Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3481

Appeal PA14-161

Ministry of the Attorney General

April 20, 2015

Summary: The ministry received a request for information about certain identified wrongfully convicted individuals. In particular, the request sought access to any applications for compensation made by them under the 1988 Federal/Provincial Guidelines for compensation. The ministry refused to confirm or deny the existence of responsive records on the basis of section 21(5) (personal privacy). This order upholds the ministry's decision to refuse to confirm or deny the existence of the requested records.

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"] and 21(5).

Orders and Investigation Reports Considered: PO-2472.

OVERVIEW:

[1] The Ministry of the Attorney General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* for information relevant to the requester's master's thesis on the topic of "Compensation for Wrongfully Convicted." The request read:

> To gain the necessary insights into this topic, I need … specific information concerning the compensation application/request for each

> wrongfully convicted person, so that it can be analyzed. I am assuming that for every compensation application/request that is received from a wrongfully convicted individual, there was a file created to document the … information so that a recommendation to award compensation or not could be made. I have listed some specific wrongful conviction cases below for which I am requesting this information. The necessary information for each wrongful conviction case needs to include the following:
>
> - Rationale/ information that the appropriate judicial body (i.e. Provincial Attorney General or other assigned judicial body) used in determining whether compensation should be paid after the wrongfully convicted was acquitted of the charges. This rationale should be based on the 1988 Federal/Provincial Guidelines on Compensation for the Wrongfully Convicted and Imprisoned Persons [the Guidelines].
>
> - Summary and details of the process stages/steps that the provincial government … undertook in awarding or not of compensation and the timeline of these steps involved in receiving the compensation decision for each case. For this research, the compensation evaluation process would start at the application of compensation by the wrongfully convicted and it would end at the decision made by the Provincial Attorney General or other judicial body.

[2] The request (and a later addition to the request) named 13 specific individuals whose files were being requested.

[3] In subsequent correspondence between the requester and the ministry, the ministry confirmed that fees may apply to the request, and that any responsive records may qualify for exemption under a number of exemptions including section 15 (relations with other governments), 19 (solicitor-client privilege) and 21(1) (personal privacy). After further clarification, the ministry issued a decision, a portion of which read:

> You requested information in relation to the decision-making process for compensation under the Federal Provincial Guidelines on Compensation for the Wrongly Convicted (FPT Guidelines). You listed 13 named individuals about whose cases you are interested. [The ministry] advised you that there are different means by which individuals who have had criminal convictions overturned may seek compensation from the government, and advised you that not all of the 13 individuals at issue may have sought compensation under the FPT Guidelines.

[4] The ministry then indicated that it had reviewed the file of one of the named individuals whose compensation request is not in the "public domain". It then stated that it was refusing to confirm or deny the existence of responsive records relating to any of the named individual's possible compensation claims under the FPT Guidelines on the basis of section 21(5) (personal privacy) of the *Act*. The decision went on to state:

> In this case, disclosure of the existence of a record would convey to you that a request for compensation under the FPT Guidelines has been made. The fact that a request for compensation has been made is the claimant's personal information. …

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

[6] Mediation did not resolve this appeal and it was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the ministry and the appellant, and shared them in accordance with section 7 of the IPC's *Code of Procedure* and Practice Direction number 7.

[7] In this order, I uphold the decision of the ministry to refuse to confirm or deny the existence of records responsive to the appellant's request.

Preliminary Matter

[8] During the processing of this appeal, the ministry confirmed that consideration of compensation under the FPT Guidelines has been made public with respect to three of the 13 individuals listed in the request. As a result, the existence of records for these three individuals has been confirmed, and records for these three individuals are no longer at issue in this appeal.

[9] The ministry states that it is not clear whether the appellant continues to seek access to information about these three individuals, but if the appellant does seek access to these records, the ministry will "readily process" the request. The appellant's response is equivocal. In these circumstances, if the appellant indicates to the ministry that she continues to seek access, the ministry should process the request in accordance with the requirements of the *Act*, treating the date of the appellant's indication of interest as the date of the request.

[10] For the ten remaining individuals, the ministry maintains that whether or not an individual has been considered for compensation under the FPT Guidelines has not been made public, and maintains that section 21(5) applies. As a result, this order will only address the ministry's decision to refuse to confirm or deny the existence of records relating to these ten remaining individuals.

ISSUES:

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

B: Has the ministry properly applied section 21(5) of the *Act* in the circumstances of this appeal?

DISCUSSION:

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

[11] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that

correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[12] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[13] Sections 2(2), (3) and (4) also relate to the definition of personal information.

[14] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[2]

[15] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[3] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[4]

Representations of the parties

[16] The ministry submits that there are various means by which individuals who have had criminal convictions overturned may seek compensation from the government, including an application under the FPT Guidelines, which is generally treated as confidential. Where compensation is granted, the government and the applicant typically make the payment of compensation public. Where compensation under the Guidelines is rejected, no public announcement is made, unless the applicant wishes to make that fact public.

---

[1] Order 11.
[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.
[4] Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

[17] The ministry then submits that if it has considered whether a named individual should be granted compensation under the Guidelines, any record(s) relating to that process will potentially contain the personal information of a number of individuals, including victims, witnesses, family members, as well as the individual whose potential compensation is at issue. It also states:

> For an individual to be eligible for compensation under the Guidelines, there must be an assessment of whether he or she is factually innocent, among other things …. Any consideration of compensation under the Guidelines will … necessarily involve an examination of the history of criminal proceedings relating to the individual, and others, as well as the facts of the underlying the events. In addition, the Ministry's assessment of the individual's claim and his or her entitlement to compensation would also be included in any responsive records.

[18] As a result, the ministry submits that information in the records (if they exist) constitutes the personal information of the individual and others under the definition of personal information in paragraphs (a), (b), (e), (f), (g) and (h), as well as other personal information that does not fit into the non-exhaustive list enumerated in section 2(1).

[19] In support of its position, the ministry refers to Order PO-2472 which found that information that would be contained in the file of a named individual who made an application to the Criminal Injuries Compensation Board qualifies as that individual's personal information within the definition of that term found in section 2(1).

[20] The appellant submits that the request was for the rationale used in deciding to award or deny compensation under the Guidelines for specific "highly publicized wrongful conviction cases." She states that she is not seeking details of the monetary compensation or settlements, nor has she requested any personal details regarding the individual compensation applicants. The appellant submits that some of the named individuals are known to have not received any compensation from the ministry. In addition, the appellant submits that where a named individual made no application for compensation under the Guidelines, there would be no record containing that individual's personal information.

[21] The appellant's representations were shared with the ministry, which then addressed the appellant's position that she was not seeking personal information, or that certain personal information could be redacted. The ministry states:

> … it is not possible to simply redact the individual's name. Personal information includes not just the individual's name, but also any information which could be used to identify the individual. This means that any information relating to the assessment of the individual's claim -

> names, dates, history of court proceedings, factual innocence, etc. - would also have to be redacted. In effect, it is likely not possible to provide anonymous information that would remain meaningful. …

[22] In response to the ministry's representations, the appellant reiterates that she is not requesting the personal information of wrongfully convicted individuals.

Analysis and findings

[23] In my view, any records responsive to the appellant's request would contain information that pertains to the individuals named by the appellant who might have applied for compensation under the Guidelines. Accordingly, I find that any such responsive records, if they exist, would be "about" those named individuals in a personal sense, and would contain information about them that falls within the scope of "personal information" as contemplated by section 2(1) of the *Act*.

[24] In addition, the request in this appeal is for specific information concerning the compensation application/request made by specific individuals who were identified by name. The ministry has stated that if an individual was considered for compensation under the Guidelines, any records relating to that process will potentially contain the personal information of a number of individuals including victims, witnesses and family members, as well as the individual whose potential compensation is at issue. I agree. Accordingly, I find that any responsive records, if they exist, would contain the personal information of the named individuals and other identifiable individuals, and falls within the scope of "personal information" as contemplated by section 2(1) of the *Act*.

[25] I have also considered the appellant's suggestion that certain information can be redacted from the records, and that the remaining information could be disclosed. In my discussion below, I uphold the decision of the ministry to refuse to confirm or deny the existence of a record or records responsive to the request. In these circumstances, there is no purpose served in discussing the possible severance of records, the existence of which cannot be confirmed or denied. However, I note that the request is for the information of named individuals who were wrongfully convicted. Clearly the fact that they were wrongfully convicted is known, and general information relating to their convictions would be publicly known. In these circumstances, it would be difficult to disclose general information about any possible compensation claim without disclosing information that would refer to the facts of the wrongful conviction, and thereby result in the identification of an individual.

Issue B: Has the ministry properly applied section 21(5) of the *Act* in the circumstances of this appeal?

[26] The ministry relies on section 21(5) of the *Act* in refusing to confirm or deny the existence of any records pertaining to the named individuals' requests for compensation

under the Guidelines.

[27] Section 21(5) reads:[5]

> A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

[28] Section 21(5) gives institutions the discretion to refuse to confirm or deny the existence of a record in certain circumstances.

[29] A requester in a section 21(5) situation is in a very different position from other requesters who have been denied access under the *Act*. By invoking section 21(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power that should be exercised only in rare cases.[6]

[30] Before an institution may exercise its discretion to invoke section 21(5), it must provide sufficient evidence to establish both of the following requirements:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and

2. Disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

[31] The Ontario Court of Appeal has upheld this approach to the interpretation of section 21(5) stating:

> The Commissioner’s reading of s. 21(5) requires that in order to exercise his discretion to refuse to confirm or deny the report's existence the Minister must be able to show that disclosure of its mere existence would itself be an unjustified invasion of personal privacy.[7]

---

[5] Note: the full text of section 21 is set out in the appendix to this Order.
[6] Order P-339.
[7] Orders PO-1809 and PO-1810, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 4813 (C.A.), leave to appeal to S.C.C. dismissed (May 19, 2005), S.C.C. 30802.

Part one: disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy

Definition of personal information

[32] Under part one of the section 21(5) test, the ministry must demonstrate that disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information. In the discussion set out above, I have found that if a record or records exist, they would contain the personal information of identifiable individuals.

Unjustified invasion of personal privacy

[33] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be "an unjustified invasion of privacy" under section 21(5).

[34] Section 21(4) refers to specific types of information the disclosure of which would not constitute an unjustified invasion of privacy. In my view, the type of information that the appellant is seeking, if it were contained in a record or records, would not fall within the section 21(4) exceptions.

Section 21(3): disclosure presumed to be an unjustified invasion of privacy

[35] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure is presumed to be an unjustified invasion of privacy. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[8]

[36] The ministry submits that a number of the presumptions in section 21(3) could apply, depending on the nature of the file and the individual to whom it relates. In particular, the ministry submits that any application file will necessarily trigger the presumption in section 21(3)(b), which deems that the disclosure of information relating to a possible violation of the law is an unjustified invasion of personal privacy. The ministry also submits that the assessment of an individual's eligibility for compensation under the Guidelines may also result in the production of documents that trigger the presumptions in sections 21(3)(a) (medical history), (f) (finances), (g) (personal recommendations) and (h) (racial origin).

[37] The appellant's representations do not address the presumptions listed in section 21(3) of the *Act*.

---

[8] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

[38] The relevant portions of section 21(3) read:

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
>
> (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[39] The request is for records related to wrongfully convicted individuals' applications for compensation under the Guidelines. Responsive records, if they exist, would necessarily include information that was compiled and is identifiable as part of an investigation into a possible violation of law, and would fall within the presumption in section 21(3)(b). In addition, I am also satisfied that the requested records, if they exist, may also contain information that would fall within the presumptions in sections 21(3)(a), (f), (g) and/or (h), as submitted by the ministry.

Section 21(2): factors for and against disclosure

[40] 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.[9] The list of factors under section 21(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 21(2).[10]

[41] The ministry submits that the factors in sections 21(2)(f) and (h) weigh against disclosure in the circumstances of this appeal. In her representations the appellant

[9] Order P-239.
[10] Order P-99.

makes submissions which indirectly raise the possible application of section 21(2)(a). Those sections read:

> (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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;

[42] The appellant takes the position that disclosure of the requested information will inform her thesis on the topic of "Compensation for Wrongfully Convicted" which she states will "uncover facts" that will result in positive changes in the future. She states that the Guidelines were adopted to offer direction and inform decisions regarding the compensation of wrongfully convicted individuals, but also states: "… informed experts have advised that these Guidelines are useless and not used." She also refers to specific public examples of certain wrongly convicted individuals who received compensation outside of the parameters set by the Guidelines. The appellant submits that disclosure would "expose the mistakes that the justice system has made" in handling selected wrongful conviction cases, and would allow parties to learn from past mistakes and to ensure that wrongfully convicted individuals receive better treatment in the future.

[43] In its reply representations, the ministry addresses these concerns raised by the appellant. It confirms that there are different mechanisms through which individuals who feel they have been wronged by the criminal justice system may seek compensation including commencing a civil action, seeking compensation under a special compensation scheme (such as that instituted after the Goudge Inquiry), and seeking compensation under the Guidelines. It then states:

> These are all separate compensation procedures. An individual may seek compensation under one or more of these procedures, depending on his or her circumstances. Some of [the individuals named by the appellant in her request] may have made a request for compensation under the FPT Guidelines, and some may not have. Similarly, some of them may have commenced a civil action seeking compensation, or applied under the Goudge process. Some of the civil actions may involve the provincial government, some may instead name municipal police service boards.

> In short, if a published report or a website refers to "compensation", it may refer to any number of possible scenarios, and not just to a request for compensation under the Guidelines. However, the request at issue [in this appeal] is specific to the Ministry's consideration of individuals for compensation under the Guidelines.

[44] The ministry also states that it generally treats applications for compensation under the Guidelines as confidential and that, if compensation is not granted, no public announcement about the application or its result is made by the ministry.

[45] Based on the representations of the parties, I accept that the appellant's master's thesis may uncover some information that could inform the public about how the Guidelines are applied in Ontario, and that this is desirable for the purpose of subjecting the ministry's activities to public scrutiny. However, I also acknowledge the ministry's position that an application for compensation under the Guidelines is just one of a number of options available to an individual who was wrongfully convicted. In these circumstances, although I accept that section 21(2)(a) is a factor favouring disclosure of any records (if they exist), I give it little weight.

[46] With respect to the factor favouring non-disclosure in section 21(2)(f), because of the nature of the information contained in any records which might exist (information relating to the assessment of the individual's claim - names, dates, history of court proceedings, factual innocence, victims, injuries, etc.), I find that, if the requested records exist, they would contain highly sensitive personal information. In my view, section 21(2)(f) is a very relevant factor weighing heavily in favour of non-disclosure.

[47] Regarding section 21(2)(h), I am satisfied that, if responsive records exist, they would contain personal information that the named individuals supplied in confidence. Based on the ministry's representations that applications for compensation under the Guidelines are generally confidential, and based on the sensitivity of information relating to the results of any such application, I find that the factor in section 21(2)(h) favouring non-disclosure is a relevant factor.

[48] In summary, with respect to any information that does not fall within the presumptions in section 21(3), I find that the factors favouring non-disclosure of any records (if they exist) carry greater weight that the factor favouring disclosure. Accordingly, I find that disclosure of the responsive records, if they exist, would constitute an unjustified invasion of personal privacy.

[49] To conclude, I find that part one of the section 21(5) test has been established.

Part two: disclosure of the fact that the record exists (or does not exist) would itself constitute an unjustified invasion of personal privacy.

[50] Under part two of the section 21(5) test, the ministry must demonstrate that disclosure of the fact that a record exists (or does not exist) would in itself convey information to the appellant, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

Representations of the parties

[51] The ministry submits that confirming or denying the mere existence of the requested record would reveal to the appellant whether or not a named individual had been considered for compensation under the Guidelines. As noted above, the ministry states:

> Applications for compensation under the Guidelines are generally confidential. In cases where compensation is granted, the government and applicant generally make the payment of compensation public. In cases that have not been made public by the applicant, and compensation is not granted, no public announcement is made, although the applicant would be at liberty to make that fact public if he or she so wishes. …

[52] The ministry therefore submits that whether or not an individual made an application for compensation under the Guidelines is the named individuals' personal information, and that its disclosure would be an unjustified invasion of that individual's personal privacy.

[53] The ministry also refers to previous orders of this office in support of its decision to refuse to confirm or deny the existence of the requested records. The ministry refers to Order PO-2472, where this office found that disclosure of whether or not an individual had made an application to the Criminal Injuries Compensation Board was that individual's personal information, and upheld the Board's decision to refuse to confirm or deny the existence of records. The ministry also refers to other decisions of this office.

[54] The appellant submits that her request is for the rationale used in deciding to award or deny compensation under the Guidelines and not for any details regarding the monetary award or settlement, or the individual applicants. She argues that disclosure will "expose mistakes that the justice system has made," that "the wrongfully convicted deserve better" and that granting the request will give these individuals "the reassurance that justice will prevail."

[55] The appellant also submits that some of the named individuals are known to have not received any compensation from the ministry. The appellant submits that

where a named individual made no application for compensation under the Guidelines, there would be no record containing that individual's personal information.

Findings

[56] To begin, although the appellant argues that some of the named individuals are "known to have not received any compensation from the ministry," this is not necessarily relevant to the issue before me. I accept the ministry's position, set out above, that applications for compensation can be made in a number of different ways, and that the application under the Guidelines, which is the subject of this request, is just one of these processes. The ministry has refused to confirm or deny the existence of records relating to any requests for compensation under the Guidelines by ten named individuals, and the appellant has not provided evidence to support a finding that information regarding whether or not these ten named individuals made any such application is publicly known.

[57] With respect to whether the ministry properly refused to confirm or deny the existence of responsive records, I accept the ministry's description of the manner in which information about an application for compensation is disclosed when it states:

> … there are various means by which individuals who have had criminal convictions overturned may seek compensation from the government, including an application under the Guidelines, which is generally confidential. Where compensation is granted, the government and the applicant typically make the payment of compensation public. Where compensation under the Guidelines is rejected, no public announcement is made, unless the applicant wishes to make that fact public.

[58] Based on this description, I am satisfied that the disclosure of whether or not an application for compensation under the Guidelines was or was not made by a wrongfully convicted individual would itself constitute an unjustified invasion of personal privacy. In my view, disclosure of the very existence or non-existence of records responsive to this request would itself convey information to the appellant and the nature of that information is such that disclosure would constitute an unjustified invasion of privacy under section 21(1).

[59] In this appeal, disclosure of the existence or non-existence of the records, if they exist, would reveal personal information about the named individuals, specifically whether or not they have applied for compensation from the ministry under the FPT Guidelines. I am satisfied that disclosing that responsive records do or do not exist would reveal the personal information of the named individuals that they supplied to the ministry in confidence, and that the factor in section 21(2)(h) applies.

[60] I have considered the appellant's argument that disclosure would assist the named individuals. There may be various reasons an individual chooses to apply or not apply for compensation, what method to use, and whether to disclose the fact of their application to the public. In addition, disclosing that an application was rejected under the Guidelines may also reveal information about the individual. I note that the ministry has specifically indicated that, where an application for compensation under the Guidelines has been made, regardless of the outcome, that information can be made public by the individual who made the application. In these circumstances, I do not agree with the appellant that the ministry ought to disclose to her whether or not these individuals applied for compensation under the Guidelines.

[61] Lastly, I do not accept the appellant's position that if no records exist, personal information is not at issue. It is the wrongly convicted individual's choice to decide whether to apply for compensation under the Guidelines and, based on the evidence provided, I am satisfied that disclosure of whether or not they decided to apply or not apply would itself reveal personal information about them.

[62] As a result, I have been provided with sufficient evidence to satisfy me that this is a situation in which the very nature of the request permits the ministry to rely on the application of section 21(5), as disclosure of the very existence or non-existence of responsive records would result in an unjustified invasion of the personal privacy of the individuals named in the appellant's request.

[63] As both parts of the test for the application of section 21(5) have been met, I find that the ministry properly exercised its discretion to refuse to confirm or deny the existence of responsive records, if they exist, and that section 21(5) applies in this appeal.

ORDER:

I uphold the ministry's decision to refuse to confirm or deny the existence of records relating to the ten named individuals.

Original Signed by: April 20, 2015
Frank DeVries
Senior Adjudicator