Information and Privacy Commissioner,
Ontario, Canada

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

# ORDER PO-3429

Appeal PA09-107

Ministry of Community Safety and Correctional Services

November 27, 2014

**Summary:** A requester sought access to historical data showing the length of sentence for individual inmates incarcerated in provincial correctional institutions, the corresponding last known postal code for each inmate at the time of sentencing, and the year of each sentence. The ministry denied access to the postal codes. On appeal, the adjudicator upholds the ministry's decision to deny access on the basis that, although anonymized, the information in the records could reasonably be linked to individual offenders and the personal privacy exemption in section 21(1) applies. The fee for access is waived in its entirety.

**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), 21(2)(a), (e), (f), (i), 57(4), Regulation 460, section 8.

**Orders and Investigation Reports Considered:** Orders PO-2726, PO-2811, and PO-2518.

**Cases Considered:** *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31, affirming 2012 ONCA 393 (C.A.), and affirming 2011 ONSC 3525 (Div. Ct.); *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 4987, affirmed in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300.

## OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry), through its Correctional Services Division, is responsible for the secure custody of adult offenders who have been convicted by the courts and sentenced to terms of imprisonment of up to two years less one day. The ministry is also responsible for custody of individuals pending trial, sentencing or transfer, and detentions pending immigration proceedings. The ministry operates 31 correctional institutions.

[2] The ministry uses a computerized corrections case management system called the Offender Tracking Information System (OTIS) for storing and updating inmate/offender records. This system was implemented in 2001. OTIS also incorporates information from the ministry's earlier database, the Offender Management System (OMS), and the oldest case management records in OTIS thus date back to 1991.

[3] A journalist made a request to the ministry under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* the *Act*) for the following information:

> I seek access to historical data that shows the length of sentence for individual inmates, the corresponding last known postal code for each inmate, as well as the year the inmate was sentenced.
>
> I propose that the data go back in time as far as it is electronically possible to extract the data.
>
> I propose that the information be released electronically, preferably in a table format…
>
> I do not seek personal information and it is not my intention to identify individuals…

[4] This request was one of five made by the requester, for information contained in the OTIS. The requester advised the ministry that the information he sought was of public interest and that the fee should be less than what he was charged in an earlier related request, because much of the computer programming had already been done on the OTIS.

[5] In discussions with the ministry, the requester provided the following clarifications:

- the term "historical data" should be interpreted as all relevant offender data contained on the OTIS from 2001-2008, as well as all relevant offender data

that migrated onto the OTIS from the previous records system (1991 to 2001).

- the offender identification number for each offender should be replaced by an anonymized or randomly-generated client number to facilitate linkage of all personal data relating to a single offender.
- "length of sentence for individual inmates" refers to the total aggregate sentence for each sentence served by the identified offender during the specified time period.
- "year the inmate was sentenced" refers to the year of sentence or admission to the correctional institution for each sentence served by the identified offender during the specified time period.
- Postal code refers to the available postal code(s) contained in the home address(es) of each sentenced offender for every sentence served by the identified offender during the specified time period.

[6] The ministry issued an interim access decision and fee estimate advising that part of the information would likely be exempt from disclosure, pursuant to section 21(1) (invasion of personal privacy), in conjunction with sections 21(2)(e) and 21(2)(f) of the *Act*. The ministry provided the preliminary view that the requested home address postal code data of sentenced provincial offenders would likely be disclosed in a severed form only. Specifically, the last three characters of the postal code would be withheld from disclosure. The ministry informed the requester that a final decision in this regard would be made only after all of the requested OTIS data was reviewed.

[7] In addition, the ministry advised the requester that the estimated fee for the request was $15,887.50 and requested a deposit of $7,941.25. The ministry explained the basis for its fee estimate and, also, the reasons why this request was significantly different from the prior requests referred to by the requester. It indicated, among other things, that the request would cover data in the OTIS relating to approximately 265,000 offenders.

[8] The requester (now the appellant) filed this appeal disputing the interim access decision and fee estimate. During mediation of the appeal, the appellant made a request to the ministry for a fee waiver, or a fee reduction, on the basis that the information requested would be a benefit to public health and safety. In addition, the appellant clarified that his request was for postal code information listed in OTIS on the date an offender was sentenced to a period of incarceration. It did not cover postal code changes that reflect address changes during the time an inmate was serving a sentence. The ministry then issued a revised decision based on the following clarified request:

> …historical data that shows the length of sentence for individual inmates, the corresponding available postal code for each inmate as of the date of sentencing, as well as the year the inmate was sentenced.

[9] The ministry indicated that, as a result of the clarification, its staff recalculated the estimated amount of time required for computer programming and record preparation tasks to respond to the request. The total estimated fee was now $705.00, details of which were provided to the appellant. The deposit requested was now $352.50. The ministry also indicated that its interim decision on access remained unchanged.

[10] The appellant paid the deposit and the ministry conducted its search for the records. In its final decision, the ministry stated that it treated the requested offender information for each sentence served by an individual offender as a "record" for the purposes of the request. A total of 626,168 responsive offender records were located. The ministry also indicated that approximately 62.1% of the records do not include a postal code.

[11] The ministry's decision was to grant partial access to the requested information. It stated that it would sever the postal codes in their entirety from the records, in accordance with the exemptions contained in sections 14(1)(l) (facilitate commission of unlawful act), 14(2)(d) (correctional record), 20 (danger to safety or health) and 21(1) of the *Act*. Access was granted to the remainder of the requested data from OTIS consisting of the year of sentence and the number of aggregate days sentenced for every custodial sentence served by each offender between 1991 and 2008. Each offender was identified by the use of a randomly generated numerical identifier.

[12] The ministry also advised that the actual fee was $583.88. However, because it had decided to exempt the postal code data in its entirety, the ministry reduced the processing fee by one third. Therefore, the revised fee was $389.25. As the appellant had already paid a deposit of $352.50, the ministry requested the balance of $36.75.

[13] In its final decision, the ministry also denied the request for a fee waiver.

[14] As mediation did not result in a resolution of the issues, the file was moved to the adjudication stage of the process. Both parties submitted representations. Following receipt of the representations, the adjudicator with carriage of the appeal decided to place it on hold pending completion of the judicial review relating to Order PO-2811, based on the similarity of the issues between the two cases.

[15] The judicial review of Order PO-2811 eventually resulted in a decision of the Supreme Court of Canada on April 24, 2014.[1] The file was re-assigned to me for a final decision. For the reasons below, I find that the six-character postal codes in the records are exempt from disclosure. However, I order that the fee be waived in its entirety.

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[1] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31; affirming 2012 ONCA 393 (C.A.), and affirming 2011 ONSC 3525 (Div. Ct.).

## RECORDS:

[16] The information remaining at issue consists of the available six character postal code for each offender as of the date of sentencing, for the period 1991 to 2008. The ministry provided this office with a sample of the records, relating to 20 offenders. The records are organized into four columns, containing the following information:

- Randomly generated offender identifier with one identifier being assigned to each offender
- Year of sentence for each sentence served
- Number of days sentenced for each sentence served
- Postal code, where available, for each offender, as of the date of each sentencing

[17] Although there are in excess of 600,000 records in total, a number of offenders are the subject of multiple entries, because of multiple occasions of sentencing. Because each offender is assigned one identifier, the information for each offender is linked through the identifier.

## ISSUES:

### PERSONAL INFORMATION

**Does the record contain "personal information" as defined in section 2(1) of the *Act*?**

[18] In this appeal, the critical preliminary question is whether the records contain "personal information", despite the fact that the information is anonymized. The term "personal information is defined in section 2(1) as follows:

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

> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[19] 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.[2]

[20] Sections 2(2), (3) and (4) also relate to the definition of personal information, but do not have relevance to this appeal.

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

### ***Representations***

[22] The ministry submits that in the circumstances of this request, the available offender postal code data, in conjunction with the other requested offender information and in the general context of the request, should be viewed as containing personal information about potentially identifiable offenders.

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[2] Order 11.
[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[23] The ministry notes that in some instances, the postal codes may not be accurate, as it does not seek confirmation of the address information supplied by an offender (which they are not legally required to supply), unless authorized to do so.

[24] The ministry states that the appellant's request for access to "historical data" would reveal the following types of personally identifiable information about the sentenced offenders:

- The fact that the individual was convicted of an offence(s) punishable by a term of incarceration for every sentence served between 1991 and 2008;
- each year that the individual served a sentence of incarceration in a provincial correctional facility between 1991 and 2008;
- the length of time (aggregate sentence) for every sentence of incarceration served by the individual between 1991 and 2008; and
- the available postal code in the address(es) associated to the individual in the OTIS database for every year in which the offender served a sentence of incarceration between 1991 to 2008.

[25] The ministry submits that in the context of the appellant's request the requested offender postal codes are "indirect" or "quasi-identifiers". It refers to research published on the Electronic Health Information Laboratory website by Dr. Khaled El Emam, an Associate Professor at the University of Ottawa, Faculty of Medicine and the School of Information Technology and Engineering.[4] This research discusses the potential use of quasi-identifiers as a means to identify individuals from data that is perceived to be anonymous.[5]

[26] In the ministry's submission, Dr. El Emam directly addresses the matter of whether a postal code can be used in order to identify an individual in a web posting entitled "Can postal codes re-identify individuals?"[6] According to Dr. El Emam, 25% of Ontario postal codes are associated to seven people or less. According to the ministry, applying this formula to the postal code data requested by the appellant means that in approximately 59,331 of the offender records at issue in this appeal, the available postal code is associated to geographical locations where seven people or less reside. The ministry submits that this significantly raises the risk that offenders may become identifiable as a result of the disclosure of the information requested by the appellant.

[27] The ministry also relies on another paper authored by Dr. El Emam, "Overview of Factors Affecting the Risk of Re-Identification in Canada",[7] which it submits outlines important factors that impact on the risk of re-identification when releasing data that is

[4] http://www.ehealthinformation.ca
[5] http://www.ehealthinformation.ca/faq/quasi-identifier/
[6] http://www.ehealthinformation.ca/faq/can-postal-codes-re-identify-individuals/
[7] http://ehealthinformation.ca/wp-content/uploads/2014/07/2006-Overview-of-Factors.pdf

presumed to be anonymized. The ministry states that the offender data requested by the appellant falls into at least three of the factors identified by Dr. El Emam:

- uniqueness (unusual sentence lengths or incarceration patterns);
- traceability (geographic movement of offenders);
- characteristics of population (all individuals are sentenced and incarcerated offenders).

[28] The ministry submits that data that reveals the movement of individuals over longer periods presents particular re-identification risks, relying on the following quote from another paper co-authored by Dr. El Emam:

> Longitudinal databases that record residence information about individuals present some challenges. This is because the movement of individuals can make them uniquely identifiable. For example, over a ten year period, a person who has lived in five locations may have a unique trail of postal codes because out of the whole population he or she is the only one who has moved to these locations at these points in time.[8]

[29] After referring to several other sources which are unnecessary to detail here, the ministry submits that release of the requested offender postal codes in conjunction with other publicly available information sources may lead to the identification of offenders. These additional sources may include court records, newspaper reports, white pages, internet reverse look up directories such as Canada.411, membership directories, land registry records, and internet social networking sites such as Facebook, etc.

[30] The ministry also states that the records sample provided to the IPC reveals offender postal codes that relate to one apartment building, streets that have just a few houses and, in at least one instance, a postal code that belongs to a drug and alcohol treatment centre.

[31] The ministry states that although the appellant has indicated he does not intend to "identify individuals" in relation to the released information, this does not preclude other individuals from using the offender postal codes to identify specific individuals as release of information in response to a *FIPPA* request is tantamount to release to the world.

[32] On the question of whether the information relates to identifiable individuals, the appellant submits that the release of a full postal code of an offender, in conjunction solely with the year(s) of a sentence(s) and the length(s) in days of a sentence, and in

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[8] Khaled El Emam and Anita Fineberg, An Overview of Techniques for De-identifying Personal Health Information,http://www.ehealthinformation.ca.php54-2.ord1-1.websitetestlink.com/wp-content/uploads/2014/07/2010-An-Overview-of-Techniques-for-De-identifying-personal-health-information.pdf

the absence of a name, date of birth, full address, nature of crime, etc, would not result in a "reasonable expectation" that the individual will be identified.

[33] He states that these sentences are for relatively minor crimes that are unlikely to be covered by the media. Without a name and other personal information, including charge-dates, it is impossible to look up criminal information via court records. The appellant states that this is based on his personal experience as a journalist who has routinely requested civil and criminal documents for the past 20 years from the Ministry of the Attorney General.

[34] The appellant also states that those most affected by an individual's crime would be aware of home addresses of the offender prior to incarceration, through court proceedings such as bail hearings and through probation and parole reporting requirements. These people have access to intimate details that would allow them to locate the perpetrators.

[35] They would also be aware of a perpetrator's criminal record, which, outside court proceedings, are publicly unavailable and unsearchable in Canada. Non-parties to a case, provided with access to far less robust information about an offender (ie, the information at issue in this appeal) would be far less interested in determining who the people are or where they live. Identifying them would be, in his submission, not reasonably possible.

[36] The appellant also relies on Order PO-2726, in which information about the full postal codes of provincial offenders, based on a one-day OTIS data snapshot, was found not to relate to identifiable individuals.

### ***Analysis***

[37] As indicated above, information is "personal information" only if it is associated with an identifiable individual. The Divisional Court has explained the relationship between "personal information" and identification in the following terms:

> The test then for whether a record can give personal information asks if there is a reasonable expectation that, when the information in it is combined with information from sources otherwise available, the individual can be identified. A person is also identifiable from a record where he or she could be identified by those familiar with the particular circumstances or events contained in the records. [See Order P-316; and Order P-651].[9]

[9] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 4987, affirmed in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300.

[38] Applying the above principles to the material before me, I agree with the ministry that despite the fact that the information extracted from the OTIS database is anonymized, disclosure of the six character postal codes can reasonably be expected to result in identification of offenders and thus, disclosure of their personal information.

[39] As a preliminary observation, the ministry and the appellant's representations on this issue are based on treating the records as a whole, and not on an analysis of each entry for each offender. The appellant seeks the postal code information for all the offenders in the records. The ministry's position that the records relate to identifiable individuals is not based on a consideration of each offender separately, but on the records taken as a whole. Neither seeks to have me analyze the issue "postal code by postal code" or "offender by offender."

[40] I accept the ministry's submission that even information that is anonymous can reveal personal information, and I find the evidence before me persuasive on how the particular information at issue in these records can reasonably be expected to lead to disclosure of personal information about identifiable offenders. In particular, I refer to the research of Dr. Khaled El Emam on the use of postal codes to re-identify otherwise anonymous individuals.[10] Although Dr. Emam's research is based on 2006 census data, I have no grounds to doubt its relevance today.

[41] Dr. Emam concludes that disclosing a data set with only a postal code and other sensitive information can have a "high-identification risk" if the postal code has very few people living in it, which he states would typically be defined as five people or less. In his analysis, 25% of Ontario's postal codes are associated with seven people or less. Applying Dr. El Emam's definition, the risk of re-identification for groupings of seven or less may not be "high". However, for several reasons, I am satisfied that the risk of re-identification meets the standard of a "reasonable likelihood", with respect to a significant proportion of the postal codes at issue.

[42] In the records at issue, the postal codes are linked to several other data sets (the length of sentence, date of sentencing, fact of having been incarcerated). Further, the records contain longitudinal data that record changes to the postal code of an individual offender over time. The evidence submitted by the ministry supports the conclusion that all of this information, taken together, raises a reasonable likelihood of identification of individual offenders. In the sample records provided by the ministry, some offenders have multiple entries, revealing a year of sentencing, days sentenced on each occasion, and the offender's postal code at the date of sentencing, which can change from one occasion to the next. It is reasonable to expect that the information about many offenders, presented in this manner, provides a distinctive trail or footprint about the individual that could reasonably lead to their identification.

[10] "Can postal codes re-identify individuals?", see above.

[43] The likelihood of re-identification will, of course, vary with each postal code area. Although it is hard to measure, I am satisfied that it exists with respect to a significant number of the offenders covered by the records, taking into account the research cited above as well as the nature of the data in the records.

[44] Once individuals are identified, the records reveal the fact that the individuals have been convicted of offences and sentenced to incarceration, the length of their sentences, and the number of sentences served, all of which amounts to their personal information.

[45] The appellant has indicated that he does not intend to use the information to identify individuals. While that may be the case, I have to treat disclosure to the appellant as having the potential for disclosure to "the world". The records will enter the public domain and I must consider the consequences of disclosure on the assumption that the public will have access to it. I have also considered the appellant's submissions on the likelihood of re-identification. Although I accept that he has considerable experience as a journalist in attempting to obtain information about criminal cases through court records, his submissions do not undermine the evidence and studies the ministry has submitted in this appeal. They do not address the particular combination of data elements in the records, and the longitudinal aspect of the information, that increase the risk of re-identification.

[46] It is the particular combination of data elements in these records that distinguishes the circumstances of this appeal from those discussed in Order PO-2726. In that order, this office ordered disclosure of the last three digits (the first three having already been disclosed) of the postal codes of all incarcerated provincial offenders based on a one-day snapshot of OTIS data. The information in the record also included the aggregate sentence length for each offender.

[47] In Order PO-2726 (which was upheld on reconsideration), the adjudicator concluded that the information did not qualify as "personal information" as the evidence did not support the conclusion that disclosure of the two data elements in the records could reasonably be expected to identify individuals. The adjudicator considered it significant that there was no specific date in 2007 attached to the data snapshot, and there were so few information fields overall.

[48] The information at issue in Order PO-2726, therefore, was qualitatively different from the information in the records before me. The adjudicator's conclusion on the issue of identifiability was based on an assessment of the evidence before her, applying general principles to the particular context of that appeal.

[49] The circumstances before me are more aligned with those considered in Order PO-2518. In that order, the adjudicator found, among other things, that release of the

postal codes of registered sex offenders in Ontario could reasonably be expected to identify those individuals, stating:

> …the Ministry's comments about the dangers of vigilantism, and well-documented public concern about the place of residence of released sex offenders are pertinent considerations in the circumstances of this appeal. Given the possibility of ongoing observation and/or surveillance in the context of vigilantism, I am satisfied that the ability to pinpoint the location of an offender's residence within five or six houses is small enough to make the identity and/or the residence location of an individual reasonably identifiable.

[50] There were fewer data elements at issue in Order PO-2518 than in the appeal before me, but the overall context of that appeal provided the necessary nexus between the information in the record and identifiable individuals. The appeal before me does not raise the same concerns of "ongoing observation and/or surveillance" but does involve more information about offenders, and in many cases longitudinal information, that leads to a reasonable likelihood of identification.

[51] Before leaving this discussion, I note that the Supreme Court of Canada recently upheld a decision of this office ordering release of information from the Ontario sex offender registry, in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner).*[11] The parties before me were invited to comment on the impact of the Supreme Court decision on this appeal. The appellant made no submissions; the ministry submits it has no bearing on the issues before me.

[52] The information at issue in the above case was a list of the first three digits of the postal codes (Forward Sortation Areas or FSA's) and the number of registered sex offenders in each FSA, as of the date of the request. The Supreme Court found the conclusion in Order PO-2811, that disclosure of the information could not reasonably lead to identification of individual offenders, to be reasonable. I am satisfied that the findings in Order PO-2811, related as they were to a different set of information from that before me, are not applicable to this appeal.

[53] I have considered whether I could sever part of the postal code, in such a manner as to avoid the risk of re-identification. In this case, the appellant explicitly seeks the six character postal codes and did not suggest an alternative position. Both parties, therefore, argued their case without addressing alternate versions of the postal code. In each appeal where this office has decided similar issues (such as the one ultimately considered by the Supreme Court), the records contain different combinations of data. Each appeal presented different factors affecting the determination of whether disclosure of postal code information reveals personal

[11] 2014 SCC 31 (CanLII).

information. I do not find it appropriate to decide on the possibility of severance without full evidence and argument on the issue.

[54] Having found that the postal code information at issue is "personal information" within the meaning of the *Act*, I will go on to consider whether it is exempt from disclosure under section 21(1), the personal privacy exemption.

## PERSONAL PRIVACY

### General principles

[55] 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. In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

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

[57] In this appeal, the ministry submits that release of the postal code data would constitute an unjustified invasion of the personal privacy of provincial offenders, based on the factors in sections 21(2)(e) and (f). These sections state:

> 21(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive;

#### *Representations*

[58] The ministry submits that the personal information at issue is highly sensitive, the disclosure of which will unfairly expose individuals to pecuniary or other harm. It relies on Order P-597, in which information revealing that an individual was incarcerated in the Toronto West Detention Centre was found to be highly sensitive. The ministry also relies on Order PO-2518, referred to above.

[59] In addition, the ministry notes that, in the samples provided, one of the postal codes belongs to a drug and alcohol treatment centre. It submits that disclosure of the postal code data will reveal the approximate year during which an offender apparently resided at such a treatment centre. The ministry states that disclosure of this information could unfairly harm the reputations of rehabilitated offenders who are now law abiding citizens.

[60] The appellant did not make submissions on section 21(1) and whether any of the presumptions or factors applies to the circumstances of this appeal. He did provide submissions on the public benefit from disclosure and dissemination of the information, which were all premised on the assumption that the information does not relate to identifiable individuals.

[61] Among other things, the appellant describes how he has used similar data in the past to show patterns of neighbourhoods where the government has spent the most money on incarceration. He states that the City of Toronto has also looked at this same data as a means of identifying areas in distress. He states that it is of interest that Toronto's "priority neighbourhoods" do not neatly overlap with where governments are spending most on incarceration. This, in his submission, has prompted the city to re-evaluate how they identify priority neighbourhoods.

[62] The appellant submits that the data may help reduce crime by allowing for detailed looks at underlying demographics and socio-economic factors. He states that academics have recognized the value of the data, and used it as a foundation in articles looking at penal policy in Canada. The appellant provided links to some material supporting his submissions. One of these is an article he wrote in 2009, based on the data ordered disclosed in Order PO-2726.

### *Analysis*

[63] Previous orders of this office have stated that, in order for personal information to be considered highly sensitive, disclosure of the information must reasonably be expected to cause significant personal distress to the individual.[12]

[64] In Order PO-2518, the adjudicator found that information about an individual's involvement with the criminal justice system, or even the fact of such involvement, in and of itself, will usually be highly sensitive because disclosure can be expected to cause significant personal distress to such individuals. I agree with this conclusion. It may be that this will not hold true for all offenders covered by the records but it is reasonable to conclude that it applies to many of them. The factor in section 21(2)(f) therefore weighs against the disclosure of the information.

[12] Orders M- 1053, PO-1681, PO-1736.

[65] Although the ministry cited the factor in section 21(2)(e) (pecuniary and other harms), its submissions on this point appear to be directed to the factor in section 21(2)(i) (harm to reputation). I accept that there is a potential for harm to reputation by disclosure of the fact that individuals were residents of drug and alcohol treatment centres, and this is a consideration weighing against disclosure.

[66] Although the appellant did not link his above submissions to the section 21(2) factors, he may be suggesting that section 21(2)(a) applies, which speaks to disclosure being desirable for the purpose of subjecting the activities of the government to public scrutiny.

[67] The value of the appellant's work on incarceration statistics is undeniable. I have no trouble accepting that there is a public benefit to the publication of such data. However, it is significant that his previous work has been based on information which this office found did not relate to identifiable individuals. As I have indicated, the appellant's arguments on the public benefit of disclosure and dissemination of the information were premised on the assumption that it does not relate to identifiable individuals. I cannot conclude that disclosure of the personally identifiable information is desirable for the purposes described in that section. In these circumstances, I find that the section 21(2)(a) factor does not apply.

[68] I therefore find, having regard to the factors in sections 21(2)(f) and (i), that disclosure of the information would constitute an unjustified invasion of personal privacy. The information is exempt under the mandatory personal privacy exemption in section 21. Given my finding, it is unnecessary to also decide whether it would be exempt under section 14 or 20 of the *Act*.

**FEE WAIVER**

[69] Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;

> (c) whether dissemination of the record will benefit public health or safety; and
>
> (d) any other matter prescribed by the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

[70] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees.[13]

[71] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[14] The institution or this office may decide that only a portion of the fee should be waived.[15]

[72] In this case, as I have indicated, the appellant decided to pay the deposit based on a fee estimate of $705.00, and the ministry's interim access decision that the last three characters of the postal codes would be denied. Ultimately, the ministry decided to withhold the postal codes in their entirety, and reduced the fee to $389.25.

[73] I have decided that it is appropriate to direct the ministry to waive the fees in their entirety.

[74] Without access to any part of the postal codes, the appellant does not have the critical part of the data that would enable him to conduct the analysis and mapping he

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[13] Order PO-2726.
[14] Orders M-914, P-474, P-1393 and PO-1953-F.
[15] Order MO-1243.

intended it to be used for. The severance of the postal codes from the records effectively denies him access to the information sought. In these circumstances, I find that under section 1 of Regulation 8, it would be fair and equitable for the fee to be waived in its entirety.

## ORDER:

1. I uphold the ministry's decision to withhold access to the postal codes.

2. I do not uphold the ministry's decision to deny a fee waiver and direct it to refund the deposit to the appellant.

Original Signed By: November 27, 2014
Sherry Liang
Senior Adjudicator