

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3265

Appeal PA12-277

Ministry of Community Safety and Correctional Services

October 17, 2013

Summary: The appellant filed a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) for access to a police report regarding the death of her father. The ministry granted partial access to the responsive records, severing portions pursuant to section 49(a), read in conjunction with sections 14(1)(l) and 14(2)(a), and section 49(b), read in conjunction with sections 21(2)(f) and 21(3)(b) of the *Act*. The ministry also severed some information claiming that it was not responsive to the request. The ministry advised that in making its decision it considered the compassionate grounds exception at section 21(4)(d). During mediation, the scope of the request was narrowed and only the application of section 49(b), read with sections 21(4)(d), 21(3)(b) and 21(2)(f) to two specific paragraphs of information contained in the records remained at issue. In this order, the adjudicator finds that the records contain the personal information of the appellant, the appellant's deceased father, and other identifiable individuals. The adjudicator upholds the ministry's decision in part. She finds that the compassionate grounds provision at section 21(4)(d) applies to permit the disclosure of some of the information at issue but that section 49(b) applies to exempt the remaining information from disclosure. Finally, the adjudicator upholds the ministry's exercise of discretion, under section 49(b).

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)(f), 21(2)(f), 21(2)(g), 21(3)(b), 21(4)(d); 49(b).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a police report regarding the death of the requester's father.

[2] The ministry granted partial access to the responsive records, severing portions of them pursuant to section 49(a) (discretion to refuse a requester's own information), read in conjunction with sections 14(1)(l) and 14(2)(a) (law enforcement), and section 49(b) (personal privacy), read in conjunction with sections 21(2)(f) (highly sensitive), and 21(3)(b) (investigation into a violation of law) of the *Act*. It also claimed that some information was severed as it was not responsive to the request. The ministry stated that in making its decision regarding disclosure it considered the possible application of the compassionate grounds provision at section 21(4)(d) of the *Act* but following discussions with the affected parties, decided that the provision did not apply to the information that it severed.

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

[4] During mediation, the appellant advised that she wished to pursue access to information regarding her deceased father, as well as information provided to police by the witnesses. As a result, section 21(4)(d) which, as previously mentioned, contemplates the disclosure of information on compassionate grounds, is at issue in this appeal. The appellant confirmed that she is not seeking access to any of the affected parties' contact information, birthdates, social insurance numbers, addresses or phone numbers.

[5] As none of the information that the appellant seeks access to was withheld pursuant to section 14(1)(l), that section is no longer at issue in this appeal. Additionally, the information that was severed as not responsive is also no longer at issue.

[6] During mediation, an affected party was contacted and confirmed that they did not consent to the disclosure of their personal information to the appellant. The ministry confirmed that without the consent of the affected party it was not prepared to disclose any additional information to the appellant.

[7] As a mediated resolution could not be reached, the appeal was transferred to the adjudication state of the appeal process where an adjudicator conducts an inquiry. I began my inquiry by sending a notice of inquiry setting out the facts and issues on appeal to the ministry. The ministry provided representations in which it advised that it was no longer relying on the exemption at section 14(2)(a) to deny access to portions of the records. As a result, section 14(2)(a) was removed from the scope of the appeal.

[8] I then sent a notice of inquiry to the appellant, together with a copy of the ministry's representations, in their entirety. The appellant provided representations in return.

[9] For the reasons that follow, in this order, I find that:

- the records contain the "personal information" of the appellant, the appellant's deceased father, and other identifiable individuals;
- some of the severed information at issue should be disclosed to the appellant pursuant to the compassionate grounds exception at section 21(4)(d);
- the disclosure of the remaining severed portions of the records would be an unjustified invasion of another individual's personal privacy under section 49(b); and,
- the ministry's exercise of discretion to deny access to the severed portions of the records pursuant to section 49(b), was appropriate and should be upheld.

RECORDS:

[10] The responsive records consist of Ontario Provincial Police (OPP) reports including an occurrence summary, a sudden death report, and supplementary occurrence reports. The information that remains at issue are severed portions of the "summary" section of the occurrence report (page 1) and severed portions of the "synopsis" section of the sudden death report (page 7).

ISSUES:

- A. Do the records contain "personal information" as defined by section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 49(b) apply to the information at issue?
- C. Should the ministry's exercise of discretion to deny access under section 49(b) be upheld?

DISCUSSION:

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

[11] Under the *Act*, different exemptions may apply depending on whether or not a record contains the personal information of the requester. Where records contain the requester's own information, access to the records is addressed under Part III of the *Act* and the discretionary exemptions at section 49 may apply. Where the records at issue contain the personal information of individuals other than the requester but not that of the requester, access to the records is addressed under Part II of the *Act* and the mandatory exemption at section 21(1) may apply.

[12] 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;

[13] 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.¹

[14] 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

[15] 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

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

[17] The ministry submits the records at issue contain the personal information of an affected party "who provided evidence, which was used by investigating OPP officers as part of their investigation into the traffic death of the deceased individual." It submits that the affected party was acting in a personal capacity when the information was provided.

[18] The ministry further submits:

The personal information that is at issue varies from basic information such as a name and address to substantive and sensitive personal observations provided by the affected third party individual and used in connection with the OPP investigation.

¹ Order 11.

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.

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

[19] The appellant's representations do not specifically address whether the records at issue contain personal information and, if so, whose personal information they contain. She indicates that she is not specifically aware of the identity of any of the affected parties however she states that she is aware that her father passed away at her aunt's home and therefore, she believes that her aunt may be one of the affected parties.

[20] Having reviewed the records which consist of an OPP occurrence summary and related sudden death report, I accept that they contain the personal information of the appellant, the appellant's deceased father, as well as that of other affected parties who were interviewed as part of the police investigation into the death of the appellant's father.

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

[21] As described above, in circumstances where the appellant's personal information in a record is mixed with that of other individuals, Part III of the *Act* applies to that record in its entirety and I must consider whether the severed information is exempt from disclosure under the discretionary exemption at section 49(b).

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

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

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

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

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

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

Section 21(4)(d)

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

Despite subsection (3), a disclosure of personal information does not constitute an unjustified invasion of personal privacy if it,

discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

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

[29] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is intertwined with the personal information of another individual or individuals. The facts and circumstances referred to in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).⁵

⁵ Orders MO-2237, MO-2270 and MO-2290.

[30] After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process.⁶ The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."⁷

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

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or "close relative" of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?⁸

[32] The ministry submits that it has considered whether the compassionate disclosure provision in section 21(4)(d) applies and that it considered the test set out above. With respect to the first question, which examines whether the records contain the personal information of a deceased individual, the ministry states that the records contain personal information belonging to the deceased individual. With respect to the second question, it states that it is satisfied that as the deceased's child, the appellant fits within the definition of "close relative." Finally, with respect to the third question, the ministry submits that it is not satisfied that disclosure of the personal information that remains at issue is desirable for compassionate reasons and states that it has considered the following circumstances in coming to this conclusion:

- The [affected party] has declined to consent to the disclosure of their personal information. The ministry's position is that if consent is to be meaningful, then we must act on whatever response we receive. It does not make sense to *not* obtain consent and then to go ahead and disclose personal information. People who deny consent have a reasonable expectation that the ministry will respect their wishes.
- The ministry notes that the appellant has already been provided with responsive information which should answer specific questions the appellant may have consistent with the purpose for which section 21(4)(d)

⁶ Order MO-2245.

⁷ *Ibid.*

⁸ Orders MO-2237 and MO-2245.

of [the *Act*] was enacted. The IPC has held that “for surviving family members, greater knowledge of the circumstances of their loved one’s death is by its very nature compassionate.”⁹

[33] The ministry further submits that it has disclosed some information, including witness information, and some of the details surrounding the death of the deceased. However, it submits that severances have been made to protect the privacy rights of an affected party.

[34] In her representations, the appellant submits that she is “a private citizen and a daughter with no sense of closure who is entitled to some truth in the death of my father.” She explains the circumstances of her father’s death, as they have been communicated to her. She also explains that her father’s funeral wishes as described in his will were incongruous with those detailed in the portions of the police occurrence report that were disclosed to her. She is concerned that his wishes were not respected and she indicates that she has consulted with a lawyer on this point.

[35] The appellant also expresses great distress that none of the affected parties present at her father’s death and involved in the police investigation informed her or her siblings about her father’s death. She states that she was informed by other individuals who were not present at the time. She also expresses distress that an OPP officer with whom she spoke advised that the OPP were not aware that her father had any children, despite the fact that he was survived by all five of his children. Finally, she expresses concern regarding how her father’s estate was dealt with by the executor.

[36] The appellant questions what type of information can be “so highly sensitive that the ministry and the [affected party or parties] involved in this inquiry do not want [her] to see or read.” She submits that she only requests two paragraphs of information and given that her father’s last wishes were never respected she seeks the information in the hope of attaining some closure and truth.

[37] The ministry has applied section 21(4)(d) to the responsive records and has disclosed a significant amount of responsive information on the basis of compassionate grounds. Specifically, the ministry has disclosed all of the information relating to her deceased father’s death with the exception of the names and contact information of the affected parties and several narrative portions that involve the personal information of an affected party.

[38] On my application of the section 21(4)(d) test to the circumstances of this appeal, I agree with the ministry’s affirmative conclusions on the first two questions that must be asked. I find that the records contain the personal information of a deceased individual and I find that the requester is a “close relative” of the deceased

⁹ Order MO-2237 at page 19.

individual. However, I disagree, in part, with the ministry's conclusion that the disclosure of all of the severed information that remains is not desirable for compassionate reasons, in the circumstances of this case.

[39] In my view, there is a small amount of additional personal information about the appellant's deceased father that can be revealed without disclosing the identity of the affected party. Although I acknowledge that the disclosure of this additional information will not specifically address the concerns raised by the appellant in her representations, she is clearly having a difficult time reaching closure with respect to her father's death and any additional information that she receives can, in my view, be considered to be desirable for compassionate reasons. As a result, I will order that those additional portions be disclosed to the appellant.

[40] With respect to the remaining information in the severed portions of the records, I agree with the ministry that its disclosure is not desirable for compassionate reasons. The majority of this remaining information amounts to the personal information of an affected party who has not consented to its disclosure. Although some of it may be considered to be inextricably intertwined with the personal information of the appellant's deceased father, I find that, in the circumstances, its disclosure is not desirable for compassionate circumstances and section 21(4)(d) does not apply to it. Accordingly, I must now go on to determine whether the disclosure of this information would amount to an unjustified invasion of another individual's personal privacy as contemplated by section 49(b), considering the relevant presumptions at section 21(3) and the relevant criteria at section 21(2).

Section 21(3)

[41] 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 49(b). In *Grant v. Copley*, [2001] O.J. 749, the Divisional Court said the Commissioner 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.

[42] The ministry has raised the application of section 21(3)(b) of the *Act* to the information at issue. It appears that this is the only presumption that may apply in the circumstances of this appeal.

[43] Section 21(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[44] The ministry submits that the records at issue clearly fall within the scope of section 21(3)(b). It submits:

The records contain personal information collected by investigating officers of the OPP who were determining the cause of a fatality, and for the purpose of ruling out any criminal wrongdoing. If the investigating officers had found out that the fatality was caused due to criminal actions, the OPP could have charged whoever was suspected of committing a criminal act. The ministry further contends that the personal information was both "compiled" and is "identifiable" in the records as being part of the investigation, meaning that it fits squarely within section 21(3)(b).

[45] In her representations, the appellant questions how granting her access to what the affected party or parties involved in this inquiry said to the police could affect an OPP investigation when the death was ruled a "sudden death."

[46] Having considered the records and the circumstances of this appeal, I agree with the ministry that section 21(3)(b) applies to the information at issue in the records as it was compiled and is identifiable as part of an investigation into a possible violation of law, in particular, a violation of law under the *Criminal Code of Canada*. It has been well established that even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹⁰

[47] Therefore, I conclude that the remaining undisclosed information is subject to the presumption at section 21(3)(b) and its disclosure is presumed to be an unjustified invasion of the affected party's personal privacy.

Section 21(2)

[48] As noted above, section 21(2) provides some criteria for the ministry to consider in making a determination on whether the disclosure of personal information would result in an unjustified invasion of the affected party's personal privacy. The list of factors under section 21(2) is not exhaustive. The ministry must also consider any circumstances that are relevant, even if they are not listed under section 21(2).¹¹ Some

¹⁰ Orders P-242 and MO-2235.

¹¹ Order P-99.

of these criteria weigh in favour of disclosure, while others weigh in favour of privacy protection.

[49] In the circumstances, the only criteria that appear to be relevant are those in sections 21(2)(f) and (h). Those sections read:

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,

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[50] Both of these criteria weigh in favour of privacy protection, that is, against the disclosure of the information.

[51] The ministry submits:

The personal information in question is highly sensitive, due to the circumstances in which it was collected (a police death investigation). The third party individual is a private citizen who provided a highly personal account of what happened, which the police relied upon to complete their investigation. The ministry is particularly concerned that the disclosure of records under [the *Act*], including sensitive records such as these, comes without any subsequent controls or restrictions, meaning that any disclosure under [the *Act*] is in effect potentially a disclosure to the world.

[52] The ministry also submits:

The ministry is concerned that if members of the public knew that the personal information that they provided to the police was potentially going to be disclosed under [the freedom of information process set out in the *Act*], even when they did not agree to it, it is foreseeable that potential witnesses would be less forthright in cooperating with the police, and in assisting the police with their investigations. The ministry submits that this type of outcome is one that should be strongly avoided, in the interests of public safety and security.

[53] The appellant does not specifically address the criteria that may be relevant in the circumstances of this appeal. However, as noted above, she states: "I am still wondering today, what can be so highly sensitive that the ministry and the [affected] party or parties involved in this inquiry do not want me to see or read. My request is for [two] paragraphs!"

Section 21(2)(f)

[54] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹² Although she has submitted no representations on this issue, the affected party to whom this information relates has unequivocally objected to the disclosure of any of her personal information. Having considered the circumstances of this appeal that have been revealed through the representations of the appellant, as well as the nature of the information that is at issue, I accept that the personal information that has been withheld can be considered to be highly sensitive and that its disclosure could result in significant personal distress for the affected party. Accordingly, I find that the factor weighing against disclosure in section 21(2)(f) is a relevant criterion to consider.

Section 21(2)(h)

[55] The criterion in section 21(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹³

[56] In my view, the context and the surrounding circumstances of this matter are such that a reasonable person would expect that the information supplied by them to the OPP would be subject to a degree of confidentiality. Accordingly, in this appeal, I find that the criteria in section 21(2)(h) weighs in favour of protecting the personal information of the affected party.

[57] Accordingly, I find that some weight should be given to the criteria weighing against disclosure in section 21(2)(f) and (h) as the information can be said to be "highly sensitive" and "supplied in confidence." However, on my review, and in the absence of evidence on the matter, I find that none of the criteria favouring disclosure are applicable in the circumstances of this case.

¹² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹³ Order PO-1670.

Summary

[58] In conclusion, I have found that the exception at section 21(4)(d) that permits the disclosure of personal information about a deceased person to a close relative for compassionate reasons applies to some of the information at issue. Accordingly, I will order the ministry to disclose this information to the appellant. However, with respect to the remaining portions of the records I find that not only does the presumption at section 21(3)(b) apply to it because it is information that was compiled as part of an investigation into a possible violation of law, I also find that the criteria weighing against disclosure at sections 21(2)(f) and (h) are relevant considerations as the information is highly sensitive and was supplied by the individual to whom it relates in confidence. As a result, I find that the discretionary exemption at section 49(b) applies to this information and, subject to my discussion below on the exercise of discretion, I uphold the ministry's decision not to disclose it.

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

[59] The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

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

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

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

[62] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁴ This office may not, however, substitute its own discretion for that of the institution.¹⁵

¹⁴ Order MO-1573.

¹⁵ Section 43(2) of the *Act*.

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

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

[64] The ministry submits that it has exercised its discretion appropriately in the particular circumstances of this appeal. It submits that it considered the circumstances and that it has carefully balanced the concerns and interests of the following parties:

- the appellant, who wants to know more about the circumstances of her father's death,

- the affected party individual, who has a legitimate privacy interest under the *Act*, and
- the OPP which wants to ensure that the integrity and quality of its investigations are not jeopardized as a result of the disclosure of personal information.

[65] The appellant does not specifically address the ministry's exercise of discretion, but as noted above in the discussion on the application of the compassionate circumstances exemption at section 21(4)(d), she believes that the ministry should disclose the small amount of information that remains at issue. She states that she cannot believe what can be so highly sensitive that it must be withheld and urges that this information be disclosed in order that she, and other family members can get what little closure this information may provide to them.

Analysis and findings

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

[67] As previously mentioned, the ministry applied section 21(4)(d) to disclose a significant amount of information to the appellant. Additionally, I have also ordered the disclosure of additional information pursuant to that exception. The only information that remains at issue is information that amounts to the personal information of an affected party who has clearly stated that they do not consent to the disclosure of the information. In considering the nature of the specific information that has been severed, as well as the privacy rights of the identifiable individual to whom the information relates, I accept that the ministry exercised its discretion to withhold the information and took only proper considerations into account. Accordingly, I find that the ministry's exercise of discretion was appropriate and I will uphold it.

ORDER:

1. I order the ministry to disclosed additional portions of the responsive records to the appellant by **November 22, 2013** but not before **November 15, 2013**. The portions to be disclosed are highlighted in green on the copy of the relevant pages of the records sent to the ministry with this order.
2. I uphold the ministry's decision to deny access to the remaining information at issue pursuant to section 49(b) of the *Act*.

3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant pursuant to order provision 1.

Original signed by: _____
Catherine Corban
Adjudicator

_____ October 17, 2013