Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3631

Appeal PA13-231

Ministry of Community Safety and Correctional Services

July 15, 2016

Summary: This order addresses part 44 of a 49-part request submitted by the human rights organization, Amnesty International, to the Ministry of Community Safety and Correctional Services under the *Freedom of Information and Protection of Privacy Act.* The requested records relate to time spent in Ontario Provincial Police custody by individuals arrested during protest and occupation activities on Tyendinaga Mohawk Territory in April 2008. The sole remaining issue in Appeal PA13-231 is access to the audio component of DVD recordings of cells at the OPP Napanee Detachment on two specific dates, which the ministry denied under the personal privacy exemption in section 21(1). In this order, the adjudicator finds that the only personal information contained in the audio recordings is that belonging to the six individuals specifically named in the request. Since valid written consents were provided for the disclosure of their personal information to Amnesty, in accordance with section 21(1)(a) of the *Act*, the adjudicator orders the audio recordings disclosed to Amnesty, in their entirety.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1), 21(1)(a).

Orders and Cased Considered: Orders P-230, P-1389 and PO-1880, upheld in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

OVERVIEW:

[1] This order resolves the issues in Appeal PA13-231, which is the final appeal resulting from a 49-part access request submitted in December 2008 to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) by the human rights organization, Amnesty International (Amnesty, or the appellant). Appeal PA13-231 relates to part 44

of the request, which named six individuals arrested during Mohawk protest activities that took place at the Culbertson Tract on Tyendinaga Mohawk Territory in April 2008, and sought records related to their detention at the Napanee Detachment of the Ontario Provincial Police (OPP).[1] This order determines the sole remaining issue of Amnesty's access to the audio component of certain recordings made of the cells in which those individuals were held.

[2] When the request was first submitted, the ministry responded by issuing a decision denying access because prosecutions related to the protest and occupation activities were ongoing, and the records were temporarily excluded from the *Act* under section 65(5.2). Once advised that all proceedings related to the prosecutions were complete in January 2011, this office wrote to the ministry and directed it to issue new decision letters. When the ministry did not issue decisions for all parts of the request within the given timeframe, Amnesty appealed. In Order PO-3166,[2] these matters were addressed as deemed refusals pursuant to section 29(4) of the *Act* and the ministry was ordered to issue final decision letters. The ministry's April 19, 2013 access decision regarding this part of Amnesty's request denied access under the discretionary law enforcement exemption in section 14 and the mandatory personal privacy exemption in 21(1). The ministry also claimed that some information was excluded from the scope of the *Act*.

[3] Amnesty appealed the ministry's decision to this office, and Appeal PA13-231 was opened to address the issues. During the mediation stage of the appeal, the appellant accepted the ministry's indication that no recordings of a booking area exist due to the configuration of the Napanee detachment, thereby limiting the appeal to footage of the cells and interview areas. The appellant also agreed not to pursue access to the brief portion of one of the interviews that the ministry claimed was outside the scope of the *Act*. Amnesty raised the possible application of the public interest override in section 23 of the *Act* respecting the other withheld information.

[4] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage for an inquiry. The adjudicator then responsible for the appeal sent a Notice of Inquiry outlining the issues to the ministry, initially, to seek representations. At that point, the ministry issued a revised decision in which it granted partial access to the video component of the recordings at issue and withdrew its reliance on the law enforcement exemption in section 14. The ministry did, however, maintain its claim that section 21(1), together with the presumption against disclosure in section 21(3)(b), applies to the withheld audio content of the recordings. Amnesty asked for time to review the disclosed videos and the appeal was placed on hold for this purpose. As the disclosed video footage did not fully satisfy the appellant, the adjudicator re-activated

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[1] "Any videos of the cells, booking area and interview areas at the Napanee OPP detachment with respect to [two named individuals] on April 25, 2008 and [four other named individuals] on April 25 and 26, 2008."

[2] Issued on February 22, 2013.

the appeal and requested representations from the ministry, which the ministry then submitted.

[5] At this point, the appeal was transferred to me to complete the inquiry. I sent a modified Notice of Inquiry and a complete copy of the ministry's representations to the appellant requesting submissions in response. In the representations submitted, Amnesty indicated that it was narrowing its appeal and now sought only the audio of three of the six responsive recordings. The ministry's severances to the video under section 21 were thereby removed from the scope of the appeal. I sought the ministry's reply to the narrowing of the appeal's scope to the audio of those three recordings, as well as the possibility of severing the audio for disclosure, pursuant to section 10(1) of the *Act*. The ministry provided reply representations, which I provided to Amnesty for comment. After receiving sur-reply representations from the appellant, I moved the appeal to the orders stage.

[6] During the preparation of the order, it became apparent from listening to the recordings that the quality of the audio component was so compromised as to render the words spoken unintelligible. Consequently, I wrote to the ministry, advising that I had reviewed the three remaining responsive recordings, and had noted:

> the disparity between the combined length of the recordings that *ought to be present on the DVDs* (19 hours, 47 minutes, based on adding the lapsed time of the recordings listed above) and the *actual length of those recordings* (10 hours, 29 minutes). … Although the playback speed of the DVDs is indicated as "Normal," when the "Enhancements" feature on the Windows Media Player is opened up, the speech of the individuals captured in the recordings is garbled *because it is sped up*.

[7] Surmising that the recordings had been provided to the IPC in a compressed format, I asked the ministry to obtain and provide original, uncompressed versions (or copies of them). Subsequently, the ministry provided me with eight DVDs accompanied by an explanation of them, which I provide below under my analysis of the personal information issue. Prior to the final preparation of the order, the appellant provided an update on ancillary matters related to the appeal.

[8] In this order, I find that the audio component of the cell recordings contains only the personal information of the six individuals named in the request. The remaining information does not qualify as personal information according to the definition in section 2(1) of the *Act* because it relates to individuals who are either acting in their professional capacity or who are not identifiable. With respect to the personal privacy exemption in section 21, I find that it does not apply because valid, written consents that satisfy the requirements of section 21(1)(a) exist for the six named individuals. As a result, I order disclosure of the remaining responsive audio recordings, in their entirety.

RECORDS:

[9] The information at issue in this appeal consists of the audio component of recordings made of the holding cells at the Napanee OPP Detachment on April 25 and 26, 2008. Specifically, as narrowed during the inquiry, Amnesty seeks access only to the audio component of the following cell recordings:[3]

1. **Tape O relating to Cell #2** from 18:30 on April 25, 2008 to 08:21 on April 26 when the nylon restraints on [named individuals, C, S & D] are fully removed by an officer/guard;

2. **Tape I relating to Cell #1** from 20:04 to 23:09 on April 25, 2008 when the nylon restraints on [named individual, J][4] are removed by an officer/guard; and

3. **Tape J relating to Cell #3** from 18:30 to 21:12 and from 23:36 to 23:45 on April 25, 2008 when [named individual, R] is in detention.

ISSUES:

A. Do the records contain "personal information" as defined in section 2(1)?

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

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1)?

[10] Having disclosed the video portion of the cell recordings, with some severances under section 21(1), the ministry claims that the audio component of those same recordings is exempt under section 21(1). To determine whether the withheld audio is exempt under section 21(1), I must decide first if it contains "personal information," according to the definition in the Act, because section 21(1) can only apply to personal information.

[11] "Personal information" is defined in section 2(1) of the Act as "recorded information about an identifiable individual," including, for example:

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[3] As described in the appellant's February 26, 2015 representations. All times referred to here are those displayed on the 24-hour clock in the videos of these holding cells, which were disclosed to Amnesty in June 2014. Based on my review of the DVDs, the clock in the video appears to be ahead of the actual time by approximately 65 minutes.

[4] During this time, the sixth named individual, M, is also being held in Cell #1.

(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 where 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. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information.

[13] To qualify as personal information, the information must be about the individual in a personal capacity. Section 2(3) also relates to the definition of personal information and states that "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." Therefore, 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.[5] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if

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[5] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

the information reveals something of a personal nature about the individual.[6]

[14] Finally, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[7]

Representations

[15] The ministry submits that the audio portion of the cell recordings has been withheld because "it could conceivably identify third party individuals," and other discrete portions of the cell recordings have been withheld "where they could identify other inmates or individuals, who are not law enforcement staff, and who are walking in front of the cells." The cameras in the cells may have captured "fleeting but potentially identifiable third party individuals." The ministry is referring to portions of the video content of the recordings, which are not at issue, because the appellant has removed the severances to the video portions of the recordings from the scope of the appeal.

[16] The ministry submits that the audio in the records is "inaudible based on the technology available to us." Alternately, the ministry suggests that the inaudible audio content is of no use to the appellant and need not be disclosed for that reason. However, the ministry also argues that since technology is constantly evolving, it remains possible that the audio component could be enhanced "now or in the future" to the point where it can definitively be said to contain personal information that must be protected under the Act. Therefore, the ministry's position is that because the audio component of the recordings could potentially contain personal information, the recordings should be treated as though they do.

[17] Finally, the ministry submits that "an inaudible record not capable of being rendered audible is not subject to the [Act]." As I understand it, the ministry's argument is that "inaudible" audio recordings are not a "record," as the Act defines it, since they do not contain information. However, although the ministry separated the audio from the video component in their decision and submissions, the recordings as a whole clearly fit within the definition of "record" in section 2(1) of the Act,8 and I make no distinction between them on this basis.

[18] Amnesty begins its representations by also commenting on the artificiality of separating the audio and video components of the recordings, but concedes the point for the purpose of making representations on the audio, since it decided not to appeal the severances made to the video under section 21. Amnesty calls the ministry's

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[6] Orders P-1409, R-980015, PO-2225 and MO-2344.
[7] Order PO-1880, upheld in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[8] As defined in section 2(1), "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes, (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof…

position that the audio recordings must be withheld because they could possibly contain personal information "entirely conjecture." Amnesty maintains that the reference point for my determination is now, not a speculative future.

[19] After expressing concern that the ministry is only now claiming the audio is "inaudible,"[9] Amnesty submits that if, in fact, all of the audio of these tapes is "inaudible," this only supports the existence of a compelling public interest in their release.

[20] As was evident from my own review of the DVDs originally sent to this office by the ministry, which happened after the parties submitted the representations set out above, the audio recordings were not inaudible; rather, as noted in the introduction to this order, the conversations were unintelligible. At my request, the ministry provided new copies of the recordings[10] with the following explanation:

> … [The] specified portions of the original copies of the video tapes referred to as Tape "O", Tape "I" and Tape "J" (the "Records") were accessed and sent to Orillia, where they were digitized by a certified forensic video analyst. Digitizing is the process of converting the videotape recording into a digital format. …
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> The first copy of the Records contains both an audio and visual portion. It is slowed down to "real time", but it is nevertheless still compressed. In order for both the audio and the video portions of the Records to be accessible without applying compression, … a recent version of Avid Media Composer editing software would be required, which is both expensive and, as a result, not widely in use. However, it is our position that the first copy of the Records will, nevertheless, be of assistance in listening to the second copy of the Records, which only contains audio. The second copy of the Records *is* in an uncompressed format, as you have requested, and can also be played without requiring specialized software.
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> We have listened to the Records. It is our position that the audio portion remains largely unintelligible. The certified video forensic analyst advises that this appears to be unrelated to the speed of the recording. Rather, the analyst advises the audio quality remains difficult to understand or altogether unintelligible due to the reflective nature of the concrete walls

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[9] Amnesty points out that in none of the ministry's four decision letters was there any reference to the denial of access to the cell recordings being based on "inaudibility," which Amnesty suggests is a violation of the ministry's obligation under the *Act* to provide the reasons for refusing access.

[10] Eight DVDs were provided: six DVDs representing the audio/visual "first copy of the Records" and two DVDs containing the audio-only "second copy of the Records." The total time of the second copy of the Records – 19:52:38 - roughly corresponds with the expected length of these cell recordings from the original copies provided – 19:47, compared to 10:29:42 in their compressed format.

in the cells, which caused echoing and reverberation. The location of the microphones likely also played a factor in this outcome.

Analysis and findings

[21] As outlined above, the definition of "personal information" in section 2(1) of the Act includes many different possible types of information. However, for information to fit into the definition of "personal information," it must be "recorded information about an identifiable individual." Based on my review of the cell recordings, both in the original audio/visual form where the compressed audio was "unintelligible" and in the uncompressed audio format recently provided by the ministry, I have divided my analysis of this issue into the three categories of individuals who appear in them.

Identifiable individuals – named in the request

[22] Amnesty's request for information about six named individuals was quite specific, and was rendered even more so by the narrowing of its scope during the inquiry to identified portions of Tapes I, J and O for the three holding cells at the Napanee OPP Detachment on April 25 and 26, 2008. By the very fact of them being named in the request, as well as my own review of the recordings identified as responsive, I have no difficulty finding that the DVDs contain the recorded personal information of the six individuals, according to the definition in section 2(1) of the *Act.* This finding applies to the video component containing the individuals' images and the audio portions, which contain their now-discernible voices.

Individuals acting in a professional capacity

[23] Based on my review of the cell recordings, I note that they also contain the images and voices of OPP officers, guards or staff. In this situation, members of the OPP and other authorized staff were in a secured part of the detachment where the holding cells are located, a place where they regularly perform their professional duties. It is clear that they were performing these duties in a professional, not personal, capacity. Past orders have held that depictions of individuals carrying out official or professional duties do not comprise the personal information of those individuals, absent demonstrable evidence of actions or words that could be construed to be of a personal nature.[11] In this appeal, no personal aspects are evident upon my review of the recordings. Therefore, I find that the recordings do not reveal something of a personal nature about these individuals and do not contain their personal information.

Unidentified and unidentifiable individuals

[24] The ministry's expressed concern about disclosure of the audio content of the cell recordings is that individuals other than those acting in a professional capacity (and

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[11] See Orders MO-3238 and PO-3497.

presumably the six named individuals) could be identified. Examples given are "other inmates or individuals," who may have been captured in a "fleeting but potentially identifiable" manner by the surveillance cameras in the cells.

[25] In Order P-230, former Commissioner Tom Wright held that "if there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under section 2(1) as personal information." The reasonable expectation of identification is based on a combination of information sought and otherwise available.[12] Order PO-1880, which was upheld in *Pascoe*, cited above, summarizes past orders on identifiability and highlights Order P-1389, where the adjudicator rejected evidence from the Ministry of Health and Long-Term Care of "a strong possibility that there exists some external information in the public domain … which could be linked to the information at issue to make a connection between" the information at issue and an identifiable individual. There, the adjudicator dismissed the ministry's argument, stating:

> In my view, the Ministry's arguments rely on the unproven possibility that there **may** exist a belief or knowledge of the type described. I have not been provided with any substantive evidence that information exists outside the Ministry which could be used to connect the dollar amounts to specific doctors. The scenario described by the Ministry is, in my view, too hypothetical and remote to persuade me that individual practitioners could actually be identified from the dollar amounts contained in the record. I find, therefore, that the information at issue is not about an **identifiable** individual and does not, therefore, meet the definition of "personal information" contained in section 2(1) of the *Act* [original emphasis].

[26] In the current appeal, the ministry's representations regarding the disclosure of the cell recordings as potentially leading to the identification of heretofore unknown inmates or other individuals similarly fails to rise above speculation. Although the appellant removed the severances to the video portions of the recordings from the scope of the appeal, review of the cell recordings as a whole (i.e., both audio and video) is required, since the video portions play an important role in the determination of the identifiability issue. It is true that there are individuals in the background who never enter the cells or who pass by the cell doors. However, I am reasonably satisfied that these individuals are either law enforcement staff at the detachment acting in a professional, not personal, capacity *or* are the named individuals being transported to or from the cells other than the one in which the recording was made. By noting the time at which other individuals appeared in each of the relevant video depictions of one cell, I was able to correlate those appearances with the movement of the other detainees in and out of the other cells. For example, M & J were removed from Cell 2 (Tape O) at 20:06 on April 25, 2008 and placed in Cell 1 (Tape I). At approximately

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[12] Order P-316.

21:07 of Tape O, M can be seen in the background being led out of Cell 1 and returned there at approximately 21:27, an observation correlated with that occurrence on Tape I.[13]

[27] Even if I am mistaken as to any of the correlations I observed on the recordings between individuals seen in fleeting images and the likelihood that they are OPP officers/guards or individuals named in the request, I am satisfied that the sought-after *audio* component associated with the movement of individuals outside the cells could not reasonably be connected to any other identifiable individual. The ministry's evidence does not support a finding that other individuals could reasonably be expected to be identified by disclosure. The ministry does not say who else may have been present in that particular location at that particular time in a *personal* capacity, apart from the six individuals named in the request, and the mere hypothetical possibility that an individual could be identified is simply not sufficient to establish that the cell recordings contain personal information about unknown individuals. In saying this, I reject the ministry's suggestion that advanced technology in the future may permit the improvement of the audio component to the point where personal information about additional individuals can be newly identified and must be protected under the *Act.* I agree with Amnesty that the time for evaluating that risk is now.

[28] Upon review, I have concluded that it would not be reasonable to expect that individuals other than the six individuals identified in the request (and OPP staff acting in an official capacity) may be identified as a consequence of disclosing the audio component. Accordingly, I conclude that the information about unidentified individuals in these recordings is not personal information.

In summary

[29] I find that any information in the recordings that relates to OPP officers and other detachment staff acting in a professional capacity, or individuals who cannot reasonably be identified, is *not* personal information according to the definition in section 2(1) of the *Act.* Correspondingly, I find that any portions of the audio recordings attributable to those individuals cannot be exempt under section 21, since the mandatory exemption for personal privacy can only apply to personal information.

[30] However, I will now review the application of section 21 to the portions of the audio recordings that contain the personal information of the six named individuals.

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

[31] Where a requester seeks personal information of another individual, section

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[13] The video for Tape I was fully disclosed with no severances, but the audio was withheld under section 21(1), in its entirety.

21(1) of the Act prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. The exceptions in sections 21(1)(a) to (e) are relatively straightforward. My finding in this section of the order hinges on section 21(1)(a), but since the ministry made submissions under the exception in section 21(1)(f) (where "disclosure does not constitute an unjustified invasion of personal privacy"), I will mention sections 21(2) to 21(4), which provide guidance in determining if disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 21(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2), as well as other considerations that are relevant in the circumstances of the case. An established presumption in section 21(3) cannot be rebutted by either one or a combination of the factors set out in section 21(2), but may be overcome if the personal information is found to fall under section 21(4) of the Act or if a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record that clearly outweighs the purpose of the section 21 exemption.14

Representations

[32] The ministry's representations in this appeal focus on the exemption of the personal information at issue in light of considerations reviewed to decide whether section 21(1)(f) is established: the presumption against disclosure in section 21(3)(b) (investigation into a possible violation of the law) and the factor weighing against disclosure in section 21(2)(f) (highly sensitive). As suggested, given my conclusion about the exception in section 21(1)(a), it is not strictly necessary to set out the ministry's representations on these provisions. However, one of the points the ministry makes under the factor in section 21(2)(f) is relevant: specifically, the ministry argues that the personal information at issue is "highly sensitive" because "it records images of individuals who were likely not aware that their personal information was being collected, or that it was subject to disclosure in the manner contemplated by this appeal."

[33] Amnesty explains the reasons for seeking access to the audio portions of the recordings corresponding to the video already released, an explanation that alludes to the factor in section 21(2)(a); that is, disclosure is desirable for subjecting the institution to public scrutiny. The explanation reviews the relevant video portions complemented by details gleaned from prisoner security check forms for these

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

individuals that were disclosed through another appeal. Amnesty specifically identifies the parts of the videos that show nylon plastic restraints being put on, and removed from, the wrists of the named individuals.[15] Amnesty states that according to Tape O, there is a discussion at 08:21 on April 26 between C, S and D and the guard/officer that may be about the plastic restraints, which had just been removed.

> Due to the fact that, according to Tape O, [C] was forced to wear plastic restraints in a locked cell from approximately 18:30 on April 25 until 8:21 on April 26 – a duration of about 13 hours and 51 minutes – and [S] and [D] were compelled to wear nylon restraints from approximately 18:45 on April 25 until sometime during the night and did not have the cuffs fully removed by a guard/officer until 8:21 on April 26, Amnesty is asking for the audio recording for Cell #2 [for this time period.]

[34] According to Amnesty, the audio recording may confirm whether or not the named individuals objected to the use of nylon restraints while they were detained in locked cells and what response may have been given by OPP officers or guards.[16] Amnesty also explains that the disclosed video component of Tape J demonstrates that R was experiencing considerable pain and submits that the audio recording may illuminate the situation in terms of this individual's request for medical assistance. Amnesty's further representations explaining the purpose of the request and challenging the ministry's position on sections 21(2)(f) and 21(3)(b) are not necessary to outline here, given my finding on section 21(1)(a).

[35] Regarding section 21(1)(a), Amnesty points out that the ministry long ago received written consents to the disclosure of personal information to Amnesty from all six of the individuals named in the request; further, the validity of the consents was affirmed in a decision by an adjudicator from this office. Amnesty provided copies of these six signed consents during the inquiry and noted that there are 18 additional written consents from other individuals interviewed by Amnesty in the course of conducting its Tyendinaga Research Project. To counter the ministry's professed concern about individuals not being aware of the collection or disclosure of their personal information, Amnesty states that the redacted video recordings disclosed by the ministry have already been provided to each individual to whom they relate.

Analysis and findings

[36] Pursuant to my findings under the definition of "personal information" in section

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[15] Amnesty alleges that use of such restraints violates section 2.42.2 of the Ontario Provincial Police Orders, which requires members/auxiliary members to use handcuffs or nylon restraints applied no tighter than required and to remove them as soon as it is reasonable to do so.

[16] Amnesty recently provided a status update to the effect that the OPP Commissioner had agreed to conduct an "internal review" into "allegations of mistreatment relating to the use of nylon restraints on a number of individuals in custody at the Napanee OPP Detachment on April 25 and 26, 2008…"

2(1) of the *Act,* only the personal information of the six individuals named in part 44 of Amnesty International's request are at issue under section 21(1). In this context, the ministry's assertion that "none of the third party individuals identified or identifiable in the records have consented to the disclosure of their personal information" is directly contradicted by the evidence of valid, written consents provided to the ministry by Amnesty for these six individuals.

[37] The relevant provision is section 21(1)(a), which states:

> 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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> > upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

[38] As the appellant observed, this office issued a decision by letter order (in May 2012) regarding the validity of the consents. This letter order is not public but its findings can be summarized as follows:

- the consents that Amnesty provided to the ministry are in writing and explicit, as discussed in Order PO-2215;
- the terms of the consent form demonstrate that the individuals providing consent signed the forms voluntarily and understood the consequences of providing consent to the disclosure of their personal information to Amnesty; and
- the consents are sufficiently broad to allow the ministry to disclose the personal information of the individuals who provided consent to other employees or agents of Amnesty, other than the named representative of the organization.

[39] The ministry has declined to disclose, or even sever and disclose, the audio portion of the cell recordings, notwithstanding the valid written consents in its possession. Indeed, the ministry did not address the valid consents provided by the six named individuals during this inquiry. This may be attributed to the caution the ministry was exercising, given its position that the inaudible, or unintelligible, audio could eventually be rendered listenable, thus identifying other individuals who may not have provided consent. However, I dismissed this argument regarding the possible future identification of any unidentified individuals as conjecture above, and I am satisfied that the remaining responsive audio portions of the cell recordings are records to which the consenting individuals are entitled to have access. I am also satisfied that even if other unidentified individuals may be referenced in these audio recordings, disclosure of that incidentally included information is in keeping with the purpose of the *Act* that individuals should have access to their own personal information held by institutions.[17]

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[17] Orders M-444 and MO-1868-R.

In the circumstances, there is no basis under the *Act* for failing to give effect to the valid written consents of the six named individuals and no compelling reason for non-disclosure of the audio recordings, in their entirety. As a result, I find that the audio recordings are not exempt under section 21.

[40] Since I have concluded that the audio recordings are not exempt, I am ordering their full disclosure to Amnesty. To be clear, this will mean that the ministry must disclose all eight DVDs that were provided to this office in April 2016. As noted above, the appellant did not pursue the appeal respecting the severances applied to the video of the cell recordings under section 21. Accordingly, in preparing the DVDs for disclosure to Amnesty, the ministry may sever the video of these versions of the recordings for consistency with its June 2014 decision.

[41] Given my findings, there is no need for me to review the issue of whether there is a compelling public interest in the information that is sufficient to outweigh the purpose of the section 21 exemption.

ORDER:

I order the ministry to disclose to Amnesty the complete, responsive, audio recordings of Tapes I, J and O, as identified in this order, by **August 22, 2016** but not before **August 15, 2016**.

Original Signed by: July 15, 2016

Daphne Loukidelis
Adjudicator