a),(d) and (h) apply to portions of this personal information as the records relate to the employment history between the applicant and the two agencies. The records also contain the medical diagnosis and treatment information about one

individual, and the religious beliefs and associations of the applicant and another individual. I find that disclosure of this personal information is presumed to constitute an unjustified invasion of the individuals' personal privacy. As set out above, 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).[8]

[60] Moreover, I find relevant the factor favouring non-disclosure in section 21(2)(f). To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[9] Given the nature of the allegations and detail of the personal information in the records, I find that it is reasonable to expect that disclosure would result in significant personal distress to any of the individuals' whose information is in the records. In making this finding, I agree with the affected party that some of the details of the incidents that led to the discrimination allegations, if disclosed, has the potential to be used selectively to unfairly damage the reputations of the employees and other individuals involved.

[61] While I have considered and weighed the appellant's submission on the need for transparency with respect to tribunal decision making in a general sense, I find that the appellant has not established any facts that suggest that disclosure of this sensitive personal information in these particular circumstances is desirable for subjecting the tribunal to public scrutiny.

[62] Turning to the personal information relating to the applicant, I note that she has provided consent to disclose her personal information other than her address, telephone numbers and email address. Section 21(1)(a) provides for the disclosure of personal information to any person other than the individual to whom the information relates except upon the prior written request or consent of the individual. There are portions of the records that contain solely the personal information of the applicant and other portions where her personal information is mixed with that of others.

[63] Accordingly, having considered the presumptions in section 21(3), and the factors in section 21(2), and having found that there are no factors favouring disclosure, I find that disclosure of the majority of the personal information in the records would be an invasion of the personal privacy of a number of individuals and is therefore exempt under section 21(1) of the *Act*.

[64] Conversely, portions of the records relate solely to the applicant such as the remedies she seeks and her religious beliefs. As previously stated, she has provided consent to disclosure of some of her personal information. Consequently, this information is not exempt from disclosure under section 21(1) and I will order the

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[8] *John Doe*, cited above.
[9] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

tribunal to disclose it to the appellant, subject to my finding regarding whether the records can be severed.

D. Can the records be severed pursuant to section 10(2) of the *Act*?

[65] Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt.

[66] The tribunal states that there is information relating to the applicant which can be disclosed without revealing the personal information of other individuals. Further, the tribunal submits that it would be possible to disclose non-exempt information and still provide an intelligible document. In addition, the tribunal argues that the records could be severed, including the names of individuals not found to be acting in a professional capacity, other information that would reveal something of a personal nature of an individual who could be potentially identified despite severing the individual's name.

[67] The appellant submits that the records could be severed to remove the names, addresses and contact information of the identifiable individuals but still disclosing the facts and basis of the application before the tribunal.

[68] I find that severance of the names and contact information of individuals other than the applicant would not be adequate to render the information unidentifiable to a particular individual. The nature of the allegations and the fact that decisions regarding the merits of the allegations have been published establishes that disclosure of the "details" would mean that the individuals would be identifiable. Further, I find that most of the information prohibited from disclosure in section 45(8) of the *CFSA*, and the information exempt from disclosure under section 21(1) is so inextricably linked that severance is not possible or feasible in the circumstances of this appeal.

[69] However, I also find that it is possible to disclose some of the applicant's personal information by severing the personal information of other individuals and the personal information of the applicant for which she did not provide consent.

[70] In sum, I find that most of the information in the records is either exempt from disclosure under section 21(1) or disclosure is prohibited under section 45(8) of the *CFSA*, in conjunction with section 67(2)2 of the *Act*. The tribunal's decision is upheld, in part.

ORDER:

1. I order the tribunal to disclose portions of the records to the appellant by **September 20, 2013** but not before **September 13, 2013**. I have enclosed a copy of the records and have highlighted the areas that are not to be disclosed.

2. I reserve the right to require the tribunal to provide me with a copy of the records as disclosed to the appellant.

Original signed by: August 14, 2013
Cathy Hamilton
Adjudicator