Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3547

Appeal PA12-279

Ministry of Community Safety and Correctional Services

November 24, 2015

Summary: The ministry received a request for information held by the Ontario Provincial Police relating to properties used for illegal indoor marijuana grow operations in a named municipal region, specifically, the addresses, quantities seized and occurrence dates for each location. The ministry denied access to the information on the basis of the personal privacy exemption in section 21(1). This order confirms that the information qualifies for exemption under section 21(1), but finds that there is a compelling public interest in the disclosure of information relating to two occurrences, and that information is ordered disclosed.

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"), 14(1)(l), 21(1), and 23.

Orders and Investigation Reports Considered: Orders MO-2019 and PO-2265

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information held by the Ontario Provincial Police (OPP) relating to incidents involving houses used for illegal marijuana grow operations (grow-ops) or illegal drug operations. Specifically, the appellant sought the addresses of the grow-ops, the quantities seized and the occurrence date. The request stated:

> I am looking for a list of all records of dismantled "grow operation[s]" from 2010 to present where the OPP has identified houses that have been used as illegal drug operations for [an identified municipal region].

[2] The ministry located eight responsive records and issued a decision denying access to the responsive information on the basis of sections 14(1)(a), (g), and (l) (law enforcement), and 21(1) (personal privacy) of the *Act*. I note that although the appellant's request was for a "list," and the ministry's response denied access to a "list," the records at issue are the actual OPP occurrence reports containing the requested information (identified as Records 1 through 8).

[3] The appellant appealed the ministry's decision to this office.

[4] During mediation, the appellant confirmed that he was only seeking access to records relating to indoor grow-ops, where the value of the house could be affected. As a result, Records 1, 5, 7 and 8, which relate to outdoor grow-ops, were no longer at issue in this appeal. In addition, the appellant confirmed that he is not seeking access to certain non-responsive portions of the records.

[5] Also during mediation, the appellant referred to Order MO-2019 to support his position that the responsive information should be disclosed. The appellant also took the position that section 23 of the *Act* (the public interest override) applied to the records, and that section was added as an issue in this appeal. The ministry confirmed its position that no portions of the records could be disclosed, and that section 23 does not apply in this appeal.

[6] In addition, during mediation, notices were sent to a number of parties whose interests may be affected by the outcome of this appeal (the affected parties). None of the affected parties consented to the disclosure of the information in the records.

[7] Mediation did not resolve this appeal, and it was moved to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*. I sought and received representations from the ministry, the appellant and a number of affected parties.

[8] In this order, I find that the public interest override applies to the responsive portions of Records 3 and 4, and order the ministry to disclose the address, occurrence date and quantity of plants seized relating to those records. I uphold the ministry's decision to deny access to the remaining records at issue.

Preliminary matters

Law enforcement exemption

[9] The ministry originally relied on the exemptions in sections 14(1)(a), (g) and (l) to deny access to the responsive information. However, in its representations, the

ministry confirmed that it was no longer relying on sections 14(1)(a) and (g). As a result, section 14(1)(l) became the only remaining law enforcement exemption at issue in this appeal. That section 14(1)(l) states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > facilitate the commission of an unlawful act or hamper the control of crime.

[10] The ministry submits that the records contain police codes, which reveal identifiable zones from which police officers are dispatched for patrol and other law enforcement activities. The ministry refers to previous orders where this office has found that records containing operational police codes should not be disclosed because of the reasonable expectation of harm that would result from their release.[1]

[11] While the ministry is correct in its application of section 14(1)(l) to exempt police codes from disclosure, the police codes contained in the records at issue are not responsive to the appellant's request. The appellant has confirmed that he only seeks the date of each occurrence, the address, and the quantity seized. Because the ministry's submissions regarding the law enforcement exemption in section 14 relate to information that is not responsive to the request, I find that it is no longer an issue for determination in this appeal.

Nature of the records at issue

[12] On my review of the records at issue, I note that two of them (Records 3 and 4) are occurrence reports relating to indoor grow-ops, each of which resulted in a number of plants being seized. The other two records (Records 2 and 6) relate to investigations of other matters, during which the investigators found some possible evidence of "indoor grow-ops," but which did not result in any plants being seized or charges being laid.

[13] In accordance with previous orders of this office requiring institutions to adopt a liberal interpretation of a request, the ministry properly considered all records which "reasonably relate" to the request[2] as responsive records. As a result, I will review the ministry's decision to deny access to the dates of the occurrence, the addresses and the quantity of plants seized contained in Records 2, 3, 4 and 6, even though Records 2 and 6 do not identify that any plants were seized.

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[1] Orders M-393, M-757, PO-1877, PO-2209, PO-2339, PO-2394, PO-2409, PO-2660 and PO-2571.

[2] Orders P-880 and PO-2661.

RECORDS:

[14] The information remaining at issue in this appeal are the dates of the occurrence, the addresses and the quantity of plants seized contained in Records 2, 3, 4 and 6. This information is contained in the OPP occurrence summaries, occurrence and supplementary occurrence reports and general occurrence reports relating to the four incidents.

ISSUES:

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

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

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemption?

DISCUSSION:

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

[15] In denying access to the records at issue, the ministry claims that disclosing the information would disclose the personal information of identifiable individuals, thereby invading their personal privacy as contemplated by the mandatory personal privacy exemption in section 21(1). In order to evaluate the application of the exemption, I must first address whether the records sought by the appellant contain personal information.

[16] "Personal information" is defined in section 2(1) of the *Act*. The definition states, in part:

> "personal information" means recorded information about an identifiable individual, including,
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> > (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,
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> (c) any identifying number, symbol or other particular assigned to the individual,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
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> …
>
> (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

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

Representations

[18] The ministry submits that the records contain the personal information of a range of third parties, including suspects, complainants, persons of interest and victims, and that this information includes addresses and other substantive and inherently personal information obtained by the OPP during their investigations. As such, the ministry takes the position that release of the records would identify the affected third parties, thereby linking them to an OPP investigation.

[19] The appellant submits that the ministry did not establish how disclosure of the address, quantity seized and date could be linked back to identifiable individuals, or that those individuals would be automatically linked to an OPP law enforcement investigation. He also submits that address information is commonly shared without consent in many industries, such as real estate, shipping, mailing and marketing firms. The appellant notes that the land registry or municipal rolls system contain information that is available to the public. He submits that any member of the public can select any property address at random and look up certain information about that property.

[20] In reply, the ministry submits that address information combined with an occurrence date and a specific type of police enforcement should be considered a resident's personal information because its disclosure could reveal something "inherently personal about [an] individual" living at that address.

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

Analysis and findings

[21] The information responsive to the appellant's request is the address of the grow-op, the occurrence date and the quantity of plants seized. I will consider whether each piece of information constitutes personal information under section 2(1).

Property address

[22] The addresses in the records at issue relate to properties where alleged illegal marijuana grow operations were located by the OPP. The question is whether disclosure of those addresses would reveal something about an identifiable individual that is inherently personal in nature.

[23] In Orders MO-2019 and PO-2265 this office determined that in certain circumstances, a "reasonable expectation of identification" arises when addresses are disclosed, because an address may be linked, using various methods or tools such as reverse directories or municipal property assessment rolls, with an owner, resident, tenant, or other *identifiable* individual. As in Order MO-2019, the records at issue in this appeal would reveal an identifiable individual's involvement with an alleged criminal activity, whether as an accused or as an unfortunate but "innocent owner" of the property in question.

[24] As such, the effect of disclosing the requested addresses would be to disclose the personal information of an individual who can be reasonably expected to be identified. Accordingly, I find that the addresses of the grow-ops constitute personal information as contemplated by section 2(1) of the *Act*.

Quantity of plants seized

[25] Viewed in isolation, it is not reasonable to expect that an individual may be identified if the quantity of plants seized is disclosed. However, in light of my finding about the potential for linking a property address with an identifiable individual, the reality is that the quantity seized could also be linked back to an identifiable individual or individuals through cross-referencing the property address using various tools or registries that are publicly available.

[26] Employing the reasoning used in Order MO-2019, I find that while the quantity of plants seized could not be linked back to any identifiable individual with the assurance of *complete* accuracy, the linking could be done with *reasonable* accuracy. On this basis, I find that the quantity seized qualifies as personal information pursuant to section 2(1) of the *Act*.

Occurrence date

[27] As with the quantity seized, if the occurrence date of a grow-op seizure is associated with an address, it could be linked to an identifiable individual. I therefore

find that the occurrence date qualifies as personal information within the meaning of section 2(1) of the *Act*. I note that this is consistent with this office's findings in Order MO-2019.

[28] Given that I have found the requested information, namely address, quantity seized and occurrence date, constitutes personal information under section 2(1), I must now consider the application of section 21(1) of the *Act* to this information.

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

[29] Where a requester seeks the personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing it, except in the circumstances listed in section 21(1)(a) to (f). Of these, only section 21(1)(f) could apply in this appeal. This section reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
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>> if the disclosure does not constitute an unjustified invasion of personal privacy.

[30] 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 personal privacy under section 21(1)(f). Section 21(4) does not apply in the circumstances of this appeal and is not, therefore, set out below; however, there are provisions of sections 21(2) and (3) which may be relevant and these read as follows:

> (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,
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>> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
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>> (b) access to the personal information may promote public health and safety;
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>> (c) access to the personal information will promote informed choice in the purchase of goods and services;
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>> …
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>> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

…

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(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;

[31] Section 21(2) provides some criteria for the head to consider in making the determination as to whether disclosure of the personal information at issue would result in an unjustified invasion of personal privacy. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[32] If none of the presumptions found in section 21(3) apply, the ministry must consider the possible disclosure of the information by balancing the factors in section 21(2), as well as other considerations that are relevant in the context of the request.

[33] If a section 21(3) presumption is established, no factor or combination of factors in section 21(2) may overcome it. A presumption can only be overcome if the personal information in question falls under section 21(4) of the *Act* or where a finding is made under section 23 of the *Act* that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.[4]

Representations

The ministry

[34] The ministry submits that disclosure of the information in the records falls squarely within the presumption in section 21(3)(b), as it was compiled by and is identifiable as part of OPP investigations into possible violations of the law relating to illegal drug offences. The ministry submits that where criminal offences had in fact occurred, proceedings could have been commenced by laying charges under the *Criminal Code* and/or the *Controlled Drugs and Substances Act* (*CDSA*), although that is

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

not necessary for section 21(3)(b) to apply.

[35] In the alternative, the ministry submits that the factor in section 21(2)(f) applies, as the personal information is highly sensitive. In support of this position, the ministry notes that none of the affected parties consented to the release of their personal information, and in some cases, they expressly denied consent. The ministry submits that disclosure could be expected to cause significant personal distress, particularly for those individuals who declined to provide consent.

[36] The ministry further submits that if the records are disclosed, the personal information contained therein will no longer be protected by the provisions of the *Act*. The ministry submits that "the affected third party individuals will permanently lose control over personal information about themselves related to a law enforcement investigation, and that disclosure to the appellant therefore, in effect, constitutes disclosure to the world."

[37] The ministry cites Order P-1618, in which this office determined that the personal information of individuals who are complainants, witnesses or suspects as part of their contact with the OPP is highly sensitive for the purpose of section 21(2)(f).

[38] In addition to the factors listed under section 21(2), the ministry submits that another relevant consideration is that disclosure of the records could have a chilling effect on the public's willingness to cooperate with OPP and other law enforcement officials. The ministry states that this outcome would not only compromise the OPP's ability to investigate potential crimes, but would also be contrary to the public policy goal of encouraging the public to seek police assistance.

The appellant

[39] The appellant submits that the ministry has failed to demonstrate that disclosure of the addresses, quantities seized and occurrence dates would constitute an unjustified invasion of privacy.

[40] In response to the ministry's submissions regarding section 21(2)(f), the appellant submits that many police forces across Ontario already openly supply the requested information. The appellant asserts that in no known cases has it been raised that this information is "highly sensitive", or that its disclosure has caused harm to an individual's reputation.

[41] The appellant also submits that the dangerous health effects produced by properties formerly used as grow-ops are well documented, thereby raising the factor in section 21(2)(b) (access may promote public health and safety). He also states that the purchase of a new home "is an investment which is often the most significant financial commitment in a family's life," thereby raising the factor in section 21(2)(c) (access will promote informed choice in the purchase of goods and services).

[42] The appellant also submits that the ministry failed to support its position that disclosure of the information will have a chilling effect on the public's willingness to cooperate with law enforcement officials, and that there are no known cases where the public ceased to cooperate with police forces as a result of this information being disclosed.

The ministry's reply

[43] In reply, the ministry disputes the appellant's position regarding the benefits of disclosure to homeowners; instead, the ministry submits that disclosure would have the effect of stigmatizing the reputation of individuals who live or lived at the identified addresses.

[44] The ministry also notes that some records were created over five years ago, and it is not clear from the records whether the homes sustained damage or whether that damage was remediated. In addition, the ministry notes that the affected parties either did not respond or did not consent to their personal information being disclosed.[5]

Analysis and findings

[45] Section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. To find that section 21(1)(f) applies, I must find that such a disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(3)

[46] 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.

[47] The ministry takes the position that disclosure of the records would constitute a presumed unjustified invasion of personal privacy pursuant to section 21(3)(b) of the *Act*. Section 21(3)(b) reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
>> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is

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[5] In its reply-representations, the ministry also refers to Privacy Complaint MI09-1 where this office recommended that the police cease the practice of posting lawn signs indicating that homes had been the subject of a search warrant for drugs. Privacy Complaint MI09-1 is distinguishable from the case at hand for the reasons set out in it, including the differences in the nature of the information at issue and the consequences of disclosure.

> necessary to prosecute the violation or to continue the investigation;

[48] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.[6] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[7]

[49] Section 21(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.[8]

[50] As noted above, the records in this appeal are four OPP occurrence summaries related to grow-ops in a particular municipality. It is clear that the records were compiled by the OPP and are identifiable as part of an investigation into a possible violation of law. The responsive information in the records consists of the personal information of affected parties within the meaning of section 2(1) of the *Act*. I do not find that disclosure is necessary to continue the investigation into a possible violation of the law, nor is it required to prosecute the violation. Accordingly, I find that the personal information falls within the ambit of the presumption in section 21(3)(b).[9]

[51] As a result, I find that disclosure of the information contained in the records would constitute a presumed unjustified invasion of personal privacy as contemplated by section 21(3)(b). As such, it is unnecessary for me to consider the parties' submissions regarding the applicability of section 21(2) as the factors listed in section 21(2) cannot override the application of a section 21(3) presumption.

[52] The Divisional Court has stated that, 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" in section 23 applies.[10] I have considered the exceptions set out in section 21(4) of the *Act* and find that none of those exceptions apply.

[53] Accordingly, I find that the disclosure of the records is presumed to constitute an unjustified invasion of privacy under section 21(3)(b). On that basis, the responsive information is exempt from disclosure, subject to my review of the "public interest override" below.

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[6] Orders P-242 and MO-2235.
[7] Orders MO-2213, PO-1849 and PO-2608.
[8] Orders M-734, M-841, M-1086, PO-1819 and PO-2019.
[9] I note that the records at issue in this appeal are the actual occurrence reports relating to the incidents, and are different in nature from the specific records at issue in Order MO-2019.
[10] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemption?

[54] The appellant has taken the position that the public interest override at section 23 of the *Act* applies to the requested information. 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. [emphasis added]

[55] 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.[11]

[56] 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.

[57] 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.[12] 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.[13]

[58] A public interest does not exist where the interests being advanced are essentially private in nature.[14] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[15]

[59] The word "compelling" has been defined in previous orders as "rousing strong

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[11] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.).
[12] Orders P-984, PO-2607.
[13] Orders P-984 and PO-2556.
[14] Orders P-12, P-347 and P-1439.
[15] Order MO-1564.

interest or attention".[16]

[60] Any public interest in non-disclosure that may exist also must be considered.[17] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[18]

[61] 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;[19]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[20]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light in the matter.[21]

Representations

[62] In its initial representations, the ministry submits that it is not aware of any compelling public interest that would justify overriding the mandatory privacy protection for personal information contained in law enforcement records that exists in section 21(3)(b). The ministry submits that if there is any compelling public interest at play in this appeal, it is to ensure that the privacy interests of affected third parties are safeguarded, especially when their wishes are expressly stated.

[63] The ministry also takes the position that any public interest that may exist in this appeal is one that favours non-disclosure of the responsive information, that the privacy interests of the affected individuals should be respected, and that disclosure should not be permitted as the records contain highly sensitive personal information. The ministry also submits that disclosure of the information could lead to a chilling effect on the public's willingness to cooperate with police in law enforcement investigations.

[64] The appellant submits that there is a compelling public interest in the disclosure of the requested information, as contemplated by Order MO-2019. In support of this position, the appellant submits that the dangerous health effects produced by properties formerly used as grow-ops are well documented and subject to scrutiny by consumer protection agencies, such as the Real Estate Council of Ontario. He states:

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[16] Order P-984.
[17] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[18] Orders PO-2072-F, PO-2098-R and PO-3197.
[19] Orders P-123/124, P-391 and M-539.
[20] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[21] Order PO-1779.

> It is clear that [grow-ops] represent a health and financial threat to thousands of unsuspecting victims in Ontario every year. It is proven that toxic mould, poisonous gas, chemicals and criminal activities can create long lasting problems for the homebuyers and tenants. Higher risk of fires and damage [to] structures cannot be discounted from dangers of [grow-ops]. The purchase of a new home is an investment which is often the most significant financial commitment in a family's life …

[65] The appellant also notes that realtors in Ontario have a legal obligation to disclose these activities to interested buyers, and that many police forces offer awareness campaigns on the negative effects of grow-ops.

[66] In addition, the appellant notes that there has been considerable public discourse about illegal grow-ops in the past several years. The appellant submits that the government and police's response to the dangers posed by these operations have been subject to considerable scrutiny by the public. He refers to *the Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*, which expanded the Crown's authority to deal with property forfeited as a consequence of illegal activities. The appellant cites Order MO-2019, which states, "the disclosure of personal information may be desirable for the purpose of ensuring public confidence in the integrity of an institution (Orders M-120 and M-173)."

[67] In its reply representations, the ministry suggests that it is not clear whether the records relate to homes that sustained damage, nor whether these homes have since been remediated, given the age of some of the records. In addition, the ministry responds to the appellant's reference to the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*, and notes that the appellant did not refer to sections 447.2 and 447.2(5) of the *Municipal Act, 2001*, which require building inspections to be conducted when a municipal clerk is notified by police that a building contained a grow-op, and actions to be taken to make the building safe and otherwise protect the public. The ministry submits that the strategies imposed by these statutes are designed to combat the risks associated with grow-ops, without leading to the unnecessary disclosure of residents' personal information.

Analysis and findings

[68] In Order MO-2019, this office considered the application of the personal privacy exemption to a set of four charts summarizing police involvement with grow-ops from 2002-2005. Commissioner Beamish found that disclosure of certain columns from those charts, namely those identifying the property address, date of seizure, the drugs seized, the money seized and the charges laid, would not constitute an unjustified invasion of personal privacy. However, in *obiter*, the Commissioner noted that even if the exemption had applied to those columns, he would have ordered disclosure of the information pursuant to the public interest override. In reaching this conclusion, he referred to the desirability of promoting public health and safety in relation to illegal

grow-ops as one of the reasons why there was a compelling public interest that outweighed the purpose of the personal privacy exemption.

[69] The Commissioner also found that the health and safety threats posed by properties formerly used for marijuana grow-operations must be taken seriously. He stated:

> … while some citizens may be aware of [alternate methods for prospective homeowners to make "discreet inquiries" about historical use of the property directly through police], its existence does not negate the potential benefit in the release of the requested information into the public domain through a separate means, such as an inquiry under the *Act*. I agree with the appellant that, "[t]he only protection a homeowner has is access to information that is 'widely available' and 'accessible'".
>
> Homeowners, armed with pertinent information about their property, may take steps to properly investigate damage or deficiencies and to remedy them, thereby minimizing or eliminating the potential for further harm.

[70] In addition, the Commissioner found that disclosure may inform members of the public about potential hazards posed by owning a house formerly used for an illegal grow operation. He stated:

> Wider availability of information about houses used for this purpose may assist prospective homeowners in choosing not to purchase such a home. Similarly, individuals may be faced with having already bought a house that appears to be worth one amount, but is actually worth considerably less due to the modifications made to the house as a consequence of it being used for the purpose of an illegal grow operation.

[71] I adopt the approach taken in Order MO-2019, and apply it in this appeal. In particular, I am satisfied that the health and safety threats posed by properties formerly used for marijuana grow-operations must be taken seriously, and that disclosure may inform members of the public, including homeowners or potential homeowners, about possible hazards posed by owning a house formerly used for an illegal grow-operation. In addition, the desirability of promoting public health and safety in relation to illegal grow-ops is another reason why there is a compelling public interest in records identifying that a home was used as such.

[72] I have also considered the references by the parties to the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*, which included amending sections of the *Municipal Act, 2001*. I acknowledge that these amendments include requiring building inspections to be conducted and actions to be taken when a

municipal clerk is notified by police that a building contained a grow-op.[22] However, I note that these amendments relate primarily to the remediation of homes used as grow-ops. In reviewing the impact of these amendments on the application of the public interest override, I apply the approach taken by Commissioner Beamish in Order MO-2019, and find that these amendments do not negate the potential benefit in the release of the requested information into the public domain through a separate means. Access to information of this nature should be "widely available."

[73] As a result, I am satisfied that there is a compelling public interest in records establishing that a home was used as an illegal grow-op. The compelling public interest considerations include the public health and safety threats posed by illegal grow-ops, and the risks to consumers, which include, for example, electrical hazards, house fires, undetected mould and decreased property values.

[74] However, as noted under the "preliminary issue" above, there is a difference in the nature of the records at issue in this appeal. Two of the records (Records 3 and 4) are occurrence reports relating to indoor grow-ops, each of which resulted in a number of plants being seized. The other two records (Records 2 and 6) relate to investigations of other matters, during which the investigators found some possible evidence of "indoor grow-ops," but which did not result in any plants being seized.

[75] The compelling public interest considerations discussed above, including the public health and safety threats and risks to consumers, are heavily dependent on the presence of a former indoor marijuana grow-operation. Absent sufficient evidence of an indoor marijuana grow-operation, I am not satisfied that the compelling public interest in disclosure of those records applies.

[76] As a result, the compelling public interest only applies to records which contain clear evidence of the presence of an indoor marijuana grow operation. Examples of such evidence would include the laying of charges under the *Criminal Code* and/or the *CDSA* and/or the seizure of marijuana plants. In the circumstances of this appeal, I am satisfied that there exists a compelling public interest in the disclosure of the address, occurrence date, and number of plants seized relating to Records 3 and 4. However, because of the nature of the information contained in Records 2 and 6, as described above, I am not satisfied that there exists a compelling pubic interest in the limited responsive information contained in these records.

[77] I have also considered the ministry's position that there is a public interest in non-disclosure of the records.

[78] I accept that the occurrence reports, when taken as a whole, contain information that could be linked to identifiable individuals. However, I have also considered the limited nature of the personal information to be disclosed as a result of this order, as

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[22] See section 447.2 of the *Municipal Act, 2001*.

noted above.[23] In these circumstances, I find that any public interest in non-disclosure of the records does not bring the public interest in disclosure below the threshold of "compelling."

[79] I also find that the ministry has provided insufficient evidence in support of its submission that disclosure may lead to a chilling effect on the public's willingness to participate in OPP investigations.

[80] As a result, I find that there is a compelling public interest in the disclosure of the responsive information contained in Records 3 and 4.

Purpose of the Exemption

[81] 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 claimed 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.[24]

[82] As previously discussed, section 21(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.[25] The exemption reflects one of the two key purposes of the *Act* which is to protect the privacy of individuals with respect to personal information about themselves held by institutions.[26] Therefore, it is important to carefully balance the public interest against the privacy interests of the individuals identified in the record.

[83] On my review of the circumstances of this appeal, including the records at issue and the privacy interests of the affected parties, I am satisfied that there is a compelling public interest in disclosing the requested information in Records 3 and 4 that clearly outweighs the purpose of the section 21(1) exemption. For the reasons set out above, the public has an interest in knowing the addresses, quantities seized and occurrence dates related to the indoor marijuana grow-operations referenced in these records and, given the element of remoteness described above, I find that the public interest clearly outweighs the purpose of the exemption for this information.

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[23] As noted above and referenced in Order MO-2019, the information at issue could reveal an identifiable individual's involvement with an alleged criminal activity, but not the nature of the involvement (ie: whether as an accused or as an unfortunate but "innocent owner" of a property).
[24] 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.).
[25] Order P-568.
[26] Order PO-2805.

ORDER:

1. I uphold the ministry's decision to withhold the responsive information in Records 2 and 6 pursuant to the personal privacy exemption in section 21(1).

2. I order the ministry to disclose to the appellant the addresses, quantities seized and occurrence dates contained in Records 3 and 4 by **January 6, 2016**, but not earlier than **December 24, 2015**. For greater certainty, I have highlighted the information to be disclosed on a copy of the records that is being sent to the ministry with this order.

3. In order to verify compliance with this Order, I reserve the right to require the ministry to provide me with a copy of the information disclosed to the appellant pursuant to Provision 2, upon request.

Original Signed by: November 24, 2015

Frank DeVries
Senior Adjudicator