Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3247

Appeal PA12-90

Ministry of Community Safety and Correctional Services

August 28, 2013

Summary: The appellant requested records from the ministry relating to the death of a named child. The ministry denied access to the responsive records in their entirety pursuant to sections 13(1) (advice or recommendations), 14(1)(a), 14(1)(c), 14(1)(l) (law enforcement), 17(1) (third party information) and 21(1), with reference to the factor in section 21(2)(f) and the presumption in section 21(3)(a) (personal privacy) of the *Act*. The appellant appealed this decision and claimed that the public interest override in section 23 applied. The appellant also questioned the adequacy of the search conducted by the ministry. As well, there were issues raised regarding the scope of the request. In this order, the adjudicator defined the scope of the request based on the specific wording of the appellant's request and found that the ministry's search for responsive records was reasonable. She also found that the records at issue contain the personal information of the deceased child and her family; but did not contain the appellant's personal information. The adjudicator found that disclosure of the personal information in the records constitutes an unjustified invasion of the personal privacy of the child and her family pursuant to the mandatory exemption at section 21(1). As a result, she upheld the ministry's decision. Because of the findings she made in the order, it was not necessary for her to consider the other exemptions claimed by the ministry.

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), 23 and 24.

OVERVIEW:

[1] The appellant submitted a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the death of a named child as follows:

> In a meeting on December 1st, 2011, [a named Doctor] stated that "Recommendations" had already been made relating to my inquest request. Please disclose ALL Recommendations from ALL sources (Coroner's Office, Ontario Fire Marshall and Ministry of Comm & Youth Services, Ministry of Community Safety.

[2] The ministry responded in a letter to the appellant, stating that:

> Further to our telephone conversation on January 17, 2012, you did not wish to provide further clarification pertaining to the requested records or the different program areas mentioned in your request. Please be advised that this office only has access to records held by the Ministry of Community Safety and Correctional Services of the Ontario Provincial Government. This includes the Ontario Coroner's Office and the Ontario Fire Marshall's Office. For all other records mentioned in your request, please contact the offices directly in order to ascertain request procedures.

[3] The ministry later issued a decision stating that no responsive records were located at the Ontario Fire Marshall's Office. With respect to the recommendations made by the Ontario Chief Coroner, the ministry denied access to the responsive records, in their entirety, pursuant to sections 13(1) (advice or recommendations), 14(1)(a), 14(1)(c), 14(1)(l) (law enforcement), 17(1) (third party information) and 21(1), with reference to the factor in section 21(2)(f) and the presumption in section 21(3)(a) (personal privacy) of the *Act*.

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

[5] During the mediation stage of the appeal, the appellant advised that she does not take issue with the ministry's position that no responsive records were located with the Ontario Fire Marshall's office. This part of the decision is therefore not at issue in this appeal.

[6] The appellant stated that she also does not take issue with the ministry's position that she must make a separate request directly to the other offices that she mentioned in her request to obtain a decision from those offices about possible additional responsive records. This part of the ministry's decision is also not at issue in this appeal.

[7] During mediation, the appellant indicated that she believes more records relating to the recommendations should exist. The mediator relayed this information to the ministry. The ministry subsequently conducted another search for responsive records and issued a supplementary decision stating that it located additional records. The ministry denied access to these additional records pursuant to all of the previously claimed sections of the *Act*.

[8] The appellant subsequently noted that she found recommendations relating to the death in question on the Coroner's website and questioned why the ministry did not identify these as responsive to her request. As a result, she believed that there may be other responsive records. Reasonableness of the ministry's search for records remains at issue in this appeal.

[9] In its supplementary decision, the ministry indicated that one portion of the records identified in that decision was removed as it is not responsive to the request.

[10] The ministry then clarified that portions of the records that were originally located were also withheld as not responsive. The ministry noted that, in the alternative, should any of the non-responsive portions of the records be found to be responsive, it is relying on the same sections of the *Act* noted in its two previous access decisions.

[11] The appellant stated that she wants full access to all of the records which were withheld, including the portions which were removed due to being non-responsive. As a result, the scope of the request and responsiveness are issues in this appeal.

[12] The ministry advised that it is not prepared to disclose any of the records which are at issue in this appeal. Accordingly, access to the records at issue, in their entirety, remains an issue in this appeal.

[13] The appellant raised the possible application of the public interest override of section 23 of the *Act;* and it was added as an issue in this appeal.

[14] As further mediation could not be effected, this appeal was forwarded to the adjudication stage of the appeal process. I sought and received representations from the ministry and the appellant initially on only four issues: scope of the request and responsiveness, reasonable search, whether the records contain personal information and the personal privacy exemptions claimed by the ministry. The representations submitted by the parties were shared in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction 7*.

[15] In this decision, I interpret the scope of the appellant's request at the time the matter was forwarded to the adjudication stage of the appeal to be for "all recommendations" relating to the death of the named child held in the Coroner's Office.

After reviewing the steps taken by the ministry to search for and locate responsive records, I uphold the search as being reasonable. I find that the records contain the personal information of the deceased child and her family only. I also find that disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy. Accordingly, I find that the records at issue are exempt under the mandatory exemption at section 21(1) of the *Act*.

RECORDS:

[16] The records at issue comprise two reports from the Coroner's office, withheld in their entirety. I will determine whether the recommendations portions of the reports are the only portions of the records are at issue or whether the complete reports are at issue.

ISSUES:

A. What is the scope of the request? What records are responsive to the request?

B. Did the institution conduct a reasonable search for records?

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

D. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[17] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[18] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[1]

[19] To be considered responsive to the request, records must "reasonably relate" to the request.[2]

Representations, analysis and findings

[20] The ministry states that it attempted to clarify the scope of the appellant's request prior to issuing its access decision, but was unable to do so as the appellant did not respond to its queries. The ministry points out that the appellant's initial request was restricted to "recommendations." However, during the mediation stage of the appeal, the ministry indicates that it agreed to permit the appellant to expand her request to include the two records that are now at issue in this appeal.

[21] The ministry also addresses under this heading the appellant's assertion that responsive information is located on the Coroner's website. In my view, this discussion is more appropriately addressed under the reasonableness of search heading and I will return to this issue at that time.

[22] In her representations, the appellant comments on the ministry's attempts to obtain clarification regarding her request:

> The [ministry] then delayed the request by asking for "clarification" that was not required. The appellant's request had been very clear, and she was aware of what agencies the ministry held records for.

[23] Having reviewed the appellant's initial request and the submissions made by the parties, it is my view that the appellant's request was not entirely clear, but was defined enough for the ministry to conduct a search and provide a response.

[24] I find the ministry's initial decision informing the appellant that the ministry could only search for responsive records in the offices of the Coroner and the Fire Marshall and advising her to submit requests directly to other offices identified by her to be a

[1] Orders P-134 and P-880.
[2] Orders P-880 and PO-2661.

reasonable approach. I also find that this approach was reasonable in light of the appellant's clear refusal to clarify her request with respect to the locations in which she believed records might exist. Moreover, I find that the ministry identified the locations that fell within its jurisdiction clearly and concisely, and in a manner that neither delayed the matter nor disadvantaged the appellant in any way.

[25] With respect to records held by the Coroner's and Fire Marshall's office, I find that the appellant's request was very clear: she requested "ALL recommendations" only. The ministry's initial decision to restrict its access decision to the recommendations portions of the reports identified above was reasonable. Nevertheless, in a manner which is consistent with the access provisions of the *Act*, the ministry agreed to permit the appellant to expand her request to include the two reports noted above, in their entirety. Accordingly, in keeping with the ministry's agreement to include the complete reports during the mediation stage of the appeal, I find that the two reports, in their entirety, are at issue in this appeal.

[26] The ministry's actions in this regard are commendable. However, apart from the two reports that the ministry agreed to consider during mediation, in determining the scope of the appellant's request I do not regard her request to be so expansive. Accordingly, in examining the efforts made by the ministry to search for responsive records, I will restrict the scope of the appellant's request to include only "recommendations" contained in the records relating to the death of the identified child held by the offices that fall within the ministry's jurisdiction.

[27] As I noted above, during mediation, the appellant indicated that she was satisfied that no records exist in the office of the Fire Marshall. Accordingly, I interpret the scope of the appellant's request at the time the matter was forwarded to the adjudication stage of the appeal to be for "all recommendations" relating to the death of the named child held in the Coroner's Office.

B. Did the institution conduct a reasonable search for records?

[28] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[3] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[29] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence

[3] Orders P-85, P-221 and PO-1954-I.

to show that it has made a reasonable effort to identify and locate responsive records.[4] To be responsive, a record must be "reasonably related" to the request.[5]

[30] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[6]

[31] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[7]

[32] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[8]

[33] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[9]

Representations

[34] The ministry refers to the appellant's assertion that she located recommendations relating to the death in question on the Coroner's website, and denies that any recommendations are located on this site. The ministry attaches an affidavit sworn by an issues manager with the Offices of the Chief Coroner. She indicates that she is responsible for responding to all access requests under the *Act*. She describes the process for the preparation of reports and recommendations of the Paediatric Death Review Committee (PDRC) and confirms that once a report has been finalized a paper copy of it is retained in the case file to which it pertains. She indicates further that "no draft versions are retained in any format." She affirms that the Coroner's website does not contain any personal information of the named child.

[35] In her affidavit, the issues manager describes the steps she took to locate responsive records in the Coroner's office. In explaining why she searched only the case file relating to the named child, the issues manager states:

> Case reports created by the [PDRC] are initially composed by one of the reviewer members. The draft report is then brought before the entire

[4] Orders P-624 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2469, PO-2592.
[7] Order MO-2185.
[8] Order MO-2246.
[9] Order MO-2213.

> committee for review and revision. The report is then finalized by the Chair of the Committee and his executive assistant. No draft versions of the report are retained in any format. The final report is retained in printed format only and is retained in the case file housed at 26 Grenville Street in Toronto.

[36] The appellant takes issue with the ministry's decision in which it claims no records exist. She states:

> How could that be when [named doctor] used the excuse not to hold an inquest based on *recommendations already being made?*
>
> The appellant then provided evidence of a recommendation that had already been publicly released, yet the ministry still refused to disclose it to the appellant:
>
> Paediatric Death Review Committee Annual Report 2010 makes two references to the fatal fire in Peterborough, and releases information publicly (Exhibits 1 and 2) specifically regarding CAS, without personal privacy being affected.
>
> **Page 91** reads: **Kawartha-Haliburton CAS organized a one day training for its staff on a Community Response to Fire Safety involving the local fire department, Office of the Fire Marshall and Office of the Chief Coroner.**
>
> **Page 115** reads: **participation on a forum with the Ontario Fire Marshall's Office, CAS and the Peterborough Fire Department regarding a community response to fire safety**. [10]

[37] The appellant submits that there have been no other paediatric deaths involving fires in the Peterborough area, which supports her contention that "this recommendation" clearly relates to the fire in question. Since the recommendation has been "publicly disclosed in the annual report," the appellant believes that the ministry is acting in bad faith and has not conducted a reasonable search for responsive records.

Analysis and findings

[38] As I noted above, the appellant's request was for all recommendations relating to the death of the named child held in the Coroner's Office. I am not persuaded that the PDRC Annual Report for 2010 contains specific recommendations relating to the death

[10] Emphasis in the original.

of the named child. Nor am I persuaded that this report provides any evidence that other recommendations should exist.

[39] The paragraphs highlighted above from the Annual Report are found under the headings "Initiatives by Agencies in Response to internal and PDRC Death Reviews" and "Current Initiatives and Future Directions." It is apparent from the Annual Report that the collective experiences of the PDRC have been used in "[developing] and [implementing] new initiatives in the spirit of enhancing practice, policy, and service to families." The portions of the Annual Report provided by the appellant do not refer to specific cases; nor do they contain specific recommendations relating to the death of the named child. The examples cited by the appellant simply identify the areas where new initiatives have been implemented. Accordingly, I find that the appellant has provided insufficient evidence to support her contention that additional records should exist.

[40] I find the ministry's explanation of the process the Coroner's office follows in producing and maintaining reports following PDRC reviews, and its explanation for searching only in the case file sufficiently explains the steps taken in its search process. Given the care taken by the Coroner's office to maintain specific case files intact, it is reasonable to expect that any recommendations made relating to the death of the named child would only be found at this location. I also accept the ministry's position that no draft versions of the recommendations exist, as well as its position that the website does not contain the personal information of the named child.

[41] I am satisfied that the search for responsive records was conducted by an experienced employee knowledgeable in the subject matter of the request, and that she made a reasonable effort to locate records which are reasonably related to the request. Accordingly, I find that the search conducted by the ministry was reasonable.

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

[42] 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. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual.[11]

[43] 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.[12]

---

[11] Paragraph (h) of the definition of personal information at section 2(1).
[12] Order 11.

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

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[45] 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.[13]

[46] 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.[14]

[47] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[15]

Representations, analysis and findings

[48] The ministry submits that all of the responsive records contain the personal information of the deceased child and other members of that child's family. In particular, the ministry states that the personal information includes:

> …names, birth dates, and extensive details as to how the child died and the impact of the child's death on surviving family members. There is information about the health of surviving family members, and professional opinions expressed about the deceased individual and members of her family.

---

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

[49] The ministry notes that the child's death was reported in the media and submits that she would be identifiable in these circumstances if the record was disclosed.

[50] The ministry argues that none of the personal information contained in the records pertains to an individual acting in their professional capacity.

[51] The appellant does not specifically address this issue.

[52] Having reviewed the records at issue, I find that they all contain information about the deceased child and her family. I also find that the ministry has correctly identified the types of information contained in the reports, as noted above. Although some of the information in the records pertains to individuals in their professional capacity and/or may have broader implications beyond the particular circumstances of this death, I am satisfied that this information is based on and included in the context of the review into the child's death and that the records, in their entirety, relate solely to the deceased and her family.

[53] The records do not contain the personal information of the appellant.

D. Does the mandatory exemption at section 21(1) apply to the information at issue?

[54] 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.

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

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
>
> (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
>
> (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[56] The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception is more complex, and requires a consideration of additional parts of section 21. The appellant has addressed a number of the exceptions.

21(1)(a): consent

[57] For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request.[16]

[58] The appellant indicates that she was a neighbor of the family of the deceased child and has acquired a significant amount of information about the family and the circumstances of the child's death. On reviewing an attachment she provided to this office along with her representations, it appears that the appellant has made it her business to investigate and share the circumstances of this family; she claims to be writing a book about the incident. In her representations, the appellant states that "[t]he deceased child's representative is incapable of understanding all that is involved, and was never given access to this information either and seems to be totally unaware

[16] see Order PO-1723.

of any recommendations being made." The appellant does not provide a written consent from any party identified in the records.

[59] In the circumstances, I find that section 21(1)(a) does not apply.

21(1)(b): health or safety

[60] The appellant submits that there are compelling circumstances affecting the health and safety of low income tenants "who do not have the ability to navigate government 'oversight' channels themselves."

[61] The records at issue pertain to an incident that affected a particular family. While I understand, from the appellant's submissions overall, that her concerns appear to relate to fire safety and response times, I am not persuaded that there are compelling circumstances with respect to these particular records regarding the concerns raised by the appellant. Accordingly, I find that the exception at section 21(1)(b) does not apply.

21(1)(c): public record

[62] The appellant states that "[o]ne of the recommendations, and many recommendations from other Coroner's investigations are regularly publicly available through the publication of annual Coroners reports."

[63] The appellant's submissions do not address the particular records at issue; nor does she provide any evidence that the personal information in them was collected and maintained *specifically for the purpose of creating a record available to the general public.*

21(1)(d): authorized disclosure and 21(1)(e): research purpose

[64] The appellant also addresses sections 21(1)(d) and (e); however, her submissions do not relate to the elements of these two provisions. On review, I find that they do not apply in the circumstances of this appeal.

21(1)(f): disclosure constitutes an unjustified invasion of privacy

[65] 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 privacy under section 21(1)(f). Section 21(2) provides criteria 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.

[66] The appellant does not argue and nor do I find that section 21(4) is applicable in the circumstances of this appeal.

[67] The ministry relies on the presumption at section 21(3)(a) and the factor favouring non-disclosure at section 21(2)(f). The appellant claims that the factors favouring disclosure at section 21(2)(a) and (b) apply in the circumstances. She also claims that the factor at section 21(2)(g) is relevant. Further, she claims that withholding the information contained in the records would be an absurd result.

Section 21(3)(a)

[68] I will begin with the presumption at section 21(3)(a). This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

[69] If paragraph (a) of section 21(3) applies, 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.[17]

[70] The ministry states "there is a significant amount of medical information in the PDRC Report and the CAS Review, with respect to the cause of death of the deceased child, and the health and well-being of surviving family members." The ministry notes that the records were either created or are in the custody of the Coroner's office, and that coroner's are medical physicians.

[71] The appellant does not specifically address this issue.

[72] Having reviewed the records, I accept that certain portions of them contain information that would fall within the presumption at section 21(3)(a) as they pertain to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. Accordingly, I find that the presumption applies to these portions of the records.

[73] 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).[18]

---

[17] John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div.Ct.).
[18] John Doe, cited above.

[74] 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.[19] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[20]

[75] I will now consider the application of the section 21(2) considerations raised by the parties to determine whether there are any factors weighing for or against disclosure. As I noted above, the ministry claims that the factor in section 21(2)(f) is relevant, and the appellant has raised the possible relevance of the factors at sections 21(2)(a), (b) and (g). These sections state:

> 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;
>
> (b) access to the personal information may promote public health and safety;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;

21(2)(a): public scrutiny; 21(2)(b): public health and safety; 21(2)(g) unlikely to be accurate

[76] Section 21(2)(a) contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[21]

[77] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.[22]

---

[19] Order P-239.
[20] Order P-99.
[21] Order P-1134.
[22] Order PO-2905.

[78] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 21(2)(a).[23]

[79] In her representations, the appellant states:

> The appellant has a compelling argument for disclosure as she has been on a quest PROMOTING the HEALTH and SAFETY of tenants living in government housing units that do NOT meet occupancy code, and never have. The government and its agencies are **NOT acting in the best interest of the citizens**. They are simply promoting a government cover-up, to avoid personal and professional loss, much deserved loss to reputation. The citizens have the right to truthful information that promotes the rights of all citizens, and dispels blind faith in 'protective' services so they can make decisions to protect themselves, their children, and their communities.

[80] With respect to the factors in section 21(2), the appellant states further:

> The appellant argues that to not disclose this information would be (a) an 'absurd' result not intended by legislation (b) inconsistent with the purposes of the exemptions claimed and, (c) in conflict with the objective of section 21(2)(a) or the Act which is to ensure an appropriate degree of scrutiny of government and its agencies by the public resulting in greater scrutiny of the ministry, and or agencies involved (d) public interest over-ride issues (e) **Ongoing Health and Safety Risks** to a disadvantaged population, who are without any legal protections to fight the balance of power involved in standing up for their own rights (f) the information provided to the Coroner's committee by investigator is unlikely to be accurate and complete and requires CORRECTION.[24]

[81] Having considered the appellant's arguments and the records at issue, I am not persuaded that disclosure of the records at issue is desirable for the purpose of subjecting the activities of the government of Ontario and its agencies to public scrutiny. These records pertain to an individual situation involving the deceased child and her family and their particular circumstances. They also contain information about the various government bodies that were involved with this family and incident. Apart from the appellant's own personal interest in obtaining this information I find that the disclosure of sensitive personal information obtained as the result of a tragic incident is not desirable in the circumstances.

---

[23] Order P-256.
[24] Emphases in the original.

[82] I find further that the appellant has provided insufficient evidence and/or argument to support a finding that the factor favouring disclosure in section 21(2)(b) is relevant in the circumstances. Similar to my findings above, I am not persuaded that disclosure of these records would promote public health or safety as they pertain to the unique circumstances of an individual family.

[83] The factor at section 21(2)(g) is typically considered to be a factor favouring non-disclosure. The appellant argues that it favours disclosure in the circumstances because the information is "unlikely to be accurate and complete". The appellant assumes that the records require correction. Considering that the appellant has not been involved in the investigation relating to this family and has no knowledge of the contents of the records, I find her allegations to be without merit. Accordingly, I have no evidence before me that the factor in section 21(2)(g) is relevant in the circumstances of this appeal.

[84] The appellant also argues that withholding the records at issue would be absurd. I will address this argument below. In addition, the appellant argues that the public interest override applies in the circumstances of this appeal. I will also address that issue below. The ministry submits that the factor in section 21(2)(f) is relevant to the information contained in the records.

21(2)(f): highly sensitive

[85] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[25]

[86] The ministry submits that disclosure of the records at issue would cause "excessive personal distress" to the family of the deceased for the following reasons:

- The affected parties did not consent to disclosure,
- The family of the deceased child would not expect that their personal information would be disclosed to the appellant, and
- The child's death received media attention, and there is a very real possibility that the records at issue might end up in the media, "which would traumatize the family of the decease child".

[87] The ministry states further:

> The personal information relates to the most tragic of incidents, the death of a child. The personal information was collected from and about family members when they were at their most vulnerable and grief stricken. To even contemplate disclosing these responsive records in these

[25] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

> circumstances suggests a profound lack of compassion and sensitivity that the Ministry submits would be fundamentally at odds with the purpose of [the *Act*].

[88] In response to the ministry's arguments the appellant describes her knowledge of and relationship with the family of the deceased child. She claims that she likely knows more about the matter than the PDRC. Indeed, the appellant has provided extensive representations about her knowledge of this family and appears to be prepared to disclose publicly the personal details of the lives of a number of individuals. Further, it is not clear to me that the family of the deceased child share the appellant's concerns, as the appellant states:

> The family has a strong interest in protecting their reputation and have no qualms feeding their own young blood to the wolves to save themselves. They refuse to even comment on the evidence the appellant has unearthed, most of it posted publicly as scanned documents on the internet…They do NOT care that hundreds of tenants are still at risk and may suffer a similar fate in the future. They do not care that their intelligence has been totally insulted…

[89] However, it is apparent that the family of the deceased does not share the appellant's enthusiasm for the disclosure of their personal information.

[90] I am satisfied that the personal information contained in the records is highly sensitive as it contains information obtained by the family members of the deceased child following her death and pertains to the very personal dynamics of this family. I am also satisfied, after reviewing all of the representations, that there is a reasonable expectation that this family would suffer significant personal distress if the information is disclosed. Not only would this information be received by the appellant, but it is very likely that she would disseminate the information indiscriminately, and with the belief that she is fully entitled to do so. For these reasons, I give the factor in section 21(2)(f) very high weight.

[91] I will discuss the appellant's other arguments in favour of disclosure below, under the public interest heading. However, having reviewed the appellant's submissions in their entirety, I find that they do not reveal any other factors or considerations favouring disclosure under section 21(2).

Absurd result

[92] As I indicated above, the appellant has provided extensive representations outlining all of the personal details of the deceased's family's life that she claims to know. For this reason, she argues that it would be absurd to withhold the records at issue:

> Disclosure of the record would in itself convey very little new information to the appellant, yet clarify information she already has…

[93] In Order MO-1449, I considered the absurd result principle in a case where the sister of the deceased, who was also the deceased's personal representative, was seeking information that pertained to her deceased brother. In my view, the analysis in this order is useful in considering this issue in the circumstances of the current appeal, and I include the relevant portions of that discussion below:

> In Order M-444, former Adjudicator John Higgins found that non-disclosure of information which the appellant in that case provided to the Metropolitan Toronto Police in the first place would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This reasoning has been applied in a number of subsequent similar orders of this Office and has been extended to include, not only information which the appellant provided, but information which was obtained in the appellant's presence or of which the appellant is clearly aware (eg. MO-1196, P-1414 and PO-1679).
> …
>
> In Order MO-1323 (which pertained to a different police force), I had occasion to consider the rationale for the application of the absurd result:
>
> > As noted above, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure (section 1(b)). Section 1(b) also establishes a competing purpose which is to protect the privacy of individuals with respect to personal information about themselves. Section 38(b) was introduced into the *Act* in recognition of these competing interests.
> >
> > In most cases, the "absurd result" has been applied in circumstances where the institution has claimed the application of the personal privacy exemption in section 38(b) (or section 49(b) of the provincial *Act*). The reasoning in Order M-444 has also been applied, however, in circumstances where other exemptions (for example, section 9(1)(d) of the *Act* and section 14(2)(a) of the provincial *Act*) have been claimed for records which contain the appellant's personal information (Orders PO-1708 and MO-1288).

> In my view, it is the "higher" right of an individual to obtain his or her own personal information that underlies the reasoning in Order M-444 which related to information actually supplied by the requester. Subsequent orders have expanded on the circumstances in which an absurdity may be found, for example, in a case where a requester was present while a statement was given by another individual to the Police (Order P-1414) or where information on a record would **clearly** be known to the individual, such as where the requester already had a copy of the record (Order PO-1679) or where the requester was an intended recipient of the record (PO-1708).

I stated further in that order:

> In Order M-444, former Adjudicator Higgins also noted that it is possible that, in some cases, the circumstances would dictate that the "absurd result" principle should not be applied even where the information was supplied by the requester to a government organization. I agree and find that all of the circumstances of a particular case must be considered before concluding that withholding information to which an exemption would otherwise apply would lead to an absurd result.

In Order MO-1323, I considered whether this principle should be applied in circumstances where the appellant provided a cassette tape from her son's answering machine to the police during their investigation into his death. The appellant in that case submitted that she knew what was on the tape although she had not actually heard it herself. I found that the cassette tape did not contain her personal information. After considering the rationale for the application of the absurd result principle, I concluded:

> In all cases, the "absurd result" has been applied **only** where the record contains the appellant's personal information. In these cases, it is the contradiction of this higher right of access which results from the application of an exemption to the information. In my view, to expand the application of the "absurd result" in personal information appeals beyond the clearest of cases risks contradicting an equally fundamental principle of the *Act*, the protection of personal privacy. In general, I find that the fact that a record does not contain the appellant's personal information weighs significantly against the application of the "absurd

> result" to the record. However, as I indicated above, all of the circumstances must be considered in determining whether this is one of those "clear cases" in which the absurdity outweighs the privacy protection principles.

In the circumstances of that appeal, I found that having indirect knowledge about the contents of the cassette tape was very different from having listened to it first hand. Consequently I did not apply the principle in that case.[26]

The privacy rights of individuals other than the appellant are without question of fundamental importance. However, the withholding of personal information of others in certain circumstances, particularly where it is intertwined with that of the requesting party, would also be contrary to another of the fundamental principles of the *Act*: the right of access to information about oneself. Each case must be considered on its own facts and all of the circumstances carefully weighed in order to arrive at a conclusion that, in these circumstances, withholding the personal information would result in an absurdity.

[94] After reviewing the particular circumstances in the case before me in Order MO-1449, I concluded:

> The appellant indicates that hers is a reasonably close family and that much of the information in the records would be known to her. The records would tend to support her. Further, she indicates that during the police investigation she was in contact with and was provided information by the investigating officers, suggesting that she already knows what is in the records. I do not find this surprising. The circumstances of her brother's death are such that in order to fully investigate the matter, it is only to be expected that there would be communications, perhaps to a considerable degree, between the police and the family. However, I will not speculate as to what is known or not known by the appellant.
>
> To a certain extent, I agree with the Police in that there should be a clear basis for a finding that the absurd result principle applies in any given situation. With respect to her presence at the time the statements were taken from other family members … It is entirely possible that she was somehow involved. However, after carefully reading the police officers' notes of these interviews, I find that it is equally possible that she was not. *While the appellant may well know what other family members said because they perhaps spoke about it or she surmised what they said, that*

[26] My emphasis.

> *is not sufficient for this purpose.*[27] In my view, the appellant has failed to provide sufficient evidence to establish that the application of the presumption in section 14(3)(b) would result in an absurdity with respect to this information.
>
> There is a considerable amount of information in the records that can best be described as the observations/assessment of evidence by the investigating officers. In addition, there is information about other witnesses (apart from family). This information is all about other individuals as well as, in some cases, the appellant and was obtained independently of her knowledge and participation. I have no difficulty finding that the absurd result principle does not apply to this information.
> …

[95] In my view, the rationale in these above-referenced orders is similarly applicable to the circumstances of the current appeal. In this case, the appellant is not a family member and none of the records contain her personal information. She was not present at, nor has she been made aware of the content of the records at issue. Although the appellant may know or surmise certain information about this family through her own investigation or contact with the family of the deceased child, this is not sufficient to establish the applicability of the absurd result principle. Accordingly, I find that the absurd result principle does not apply to the information at issue in the records.

[96] I have found that the presumption at section 21(3)(a) applies to some of the information in the records and that the factor favouring disclosure in section 21(2)(f) is relevant and that it carries significant weight. Accordingly, I conclude that disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of the deceased child and her family under section 21(1)(f) of the *Act*.

Public interest in disclosure

[97] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

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

---

[27] My emphasis.

[99] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[28]

Compelling public interest

[100] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[29] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[30]

[101] A public interest does not exist where the interests being advanced are essentially private in nature.[31] However, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[32]

[102] A public interest is not automatically established where the requester is a member of the media.[33]

[103] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[34]

[104] Any public interest in *non*-disclosure that may exist also must be considered.[35] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[36]

---

[28] Order P-244.
[29] Orders P-984, PO-2607.
[30] Orders P-984 and PO-2556.
[31] Orders P-12, P-347 and P-1439.
[32] Order MO-1564.
[33] Orders M-773 and M-1074.
[34] Order P-984.
[35] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[36] *Orders PO-2072-F, PO-2098-R and PO-3197.*

Purpose of the exemption

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

[106] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[37]

Representations

[107] The appellant submits that there is "a strong relationship between the requested records and the Act's central purpose of shedding light on the operations of government." Referring to the circumstances of the child's death, the appellant indicates her desire to assist a certain family member, who, in her option, requires legal protection. She states further:

> [T]here are very compelling public interest issues with this situation…**compelling enough to qualify for a Royal Commission Inquiry**, considering the abuse of process and authority the wrongful conviction entailed, to discredit the appellant's legal advocacy history. In fact, some parts of the evidence are shocks to the conscience, almost psychological rape. For example, a child is forced to shoulder the blame for his mothers and the authorities (*sic*) negligence no providing these children the necessities of life; 100+ years of municipal construction fraud, racketeering and corruption … all involving trusted authorities such as CAS, OFM, police, fire dept, Coroner's Office, etc, not just the expected mobsters and politicians…[38]

[108] The appellant goes on to describe her views of abuses and corruption by government bodies and the members of the public who have business interactions with them. She continues:

> Add the public's shock when they learn that the Ministry of the Attorney General's Office actually seems to be involved in concealing the truth; then preventing the appellant's appeal of a wrongful conviction intended to discredit her successful legal advocacy work… All this effort and expense to protect their own [named individual], and many other government funded agencies who contributed to the child's negligent death.

---

[37] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).
[38] Emphasis in the original.

Analysis and findings

[109] I accept that there will be a public interest in the circumstances surrounding the unexpected death of a child. This is evident in the media coverage that follows such a death, as indicated in the newspaper clippings provided by the appellant. However, this alone is not sufficient to render the public interest "compelling." As I indicated above, a public interest is not automatically established where the requester is a member of the media. By extension, I find that this caveat would also apply to independent researchers and/or other individuals seeking to expose alleged wrongdoing, as is the case in the current appeal.

[110] Although the appellant argues that disclosure of the records at issue would reveal systemic corruption and abuse, an allegation that she has, apparently, spent a considerable amount of time pursuing, I am not persuaded by her assertions that the records at issue would assist in attaining her goal. As I have stated before, the records at issue pertain to the unique circumstances of one family, who lost a child in a tragic accident. I found above that the records contain highly sensitive personal information about this family. After reviewing the appellant's representations overall, I find that she has shown a private interest in obtaining as much personal information about other individuals as she can in pursuit of her own agenda against various government bodies. I do not find the evidence and argument that she has provided, which consists primarily of her own beliefs and suspicions, to establish a *compelling* public interest.

[111] As I noted above, "the privacy rights of individuals other than the appellant are without question of fundamental importance." Even if there were some credible evidence to support the appellant's concerns regarding any of the issues she has written about in her representations, I find that there is nothing in the material before me demonstrating a compelling public interest which outweighs the protection of personal privacy in the circumstances of this appeal.

[112] For these reasons, I find that section 23 is not applicable.

[113] Accordingly, I find that the personal information in the records at issue is exempt under section 21(1).

[114] Because of the findings I have made in this order, it is not necessary for me to consider the other exemptions claimed by the ministry.

ORDER:

I uphold the ministry's decision.

Original signed by: August 28, 2013
Laurel Cropley
Adjudicator