Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3484

Appeal PA14-18

Ministry of Community Safety and Correctional Services

April 28, 2015

Summary: The appellant made a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of incident reports, memorandums and internal communications between correctional/ministry staff, as well as any reports, related to the death of a named individual while he was an inmate at the Toronto (Don) Jail during a specified time period. The ministry denied access to the records, in part, claiming the application of the mandatory exemption in section 21(1) (personal privacy), the discretionary exemption in sections 14(1) and 14(2) (law enforcement) and the exclusion in section 65(6)3 (labour relations and employment records). During the mediation of the appeal, the appellant raised the possible application of the public interest override in section 23. In this order, the adjudicator upholds the application of the exclusion in section 65(6)3 to one record and the exemption in section 21(1) to the remaining records, and finds that the public interest override in section 23 does not apply in the circumstances of this appeal. The appeal is dismissed.

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(3)(a), 23 and 65(6)3.

Orders and Investigation Reports Considered: Orders M-927 and PO-2809.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request, from a member of the media, was for copies of incident reports, memorandums and internal communications between correctional/ministry staff, as well as any reports, related to the death of a named individual that occurred while he was an inmate at the Toronto (Don) Jail during a specified time period.

[2] The ministry and the requester subsequently clarified the request to include:

1. Briefing notes;
2. Media Speaking Points;
3. Toronto Jail Staff Occurrence Reports;
4. Toronto Jail Superintendent's E-mails; and
5. A Correctional Investigation and Security Unit Internal Investigation Report.

[3] The ministry located records that were responsive to the request and issued a decision letter that provided the requester with partial access to these records. It denied access to some records in full, and others in part, claiming: the discretionary exemptions in sections 14(1)(j), 14(1)(k) and 14(2)(d) (law enforcement); the mandatory exemption in section 21(1) (personal privacy), read in conjunction with the factor in section 21(2)(f) and the presumption in section 21(3)(a); and the exclusion in section 65(6) (labour relations and employment records).

[4] In addition, the ministry's decision letter to the requester advised that some of the information in the records was not responsive to the request and that no responsive records exist with respect to part 4 of the request.

[5] The requester (now the appellant) appealed the ministry's access decision to this office.

[6] During the mediation of the appeal, the appellant advised the mediator that in her view, there is a public interest in disclosure of the requested records. As a result, the possible application of the public interest override in section 23 of the *Act* was added as an issue. In addition, the appellant advised that she was not seeking access to those portions of the records that the ministry identified as being not responsive to

her request. Finally, the appellant advised the mediator that she was not appealing the ministry's claim that no records exist in response to part 4 of the request.

[7] The appeal was then moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought and received representations from the ministry and the appellant, which were shared in accordance with this office's *Practice Direction 7*.

[8] The appeal was then transferred to me for final disposition. For the reasons that follow, I uphold the ministry's decision and dismiss the appeal.

RECORDS:

[9] The records at issue are set out in the following chart:

Description of record	**Page numbers**	**Ministry's decision**	**Exclusion/exemptions claimed**
Briefing notes	1-7	Withheld in part	s. 14(2)(d) s. 21(1)
Media speaking points	8-15	Withheld in part	s. 14(2)(d) s. 21(1)
Occurrence reports	16-54	Withheld in full	ss. 14(1)(j) and (k) s. 14(2)(d) s. 21(1)
Investigation report, including cover letter	55-74	Withheld in full	s. 65(6)

ISSUES:

A. Does section 65(6)3 exclude the investigation report from the *Act*?

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

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

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

DISCUSSION:

Issue A: Does section 65(6)3 exclude the investigation report from the *Act*?

[10] The ministry claims that the the Investigation Report (pp. 55-74) is excluded from the *Act* under section 65(6)3.

[11] Section 65(6)3 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[12] If section 65(6)3 applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[13] For the collection, preparation, maintenance or use of a record to be "in relation to" the subject mentioned in paragraph 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[1]

[14] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[2] The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[3]

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[1] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

[2] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.

[3] Order PO-2157.

[15] If section 65(6)3 applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.[4] The exclusion in section 65(6)3 does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees.[5]

[16] The type of records excluded from the *Act* by section 65(6)3 are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.[6]

[17] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[18] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- an employee's dismissal; [7]
- a grievance under a collective agreement;[8] and
- disciplinary proceedings under the *Police Services Act*. [9]

[19] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review; and[10]

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[4] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[5] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).
[6] *Ministry of Correctional Services*, cited above.
[7] Order MO-1654-I.
[8] Orders M-832 and PO-1769.
[9] Order MO-1433-F.
[10] Orders M-941 and P-1369.

- litigation in which the institution may be found vicariously liable for the actions of its employee.[11]

[20] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce.[12]

[21] The records collected, prepared, maintained or used by the ministry … are excluded only if [the] meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions.[13]

[22] The ministry submits that pages 55-74 consist of an investigation report (the report) prepared by its Correctional Investigation and Security Unit (CISU)[14] into the death of the named individual that is the subject matter of the request (the affected person), and that this report is excluded from the operation of the *Act* under section 65(6)3. The ministry relies on Order PO-2809, in which a CISU report into the investigation of ministry staff was held to fall within the same exclusion. The affected person died while in custody at the Toronto Jail.

[23] With respect to the first part of the three-part test enumerated by this office, the ministry submits that the report was prepared and used by the CISU, which is part of the ministry and an "institution" for the purpose of the *Act*. As previously stated, the report relates to the investigation conducted following the death of the affected person.

[24] Concerning part two of the three-part test, the ministry submits that the report was prepared to investigate the conduct of employees of the Correctional Services Division (CSD) in relation to the death of the affected person, and specifically whether ministry staff complied with all legal and policy requirements. The ministry states:

> Page 55 is the cover memorandum that accompanied the CISU report. It is addressed from the Chief of Oversight and Investigations at CISU to the Regional Director of Institutional Services. The Regional Director would then usually send one of the copies of the CISU report to the superintendent of the responsible correctional institution for review, and if necessary, to prepare an action plan to address the findings of the CISU report.

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[11] Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.
[12] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner),* cited above.
[13] *Ministry of Correctional Services*, cited above.
[14] The CISU is a part of the ministry that conducts investigations, which are authorized under section 22 of the *Ministry of Correctional Services Act* (*MCSA*).

> The Ministry submits that the fact that the CISU report was addressed to the Regional Director shows that it was prepared in relation to discussions or communications, and therefore meets the requirements of the second part of the test.

[25] Turning to part three of the test, the ministry submits that the report was prepared for CSD management to review whether its staff at the Toronto Jail acted appropriately, that is, in compliance with policies and legal requirements in relation to the death of the affected person. Any incidents of misconduct, the ministry states, can result in the imposition of discipline by it. The ministry goes on to argue that the subject matter of the report is clearly something in which it has an interest as an employer.

[26] The ministry relies on Order PO-2809, in which a CISU report into an investigation of ministry employees was found to fall within the exclusion in section 65(6)3. The ministry submits that the reasoning in Order PO-2809 should be adopted in this appeal, as the same type of record was prepared for the same purpose in both appeals. The ministry adds that none of the exceptions in section 65(7) of the *Act* apply in the circumstances of this appeal.

[27] The appellant submits that the record should not be withheld in its entirety and that any portions dealing specifically with employment issues can be severed. In addition, the appellant argues that it has been more than two years since the incident, and so it is fair to assume that there has been some resolution or agreement as contemplated by the exceptions in section 65(7).

[28] In reply, the ministry submits that if a record meets the requirements of the exclusion in section 65(6), it applies to exclude the record in its entirety.

[29] In this appeal, the only record for which the ministry claimed the exclusion in section 65(6)3 is the report prepared by the CISU in the course of its investigation into the death of the affected person and, by extension, of possible misconduct by ministry employees who are part of its workforce. Incidents of misconduct by ministry employees have the potential to result in the imposition of discipline by the employer.

[30] In these circumstances, I am satisfied that the record falls within the scope of the exclusionary wording in section 65(6)3. The record clearly relates to matters in which the institution is acting as an employer, and human resources questions are at issue, as discipline of the employees could result from the findings of the investigation.

[31] I agree with the ministry that the findings of Adjudicator Frank DeVries in Order PO-2809 are instructive in the circumstances in this appeal. In that order, Adjudicator DeVries referred to Order M-927, in which former Senior Adjudicator John Higgins clearly identified the important distinction between records or copies of records which

relate to day-to-day police investigations of incidents occurring within the force's jurisdictional boundaries, and copies of those same records which may reside in a file relating to an investigation of a police officer's conduct. Adjudicator DeVries accepted this distinction for the purpose of his review of the record at issue in that appeal, which was also a CISU investigation report compiled in response to a complaint.

[32] Although in this instance, the CISU investigation was not initiated as a result of a complaint, I am satisfied that it was conducted to determine if correctional staff's actions in response to the incident which resulted in the affected person's death were appropriate, and in accordance with the ministry's policies and procedures. Consequently, I am satisfied that the exclusion in section 65(6)3 applies to the complete report, as this record was collected, prepared or maintained directly in relation to communications about the actions of ministry employees, which is an employment-related matter in which the ministry has an interest. I also find that none of the exceptions in section 65(7) apply in these circumstances. Therefore, I find that the investigation report, at pages 55-74, is excluded from the application of the *Act*.

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

[33] The mandatory personal privacy exemption in section 21(1) only applies to "personal information." Consequently, it is necessary to decide whether withheld portions of the records at pages 1-54 contain "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,
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> (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;

[34] 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.[15]

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

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

[36] 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.[16]

[37] 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.[17] To qualify as personal information, it must

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[15] Order 11.
[16] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[17] Orders P-1409, R-980015, PO-2225 and MO-2344.

be reasonable to expect that an individual may be identified if the information is disclosed.[18]

[38] The ministry submits that there is a "significant" amount of personal information of identifiable individuals in the records. In particular, it states that the records contain the personal information of the affected person, including detailed information concerning the circumstances surrounding his incarceration and death. In addition, the ministry argues that the records contain the personal information of the CSD staff because the information was used, in part, to evaluate their work performance, which "reveals something personal about them."[19]

[39] The appellant does not dispute that the records at issue contain personal information, but states that it would not object to the names of employees or other persons being severed, including identifiers such as badge numbers.

[40] I find that all of the records at issue contain the personal information of the affected person, who is identified in them. In particular, the records describe in detail information relating to his ethnic origin and sex, which qualifies as personal information as set out in paragraph (a) of the definition in section 2(1) of the *Act*. I also find that the records contain very detailed information relating to his medical, psychiatric and criminal history, falling within paragraph (b) of the definition of personal information.

[41] However, I find that the records do not contain the personal information of identifiable individuals other than the affected person, with two exceptions, which I will discuss below. First, there is no information in the records concerning other incarcerated individuals. Second, the information concerning the staff and other professionals who attended to assist the affected person during and following the incident is in the context of their professional duties and does not reveal anything of a personal nature about them, with two exceptions.

[42] Some records contain the names and job titles of various correctional officers, EMS workers and health professionals. This information identifies these individuals in a professional or official capacity. In accordance with the exclusion from the definition of "personal information" in section 2(3), I find that this information does not qualify as their personal information.

[43] As cited by the ministry, previous orders of this office have found that information that involves an examination of an employee's performance, or an investigation into his or her conduct, reveals something personal about them, and it therefore qualifies as their "personal information."[20] I find that in the circumstances of

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[18] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[19] Relying on Order PO-3117.
[20] See Orders MO-2477, PO-3117, PO-2570, PO-2271 and P-1180.

this appeal, the information in the records at issue is about correctional officers, EMS workers and health professionals in their professional capacity. The records describe the incident involving the affected person and the immediate actions taken by staff as a result of it. I find that these records do not relate to investigations into the job performance of the professionals identified in the records and possible misconduct by these individuals. Consequently, I find that this information is purely professional, and it therefore does not qualify as their personal information.

[44] However, on pages 16 and 49 of the records, there is some information about two staff members that would reveal something of a personal nature about them. In particular, the information on page 16 reveals the ethnic origin of the identified staff member. In addition, a staff member's name appears on page 49 and its context would reveal other personal information about that staff member.

Issue C: Does the mandatory exemption at section 21(1) apply to the information at issue?

[45] 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.

[46] 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.

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

[48] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).[22] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[23] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In

[21] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[22] *John Doe*, cited above.
[23] Order P-239.

the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.[24]

[49] The ministry claims that the presumption against disclosure in section 21(3)(a) applies to the personal information in the record because it consists of detailed medical information describing the death of the affected person, including:

- the state of his health when admitted to the Toronto Jail;
- the state of his health just prior to the time of his death;
- the type of medical intervention that was provided to him at the time of the incident; and
- his medical condition during and following the incident.

[50] The ministry also argues that the factor in section 21(2)(f) is relevant in determining whether disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy. Section 21(2)(f), which is a factor that favours the non-disclosure of personal information, states that the head should consider whether the personal information is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[25]

[51] The ministry submits that the affected person's personal information is highly sensitive, given that it relates to his death, as well as the fact that the records at issue derive from his incarceration at a correctional facility. With respect to the reasonable expectation of significant personal distress should the personal information be disclosed, the ministry argues that it would be reasonable to expect that the CSD staff[26] and the family members of the affected person would be subject to personal distress if the personal information was to be disclosed.

[52] The appellant submits that the disclosure of the records would not constitute an unjustified invasion of privacy and that it is not possible to cause the affected person personal distress by disclosing the records because he is deceased. In addition, the appellant argues that medical information about the affected person upon entering the Toronto Jail is already in the public domain. Further, the appellant states that the affected person's family is aware of the request and supports it fully.

[53] In reply, the ministry states that despite the fact that some of the affected person's medical information may be in the public domain does not mean that it can be disclosed under the authority of the *Act*. In addition, the ministry submits that because it does not have access to communications between the appellant and the affected

[24] Orders PO-2267 and PO-2733.
[25] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[26] The ministry takes the position that the records contain the personal information of the CSD staff.

person's family, it cannot comment on the suggestion that the family supports the access request.

[54] The presumption in section 21(3)(a) of the *Act* provides that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information relates to a medical, psychiatric, or psychological history, diagnosis, condition, treatment or evaluation.

[55] The ministry argues that the records at issue contain information that qualifies as the medical history of the affected person. I have reviewed each of these records and agree that the information they contain relates directly to the affected person's medical and psychiatric history, diagnosis, condition, treatment or evaluation. Accordingly, I find that the presumption in section 21(3)(a) applies to the personal information in these records and its disclosure is presumed to constitute an unjustified invasion of his personal privacy. As previously stated, once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).[27]

[56] With respect to the portions of records containing the personal information of two CSD staff members, I find that none of the presumptions in section 21(3) apply to this information. I also find that none of the factors in section 21(2) either favouring disclosure or non-disclosure of this personal information apply, including the factor in section 21(2)(f) relied upon by the ministry. I do not agree that the disclosure of this limited personal information could reasonably be expected to cause significant personal distress to the two staff members. The appellant has not provided evidence in favour of a finding that any of the factors favouring disclosure under section 21(2) or any unlisted factors are applicable. Accordingly, as the personal privacy exemption in section 21(1) is a mandatory exemption, I find that it applies to the personal information of the two CSD staff members.

[57] Therefore, I find that the records at issue, and portions thereof for which section 21(1) of the *Act* was claimed, are exempt from disclosure under the personal privacy exemption. Consequently, I find that it is not necessary to consider the possible application of the exemption in section 14(1) to these same records.

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

[58] The appellant has raised the possible application of the public interest override in section 23, which states:

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[27] *John Doe*, cited above.

> 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.

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

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

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

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

[63] A public interest is not automatically established where the requester is a member of the media.[33] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[34] Any public interest in *non*-disclosure that may exist also must be considered.[35] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[36]

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

[64] A compelling public interest has been found to exist where, for example the integrity of the criminal justice system has been called into question. [37]

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

- another public process or forum has been established to address public interest considerations; [38]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[39] or

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter.[40]

[66] 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. 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.[41]

[67] The ministry submits that the compelling public interest override does not apply to the records, because to the extent there is a compelling public interest in the disclosure of the records, that interest has been met by:

- the completion of a Coroner's Inquest into the death of the affected person. Therefore, another public process has been established to address public interest considerations; and

- disclosure of some of the general records, such as pages 13 and 14. These records set out in general terms the treatment of mentally ill individuals with criminal backgrounds. The ministry argues that these records shed light on the operations of government.

[68] In addition, the ministry argues that the records that have been withheld relate to a narrower interest, which is the circumstances surrounding the death of the affected person. Further, the ministry submits that any public interest in the disclosure of the

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[37] Order PO-1779.
[38] Orders P-123/124, P-391 and M-539.
[39] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[40] Order P-613.
[41] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

records does not outweigh the purpose of the exemption in section 21(1). In particular, the ministry submits that the protection of the privacy of the affected person's medical information outweighs any public interest in its disclosure.

[69] The appellant submits that the fact that an inmate is able to commit suicide inside a provincial institution should be a matter of public record and is a matter of great public interest. The appellant argues that these types of incidents should be transparent and those involved should be held accountable for any wrongdoing, if any occurred. The appellant goes on to state that given it has the support of the affected person's family and that there is a clear public interest in the disclosure of the records, the public interest override in section 23 should apply to the exemption in section 21(1). The appellant goes on to state that:

> The public has a clear interest in understanding how employees and a ministry their tax dollars fund were involved in this incident and what has been done to prevent further deaths. Clearly, the integrity of [the] criminal justice system and those who guard it has been called into question in this case.
>
> The [appellant] believes an inquiry did not fully address the actions taken by Ministry officials in this case.

[70] In reply, the ministry reiterates that a five-day Coroner's Inquest was held into the death of the affected person and that the appellant reported extensively on the inquest in the media. This information being in the public domain, the ministry argues, satisfies any compelling public interest in it.

[71] In my opinion, there exists a public interest by the media and public in the circumstances surrounding the affected person's incarceration and death. There has been media coverage and public discussion of the Coroner's Inquest, which examined the circumstances surrounding his incarceration and death. However, section 23 requires that the disclosure of the specific information contained in the records must serve the purpose of informing the citizenry about the activities of their government, 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.

[72] I agree with the representations provided by the ministry that another public process was established to address public interest considerations, namely the Coroner's Inquest. Given this, I find that the disclosure of the information contained in the records would not serve the purpose of informing the citizens of Ontario about the activities of their government, or providing them with additional information in which to assess government activities.

[73] As noted earlier, the records for which section 21(1) was claimed consist of the affected person's personal medical information. In particular, the records describe the incident that occurred at the Toronto Jail, the immediate treatment provided to the affected person in response and the actions taken thereafter. There is no evidence to suggest that the records contain information about the ministry's decision-making process.

[74] In addition, although there may be curiosity about the contents of the records, and their release may be newsworthy, that does not automatically lead to the application of the public interest override, which must assess whether the broader public interest would actually be served by disclosure. That is the purpose of weighing a compelling public interest, where one is found to exist, against the purpose of applicable exemptions. In this instance, I conclude that this interest does not clearly outweigh the purpose of the personal privacy exemption in section 21(1). I have found in my discussion of section 21(1) that the personal information in the records, which relates to the affected person, contains detailed medical information and its disclosure is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(a). Privacy protection is one of the enumerated purposes set out in section 1(b) of the *Act*. I find that the appellant has not provided sufficiently convincing evidence that the public interest, compelling or otherwise, that exists in the disclosure of the information relating to the mental and physical health of the affected person, as well as the treatment he received during the incident, sufficiently outweighs the privacy protection purpose extant in the section 21(1) exemption.

[75] Therefore, I find that the public interest override provision in section 23 has no application in the present appeal.

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original Signed By: April 28, 2015
Cathy Hamilton
Adjudicator