Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3643

Appeal PA14-99

Ministry of Community Safety and Correctional Services

August 29, 2016

Summary: The appellant sought access to the number of inpatient suicides committed at Ontario hospitals and psychiatric facilities between 2003 and 2012 by year and facility. The ministry granted access to the total annual number of inpatient suicides but withheld the names of the facilities and the corresponding annual suicides per facility on the basis that the withheld information qualified as "personal information" under section 2(1) and was exempt under the mandatory personal privacy exemption in section 21(1) of the *Freedom of Information and Protection of Privacy Act.* The ministry's decision is not upheld and the withheld information is ordered disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, as amended, section 2(1) (definition of "personal information"); *Personal Health Information Protection Act, 2004,* SO 2004, c 3, Sched A, sections 4(1) and (2) (definitions of "personal health information" and "identifying information").

Orders and Investigation Reports Considered: MO-2337, MO-3320, PO-2744, PO-2811, PO-2892, PO-3345 and PO-3497.

Cases Considered: *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA); *Ontario (Ministry of Correctional Services) v Goodis*, 2008 CanLII 2603 (ON SCDC).

BACKGROUND:

[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 access to a list of Ontario hospitals and psychiatric facilities (the facilities) where a suicide has occurred during a ten-year period broken down by year, facility and number of suicides.

[2] In response, the ministry issued a decision providing partial access to the requested information. The ministry disclosed the total annual number of suicides committed in the facilities for the years 2003 to 2012. The ministry denied access to the names of the facilities and the number of suicides committed at each facility under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] The appellant, a member of the media, appealed the ministry's decision to this office arguing that the withheld information did not qualify as personal information under the *Act*. In her appeal letter, the appellant asserted that there is a public interest in disclosure of the information because it pertains directly to the safety record of Ontario health facilities. She also noted that the Office of the Chief Coroner discloses detailed information about deceased individuals during inquests it conducts into suicides at health facilities and that other provinces disclose the withheld information even though they are subject to similar privacy protection legislation.

[4] Although mediation was attempted, it did not resolve the issues in this appeal and the appeal was transferred to the adjudication stage of the appeal process for a written inquiry under the *Act.*

[5] During my inquiry, I sought and received representations from the ministry and the appellant, and shared these in accordance with section 7 of this office's *Code of Procedure* and Practice *Direction Number 7*. I also sought reply and sur-reply representations from the parties in order to provide them with the opportunity to address issues raised in each other's response. After reviewing the representations of the parties, I invited the facilities listed in the record to participate in the appeal on the basis that they may have information relating to the record that could assist me in my determination. Fourteen facilities submitted representations which I summarize below.

[6] In this order, I do not uphold the ministry's decision and I order it to disclose the record in its entirety.

RECORD:

[7] The record at issue is a three-page listing of the number of suicides committed in Ontario hospitals and psychiatric facilities for the ten-year period starting in 2003 and ending in 2012, broken down by year and facility.

ISSUES:

[8] The issues to be determined in this order are:

A. Does the record contain personal information within the meaning of section 2(1) of the *Act*?

B. If the record contains personal information, does the mandatory exemption at section 21(1) of the *Act* apply?

DISCUSSION:

A. Does the record contain personal information within the meaning of section 2(1) of the *Act*?

[9] Section 2(1) defines "personal information" as follows:

> "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,
>
> (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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> (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;

[10] Section 2(2) also relates to the definition of personal information and states:

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.

[11] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1] To qualify as personal information, the information must be about an individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.[2]

Representations

The ministry

[12] The ministry states that it withheld the name of the facility and the number of suicides committed at each facility based on its determination that disclosure of this information could identify individuals who died by suicide. It acknowledges that the record does not contain the names of individuals who have committed suicide. However, it states it relies on past orders of this office that have held that even unnamed information can qualify as personal information based on a factual examination of the record. In support of its argument, the ministry cites paragraph 22 of Order PO-3345, which states:

> [Past orders] recognize that the question of whether it is reasonable to expect that an individual can be identified from information involves a consideration of a number of circumstances including, for example, the information in the record, the size of the group to which the individual belongs, and what information is already available in the public domain or known to those familiar with the particular circumstances or events contained in the record.

[13] The ministry submits that in determining that the record identifies individuals who committed suicide in Ontario facilities between 2003 and 2012 and thus contains these individuals' personal information, it considered that:

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[1] Order 11.

[2] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA).

> (a) The information in the record may be matched with information that could already be publicly available to identify individuals. For example, information about these suicide deaths may have been reported in the media, including social media, as well as having been posted on obituary web sites.
>
> (b) Some of the facilities are small and are located in rural or even remote parts of the province and the number of suicides at such facilities is so low that it is possible to figure out the identity of the deceased individual by virtue of the "size of the group to which the individual belongs."
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> (c) Some of the facilities offer specialized treatment, such as cancer or acute care, that is unrelated to mental health. As such, death by suicide in one of these facilities is likely to stand out and to make the individual who died by this means more readily identifiable, again, based on the "size of the group to which the individual belongs."

[14] The ministry concludes by submitting that since the individuals in the record died between 2003 and 2012, information about them continues to be their personal information for 30 years following their death in accordance with section 2(2) of the *Act.*

The appellant

[15] The appellant submits that the information she seeks is statistical in nature and will not identify individuals. She states that British Columbia, Manitoba, New Brunswick and Quebec, which have legislation similar to the *Act* including similar definitions of "personal information" and similar exemptions regarding personal privacy and medical information, have already provided her with the information they have that corresponds to the information at issue; British Columbia and Quebec also provided the actual dates of death of patients who committed suicide, and did so without raising any concerns about the possible disclosure of personal information.

[16] The appellant disagrees with the ministry's position that the unnamed information at issue qualifies as personal information under the *Act*. She notes the requirement that it must be reasonable to expect that an individual may be identified if the information is disclosed and she submits that identifiability based on information available in the public domain, such as media reports and obituary notices, is extremely unlikely. She argues that the ministry has not provided any real evidence to support its claim that individuals may be identified if the information at issue is ordered disclosed.

[17] In response to the ministry's reliance on Order PO-3345, the appellant explains the difference between her request and the request that was the subject of that order. She states that Order PO-3345 dealt with a request for access to an extensive report regarding the Prince Edward County Children's Aid Society (CAS) following allegations of

sexual abuse of children in CAS foster homes that were investigated by the Ministry of Children and Youth Services (MCYS). She adds that while most of the information was ordered disclosed, certain information that did not name individuals remained in dispute because of MCYS's concerns that the information could identify certain individuals, including certain foster parents and minor victims of sexual abuse, with the aid of secondary sources. She continues that the information requested in Order PO-3345 did not simply include statistical information as is the case in this appeal, but also included descriptions of the allegations and other details about current and former foster children, youth and foster parents compiled during MCYS's review of the CAS foster care program and services. The appellant notes that the adjudicator in Order PO-3345 found that statistical information, including the number of investigations by the CAS and the Ontario Provincial Police into certain allegations and the types of allegations along with the number of homes involved, did not qualify as personal information within the meaning of the *Act* and ordered this information disclosed. The appellant submits that the information ordered disclosed in Order PO-3345 is comparable to the information at issue in this appeal. She cites the following passage from paragraph 27 of Order PO-3345 in support of her position:

> [T]here must be evidence to support a claim that information in the public domain could be used to lead to the identification of unnamed individuals discussed in the report.[3] In this case I have not been provided with evidence to support a finding that disclosure of the withheld information on pages 8 and 21 could reasonably lead to the identification of specific individuals, and it is not obvious from the record how that identification could be made.

[18] The appellant argues that in contrast to the statistical information ordered disclosed in Order PO-3345, the detailed descriptions of allegations made against certain foster homes and individuals, including dates, was found to qualify as personal information because it "could reasonably be expected, either alone or in combination with information in the public domain to identify or reveal information about specific individuals alleged to have committed or experienced abuse." The appellant notes that MCYS indicated that extensive media coverage of the incidents described in the report at issue in Order PO-3345 had already taken place, including naming some former foster parents charged or convicted in relation to the allegations. Conversely, the appellant submits there has been little media coverage of inpatient suicides in Ontario facilities and she maintains that it would not be reasonable to expect that an individual may be identified if the information at issue is ordered disclosed. Accordingly, she argues that the finding in Order PO-3345 supports her position that the statistical information at issue should not qualify as personal information.

[19] The appellant also relies on Order MO-2466, which she states involved a request

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[3] *Ontario (Ministry of Correctional Services) v Goodis*, 2008 CanLII 2603 (ON SCDC).

by a journalist for statistical information from the Toronto Transit Commission (TTC) about the number of suicides, by year, on TTC property. She argues that the information requested in Order MO-2466 was similar to the information at issue in this appeal and was ordered disclosed in its entirety.

[20] The appellant submits that based on her own efforts, the statistical information she seeks cannot be matched with publicly available information to identify individuals. She explains that she and two colleagues tested the ministry's assertion with a real example using the statistical information she received from another province that provided the number of suicide deaths by institution and year. She states that they chose a single inpatient suicide from 2008 in the smallest community available with a population of 12,000 and attempted to identify the deceased individual by searching various secondary sources including published obituaries, national and international news sources, and multiple databases. The appellant states that while she and her colleagues were able to find obituaries of people who died in the community and at the specific hospital, they were unable to find any information that could identify the specific individual who died by suicide in 2008. One probable reason the appellant identifies for not being able to find any media reports about the 2008 suicide is the journalistic policy of most, if not all, media organizations to not report on suicides except in particular circumstances. She states that her own organization has a policy of not reporting on suicides unless it can be justified as a newsworthy event on the basis that the deceased is a prominent member of society, or the death created a public disturbance, or the suicide is illustrative of a larger social problem; in these circumstances, the suicide can be reported but care should be taken to avoid graphic or sensational treatment.

[21] "Specious" and "not borne out by real evidence" is how the appellant characterizes the ministry's argument that obituaries are a relevant secondary source of information that could be used to identify individuals. She states that not every family publishes an obituary, and even if they do, it is extremely unlikely that an obituary would name the hospital where the individual died and even more unlikely that it would identify the cause of death as suicide. To support her point, the appellant provides an excerpt from an actual obituary published for an individual who committed suicide while a patient at a hospital.

[22] The appellant submits that unless there was only one death in a hospital in a given year from any cause and that death was also determined to be by suicide there is no way statistics can reveal an individual's identity. She concludes with the following statistics: in 2012/2013, there were 93,755 deaths; 65% of all deaths in Canada occur in a hospital; approximately 60,000 people die in hospitals in Ontario in a single year.[4] The appellant contends that in this context, the average of 10 inpatient suicides per year reflected in the information disclosed by the ministry is an infinitesimal number – a

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[4] The appellant cites Statistics Canada as the source of these figures.

sample representing only 0.016667% of deaths in hospitals, or one in five thousand – that could not lead to the identification of any individuals who committed suicide.

The ministry's reply

[23] The ministry states that there is nothing in the appellant's representations that changes its position that the disclosure of the withheld information could identify individuals who have committed suicide, meaning that the record contains these individuals' personal information as defined in the *Act.* It asserts that the appellant's attempts to distinguish this appeal from Order PO-3345 are based on irrelevant factual considerations, namely, the level of media reporting. The ministry contends that whether information is personal information does not relate to whether the media has reported on it, but more broadly speaking, whether information has entered the public realm thereby making an individual identifiable. It reiterates its reliance on Order PO-3345, and it notes that Order PO-2713 held that grade information could be used to identify some unnamed law students and upheld the university's decision to withhold that information on basis that it constituted the students' personal information.

[24] The ministry argues that Order PO-2466 is irrelevant because, unlike in this appeal, the suicide statistics in Order PO-2466 were not withheld on the basis that they contained personal information. They were withheld on the basis that disclosure could "reasonably be expected to seriously threaten the safety or health of an individual." Due to this distinction, the ministry asserts that Order PO-2466 should carry no weight in my determination of whether it has properly withheld the record at issue in this appeal.

[25] The ministry dismisses the appellant's "test" as immaterial anecdotal evidence. It states that it considers the totality of the evidence before it when making decisions about whether information may identify an individual and is thus personal information. It submits that the notoriety of suicide and, in particular, the fact that there is still a significant stigma associated with it and with mental illness in general, means that the disclosure of the record could identify individuals as having committed suicide, especially in smaller, more remote communities. The ministry adds that the appellant's representations do not take into account the fact that new technology, especially social media, has eroded privacy, making all individuals in general much more identifiable than they were only a decade ago; thus, determining what constitutes personal information must consider the reality of rapid and transformative technological change. The ministry notes that this paradigm shift was explored in a 2012 article entitled *Privacy by Design in the Age of Big Data*.[5]

[26] In respect of the appellant's position that ten inpatient suicides per year is an infinitesimal number that could not identify individuals, the ministry states that it refutes the appellant's logic. It submits that the number of suicides per year is irrelevant in

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[5] June 2012, by Ann Cavoukian and Jeff Jonas.

determining whether individuals who have committed suicide are identifiable. Rather, it is the notoriety of these suicides, the stigma associated with them and, generally, the amount of information already known about them, that makes individuals identifiable.

The appellant's sur-reply

[27] In response to the ministry's position that disclosure of the information in the record is likely to be matched with information already in the public realm such that individuals will be identifiable and that new technology and social media impact on the determination of what constitutes personal information, the appellant stresses that the ministry has still not provided any evidence to support its assertions even though it bears the burden of proof as the party resisting disclosure. The appellant challenges the ministry's contention that the factual differences between this appeal and Order PO-3345 are irrelevant. She asserts that information about suicide deaths would only likely enter the public realm through media reports including social media and obituaries – sources that the ministry itself asserts – and thus, it is inconsistent and disingenuous for the ministry to suggest that the degree of media coverage is not relevant.

[28] The appellant agrees that the ministry is entrusted with protecting privacy in accordance with the *Act*, but she asserts that an analysis of past orders of this office to determine how the provisions of the *Act* are to be interpreted must be done on a case by case basis, as confirmed in Order PO-3345, which states:

> These orders recognize that the question . . . involves a consideration of a number of circumstances . . . In every case, the decision on this question is based on its own facts.[6]

[29] She contends that the ministry appears to be encouraging me to find, without reviewing the specific circumstances of this appeal, that Order PO-3345 stands for the proposition that unnamed information can qualify as personal information.

[30] In respect of Order PO-2713 relied on by the ministry, the appellant notes that many other records requested in that appeal were determined not to be personal information and were ordered disclosed, including the grade information related to combined years and some information related to the 2004 first year class.

[31] The appellant asserts that the position taken by the ministry is speculative and exaggerated given the lack of any real evidence that disclosure of the unnamed information can lead to identification of an individual. She argues that in contrast to the circumstances in Order PO-3345 where there was extensive media coverage of the sexual abuse allegations at issue, the scarcity of secondary sources of information about people that died by suicide, especially in hospital settings, does not allow for the possibility of identifying an individual. She states that her unsuccessful real world test

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[6] At paragraph 22.

with her colleagues to attempt to identify a known individual who had committed inpatient suicide is probative evidence of the fact that disclosure of the withheld information would not reveal personal information of individuals who died in Ontario facilities as a result of suicide. She adds that the "simplest remote possibility" of identifiability without any basis or reasonable evidence is not sufficient to establish a reasonable expectation that an individual may be identified if the information is disclosed.

[32] The appellant argues that the facilities' ratio of suicides to overall deaths is very relevant in this appeal because the likelihood of identifying an individual who died as a result of inpatient suicide depends on knowing the total number of deaths in that facility for the particular year in question. She states that while the number of deaths at facilities is not public information, most facilities in Ontario experience more than one death annually from a variety of causes making it virtually impossible for anyone to identify a suicide victim without more detailed information.

[33] The appellant concludes by stating that since her news organization released the information on inpatient suicides provided by other provinces, they have received no indication that any individuals have been identified.

Information from the facilities

[34] After receiving and reviewing the appellant's sur-reply representations, I gave the ministry the opportunity to respond. I specifically asked the ministry to respond to the appellant's submissions on:

- the issue of personal information and identifiability
- the ratio of suicides to overall deaths in each facility being one in five thousand and the extremely low likelihood that the individuals who committed suicide (as reported in the record) would be identifiable, and
- the nature of the information at issue in Order PO-3345 that distinguishes it from this appeal.

[35] The ministry declined to provide a response, stating it had nothing to add to its representations, which thoroughly set out its position.

[36] Because I was not able to obtain information from the ministry on the ratio of suicides to overall deaths in each facility included in the record, I decided to invite the facilities to participate in the appeal on the basis that they may have this relevant information. I sent a letter to all the facilities listed in the record and received a response from 26 of them. A total of 20 facilities expressed interest in participating in the appeal, while the remaining six declined. I then sent a Notice of Inquiry to the 20 facilities that agreed to participate in the appeal asking the following questions:

> 1. Is it reasonable to expect that an individual may be identified if the withheld information – specifically, the number of patients at your particular facility who committed suicide each year during the relevant years as listed in the record – is disclosed?
>
> 2. If it is reasonable, please explain why with specific reference to the ratio of suicides to overall deaths in your facility and the way in which the individual may be identified.

[37] Of the 20 facilities that received my Notice of Inquiry, 14 provided representations and most of them asked that I keep their representations confidential. To maintain the confidentiality of the facilities' submissions, I have summarized their representations below without attribution to the facilities that provided them.

[38] All but one of the 14 facilities assert that disclosure of the withheld information would identify individuals. One facility submits it would not be reasonable to expect that an individual may be identified if the withheld information is disclosed. However, this facility argues that the data pertaining to it in the record should be excluded from the appeal by virtue of section 69(2) of the *Act* which excludes records under the control of hospitals prior to January 1, 2007. Since the withheld information is contained in a record under the control of the ministry, which is an institution subject to the *Act* and not a hospital, I reject this argument and will not address it further in this order.

[39] The five points made by the facilities are:

<u>Identifiable as a result of small cell count</u>

[40] The main argument advanced by the facilities, including certain facilities that serve small communities and populations, is that disclosing the number of suicides in a specific year would mean reporting on a sample size with fewer than five members. These facilities argue that because the annual suicides at their facilities are fewer than five for the time period in question, this constitutes a small cell count. They further argue that disclosure of the number would violate a well-established de-identification practice that discourages such reporting on the grounds that a small sample size raises the risk of re-identification to unacceptable levels. Some of these facilities argue that the small cell count justifies suppression of the number regardless of the ratio of suicides to overall deaths for any given facility in any given year, and they refer me to the information practices of the Canadian Institute for Health Information, Cancer Care Ontario and the Institute for Clinical and Evaluative Studies as the authority for their submission.

[41] One facility notes Order PO-2744, which held that electroshock statistics for certain hospitals over a two-year period were not personal information under the *Act* because it was speculative to suggest that people would know that an individual was receiving electroshock treatments during a certain period of time and therefore the

possibility of disclosing personal information or personal health information was too remote. This facility submits that the circumstances in Order PO-2744 are distinguishable from those in this appeal due to the arguably lower numbers at issue here.

Identifiable to family and friends

[42] A few facilities submit that the withheld information would identify the deceased individuals who committed suicide to family members, friends and facility staff who are aware of the circumstances of the individuals' suicides. Some facilities also argue that others, such as acquaintances and colleagues of the deceased individuals, could identify the individuals if the withheld information were disclosed. In support of their contention, most of these facilities use hypothetical examples based on process of elimination arguments.

[43] One facility relies on Order P-651 to argue that this office has held that where the personal information of an individual would be readily identifiable to those who are familiar with the circumstances at issue it will be exempt under the *Act.*

Specific Examples

[44] One facility submits that disclosure of the withheld information relating to a particular suicide that occurred on its premises could reasonably lead to an individual being identified because of local media coverage of that suicide, which included the date and circumstances of the suicide but not the name of the individual. This facility submits that the publicly available information about the date and location of the suicide could reasonably lead to a review of obituaries for corresponding death notices.

[45] Another facility submits that disclosure of one particular suicide for a particular year would disclose personal information about an individual because it could be matched with a publicly available legal decision that contains details about the suicide. This facility argues that if the withheld information related to that suicide is disclosed, the public would gain details about the suicide including the identity of the individual, the fact that they committed suicide, the method used for committing suicide and the aftermath of the suicide at the facility.

The withheld information is "personal health information"

[46] Multiple facilities submit that the requested information constitutes "personal health information" as defined in section 4 of *PHIPA*. They assert that personal health information includes "identifying information" which is information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual. One facility cites Order PO-3189 in support of its assertion that the withheld information may qualify as personal health information even without direct identifiers in the withheld information.

[47] Some of these facilities also submit that under section 8 of *PHIPA* the access provisions of the *Act* do not apply to personal health information in the custody or under the control of a health information custodian.

Ratio of suicides to overall deaths is not relevant

[48] A number of facilities argue that the ratio of suicides to overall deaths in a specific facility, while helpful in illustrating the prevalence of suicide vis-à-vis naturally occurring death, is not a helpful statistic in illustrating whether an individual can be identified through disclosure of yearly suicides at facilities. They argue there are many other factors that are relevant including, the different types of information publicly available, the actual number of suicides, and the fact that the smaller the number of suicides the greater the likelihood that individuals could be identified.

[49] One facility argues that when dealing with personal health information, determining the probability of re-identification is more complex than simply comparing the number of suicides relative to the overall deaths at a facility.

The withheld information constitutes the "personal information" of the deceased individuals' family members

[50] One facility argues that in addition to being the personal information of the deceased individuals, the withheld information is the personal information of the deceased individuals' family members as a result of the commonly held belief that mental health issues run in families.

Analysis and finding

[51] Having considered all of the representations before me, including the confidential representations of the facilities and all of the orders referenced in the submissions, I agree with the appellant that the withheld information is statistical information that could not reasonably be expected to identify individuals and does not qualify as personal information under the *Act.* I set out below my reasons for finding the appellant's representations most compelling and for ordering the withheld information disclosed.

Identifiability

[52] The ministry provides no evidence to support its claim that information exists in the public realm that could lead to the identification of the deceased individuals. The ministry's representations on identifiability are vague, speculative and contain no real life, concrete examples. As noted in Order PO-3345, it is not sufficient for the ministry to assert that there is information in the public domain that relates to individuals whose information is contained in the record. The Divisional Court and this office have consistently found that there must be evidence to support a claim that information in the public domain could be used to lead to the identification of unnamed individuals in

the record under consideration[7]. In this appeal, the ministry and the facilities who provided representations did not provide evidence to support a finding that disclosure of the withheld information – either on its own or combined with information in the public realm – could reasonably lead to the identification of deceased individuals, and it is not obvious from the withheld information how that identification could be made.

[53] The submissions from two facilities on two specific suicides also lack evidence and do not explain how the two deceased individuals could be identified by disclosure of the facility name and the corresponding year of the suicide. They simply assert that the legal decision and media coverage that they point to as information in the public realm could be used to identify the two individuals. The fact that a legal decision exists containing details of one suicide does not change the fact that nothing personal is revealed by the withheld information. Any identifiability that exists derives from the information in the legal decision, which has been public for some time, and not from the withheld information or the withheld information in combination with the information in the existing legal decision. As for the second example, the facility bases its argument on the availability of identifying information that is purportedly in the public realm, but does not provide any evidence of the existence of any such identifying information.

[54] There is also no basis for the related argument that people in the personal networks of an individual who committed suicide who either knew or suspected that the individual committed suicide at a specific facility during a specific year, but did not know the details surrounding the suicide, could learn personal information and/or personal health information about that individual from the withheld information on its own or in conjunction with other publicly known information.

[55] Identifiability must result from the disclosure of the information at issue on its own or in combination with other available information. Identifiability does not result simply because someone who already knows the information, in this case a friend or family member of an individual who committed suicide and who already knows about the individual's suicide, recognizes a statistic in the form of a year and a facility as representing the deceased individual's suicide. Obviously, there are people who know about these suicides by virtue of their relationship with or knowledge of a deceased individual, including the staff at the facilities who assisted the deceased individual. However, the prior personal knowledge of a few does not establish identifiability in the general public when the withheld information does not disclose any personal information about the deceased.

[56] Identifiability does not flow from the information when people with prior personal knowledge see their knowledge reflected in the record. Identifiability through disclosure must flow from the information itself, or from the information in combination with other

[7] *Supra*, note 3 above; and Order PO-3345.

information that results in the identification of an individual. Or, at the very least, to constitute personal information, disclosure of the record must reveal something personal about the deceased individual to people familiar with the circumstances that these people would not otherwise know. I considered such a situation in Order PO-3497 where I acknowledged that disclosure of a video containing no personal information about certain affected parties would reveal something personal about the affected parties to the appellant. In that appeal, the ministry had argued that a video contained the affected parties' personal information because the appellants knew who the video belonged to and the video linked the affected parties to a police investigation. My reasoning on this issue is set out at paragraphs 12 to 14 as follows:

> [The ministry's] submission requires me to determine whether the video contains the affected parties' personal information because it reveals something of a personal nature about them in the circumstances of this appeal. The Divisional Court[[8]] has explained the relationship between "personal information" and identification in the following terms:
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> > The test then for whether a record can give personal information asks if there is a reasonable expectation that, when the information in it is combined with information from sources otherwise available, the individual can be identified. A person is also identifiable from a record where he or she could be identified by those familiar with the particular circumstances or events contained in the records.
>
> [T]he video cannot be said to depict information that connects the affected parties to an OPP law enforcement investigation. …
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> As regards the appellants who are familiar with the particular circumstances, it is not the video that reveals a connection between the affected parties and an OPP investigation; the appellants are already aware of this connection through their interaction with the OPP regarding the events depicted in the video. What the video does reveal to the appellants is the content and extent of the information provided by the affected parties in respect of this specific incident to the OPP. On this basis, I accept that the affected parties have a privacy interest in the record. Applying the Divisional Court's analysis to the circumstances of this appeal, I am satisfied that disclosure of the video would reveal exactly what information the affected parties provided to the OPP in confidence in respect of a specific incident, which was an action taken by the affected parties in their personal capacity. Accordingly, I find that disclosure of the record in the circumstances of this appeal would reveal something

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[8] *Supra*, footnote 2 above.

> personal about the affected parties, despite the fact that the record itself does not contain their personal information.

[57] Applying this reasoning to this appeal, there is nothing of a personal nature that disclosure of the withheld information would reveal to individuals who are already aware of the suicides reflected in it.

[58] I also note that in Orders MO-2337 and PO-2892, Commissioner Brian Beamish, who was the Assistant Commissioner when he issued these orders, considered and rejected arguments on identifiability that were similar to those before me. In those orders, the Commissioner acknowledged that there will be a very limited number of people who may already be independently aware of the identities of the individuals referred to in the records. He determined, however, that this does not affect a decision to disclose anonymized records since disclosure itself would not result in those unnamed individuals being identified to the vast number of people who are unware of the individuals' identities.

[59] Adopting the approach set out in Orders MO-2337 and PO-2892, I am not convinced that a member of the public, without any prior personal knowledge of the suicide of an individual whose death is reflected in the record, would be able to identify an individual based on disclosure of the withheld information. Nor am I convinced that a member of the public, without any prior personal knowledge of a suicide reflected in the record, would be able to combine the withheld information in the record, revealing the year a suicide was committed and the corresponding facility, with other information available from secondary sources – be they obituaries, media coverage, social media or legal decision databases – to identify an individual.

[60] My conclusion is based in large part on the fact that neither the ministry nor any of the facilities that responded to my Notice of Inquiry provided a single real example or any evidence beyond mere speculation to show that it would be reasonable to expect that an individual may be identified if the withheld information were disclosed. The ministry and the facilities had the opportunity to provide me with examples of actual information available from secondary sources and its connection to a specific suicide reflected in the record to demonstrate how an individual could reasonably be expected to be identified; none of them did. And this is despite the ministry's and the facilities' submissions alleging the existence of considerable information and its ready availability as a result of technological ease and social media proliferation.

[61] Moreover, I do not consider the appellant's submissions on her attempt to identify an individual from another province who was known to have committed inpatient suicide as "immaterial anecdotal evidence" as the ministry suggests. The appellant's real example and explanation of the steps she took to try and identify the individual – which I do not fully describe in this order due to confidentiality concerns – coupled with her submissions on media guidelines and practices on covering suicides, were informative.

Small cell count

[62] I also reject the submissions that the ratio of suicides to overall deaths at a facility for the years in question is irrelevant to my determination. These submissions are all based on an erroneous understanding of the "small cell" count concept, which I elaborate on below. I specifically requested ratio information so that I could assess whether a small cell count argument could be sustained, particularly for smaller facilities with fewer patients within less populous communities.

[63] Only three facilities provided me with the ratio for their specific facility. One facility cites its ratio as being one suicide to several hundred deaths for any given year. This facility states that its ratio is significantly smaller than the ratio cited by the appellant and it argues that this smaller number of overall deaths also increases the likelihood of individuals being identified. This facility does not provide any evidence or explanation to support its assertion. Another facility provides me with the total number of deaths at its facility for each year in which at least one suicide is listed in the record for that facility. The total number of deaths for each reported year is over 1000. Finally, one facility submits that its ratio of suicides to overall deaths is 0.001 over a specific number of years. However, it does not provide the number of deaths or its calculation. It asserts, without any evidence to support its assertion, that the number of suicides is very low and when combined with other publicly available information it could lead to an individual being identified.

[64] The small cell count concept has been canvassed in previous orders of this office that considered whether numerical data could reasonably be expected to identify individuals. It was succinctly set out in Order PO-2811, which stated:

> The term "small cell" count refers to a situation where the pool of possible choices to identify a particular individual is so small that it becomes possible to guess who the individual might be, and the number that would qualify as a "small cell" count varies depending on the situation. … If … 5 individuals is a "small cell" count, this would mean a person was looking for one individual in a pool of 5. By contrast, the evidence in this case indicates that one would be looking for 5 individuals in a pool of anywhere from 396 to 113,918. This is not a "small cell" count.

[65] Similarly, and recently, in Order MO-3320, the adjudicator noted that attempting to identify two individuals in a pool of 1,500 students is not a "small cell" count situation.

[66] Like the ministry did in Order PO-2811, the facilities that argue a small cell count exists in this appeal have misapplied the small cell concept. The relevant pool, or size of the group as expressed by the ministry, in this appeal is the total number of deaths at a facility for each year in question. The total number of deaths is key in determining whether the suicide statistics represent a small cell count situation, which is why I

requested the ratio of suicides to overall deaths at each facility. The small cell count concept would certainly apply if any facility at which at least one suicide occurred had fewer than five total deaths in one year. There is no evidence before me that this is the case. As a result, I reject this argument.

[67] In the circumstances of this appeal, where the withheld information is clearly aggregate data that has been stripped of any personal identifiers, similar to the information ordered disclosed in Order PO-2744, I am not convinced that it is reasonable to expect that its disclosure may lead to the identification of deceased individuals. I find that the withheld information does not qualify as personal information under section 2(1) of the *Act.* For the same reasons, I also find that the withheld information does not qualify as personal information under section 2(2) of the *Act.* Having found that the withheld information does not qualify as the personal information of the deceased individuals since they are not identifiable, I reject the argument that it constitutes the personal information of the deceased individuals' family members.

[68] As for the arguments that the withheld information constitutes personal health information under section 4 of *PHIPA* and that, as a result, section 8(1) of *PHIPA* applies and removes the information from the application of the *Act*, I reject them too. Sections 4(1) and 4(2) of *PHIPA* contain language similar to that found in the definition of personal information under the *Act* and state:

> 4.(1) In this Act,
>
> > "personal health information", subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form . . .
> >
> > . . .
>
> (2) In this section,
>
> > "identifying information" means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual.

[69] Having concluded that the withheld information does not contain identifying information about the individuals under the *Act*, I similarly conclude that it does not contain identifying information under *PHIPA*. Since the information at issue is not personal health information, I find that *PHIPA* does not apply in the circumstances of this appeal.

Accuracy of the withheld information

[70] In their representations, three facilities dispute the accuracy of the withheld

information that relates to them. One facility takes issue with the listing of a specific suicide during a specific year as an inpatient suicide because the patient in question did not attempt suicide on its premises but did ultimately die there as a result of life support being removed after the patient was transferred to it for emergency care. Another facility disputes the inclusion of one suicide during a specific year on the basis that the suicide did not occur on its premises and it argues that this suicide falls outside the scope of the request and should not be disclosed. A final facility states that far fewer suicides occurred on its premises than the number indicated in the record, and it requests a complete and thorough review of all records associated with it and the opportunity to work with the ministry to validate any statistics relating to its premises. This facility submits that this review and validation should occur before I issue any order regarding disclosure of the record. I note that this facility also confirms that it contacted the ministry and the Office of the Chief Coroner about the inaccuracy, and the ministry advised it would review the data while the Coroner's office advised it would facilitate the correction of this information in its records.

[71] To the extent that any of the withheld information requires correction, I leave that to the ministry as it is the repository of the statistics it receives from the Office of the Chief Coroner and is responsible for their accuracy.

B. If the record contains personal information, does the mandatory exemption at section 21(1) of the Act apply?

[72] Section 21(1) of the Act states, in part:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates[.]

[73] Because I have found that the information in the record is not personal information, I find that section 21(1) does not apply.

[74] As a result of my finding, it is unnecessary for me to consider the possible application of the public interest override.

ORDER:

1. I do not uphold the ministry's decision that the mandatory personal privacy exemption at section 21(1) of the *Act* applies to the record.

2. I order the ministry to disclose the record to the appellant by **October 4, 2016,** but not before **September 29, 2016,** and to provide me with a copy of its disclosure correspondence to the appellant.

Original Signed by: August 29, 2016
Stella Ball

Adjudicator