

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3656

Appeal PA15-85

Ministry of Community Safety and Correctional Services

September 30, 2016

Summary: The appellant, an insurance claims adjuster, made a request to the ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the Office of Fire Marshall's records relating to its investigation of a house fire, including statements of the property owner, who had signed a consent for the release of the records. The property owner then died, and the ministry withheld the information under the personal privacy exemption at section 21(1) of the *Act*. The appellant appealed, arguing that the consent that the insured signed before his death was still valid consent under section 21(1)(a). In this order, the adjudicator finds that, given the property owner's estate's subsequent objection to the release of the records, the property owner's prior consent is not sufficient for section 21(1)(a) to apply. She finds that the personal information in the records is exempt from disclosure under section 21(1), but orders the disclosure of the remaining information, which is information about a property rather than personal information.

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

Orders and Investigation Reports Considered: Orders 23, MO-2053, PO-3279, M-1048, and PO-3017.

Cases Considered: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII); *Canadian Association of Elizabeth Fry Societies v Canada (Public Safety)*, [2011] 3 F.C.R. 309; *R. v Puskas*, [1998] 1 S.C.R. 1207; and *Niagara Escarpment Commission v Paletta International Corp*, 2007 CanLII 36641 (Div. Ct.).

BACKGROUND:

[1] The appellant, an insurance claims adjuster, submitted a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the Office of the Fire Marshall's records relating to its investigation of a fire at a specific residence, including a copy of the statement provided to the Office of the Fire Marshall by the property owner. The appellant provided the ministry with an "Authorization for the Release of Personal Records" signed by the property owner, authorizing and directing the Office of the Fire Marshall to provide the records to the claims management company on whose behalf it appears the adjuster has requested the record.

[2] After the appellant's request and before the ministry issued a decision, the property owner died. The ministry then issued a decision denying access to the responsive records, relying on the mandatory personal privacy exemption at section 21(1) of the *Act*.

[3] The appellant appealed the ministry's decision to this office. During the course of mediation, the ministry advised the mediator that it denied access to the responsive records because the property owner is now deceased and, therefore, the authorization provided by him is no longer valid. The ministry explained that it had requested that the appellant provide a new authorization from the property owner's estate, but that the appellant was unwilling to do so.

[4] The appellant advised the mediator that the authorization was obtained in June 2014, the access request was made in September 2014, and the property owner did not die until December 2014. The ministry's decision denying access is dated January 27, 2015. The appellant advised the mediator that he believes the authorization to be valid because it accompanied a request made prior to the property owner's death.

[5] The ministry, however, maintained its position that the authorization is no longer valid and continued to deny access to the records. The mediator then contacted the representative of the property owner's estate, who advised the mediator that the estate would not provide a new authorization.

[6] The appellant advised the mediator that he wished to pursue access to the withheld information on the basis that the authorization provided by the property owner continues to be valid. As no further mediation was possible, this appeal was moved to the inquiry stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[7] I began my inquiry by seeking and receiving representations from the ministry and the estate's representative as an affected party. I also invited representations from an individual who provided a statement to the Office of the Fire Marshall (the second affected party), but this individual did not provide representations. The appellant was

then invited to submit representations but did not do so.

[8] In this order, I find that the records at issue contain some personal information and that this information (with the exception of the property owner's name and address) is exempt from disclosure under the personal privacy exemption at section 21(1). I find that the remainder of the information in the records is not personal information, and I order that it be disclosed to the appellant.

RECORDS:

[9] The records at issue are the Office of the Fire Marshall's records relating to the fire at the residence in question, consisting of the following:

1. A Confidential Fire Investigation Report, a Fire Investigation Report, a Preliminary Report (collectively, the reports); and
2. Fire Investigation Notebook entries of the investigating officer.

[10] The statements made by the property owner and the second affected party are recorded in the officer's notes and summarized in the reports.

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 personal information?

DISCUSSION:

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

[11] In order to determine whether the personal privacy exemption at section 21(1) of the *Act* applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

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

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

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

¹ Order 11.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[14] Section 2(2) of the definition of personal information clearly recognizes that information about an individual who has been dead for less than 30 years constitutes that individual's personal information.

[15] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.² However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

[16] Previous orders of this office have also drawn a distinction between personal information, as opposed to information about a property.⁴ However, if information about a property reveals something of a personal nature about an individual, that information is considered to be personal information.⁵ I discuss this distinction in more detail below.

[17] The ministry submits that there is personal information in the records belonging to the deceased property owner and the other affected party, which was collected during the fire investigation. The ministry submits that the records contain these individuals' names, addresses, phone numbers and their statements to the investigator. The ministry also submits that even if the names of the individuals are redacted, they would be easily identified. No other parties made representations on whether the records contain personal information.

[18] I agree with the ministry that the addresses and telephone numbers of the property owner and the other affected party constitute their personal information pursuant to paragraph (d) of the definition. The telephone numbers of two additional named individuals also appear in the records. Further, some of the information falls within paragraph (a), as it is information relating to the age of an individual. A small portion of the information also constitutes the personal information of the property owner under paragraph (g) (views and opinions of another individual about the individual).

[19] While the remainder of the information relating to these individuals does not fit

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-3088.

⁵ See Order PO-3616.

within any of the paragraphs listed in the definition of "personal information", I must consider whether it is "recorded information about an identifiable individual". If so, then it constitutes their personal information under the introductory wording of the definition.

[20] All of the information in the records is, in a general sense, information about the property owner's property, because that is where the fire that was the subject of the investigation occurred. As noted above, previous orders of this office have drawn a distinction in some circumstances between information that qualifies as "personal information" and information about residential properties. In Order 23, Commissioner Sidney B. Linden described the distinction as follows:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "... any recorded information about an identifiable individual..." In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.

[21] In Order MO-2053, Adjudicator John Higgins reviewed the jurisprudence following Order 23 addressing this distinction between information about a residential property and "personal information":

Subsequent orders have further examined the distinction between information about residential properties and "personal information". Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have

committed infractions against property standards by-laws was personal information. *In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.*

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites was found not to be personal information. Similarly, in Order PO-2322, former Assistant Commissioner Tom Mitchinson found that water analysis and test results concerning an identified property were information about the property, not personal information. [Emphasis in original]

[22] Adjudicator Higgins went on to find that two fields of information titled "street no" and "street name" for locations of septic systems were information about the property and not "about" an identifiable individual. Similarly, in Order PO-3088, Adjudicator Stephanie Haly found that environmental test results relating to the basements of certain homes were not the personal information of the homeowners.

[23] In *Edmonton (City) v Alberta (Information and Privacy Commissioner)*,⁶ the Alberta Court of Appeal upheld the adjudicator's finding that information connected to a property might be "about an individual" if it had a personal dimension to it. In that case, the adjudicator contrasted complaints made about the removal of snow from the requester's sidewalks (which would be about the requester's conduct), with complaints made about lot grading (which would be about the requester's property).

[24] In Order PO-3279, Adjudicator Steven Faughnan found that the fact that the information in the records is associated with a fire at a specific address does not automatically result in all the information being personal information. He found that while the records before him contained some personal information, other information, even though associated with a fire at a specified address, was about the property rather than about the property owner, and disclosing it would not reveal anything of a personal nature about him.

[25] I agree with the above decisions that the guiding principle in distinguishing personal information from information about a property is whether the information in the record reveals something of a personal nature about an individual, or, put another way, whether the information has a personal dimension to it.

[26] From my independent review of the records, I find that some of the information at issue has a personal dimension to it. Without divulging the contents of the records, I

⁶ 2016 ABCA 110 (CanLII) (*Edmonton v. Alberta (IPC)*).

observe that records of this nature would be expected to contain information such as the property owner's whereabouts and activities before, during and after the fire. The records would also be expected to contain the observations of any witnesses in the context of their personal activities. All of this information is the personal information of the individuals to whom it relates.

[27] I also find that the disclosure of this information could reasonably be expected to identify the property owner and the other affected party even if their names were redacted from the records. I cannot be more specific without revealing the identity of the affected party.

[28] I find, therefore, that the records contain the personal information of the property owner and the other affected party under the introductory wording of the definition.

[29] Much of the information in the records, however, is information about the property and does not have a personal dimension to it. For example, in the circumstances of this appeal, the scene description, fire patterns and other similar information do not reveal anything of a personal nature about an individual. Where such information can be severed and disclosed without revealing personal information, I will order that it be disclosed.

[30] Furthermore, the names of the investigating officer, other Office of the Fire Marshall personnel and other professionals involved in the aftermath of the fire do not constitute the personal information of those individuals, as their involvement in the investigation is information about them in their professional capacities, with no personal aspect to the information. Where this information can be severed and disclosed without revealing the personal information of the property owner or the other affected party, I will order that it be disclosed.

[31] To summarize, I find that the records contain the personal information of the property owner, the other affected party and two other individuals. Since no other exemption has been claimed for the information that I have found is not personal information, I will order that that information be disclosed to the appellant.

[32] I will now consider whether the personal information in the records is exempt from disclosure pursuant to the personal privacy exemption at section 21(1) of the *Act*.

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

[33] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[34] In the circumstances of this appeal, the two exceptions with possible application

are sections 21(1)(a) and (f), which read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Consent: does paragraph 21(1)(a) apply?

Representations

[35] As mentioned above, the appellant provided the ministry with an "Authorization for the Release of Personal Records", signed by the property owner, which authorizes and directs the Office of the Fire Marshall to provide the records to the claims management firm. The appellant advised the mediator that he believes the authorization to be valid because it accompanied a request made prior to the property owner's death.

[36] During mediation, the mediator contacted the representative of the appellant's estate and asked whether the estate would be willing to provide a new authorization. The estate's representative declined to do so.

[37] In its representations, the ministry submits that while the authorization has the same purpose and effect as a consent, the authorization terminated when the property owner died and is no longer valid. The ministry submits that, pursuant to section 66(a) of the *Act*, only the personal representative of the property owner's estate has the authority to consent to the disclosure of the property owner's personal information.

[38] The estate's representative submits that the appellant does not need the records for a fair determination of its rights. Further, he submits that while he does not know what information is in the records, the deceased property owner now cannot offer any reply in the event of an ambiguity or uncertainty arising from another party's interpretation of the material.

Analysis and conclusion

[39] The property owner's death following his signing of the authorization, and the estate representative's subsequent position on the disclosure of the information, raise the following issues regarding the possible application of paragraph 21(1)(a):

1. Did the property owner's authorization become invalid upon his death?

2. What is the relevance of the estate representative's position on disclosure of the property owner's personal information?

1) Did the property owner's authorization become invalid upon his death?

[40] The parties did not draw my attention to any authorities on this point. However, the Federal Court's judgment in *Canadian Association of Elizabeth Fry Societies v Canada (Public Safety)*⁷ is instructive. The Court had to decide whether a consent to the release of personal information remained valid after the death of the consenting party. In that case, Ashley Smith signed a consent to the release of her personal information to the Canadian Association of Elizabeth Fry Societies (the CAEFS). The CAEFS then submitted an access request to Correctional Services Canada (CSC) for the information at issue. The CSC extended the time for responding to the request. In the meantime, Ms. Smith died and the CSC then refused to disclose the information on the basis that her death invalidated the consent.

[41] The CAEFS filed a complaint with the Privacy Commissioner of Canada, which found that that Ms. Smith's death did not vitiate her prior consent. The CAEFS then brought an application to the Federal Court to compel the disclosure of the records. The Court agreed that a deceased person's consent to disclosure survives their death.

[42] In coming to its conclusion, the Court cited this office's Order M-1048. In that order, an insured person signed a consent for the police to release his personal information to his insurer. The insurer then made an access request to the police for the personal information. The police denied access. On appeal, this office learned that the insured person had died, but the adjudicator found that the consent that the insured had provided to the police prior to his death was still valid, and ordered the disclosure of the information at issue to the insurer.

[43] Based upon the above authorities, it appears that the property owner's death, taken on its own, did not invalidate his consent to the disclosure of the information to his insurer. However, based on this office's contacts with the estate's representative, discussed below, I find that his consent is no longer operative for the purposes of section 21(2)(a).

2) What is the relevance of the estate representative's position on the disclosure of the property owner's personal information?

[44] Section 66(a) of the *Act* provides as follows:

Any right or power conferred on an individual by this Act may be exercised,

⁷ [2011] 3 F.C.R. 309

where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

[45] The records at issue relate to a fire at the property owner's residence, and are being sought by a representative of the property owner's insurance company. Since the ultimate resolution of the insurance claim will have a bearing on the value of the property owner's estate, I find that the estate's representative has the power pursuant to section 66(a) to consent or object to the release of the records at issue. As noted above, the representative of the deceased property owner's estate was asked during mediation whether he would provide another consent to the release of the information at issue to the appellant. The representative did not provide consent.

[46] Moreover, during the adjudication stage of the appeal, I sent the estate's representative a Notice of Inquiry and invited him to make representations on the issues in this appeal. On the issue of consent, I asked him whether the authorization provided by the property owner is still valid, and whether the estate revoked the authorization given by the property owner.

[47] The representations provided by the estate representative on this issue are brief. After submitting that the insurance claim has been largely settled and the appellant does not need the records to determine its rights, the representative states:

I don't know what the records sought contain. However, the deceased person now cannot offer any reply in the event of an ambiguity or uncertainty arising from another party's interpretation of the material.

[48] Although the estate representative's representations did not, unfortunately, speak directly to the issue of whether the consent is still valid or has been revoked, it is clear that the estate does not consent to the release of the information, and, in fact, objects to its release. I find, therefore, that the estate has effectively revoked the property owner's prior consent and that, as a result, the property owner's prior consent cannot now be relied on for the purposes of section 21(1)(a).

[49] I have also considered whether my finding interferes with any vested right of access of the appellant. As noted above, the appellant has pointed out that his request to the ministry was made while the property owner was still alive. Assuming the property owner's authorization constituted consent for the purposes of section 21(1)(a) at that time, the question arises whether the appellant had a vested right to access to the records which cannot be interfered with by the estate's subsequent revocation of consent.

[50] In Order PO-3017, Adjudicator John Higgins addressed the issue of when a requester's access rights vest. At issue in that appeal was whether applying the exclusion for records relating to an ongoing prosecution found at section 65(5.2) would

interfere with any vested right of access, given that the appellant's access request had been made prior to the coming into force of that section. Adjudicator Higgins found that the appellant's right to access was not vested, because it was not sufficiently constituted at the time of the commencement of the legislative amendment.⁸ He noted that in order to have a vested right, the legal situation must have inevitability and certainty.⁹

[51] In reaching this conclusion, Adjudicator Higgins referred to the Supreme Court of Canada's decision in *R. v Puskas*.¹⁰ That case related to *Criminal Code* amendments that eliminated the right of an accused to appeal to the Supreme Court of Canada as of right. Under the former law, that right accrued if an acquittal or a stay of proceedings was overturned by a Court of Appeal and a new trial ordered. The Supreme Court ruled that, with respect to the two accused before it, the right to appeal did not vest until the Court of Appeal rendered judgment. In particular, it held that:

. . . a right cannot accrue, be acquired, or be accruing until all conditions precedent to the exercise of the right have been fulfilled.

Under the former s. 691(2) of the *Code*, there were a number of conditions precedent to the acquisition of the right to appeal to this Court without leave. The first is that the accused is charged with an indictable offence. The second is that he is acquitted of that offence at trial. The third is that the acquittal must be reversed by the Court of Appeal, and the fourth is that the Court of Appeal order a new trial. Until those events occur, the accused does not acquire the right to appeal to this Court without leave, nor does it accrue, nor is it accruing to him or her.¹¹

[52] Adjudicator Higgins also referred to the Divisional Court's decision in *Niagara Escarpment Commission*.¹² The respondent, Paletta, had submitted a draft plan of subdivision application, and requested that it be referred for a hearing before the Ontario Municipal Board. After its request for a referral was made, the governing legislation was amended in a manner that altered the Board's jurisdiction to hear the matter. The Divisional Court found that Paletta did not have a vested right to a hearing, stating:

At most, Paletta had a hope or expectation that its application might be approved by the Board....

⁸ *Dikranian v. Quebec (Attorney General)*, 2005 SCC 73 at para. 37-38; *Côté* at 144.

⁹ *Niagara Escarpment Commission* (see citation at footnote 15, above) at para. 42.

¹⁰ [1998] 1 S.C.R. 1207.

¹¹ *Puskas* at paras. 14-15.

¹² *Niagara Escarpment Commission v Paletta International Corp.*, 2007 CanLII 36641 (Div. Ct.), at paras. 42-43.

There is no vested or accrued right to approval of a plan of subdivision until the Board has made a determination, nor can there even be said to be an accruing one here, when the Board has not begun the actual hearing process.

[53] Adjudicator Higgins noted that, as in *Puskas*, there are a number of conditions precedent that must be satisfied in order to receive access to records that have been requested under the *Act*:

The requester must have made a written request for access to an institution [section 24(1)(a) and (b) of the *Act*]; the requester must have paid the prescribed fees [sections 24(1)(c) and 57, as applicable]; and a decision must have been made by the head of an institution or, on appeal, by this office, to grant access to the record [section 50(1)]. Until all of these conditions precedent are satisfied, the right to obtain a record requested under the *Act* does not vest. Because the OLG denied access to the record, and no decision reversing that decision had been made, the appellant did not have an existing right of access on the date of the amendment, and its legal situation was therefore not sufficiently constituted at the time when section 65(5.2) came into force as to form a vested right of access.

[54] Adjudicator Higgins concluded that, given that the matter before him was yet to be adjudicated by this office, the appellant did not have a vested right of access under the *Act*. He found, therefore, that applying section 65(5.2) to records that relate to an ongoing prosecution, even where the charges are laid after the date of the request, or after the filing of an appeal, would not offend the presumption against interference with vested rights.

[55] I agree with Adjudicator Higgins' analysis and adopt it for the purposes of this appeal. Although the appellant made his access request before the property owner died, and before the estate revoked consent to the release of the records, no decision has been made granting access; the ministry denied access and this office has not yet made its determination about the appellant's access right. I find, therefore, that the appellant does not have any vested right of access resulting from the fact that he made his access request prior to the property owner's death and prior to the estate's revocation of consent to the release of the records.

Does the exception at section 21(1)(f) apply, or would disclosure be an unjustified invasion of personal privacy?

[56] Under section 21(1)(f), if disclosure of personal information would not be an unjustified invasion of personal privacy, the information is not exempt from disclosure.

[57] Sections 21(2) and (3) help in determining whether disclosure would or would

not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. None of the situations listed in section 21(4) applies here.

[58] The ministry has not argued the application of any of the presumptions found in section 21(3). If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.¹³ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.¹⁴

[59] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).¹⁵

[60] While the appellant did not make representations, given that he is the representative of the insurance claims management firm, the possible application of section 21(2)(d) is an issue. That section states:

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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

[61] For section 21(2)(d) to apply, an appellant must establish that:

(1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;

(2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;

(3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

¹³ Order P-239.

¹⁴ Orders PO-2267 and PO-2733.

¹⁵ Order P-99.

(4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.¹⁶

[62] The appellant, however, did not make representations in this appeal, and so his reason for wanting access to the records is unclear. As noted above, the estate representative's representations make reference to the settlement of a large portion of the insurance claim.

[63] I conclude that the factor at section 21(2)(d) does not apply in the circumstances of this appeal. Moreover, the appellant has not raised any other factors that would, if present, weigh in favour of disclosure. As noted above, in order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors favouring disclosure in section 21(2) must be present. Since none are present here, I do not need to consider whether any of the factors in favour of non-disclosure in section 21(2) are present. In particular, I do not need to address the ministry's arguments that the personal information is highly sensitive (section 21(2)(f)).

[64] I have decided, however, that it would be absurd to withhold the name and address of the property owner under section 21(1), as this information is clearly already known to the appellant. This office has previously found that where a requester originally supplied the information, or is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.¹⁷

[65] I find, therefore, that the mandatory section 21(1) exemption applies to all of the personal information in the records with the exception of the property owner's name and address, and I will order that it be withheld.

ORDER:

1. I uphold the ministry's decision, in part, and order that the personal information in the records, except for the property owner's name and address, is to be withheld under section 21(1). A copy of the records is attached to the ministry's copy of this order, with the information to be withheld highlighted in yellow.
2. I order the ministry to disclose the remainder of the information at issue to the appellant, by providing a copy of it to him by **November 3, 2016** but not before October 26, 2016.

¹⁶ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

¹⁷ Orders M-444 and MO-1323.

Original Signed by: _____
Gillian Shaw
Adjudicator

September 30, 2016 _____