

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3461

Appeal PA12-413

Ministry of Community Safety and Correctional Services

February 11, 2015

Summary: This is the decision on reconsideration of Order PO-3164 at the direction of the Divisional Court in 2014 ONSC 3295. The appellant, a member of the media, sought access to the dates that DNA samples were taken from victims and/or identified addresses as part of an investigation relating to a criminal case that has received significant public attention. In Order PO-3164, an adjudicator found the ministry had properly applied the mandatory exemption at section 21 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) to withhold the record, as it contains the personal information of an affected party and certain victims of the affected party's crimes; he found, however, that there is a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 21 exemption, and he ordered its disclosure to the appellant. On the ministry's application for judicial review, the Divisional Court found that the IPC's failure to notify the victims (or the representatives of deceased victims) of the appeal constituted a breach of procedural fairness. The court referred the matter back to the IPC for reconsideration of the application of the public interest override on notice to the victims or their representatives. On reconsideration following notice to the victims, and in view of some additional submissions made by other parties to the appeal, the adjudicator finds that the public interest override at section 23 of the *Act* applies. He orders the ministry to disclose the record to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, s. 23.

Orders and Investigation Reports Considered: Order PO-3164.

Cases Considered: *Ministry of Community Safety and Correctional Services v. Information and Privacy Commissioner*, 2014 ONSC 3295.

OVERVIEW:

[1] This order constitutes the final decision in an appeal re-opened for reconsideration of a discrete issue addressed in Order PO-3164 on notice to certain individuals who were not previously notified of the appeal.

[2] In the result, after considering the views of the newly-notified parties and the submissions of those parties previously notified of this appeal (made both in the course of the earlier inquiry and during this reconsideration process), I find there is a compelling public interest in disclosure of the record at issue in this appeal that clearly outweighs the privacy interests of the individuals whose personal information is contained in the record.

[3] I therefore order disclosure of the record. The reasoning for this result follows. I will begin, however, by setting out the circumstances leading to the re-opening of this appeal.

Background

[4] This appeal arises from a request made by a member of the media to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The media requester sought access to the dates that DNA samples were taken from victims and/or identified addresses as part of an investigation relating to a criminal case that has received significant public attention.

[5] The ministry denied access to one responsive record on the basis of section 21(1) of the *Act* (mandatory exemption where disclosure is an unjustified invasion of personal privacy). The media requester appealed the ministry's decision to this office (the Office of the Information and Privacy Commissioner, or IPC), becoming the appellant in Appeal PA12-413. In his letter of appeal, the appellant raised the possible application of the public interest override at section 23 of the *Act*, which provides that the section 21 exemption does not apply where a compelling public interest in disclosure clearly outweighs the purpose of the exemption.

[6] During the inquiry stage of that appeal process, the adjudicator previously assigned to this appeal sought and received representations from the ministry and the appellant, which were exchanged in accordance with this office's *Code of Procedure and Practice Direction 7*. The adjudicator also sought representations from one individual who may have an interest in the subject matter of the record (the affected party). The affected party did not make representations in the appeal.

Order PO-3164

[7] After considering the parties' representations and the record, the adjudicator issued Order PO-3164 to dispose of the issues in the appeal. In that order, he found the record contains the personal information of the affected party and of two named individuals and one unnamed individual. (He also found that a fourth unnamed individual whose information appears in the record is not an "identifiable individual" within the meaning of section 2(1) of the *Act*, and thus found the record does not contain the fourth individual's personal information.)

[8] The adjudicator found that the mandatory exemption at section 21(1) of the *Act* applies to exempt the personal information in the record from disclosure. He went on to find, however, that there is a compelling public interest in disclosure of the record that clearly outweighs the purpose of the personal privacy exemption.

[9] In arriving at this finding, the adjudicator considered the impact of disclosure on the personal privacy interests of the affected party and the three individuals whose personal information he had found is contained in the record. He concluded that the impact of disclosure on the privacy interests of these parties would be minimal, if any.

[10] Among other bases for his conclusion, the adjudicator noted that the affected party had not made any representations in the appeal, despite having been invited to comment on issues including the impact of disclosure on his personal privacy interests. The adjudicator also considered the privacy interests of the three individuals whose personal information he had found appears in the record, who were victims of the affected party. Noting that the record only discloses dates relating to the processing and collection of DNA samples at locations relating to the victims, and not any specific details about the crimes committed or about the victims, the adjudicator was satisfied that the information in the record would not cause the victims or their families any more distress if disclosed.

[11] The adjudicator concluded that the public interest in disclosure of the record clearly outweighs the privacy interests of the individuals whose personal information appears in the record. As a result, he found that section 23 of the *Act* applies to override the section 21(1) claim, and he ordered the ministry to disclose the entire record to the appellant.

Judicial review of Order PO-3164

[12] The ministry requested reconsideration of Order PO-3164. The adjudicator determined that the ministry had not met the grounds for seeking reconsideration of the order, and dismissed its reconsideration request.

[13] The affected party subsequently sent correspondence to the adjudicator referring to the dismissal of the ministry's reconsideration request. The adjudicator treated the affected party's correspondence as an independent request for reconsideration. After considering the affected party's submissions, the adjudicator dismissed his reconsideration request.

[14] The ministry subsequently sought judicial review of Order PO-3164. The Divisional Court allowed the ministry's application in *Ministry of Community Safety and Correctional Services v. Information and Privacy Commissioner*.¹ In its decision, the Divisional Court found that the IPC's failure to notify the victims or representatives of deceased victims of the appeal constituted a breach of procedural fairness. The court referred the matter back to the IPC for reconsideration on notification to the victims and representatives of victims, in order to allow these parties to make submissions to the IPC on the public interest override issue.

Reconsideration of Order PO-3164

[15] As a result of the Divisional Court decision and the appellant's confirmation of interest in pursuing access to the record at issue in Order PO-3164, this appeal was re-opened for reconsideration of Order PO-3164 on notice to those individuals not previously notified of this appeal.

[16] In addition, the IPC provided two previously-notified parties, the affected party and the ministry, with the opportunity to make additional submissions on the impact (if any) that the outcome of the notice given to victims and representatives of victims ought to have on this office's reconsideration of the public interest override issue.

[17] In the course of the reconsideration process, the appeal was transferred to me to decide the sole issue in this reconsideration: whether the public interest override at section 23 of the *Act* applies to the record. For the reasons that follow, including consideration of the outcome of the IPC's notification of the victims or their representatives, and the additional submissions made by some previously-notified parties, I find that section 23 applies to the record, and I order the ministry to disclose it to the appellant.

RECORD:

[18] The record at issue in this appeal consists of a two-page report.

[19] The first page contains information from the Ontario Provincial Police (OPP), including the dates that certain DNA samples were collected by the OPP, the dates the

¹ 2014 ONSC 3295. (Hereinafter "Divisional Court decision.")

samples were sent to the Centre for Forensic Science (CFS), and the dates of the subsequent CFS reports.

[20] The second page contains information from the CFS, including the dates that DNA samples were received from the OPP, the dates of CFS reports, the dates the results were uploaded to the National DNA Data Bank, and relevant comments.

DISCUSSION:

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

[21] The sole issue for determination in this reconsideration is whether, taking into account the views of the victims or representatives of victims whose information appears in the record, the public interest override at section 23 of the *Act* applies to the record such that I ought to order its disclosure. This is evident from the court's decision:

The failure to inform the victims and representatives of deceased victims constitutes, in our view, a breach of the duty of procedural fairness. Notice would have given the victims an opportunity to advise by letter whether or not they would suffer distress if the records were disclosed to the media and public.

All four of the victims or their representatives were, in our view, denied the opportunity to make submissions on whether there was a compelling public interest in disclosure that clearly outweighed victims' elevated rights to privacy.

In our view, the duty of procedural fairness requires that the victims be given an opportunity to make submissions to the IPC.

... In order to properly determine that there is a compelling public interest in disclosure requires a full and complete balancing of interests. This has not occurred due to the lack of information being provided to the victims and direct representatives of victims and the consequent incomplete record resulting from this oversight.

The appropriate remedy is to allow the application and refer the matter back to the IPC for reconsideration on notice to the victims and representatives of victims.²

² Divisional Court decision, *supra*, note 1, at paras. 4-6, 8-9.

[22] In accordance with the court's decision, the IPC re-opened this appeal for reconsideration of the public interest override issue on notice to the victims (or representatives of victims) who had not previously been notified of this appeal.

[23] Although not directed to do so by the court, in this reconsideration the IPC also provided the ministry and the affected party an opportunity to provide submissions on the results of the notification to the victims or their representatives. In this reconsideration I have also considered submissions made by the affected party to the IPC following the initial processing of this appeal. I have summarized these submissions below.

Results of notification to the victims or their representatives

[24] The IPC began the reconsideration process by sending letters to all four victims or representatives of victims whose information appears in the record, notifying them of the appeal and inviting these parties (the "notified victims") to make submissions on whether there is a compelling public interest in disclosure of the record that clearly outweighs their personal privacy interests in withholding the record.³

[25] The IPC also advised the previously-notified parties (the appellant, the ministry and the affected party) of the re-opening of this appeal for reconsideration on notice to the four victims or their representatives.

[26] Of the four notified victims, three responded to the notification expressing an interest in participating in the appeal. The IPC provided these parties with additional information about the appeal. One of these three parties, through legal counsel, advised that given the nature of the information contained in the record, she did not feel the need to participate in this appeal. The IPC sent the remaining two parties Notices of Inquiry, summarizing the facts and the issue for reconsideration, and copies of Order PO-3164 and the Divisional Court decision that precipitated the re-opening of this appeal. The IPC also enclosed a consent form for the parties to complete in the event they consent to disclosure of their information in the record. In the end, both parties confirmed they did not wish to participate in this appeal, on the understanding this office would issue an order on reconsideration in the absence of representations from them.

[27] The IPC then advised the ministry and the affected party of the results of the notifications – namely, that none of the notified victims had chosen to participate in the appeal – and invited any submissions from them on the impact, if any, of the lack of participation to this office's reconsideration of the public interest override issue, or any

³ Although the adjudicator in Order PO-3164 found the record contains the personal information of three victims (and not of the fourth victim, given his finding this individual is not identifiable in the record), and this finding was not specifically addressed by the court on judicial review, in this reconsideration process the IPC provided notice of the appeal to all four victims (or their representatives).

other relevant submissions. Both the ministry and the affected party provided representations in response.

Submissions from the ministry

[28] The ministry states that non-participation of the notified victims means they do not consent to disclosure of the record. The ministry notes the IPC provided notified victims with consent forms in addition to the opportunity to make submissions, and says “the failure to provide consent means that there is none. Nothing may be inferred from the individuals’ failure to respond to the notification, except they do not consent to the disclosure of the personal information at issue.”

[29] The ministry concludes that given there is no consent to disclosure, the personal information must not be disclosed. It says its position is informed by the following considerations:

- two of the four notifications went to individuals unrepresented by legal counsel, who may not have understood the notification and specifically the significance of failing to respond (namely, that failure to respond could lead to the disclosure of their personal information);
- for the two represented notified victims, “the failure to respond may be linked to a desire not to incur legal costs associated with having their counsel prepare submissions in response to the notification;” and
- the Divisional Court on judicial review noted that the victims have “elevated rights to privacy,” which the ministry submits ought to be interpreted to mean, among other things, that “elevated privacy rights is a determinative factor against disclosing records containing personal information as part of a section 23 analysis.”

[30] The ministry thus submits that absent express consent, section 23 should not be applied to override the personal privacy rights of victims of crime.

[31] The ministry’s position remains unchanged from that set out in its submissions made during the initial processing of this appeal, which were canvassed by the previous adjudicator in Order PO-3164.

Submissions from the affected party

[32] The affected party responded to my invitation to comment on the impact of the lack of participation of the notified victims by advising that he has no submissions to make on this aspect of the appeal. He states that his primary interest in this appeal has instead been in ensuring that the victims are notified of the potential release of their personal information in the record.

[33] The affected party also refers to earlier correspondence he had sent to the previous adjudicator in this appeal after the completion of the initial inquiry and the issuance of Order PO-3164. In a number of letters sent to the previous adjudicator post-dating the order, the affected party made submissions on the application of the public interest override to the record. The affected party acknowledges that the previous adjudicator treated his submissions as a request for reconsideration of Order PO-3164, and, by decision dated May 28, 2013, dismissed the request on the ground the affected party had not made such submissions during the course of the initial appeal process. In this denial decision, the previous adjudicator noted that the affected party had an opportunity to make representations during that initial inquiry but had not done so; as this office's *Code of Procedure* provides that the IPC will not reconsider a decision simply on the basis that new evidence is provided, the previous adjudicator found he was not required to consider new evidence not raised during the inquiry process, and dismissed the reconsideration request.

[34] In the affected party's letter to me in response to my invitation for submissions on the impact of notification in the present reconsideration, the affected party asks that I revisit his submissions made to the previous adjudicator in support of his denied reconsideration request.

Analysis and findings

[35] In accordance with the notifications made to the victims or their representatives following the re-opening of this appeal, for the purposes of this reconsideration, I will treat the entire record as containing the personal information of the affected party and the four notified victims.⁴ The Divisional Court decision has not disturbed the previous adjudicator's finding that the mandatory exemption at section 21 of the *Act* applies to the entire record.

[36] The effect of the Divisional Court decision is to re-open for reconsideration, on notice to parties not previously notified of this appeal, the issue of whether the public interest override at section 23 applies to the record so as to outweigh the purpose of the section 21 exemption.

[37] In addition to soliciting the views of the newly-notified parties, in the interests of having a complete record before me, and to enable the full and complete balancing of interests described by the court,⁵ I have also considered the submissions made by the ministry and the affected party since the close of the initial inquiry in this appeal, as well as the record itself, the representations made by all the parties during the initial processing of this appeal, and the findings of the previous adjudicator as set out in Order PO-3164 and in his decisions on the parties' reconsideration requests.

⁴ See note 3, above.

⁵ At para. 8 of Divisional Court decision, *supra*, note 1.

[38] Section 23 states:

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

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

Compelling public interest

[40] 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.⁶ 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.⁷

[41] A public interest does not exist where the interests being advanced are essentially private in nature.⁸ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.⁹

[42] A public interest is not automatically established where the requester is a member of the media.¹⁰

[43] The word “compelling” has been defined in previous orders as “rousing strong interest or attention.”¹¹

[44] Any public interest in *non*-disclosure that may exist also must be considered.¹² A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling.”¹³

⁶ Orders P-984 and PO-2607.

⁷ Orders P-984 and PO-2556.

⁸ Orders P-12, P-347 and P-1439.

⁹ Order MO-1564.

¹⁰ Orders M-773 and M-1074.

¹¹ Order P-984.

¹² *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

¹³ Orders PO-2072-F, PO-2098-R and PO-3197.

[45] The adjudicator in Order PO-3164 canvassed the representations of the ministry and the appellant, who is a member of the media, on the question of whether there is a compelling public interest in disclosure of the record. The parties' positions on this matter have not changed since the previous adjudicator's consideration of this question, and I endorse the summary of those representations set out in his order. While I will not reproduce the entirety of his summary here, I do wish to highlight some of the bases for his finding on this question – namely, his consideration of the appellant's submission that disclosure of the record would shed light on whether the police investigation in this case was conducted in a proper and timely manner; and of the ministry's position that there exists a compelling public interest in ensuring that the privacy interests of the victims whose information appears in the record are protected.¹⁴

[46] In addition to these parties' submissions on this matter made during the initial processing of this appeal, at the request of the ministry and the affected party, I have considered the affected party's views on this issue as reflected in his letters dated March 4, May 2 and June 11, 2013 and September 16 and November 21, 2014.¹⁵ As the affected party has asked that his submissions on this topic not be shared,¹⁶ I will not refer to them in greater detail in this order, other than to note that I have taken into account his views and that the ministry's earlier and more recent submissions reflect some of the same concerns.

[47] On my review of all these materials, I am satisfied that there is a compelling public interest in disclosure of the record. I find there is a compelling public interest in the manner in which the police investigation in this case was conducted, and particularly in knowing whether the DNA evidence that played a role in the investigation was collected and processed in a timely manner. As the previous adjudicator noted in his reasons in Order PO-3164, and in his further correspondence to the ministry denying its request for reconsideration of his finding on this question,¹⁷ the public interest in this case stems not only from the identity of the criminal (the affected party in this appeal) and the notoriety of his crimes, but from a strong concern in knowing whether law enforcement officials handled crucial and time-sensitive evidence in this case in an appropriate manner. I accept there is a compelling public interest in the issue of the efficacy of the conduct of this law enforcement investigation. The disclosure of the record at issue in this appeal would shed light on this very matter. The affected party's submissions and the ministry's additional representations on reconsideration do not lead me to a different conclusion from the one reached by the previous adjudicator on this question.

¹⁴ At paras. 35 and 36 of Order PO-3164.

¹⁵ I note that some of these letters (in whole or in part) address matters other than the issue for reconsideration in this order; however, I list them all here in the interests of completeness.

¹⁶ This request was made explicitly in his letters dated March 4 and June 11, 2013.

¹⁷ IPC's April 29, 2013 decision on reconsideration request.

[48] Therefore, on my reconsideration, I find that there is a compelling public interest in disclosure of the record.

Purpose of the exemption

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

[50] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.¹⁸

[51] The ministry takes the position that protection of the personal privacy rights of the victims ought to prevail over any compelling public interest in disclosure of the record. In its submissions on reconsideration, the ministry refers to the Divisional Court's characterization of these privacy interests as being "victims' elevated rights to privacy,"¹⁹ and urges me to interpret this phrasing to mean that victims' privacy rights are "a determinative factor against" disclosure of the record.

[52] First, I note that the exercise of determining whether the public interest override applies in the circumstances of this appeal already calls for the weighing of any public interests in disclosure against the personal privacy interests of the parties whose information is contained in the record, including the victims. I do not read the court's decision as mandating a particular outcome in this exercise where the individuals whose personal information is at issue are victims of crime or of a particular kind of crime. In his decision on the ministry's reconsideration request,²⁰ the previous adjudicator specified, for greater certainty, that there is no distinction drawn in Order PO-3164 between the privacy rights of victims of well-known criminals and those who are less well known. In all cases the analysis turns on a weighing of the impact of disclosure on the personal privacy interests of the individuals whose personal information appears in the record. While I do not accept the ministry's suggestion that the Divisional Court intended that the victims' privacy rights be the only, or determinative, factor in this analysis, I do accept that the court required notification of the victims in order to ensure a complete record before this office in making the section 23 determination.

[53] Notifying the victims or their representatives of this appeal provided these individuals with the opportunity to make submissions, if they wished, on the impact of disclosure on their privacy interests. As noted above, while the IPC sent letters of notification to all four victims or their representatives, in the end, none chose to

¹⁸ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

¹⁹ At para. 5 of Divisional Court decision, *supra*, note 1.

²⁰ See note 17.

participate in this appeal. The ministry devotes some part of its submissions on reconsideration to making the case that, in these circumstances, consent to disclosure requires a positive, affirmative act like signing a consent form, and that absent such act, I cannot assume that the notified victims consent to disclosure. This statement is uncontroversial. I agree that none of the notified victims has provided consent to disclosure of her personal information in this appeal. However, I do not accept the ministry's conclusion that, absent express consent, I must find that the victims' personal privacy interests prevail over any compelling public interest in disclosure.

[54] Any consent to disclosure by the notified victims would clearly be a relevant consideration in weighing the impact of disclosure on their privacy interests. The absence of their consent is not a determinative factor against disclosure, however. As noted by the previous adjudicator in this appeal, there are several other factors that lead to the conclusion that disclosure of the record would have minimal or no impact on the privacy interests of any of the parties whose information appears in the record. After taking into account the additional evidence obtained through this reconsideration process – including the results of notification to the victims or their representatives – I arrive at the same conclusion on reconsideration.

[55] The affected party makes submissions on this topic concerning not only his own privacy interests but also the privacy interests of the victims. For the reasons given above, I will not refer to these submissions in more detail except to say he does not appear to take issue with the previous adjudicator's finding that disclosure of the record would not cause a significant impact on the affected party's privacy interests. I have taken into account the affected party's submissions, large portions of which concern the privacy interests of the victims, in making my findings on reconsideration.

[56] In reconsidering the question of the impact of disclosure on the privacy interests of all the parties whose information appears in the record, I find significant the fact that the record contains only the *dates* that DNA samples were collected and processed as part of the police investigation into the affected party's criminal activities. The record does not contain any specific details about the crimes committed, or about the victims. As the previous adjudicator noted, the collection and processing of DNA samples from locations relating to the affected party's crimes, and thus relating to victims of his crimes, should not be surprising. He concluded that disclosure of the record containing only the dates of collection and processing of those samples would have little or no impact on the privacy interests of the affected party or of the victims whose personal information is contained in the record.²¹

[57] On my review of all the evidence in this appeal, including the new submissions of the affected party and the ministry, I am satisfied that disclosure of the record would have no significant impact on the privacy interests of the affected party. I also find that

²¹ Order PO-3164, paras. 57-59.

disclosure would have little to no impact on the privacy interests of the victims whose personal information appears in the record. In arriving at this finding I considered, among other factors, the lack of participation of any of the notified victims in this appeal.

[58] In its representations made on this issue during the initial processing of this inquiry, the ministry's submissions included a claim that there is a compelling public interest in "ensuring that the privacy interests of victims of crime are safeguarded and that they are allowed to go on with their lives." I note that none of the notified victims, who would be best placed to speak to these claims, has chosen to participate in this appeal by making submissions to this effect to this office.

[59] The ministry seeks to discount the significance of this lack of participation, in part by distinguishing between those notified victims who were represented by legal counsel and those who were not, and for both cases advancing theories for their non-participation in this appeal. I find the ministry's submissions on these points to be speculative and unpersuasive.

[60] First, I find the ministry's representations on this issue focus unduly on whether the notified victims were represented by legal counsel. As well, while the ministry describes the lack of participation by the notified victims as a "failure to respond to the notification," I disagree with this characterization. All but one of the notified victims contacted this office to confirm receipt of the IPC's letter of notification, and were given detailed information about the nature of the information contained in the record, the issue for reconsideration in this appeal and the consequences of choosing not to participate in the appeal process. In particular, the notified victims (or their legal counsel) who contacted this office were advised that the reconsideration process would proceed in the absence of their representations if they chose not to participate in this appeal. They were also advised of the circumstances leading to the re-opening of this appeal, including the previous adjudicator's finding on this issue in Order PO-3164, which was made in the absence of any representations from them on why their privacy rights ought to prevail over the compelling public interest in disclosure. As noted, none of the notified victims who contacted this office ultimately chose to make representations.

[61] Only one notified victim did not respond to the IPC's letter of notification.²² The letters sent to unrepresented notified victims advised them that they may have an interest in an access-to-information appeal, and invited them to contact this office for more information about the appeal and how they may participate. These letters to unrepresented notified victims were intended to convey necessary information without overwhelming the recipients with excessive material or containing inessential details

²² In this instance "notified victim" refers to the representative of a deceased victim.

that could harm their privacy interests should the letters be misdirected.²³ I do not accept the ministry's suggestion that these letters required more detail in order for unrepresented notified victims to understand their meaning. I note that the other unrepresented notified victim in this appeal contacted this office in response to the letter, and obtained detailed information about the record and the issue for reconsideration, among things, before choosing not to participate in the appeal. I do not find persuasive the ministry's conjectures about the meaning behind one notified victim's decision not to respond to notification, or on the motives behind the other three notified victims' decisions not to participate in this appeal.

[62] In any event, their lack of participation in this appeal is only one factor for consideration in weighing the impact of disclosure on the privacy interests of the victims whose information appears in the record. Taking into account all the evidence before me, including the additional evidence obtained through this reconsideration process, I find that disclosure of the record would not have a significant impact on the privacy interests of the victims. The record reveals little (if anything) about the victims. It answers a question about the conduct of law enforcement in the investigation. The previous adjudicator observed that the nature of the information contained in the record is such that its disclosure would not cause the victims more distress if disclosed.²⁴ I have reviewed the record at issue in this appeal, and I agree.

[63] Given all the above, I find the compelling public interest in disclosure of the record clearly outweighs the purpose of the personal privacy exemption applicable to it. As a result, I find the public interest override at section 23 of the *Act* applies. I order the ministry to disclose the record, in its entirety, to the appellant.

ORDER:

I order the ministry to disclose the record to the appellant by **March 17, 2015**, but not before **March 12, 2015**.

Original signed by: _____
David Goodis
Assistant Commissioner

February 11, 2015 _____

²³ The ministry provided this office with the most recent contact information and mailing addresses the ministry had on file for the four notified victims for the purpose of this notification.

²⁴ Order PO-3164, para. 59.