

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3349

Appeal PA12-521

Ministry of Community and Social Services

June 6, 2014

Summary: The ministry received a request for access to a report relating to a review of provisions of the *Child and Family Services Act*. The ministry granted access in full to the body of the report, but denied access to portions of the bibliography and biographies of the report's authors, relying on the personal privacy exemption in section 21(1). The requester appealed the ministry's decision, claiming that there was a compelling public interest in the disclosure of the records, as contemplated by section 23. The adjudicator concludes that, with one exception, the court case citation information is not "personal information" as defined in section 2(1) of the *Act*, and should, therefore, be disclosed to the appellant. The adjudicator upholds the ministry's decision to exempt the withheld portions of the inquest recommendation citations and one court case citation, as well as the personal biographical information of two of the report's authors. Moreover, the adjudicator finds no compelling public interest in the disclosure of the information which would outweigh the purpose of the section 21(1) exemption.

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, 23, 28 and 67(2); *Child and Family Services Act*, R.S.O. 1990, c. C.11, as amended, section 45; *Coroner's Act*, R.S.O. 1990, c. C.37, sections 18, 32.

Orders and Investigation Reports Considered: Orders M-50, P-945, PO-1923, PO-1921, PO-1959, PO-2260, PO-2518 and PO-2623.

OVERVIEW:

[1] The appellant submitted a request to the Ministry of Community and Social Services (the ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a report relating to a review of provisions of the *Child and Family Services Act*¹. Specifically, the request was for:

[T]he immediate pre-Bill 6 1998/99(?) report primarily authored by [a named judge].

[2] The ministry located the requested report (the report) and granted partial access to it. Access to some information was denied pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*. The withheld information consisted of portions of the court decision citations and inquest recommendation citations listed in the bibliography to the report, as well as some biographical information about two of the report's authors in Appendix "D".

[3] The appellant appealed the decision of the ministry. During mediation, the ministry conducted further internet research and determined that one of the citations set out on page 73 of the records is publicly available on the internet. As a result, the ministry issued a revised decision and provided the appellant with access to that citation.

[4] The appellant requested that the ministry notify the affected parties identified in Appendix "D" and was not satisfied with the ministry's response that it was not able to do so as the records are too old and it did not have the necessary contact information in its records to enable it to contact the parties.

[5] Further mediation was not possible and a Mediator's Report was issued. Subsequent to receiving the Mediator's Report, the appellant advised the mediator that he is also raising the application of section 23 (public interest override) of the *Act*. The file was forwarded to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. The adjudicator sought and received representations from the ministry and the appellant. These representations were shared in accordance with section 7 of the Information and Privacy Commissioner's *Code of Procedure and Practice Direction 7*.

[6] During the adjudication phase, the ministry was asked to determine whether the requested record was released to the public in its entirety at the time it was written. The ministry advised that, upon receipt of the appellant's access request, it conducted a comprehensive search to try to determine this. Ultimately, while it was able to confirm

¹ R.S.O. 1990, c. C.11, as amended.

the public release of the body of the report, it was unable to confirm the public release of the bibliography and biographies.

[7] The file was subsequently transferred to me for a resolution.

[8] In this order, I uphold the ministry's decision, in part, but order the disclosure of some redacted portions of the court case citations.

RECORDS:

[9] The information withheld by the ministry and remaining in issue consists of the following:

- a) Redactions to the court decision citations and inquest recommendation citations listed in the bibliography to the report;
- b) Certain biographical information about two of the report's authors, found in Appendix "D" to the report.

PRELIMINARY ISSUE:

The ministry's obligation to notify for the purpose of obtaining consent

[10] The ministry withheld part of the biographical information about two of the report's authors on the basis that it constitutes the personal information of those individuals, the disclosure of which would constitute an unjustified invasion of personal privacy under section 21(1).

[11] The appellant asked that the affected parties be notified to determine whether they would consent to the disclosure of their personal information as contemplated by the exception in section 21(1)(a).² The ministry advised that it was not able to contact the affected parties, given the age of the records at issue and the fact that it did not have contact information for them. As the appellant was not satisfied with this response, the parties were invited to comment on this issue and the impact that non-notification may have on the issues on appeal.

[12] The ministry submitted that given the age of the report and the fact that the individuals in question were independent of the ministry, it had no means of contacting

² Section 21(1)(a) of the *Act* provides:

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;

them. The appellant questioned why the ministry did not contact the agencies with whom the individuals had been affiliated in an attempt to locate them.

[13] Section 28 of the *Act* requires an institution to notify an affected party only where the institution plans to grant access to the record. Further, while section 21(1)(a) of the *Act* allows for the disclosure of personal information with the consent of the person to whom the information relates, section 21(1)(a) does not impose an obligation on the institution to contact the affected party for the purpose of seeking consent, again unless the institution is considering releasing the information.³

[14] I conclude that the ministry was under no obligation to contact the two authors in order to seek their consent to the disclosure of the withheld biographical information.

[15] During mediation, the appellant also asked this office to attempt to contact the affected parties in order to seek their consent to the release of their biographical information. The ministry advised the mediator that it did not have contact information for the affected parties. In addition, in view of this office's confidentiality obligations and the limited information it has, as well as the fact that the record dates back to 1998, the mediator concluded that this office would not be able to undertake notification of the affected parties in the mediation stage. The mediator suggested that the appellant could raise the issue again during the adjudication phase. Although the appellant's representations only take issue with the ministry's non-notification, and not this office's, for the sake of completeness I consider the Commissioner's notice obligations briefly below.

[16] Section 50(3) of the *Act* gives the Commissioner discretion to notify, or not notify, a party with an interest in the appeal. This discretion must be properly exercised, bearing in mind relevant factors and not taking irrelevant ones into account.⁴

[17] In determining whether to notify the affected parties in the adjudication phase of this appeal, I have considered the following factors:

- As I find below that the affected parties' information is exempt in any event, the only purpose to be served by notification (and the only purpose for which the appellant wishes to have them notified) would be to explore the possibility of consent.
- The ministry has advised that it does not have contact information for the affected parties.

³ Order PO-1959.

⁴ Order PO-2879-R.

- According to the appellant's representations, he contacted the agencies with whom the affected parties were affiliated in 1998, and was not able to locate the affected parties through those agencies.
- This office does not have any information over and above what the appellant and the ministry have, and would not likely succeed in locating these individuals, particularly in light of the fact that the records date back to 1998.

[18] Taking into account these factors, I saw no purpose in taking steps to notify the affected parties, and have exercised my discretion under section 50(3) not to attempt notification.

ISSUES:

The issues for me to determine in this appeal are the following:

- A: Do the records contain "personal information" as defined in section 2(1) of the *Act* and if so, to whom does it relate?
- B: Does the mandatory exemption at section 21(1) apply to the information at issue?
- C: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of section 21(1)?

DISCUSSION:

Background

[19] A brief background helps to give this appeal some context and to explain how the records in issue came to be created.

[20] The parties' representations indicate that the ministry solicited the report in order to obtain information and advice it could use to continue with reforms to Ontario's child protection system under the *Child and Family Services Act*. The amendments that were proposed after the release of the report were, according to media reports of the time, designed to "change child protection laws so the safety of abused and neglected children clearly outweighs the importance of keeping families together".⁵ It is a matter

⁵ Toronto Star, "Tougher laws set to guard children", June 12, 1998
Canada News-wire, "Province releases three reports on Ontario's child protection system", June 12, 1998.

of public record that the *Child and Family Services Act* underwent amendments in 1999.⁶

[21] The report was authored by eight panel members, the biographies of whom are set out in Appendix "D" to the report. The report also has an extensive bibliography.

[22] The appellant, according to the ministry, has a broad knowledge of the child welfare sector dating back many years, and regularly writes on specific cases for a public website he is a regular contributor to. After the ministry disclosed the report in its redacted form to the appellant, the report was posted to that website.

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

[23] In order to determine whether the exemption at section 21(1) of the *Act* applies, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[24] For the reasons outlined below, I find that, with one exception, the citations of the court decisions do not constitute "personal information" as defined in section 2(1) of the *Act*. However, I find that the citations of the inquest recommendations, one court case citation, and the biographical information pertaining to two of the report's authors constitute "personal information" as defined in section 2(1) of the *Act*.

[25] "Personal information" is defined in section 2(1) of the *Act* 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,

⁶ *Child and Family Services Amendment Act (Child Welfare Reform), 1999*, S.O. 1999 c. 2.

- (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;

[26] 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.⁷

[27] 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.

[28] 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

⁷ Order 11.

individual.⁸ However, 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.⁹

[29] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹⁰

The inquest recommendation citations and court case citations

[30] The report's bibliography lists many sources, including court decisions and Coroner's inquest recommendations. For the most part, the court decisions appear to involve litigation with various Children's Aid Societies. Of the two cases that do not appear to involve a Children's Aid Society, one appears to be a criminal matter.

[31] The citations to the Coroner's inquest recommendations and court cases do not appear to be official citations. According to the ministry, its searches revealed that they do not appear to have been reported cases. In the absence of official citations, the report's authors appear to have cited these sources in an informal manner, by listing the court, the parties, and in some cases the year. The individuals involved in the court decisions and Coroner's inquest recommendations are noted in the citations by the use of initials, or in some cases the first name(s) and surname initial, of the individual parties, including references to the deceased individuals in the Coroner's inquest recommendation citations.

[32] The ministry refused to disclose the initials, or first name(s) and surname initial, as the case may be, on the basis that to do so would serve to identify the individuals to whom those court proceedings and Coroner's inquests relate.

[33] As I noted above, in order for information to qualify as "personal information", it must be reasonable to expect that an individual may be identified if the information is disclosed. The ministry was asked to explain how the disclosure of a first name and last initial and/or simply initials could reasonably be expected to lead to the identification of a particular individual.

[34] In response, the ministry submitted that:

- The redacted information exists alongside the years of the court decisions and the geographic location (indicated explicitly or which can be inferred) of the named individuals;

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁹ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹⁰ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- The appellant has a broad knowledge of the child welfare sector dating back many years, and regularly writes on specific cases involving children's aid societies and individual children in a public website he is a regular contributor to; and
- Upon the ministry's disclosure of the requested record to the appellant, the appellant posted a copy of the redacted report on the above-noted website. In his posting, the appellant guessed as to the identity of the individuals whose names had been redacted. The ministry provided this office with a copy of the web page in question.

[35] The ministry submitted:

The ministry holds a reasonable expectation that, when the redacted information is combined with information from sources otherwise available, the individuals can be identified. Further, given the appellant's familiarity with child welfare services and specific cases involving individual children and families, the ministry holds a reasonable expectation that an individual may be identified if the information is disclosed.

[36] While the appellant does not make specific submissions on the issue of whether the inquest recommendation citations and court case citations constitute personal information, he states in his representations that he asked the Coroner's Office for, and received, unredacted, copies of various inquest recommendations. The appellant has provided a link to the website on which he arranged for those inquest recommendations to be published. The Coroner's inquest recommendations posted to this website set out the names of the deceased subjects of the inquests, in full.

Inquest recommendation citations: findings

[37] The rules surrounding the publication of the identity of persons who are the subject of inquest proceedings are found in the *Coroner's Act*.¹¹ Section 32 of the *Coroner's Act* provides that, with limited exceptions, Coroner's inquests are open to the public. Section 18(3) of the *Coroner's Act* further provides:

The Chief Coroner shall bring the findings and recommendations of a Coroner's investigation, which may include personal information as defined in the *Freedom of Information and Protection of Privacy Act*, to the attention of the public, or any segment of the public, if the Chief Coroner reasonably believes that it is necessary in the interests of public safety to do so.

¹¹ R.S.O. 1990, c. C.37.

[38] I have reviewed the website extract included with the ministry's representations, as well as the appellant's representations which include links to full Coroner's inquest recommendations which were emailed to him by the Coroner's office in an unredacted format, including the full names of the subjects of those inquests. My review leads me to conclude that it is reasonable to expect that an individual may be identified from the records if the redacted portions of the inquest citation information are disclosed.

[39] Therefore, I find that the Coroner's inquest recommendation citations are recorded information about an identifiable individual. Disclosure of these citations would reveal personal information about these individuals, namely, that they were the subject of the Coroner's inquest recommendations. I will consider the applicability of the mandatory exemption at section 21 to this personal information, below.

Court citations: findings

[40] Pursuant to section 45 of the *Child and Family Services Act*, child protection proceedings are generally held in the absence of the public. In addition, section 45(8) of the *Child and Family Services Act* provides:

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

[41] In this case, the authors of the report cited some of the Children's Aid Society cases by use of initials, and others by use of first name(s) and last initial.

[42] The ministry points to the appellant's broad knowledge of the child welfare sector going back many years as one of the factors supporting its argument that the parties in the citations are identifiable. While the ministry does not indicate how many years "many years" is, the appellant's representations suggest that his involvement with the Children's Aid Society began at some point shortly before 2007. The court case citations in issue, however, range in date from 1990 to 1996. Without specific evidence of how the appellant could be personally aware of these cases which took place two decades ago, I find it unlikely that he is. Therefore, the ministry would have to demonstrate that the citations, when combined with other available information, could reasonably be expected to identify an individual.

[43] In contrast to its representations with respect to the Coroner's inquests, however, the ministry's representations included little evidence supporting its argument that the parties to the court cases can be identified based on the citations. Absent such persuasive evidence, the ministry's belief that individual parties in the court case citations may be identified appears to be based on speculation. Based on the evidence and representations before me, I am not persuaded that it is a reasonable expectation

that an individual may be identified if the court citations, consisting of initials and first names with last initials, are disclosed in full. I conclude that disclosure of these citations could not reasonably lead to the identification of the individuals to whom they refer and reveal that they were the subject of these court proceedings.

[44] Two of the court case citations do not appear to involve a Children's Aid Society. One of them cites two individual parties by first name and last initial. Again, there is nothing in the representations before me or in the record to suggest that it is reasonable to expect that an individual may be identified if the case citation is disclosed. Therefore, I find that disclosure of that citation would not reveal personal information about either of these individuals.

[45] Because the court case citations discussed above do not qualify as personal information, the mandatory exemption under section 21(1) of the *Act* cannot be applied to that information.

[46] However, one of the court case citations contains sufficiently detailed information about the individual party that, when coupled with sources which are publicly available, it is reasonable to expect that disclosure of this citation may identify that individual. I conclude that disclosure of that citation could reasonably lead to the identification of the individual to whom it refers and reveal that that individual was the subject of that court proceeding which, from reviewing the portion of the citation that has been disclosed to the appellant, appears to be a criminal matter. I will discuss the application of the mandatory exemption under section 21(1) of the *Act* to that citation below.

The biographical information

[47] Appendix "D" to the report sets out the biographies of the panel members who contributed to the report. The ministry provided the appellant with Appendix "D", but withheld some biographical information pertaining to two panel members.

[48] The ministry submits that the biographies contain professional information, but that co-mingled with this information is information of a personal nature about the authors. Only the information of a personal nature has been redacted.

[49] The appellant's submissions do not contain specific argument on this point.

[50] I have reviewed the withheld biographical information and I find that it constitutes personal information about each panel member. Although the panel members contributed to the report in their professional capacities, the withheld biographical information still qualifies as personal information, because the information reveals something of a personal nature about the individual. Specifically, the withheld information reveals something about the family status of each of the panel members. Therefore, I find that the information qualifies as the personal information of the two

named panel members. I will discuss the application of the mandatory exemption under section 21(1) of the *Act* to the redacted biographical information below.

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

[51] As I found above, disclosure of the redacted initials or first name and last initial, as the case may be, in the Coroner's inquest recommendation citations, and one of the court case citations, would reveal personal information about the individuals to whom the initial or first name and surname initial relate. The redacted portions of the biographies of two of the report's authors also qualify as personal information.

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

[53] The section 21(1)(a) to (e) exceptions are relatively straightforward. The ministry submits, and I find, that none of the exceptions in sections 21(1)(a) to (e) are applicable in this appeal.

[54] The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21.

[55] The appellant submits that the disclosure of the records would not be an unjustified invasion of personal privacy. Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, the information is not exempt from disclosure. Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[56] I find that neither the presumptions in section 21(3) nor the exceptions outlined in section 21(4) apply in the present appeal. 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.¹²

[57] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in

¹² Order P-239.

section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.¹³

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

[59] The appellant relies on several unlisted factors under section 21(2) which he argues favour a finding that disclosure of the information at issue would not constitute an unjustified invasion of their personal privacy. He argues that the report was disclosed to the public in its entirety at the time it was written; that the full citations to Coroner's inquests are readily publicly available; and that there is a diminished expectation of privacy in regards to one of the report's authors, whom the appellant submits may be deceased.

[60] In addition, the appellant's arguments, taken as a whole, suggest that he argues that section 21(2)(a) is applicable. That section provides:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

[61] The ministry submits that disclosure of the withheld information would constitute an unjustified invasion of personal privacy pursuant to section 21(1), and that none of the factors under section 21(2) apply so as to favour a finding that disclosure of the information at issue would not constitute an unjustified invasion of their personal privacy.

[62] The ministry's representations do not make reference to any specific factors favouring privacy protection under section 21(2). However, because section 21(1) is a mandatory exemption, in making my determinations I have taken into account the fact that the Coroner's inquest citations would reveal highly sensitive information, as contemplated by the factor in section 21(2)(f), involving children who died under very unfortunate circumstances. Further, the court case citation appears to involve a criminal charge, and would thus reveal highly sensitive information.

[63] I have also taken into account an unlisted factor, being the fact that section 45(8) of the *Child and Family Services Act* prohibits the making public of information

¹³ Orders PO-2267 and PO-2733.

¹⁴ Order P-99.

that has the effect of identifying a child who is a witness or a participant in a child protection proceeding.

[64] I will address these factors favouring privacy protection immediately below, and then turn to the factors favouring disclosure.

Section 21(2)(f): the Coroner's inquest recommendations and the criminal court case citation would reveal highly sensitive personal information

[65] Given the nature of the report, it is fair to assume that most, if not all, of the Coroner's inquest recommendations cited involve children. Again, given the nature of the report, it is also a reasonable inference that many, if not all, of the inquests in issue relate to children who had been involved in the child protection system. In my view, personal information about children who die under these very unfortunate circumstances is, by its nature, highly sensitive personal information.

[66] Orders of this office have also found that information about an individual's involvement with the criminal justice system is highly sensitive.¹⁵

[67] Therefore, I find that the factor at section 21(2)(f) favouring privacy protection applies to the inquest recommendation citations and the criminal court case citation. Further, this factor, in my view, is deserving of considerable weight.

Section 21(2) unlisted factor: section 45(8) of the Child and Family Services Act

[68] Section 67(2) of the *Freedom of Information and Protection of Privacy Act* states:

The following confidentiality provisions prevail over this Act:

2. Subsections 45(8), (9) and (10), 54(4) and (5), 74(5), 75(6), 76(11) and section 165 of the *Child and Family Services Act*.

[69] As noted previously, section 45(8) of the *Child and Family Services Act* states:

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

¹⁵ See, for example, Order PO-2518.

[70] As also noted previously, given the nature of the report, it is a reasonable inference that many, if not all, of the inquests in issue relate to children who had been involved in the child protection system. Therefore, I find that it is likely that disclosure of the Coroner's inquest recommendation citations would have the effect of identifying a child who was a participant in or the subject of a child protection hearing.

[71] Without finding specifically (it was not argued) that disclosure of this information would be covered by the confidentiality provision in section 45(8) of the *CFSA*, I find that this is a relevant factor favouring privacy protection applying to the inquest recommendation citations and I give it significant weight.

Section 21(2) unlisted factor: were the appendices to the report released at the time the report itself was released?

[72] In his representations, the appellant provided copies of a number of e-mail exchanges he had with several of the former panel members who authored the report. According to their recollections, which they admitted were affected by time, the report was released to the public in its entirety at the time it was written.

[73] The ministry was asked to respond to this assertion and to explain what efforts it made to determine whether this was the case. In response, the ministry provided detailed representations outlining its efforts to try to determine whether the record had been released publicly in its entirety. To summarize the ministry's representations:

- Upon receipt of the appellant's access request, the ministry began internal inquiries to try to determine whether the report had been released publicly in its entirety.
- Internet searches were conducted and three news articles were located, reflecting the release of the report. The ministry appended copies of these articles to its representations.
- The Child Welfare Secretariat advised that there have been occasions where Ministers have released reports without publicly releasing all appendixes relating to those reports.
- While the Child Welfare Secretariat could confirm that the Minister of the time had released the report, it could not confirm that the Appendixes to the report had been publicly released along with the report.

- It could not be determined with certainty that the bibliography was ever released publicly, and it could not be determined whether all the reports cited in the bibliography were public reports.
- It could not be determined with certainty that the biographies of panel members were released publicly. The ministry considered notifying the panel members and seeking their consent to the release of their personal information, but determined that notification was not possible.

[74] If the report was released in its entirety, including appendices, at the time it was written, this would be a relevant factor favouring disclosure.

[75] However, given that neither the appellant's inquiries nor those of the ministry were able to confirm that the bibliography and biographies were publicly released along with the body of the report, I am not satisfied that that report was in fact released in its entirety. Therefore, I have not placed any weight on this factor in the circumstances of this appeal.

Section 21(2) unlisted factor: are full name Coroner's inquest recommendation citations already publicly available? Is a full name citation available for the criminal court case citation?

[76] The appellant suggests that Coroner's inquest recommendations, containing the full names of the deceased subjects, are public or at least available to the public upon request. If true, this would be a relevant factor favouring disclosure.

[77] While it appears from the representations before me that inquest recommendations are generally publicly available, I do not have the benefit of detailed submissions on this issue. Based on the evidence before me, it appears that at least some inquest recommendations, including the names of the subjects, are made public by the Coroner's office. Although I cannot conclude, based on the evidence before me, that this is an invariable practice, it is nonetheless a factor in favour of disclosure.

[78] However, given that it is unclear to what degree Coroner's inquests are publicly available, I do not attach a significant amount of weight to this factor.

[79] I have also considered whether a full name citation is already publicly available for the criminal court case. Where a case name is already a matter of public record, its disclosure would not be found to be an unjustified invasion of personal privacy, absent exceptional circumstances.¹⁶ However, having reviewed the parties' submissions, I am

¹⁶ Order PO-1921.

not satisfied that this citation is publicly available as a full name citation. Therefore, I have not placed any weight on this factor.

Section 21(2) unlisted factor: are the individuals to whom the information relates deceased?

[80] The appellant argues that one of the authors of the report may be deceased, and that this removes any privacy concern under section 21 with respect to that author's biographical information.

[81] Section 2(2) of the definition of personal information clearly recognizes that information about an individual who has been dead for less than 30 years constitutes personal information. Previous orders of this office have found, however, that the privacy interest associated with personal information diminishes after the individual's death.¹⁷

[82] The possibility of a diminishing privacy interest after death has been cautiously considered as an unlisted factor favouring disclosure under section 21(2) of the *Act*. As noted by former Adjudicator John Higgins in Order P-945, "[i]n view of the fact that the Act makes explicit provision for the protection of the privacy of deceased individuals, it is my view that the unlisted factor identified in Order M-50 should only apply in exceptional circumstances".

[83] I agree with Adjudicator Higgins' analysis and apply it to the circumstances of this appeal.

The inquest recommendation citations: findings

[84] Although the appellant has not raised this factor in respect of the inquest recommendation citations in particular, I will briefly address it here, given that he has raised the more general issue of the privacy interests of deceased individuals.

[85] The fact that individuals who are the subject of the inquests are deceased is a relevant factor that would tend to favour disclosure. However, as noted above, in my view this factor should only apply in exceptional circumstances. Further, in my view, this appeal does not involve any exceptional circumstances that would warrant placing significant weight on this factor. I have therefore attached little weight to it.

¹⁷ Order PO-1736 (upheld on judicial review in *Ontario (Public Guardian and Trustee) v. Goodis* (December 13, 2001), Toronto Doc. 490/00 (Ont. Div. Ct.), leave to appeal refused (March 21, 2002), Doc. M28110 (C.A.)), and Orders M-50, P-568, P-945, PO-1923, PO-2260, PO-2298 and PO-2623.

The biographical information: findings

[86] The appellant submits that, according to information he received from one of the agencies he contacted, one of the two authors in question may be deceased. He submits that this is a relevant factor supporting a finding that disclosure of that author's personal information would not constitute an unjustified invasion of personal privacy.

[87] I have reviewed the information the appellant received and note that the person who advised the appellant of this information was somewhat equivocal in that she did not identify how she came to understand that this author is deceased. The appellant himself, in his representations, states that this author "may" be deceased. I am, therefore, not satisfied that this person is deceased, and I have not placed any weight on this factor in my analysis.

Section 21(2)(a): public scrutiny of the Government of Ontario

[88] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.¹⁸

[89] The appellant argues throughout his representations that the government of the day relied heavily on the recommendations in the report in implementing significant changes to child protection laws without the opportunity for public input. He submits that the entire report, including the inquest recommendation citations, court case citations and unredacted bibliography should be disclosed to the public on this basis.

[90] The ministry submits that it considered this section and determined that the personal information in question is not relevant to the issue of subjecting the activities of the government to public scrutiny. The ministry submits that the information is not substantive to the issues and would not add anything essential to public discussion of the issues, and any public discussion of the issues may exist without disclosure of the personal information at issue.

Inquest recommendation citations and the criminal court case citation: findings on 21(2)(a)

[91] As noted above, the report formed the basis for the Ontario government's plan to implement amendments to the *Child and Family Services Act*. Appended to the report is an extensive bibliography which lists the sources consulted by the panel members in the preparation of the report.

¹⁸ Order P-1134.

[92] In determining whether disclosure of the inquest recommendation citations, as well as the criminal court case citation, would constitute an unjustified invasion of personal privacy, I have considered factors favouring disclosure under section 21(2)(a). In my view, public scrutiny of the government is enhanced when the information relied upon in forming a recommendation to government is public. This is particularly the case where, as in this instance, according to the media reports of the time, the government's stated intention was to adopt many of the report's recommendations in implementing significant changes to the law.¹⁹ I find that disclosure of the citation information is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny. Accordingly, I find that the factor favouring disclosure in section 21(2)(a) is relevant.

[93] I am mindful that this factor strikes at the very overarching purpose of access to information legislation, being enhanced participation in the democratic process.²⁰ However, I also note that the full body of the report has been released. Further, as a result of this order, the majority of the court case citations will be released. In these circumstances, I find that releasing the inquest recommendation citations and the one criminal court case citation would not add significantly to the information already available for the purpose of subjecting the government to public scrutiny. I therefore accord only moderate weight to this factor.

Biographical information: findings on 21(2)(a)

[94] The withheld biographical information consists of information about the family status of the two authors in question. The appellant has made an assumption regarding the family status of these two individuals which he suggests negatively impacts the impartiality of the panel of authors. I understand the appellant's submission to be that the disclosure of this personal information is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny pursuant to section 21(2)(a).

[95] I am not persuaded that the withheld information would add appreciably to an understanding of the report. As I indicated above, the body of the report was made public. Further, all but one of the court case citations will be disclosed as a result of this order. In my view, the activities of the government can be subjected to public scrutiny without disclosure of the family status information of the two authors in question.

[96] In addition, I note that the report had eight authors, the professional biographies of whom have been disclosed in full to the appellant. None of the other six authors'

¹⁹ The following were appended to the ministry's representations: Canada News-wire, "Province releases three reports on Ontario's child protection system", June 12, 1998; Toronto Star, "Tougher laws set to guard children", June 12, 1998.

²⁰ *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403 per LaForest J. at paras. 61-62, adopted by the majority on this point at para 1.

biographies include their family status information. Therefore, even if the family status information of the two panel members in question were disclosed to the appellant, the overall composition of the panel in terms of family status would still be unknown.

[97] I conclude that section 21(2)(a) does not apply to the family status information in respect of the two authors.

Inquest recommendation citations: conclusion on the application of section 21

[98] Having considered the parties' submissions, I conclude that there are relevant factors weighing both in favour of privacy protection in respect of the inquest recommendation citations, and in favour of disclosure of those citations. Specifically, I have considered the fact a) that the inquest recommendation citations, if disclosed, would reveal sensitive personal information; b) that section 45(8) of the *Child and Family Services Act* is a significant factor favouring privacy protection; c) that disclosure is desirable for the purpose of subject the government of Ontario to public scrutiny; and d) that many inquest recommendations appear to be available to the public. As I noted above, I have given little weight to the fact that the privacy interest of the subjects of the Coroner's inquests may be diminished because they are deceased.

[99] Balancing the privacy interests of the deceased children whose personal information is contained in the records against the appellant's right of access, I find that the privacy interests at stake outweigh the interest in disclosure. In particular, I have placed considerable weight on the fact that disclosure would reveal highly sensitive personal information which is protected by section 45(8) of the *CFSA*. Therefore, I find that disclosure of the withheld information in the Coroner's inquest recommendation citations would constitute an unjustified invasion of personal privacy under section 21(1) of the *Act*. This personal information, therefore, qualifies for an exemption under section 21(1).

Criminal court case citation: conclusion on the application of section 21

[100] Again, there are factors weighing both in favour of privacy protection and in favour of disclosure. Specifically, I have considered the fact that this citation, if disclosed, would reveal highly sensitive information about an individual, as well as the fact that disclosure of this case citation is desirable for the purpose of subjecting the government to public scrutiny. For the reasons explained earlier, I find that the latter factor should not be accorded significant weight in the circumstances. In my view, therefore, the privacy interest at stake outweighs the interest in disclosure. I find that disclosure of the criminal court case citation would constitute an unjustified invasion of personal privacy under section 21(1) and this personal information, therefore, qualifies for an exemption under section 21(1).

Biographical information: conclusion on the application of section 21

[101] Having considered the appellant's submissions, I conclude that there are no relevant factors weighing in favour of disclosure of the biographical information. As section 21(1) is a mandatory exemption and there are no relevant factors favouring disclosure, I find that disclosure of the family status information of the authors would result in unjustified invasion of their personal privacy and it qualifies for exemption under section 21(1).

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

[102] I have determined that disclosure of the following would constitute an unjustified invasion of personal privacy under section 21(1) of the *Act*:

- The inquest recommendation citations;
- The criminal court case citation; and
- The family status information in the biographies of two of the report's authors.

[103] I will now consider whether there exists a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption.

[104] The appellant submits that the disclosure of the withheld information is necessary in order to expose the process that led to the government's changes to the child protection system in Ontario in 1999. He relies on the "public interest override" in section 23 of the *Act* applies in this case. This section reads:

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

[105] 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.²¹

[106] 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 Information and

²¹ Order P-1398.

Privacy Commissioner reviews 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.²²

Compelling public interest

[107] 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.²³ 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.²⁴

[108] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.²⁵

[109] Some examples of where compelling public interest has been found to exist are

- the records relate to the economic impact of Quebec separation²⁶
- the integrity of the criminal justice system has been called into question²⁷
- public safety issues relating to the operation of nuclear facilities have been raised.²⁸

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

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations²⁹

²² Order P-244.

²³ Orders P-984, PO-2607.

²⁴ Orders P-984 and PO-2556.

²⁵ Order P-984.

²⁶ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²⁷ Order PO-1779.

²⁸ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

²⁹ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

- the records do not respond to the applicable public interest raised by appellant.³⁰

[111] The ministry submits that no compelling public interest exists in this case in that the personal information is irrelevant to the purpose of the record in question and does not serve the purpose of informing or the enlightening the public.

Conclusion: Inquest recommendation citations and criminal court case citation

[112] Having reviewed the information at issue and the representations of the parties, I conclude that there is no public interest, compelling or otherwise, in the disclosure of the inquest recommendation citations or the criminal court case citation. Any public interest considerations can be addressed by the significant amount of information already disclosed and which will be disclosed as a result of this order. In my view, these disclosures are adequate to address any public interest considerations.

[113] As I have found that there is no compelling public interest in disclosure, I do not need to consider whether such a public interest clearly outweighs the purpose of the established exemption claim in the specific circumstances.

[114] Accordingly, I find that the withheld portions of the inquest recommendation citations and the criminal court case citation are exempt from disclosure under the mandatory exemption in section 21(1) of the *Act*.

Conclusion: Biographical family status information

[115] Having reviewed the information at issue and the representations of the parties, I also conclude that there is no public interest, compelling or otherwise, in the disclosure of the family status information of the two authors. While there may be a public interest in disclosure of the report as a whole and even some interest in the background of its authors, disclosure of, in particular, the family status information of the authors does not serve the purpose of informing citizens about the activities of the government, nor does it add to the information the public has to make effective use of the means of expressing public opinion. As noted above, the family status of the two authors, even if disclosed, would impart very little information about the process that resulted in the creation of the report, in light of the fact that there were six other authors whose family status is not included in their biographies.

[116] In addition, any public interest considerations can be addressed by the significant amount of information already disclosed. The disclosure to date, together

³⁰ Orders MO-1994 and PO-2607.

with the additional disclosures ordered herein, is adequate to address any public interest considerations, in my view.

[117] As I have found that there is no compelling public interest in disclosure, I do not need to consider whether such a public interest clearly outweighs the purpose of the established exemption claim in the specific circumstances.

[118] Accordingly, I find that the biographical information at issue in the records is exempt from disclosure under the mandatory exemption in section 21(1) of the *Act*.

ORDER:

1. I uphold the ministry's decision to withhold the redacted portions of the inquest recommendation citations, and the criminal court case citation.
2. I uphold the ministry's decision to withhold the biographical information redacted from Appendix "D", page 76 of the record.
3. I order the ministry to disclose the remainder of the withheld information to the appellant which I have highlighted and provided to the ministry with this order. This disclosure is to take place no later than **July 7, 2014**.
4. In order to verify compliance with provision 3 of this order, I reserve the right to require the ministry to provide me with a copy of the information disclosed to the appellant.

Original Signed By:
Gillian Shaw
Adjudicator

June 6, 2014