

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3746

Appeal PA17-102

Ontario Civilian Police Commission

June 30, 2017

Summary: The OCPC received a request for access to a decision made by it regarding formal complaints into the conduct of a member of a police services board. In a revised decision, the OCPC stated that it intended to release the records responsive to the request as there is a compelling public interest in disclosure of the records, which clearly outweighs the purpose of the section 21(1) personal privacy exemption. An affected party appealed the OCPC's revised decision. This order upholds the OCPC's revised decision to disclose the records because of the application of the compelling public interest in section 23 of the *Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) ("personal information"), 21(1), 23.

Orders and Investigation Reports Considered: Orders MO-1577-I, PO-2516 and MO-3295.

OVERVIEW:

[1] This order addresses the issues raised in an appeal of a revised decision issued by the Ontario Civilian Police Commission (the OCPC) dated February 6, 2017.

[2] The OCPC's revised decision arises from a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a "decision by [the OCPC] regarding formal complaints into the conduct of [a named Councillor] of Hamilton as a member of the Hamilton Police Services Board." In its revised decision, the OCPC stated that it intended to release the records responsive to the request as there is a

compelling public interest in disclosure of the records, which clearly outweighs the purpose of the section 21(1) personal privacy exemption.

[3] An affected party appealed the OCPC's decision to disclose the records, and the above-noted appeal file was opened.

[4] In this order, I uphold the OCPC's decision to grant access to the records at issue.

Background

[5] The current appeal and the OCPC's revised decision are connected to an earlier appeal processed by this office (PA13-542).

[6] The records relate to an investigation by the OCPC into formal complaints made about the conduct of a member of the Hamilton Police Services Board. The OCPC is an independent oversight agency established under the *Police Services Act* (the *PSA*). Section 25(1) of the *PSA* reads:

The Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police force, a special constable, a municipal law enforcement officer or a member of a board;

[7] OCPC staff undertook an investigation and prepared a report. The OCPC confirms that, as a result of its investigation, it decided not to proceed to a public hearing under section 25(1) of the *PSA*.

Appeal PA13-542

[8] In Appeal PA13-542, the Ministry of the Attorney General (the ministry or the institution) received the above-noted request under the *Act*. In response to the request, and on behalf of the OCPC, the ministry issued a decision stating that access to the responsive records was denied on the basis of the exemption in section 14(1)(f) (right to a fair trial) of the *Act*.¹ The requester appealed the decision to this office.

[9] During mediation, the institution confirmed that there were two records responsive to the request. It also advised that, in addition to the exemption in 14(1)(f), access to both records was also denied on the basis of the exemptions in sections

¹ In its decision letter, the ministry confirmed that the person responsible for making this decision is the Associate Chair of OCPC.

14(1)(a) and (b) (law enforcement) of the *Act*. The institution also took the position that the mandatory exemption in section 21(1) (personal privacy) applied to the records.

[10] Also during mediation, the requester indicated that he believed that there is a public interest in the records, and the possible application of the public interest override in section 23 of the *Act* was added as an issue in this appeal.

[11] Mediation did not resolve the issues, and the file was transferred to the inquiry stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in the appeal to the institution and an affected party, initially. Both the institution and the affected party provided representations.

[12] After reviewing the institution's confidential representations related to the application of the discretionary exemptions in sections 14(1)(a), (b) and (f), and noting that the "public interest override" in section 23 does not apply to section 14, I decided to issue an interim order addressing the application of section 14 to the records.

[13] On December 31, 2015, I issued Interim Order PO-3565-I, in which I found that the discretionary exemptions claimed by the institution did not apply to the two records at issue. I remained seized of the appeal to address the other issues raised in it. The other issues raised in the appeal were: (1) whether the information in the records contains personal information; (2) if so, whether the disclosure of records would constitute an unjustified invasion of privacy; and (3) if so, whether the public interest override in section 23 of the *Act* applies such that the records ought to, in any event, be disclosed.

[14] After issuing Interim Order PO-3565-I, and after resolving certain additional issues raised by the parties regarding the sharing of representations, I sent a Notice of Inquiry to the requester and provided the requester with a copy of the non-confidential representations of the institution and the affected party. The requester provided representations in response.

[15] I then sent a copy of the requester's representations to the institution and the affected party. I also decided that the Hamilton Police Services Board (the board) may have an interest in this appeal, and sent a supplementary Notice of Inquiry, along with a copy of the requester's representations, to the board.

[16] The affected party provided representations in response. The board indicated that it would not be providing representations on the issues. In response to my invitation to the institution to provide reply representations, the OCPC provided correspondence to me which stated that "the OCPC has reconsidered its decision" and that the OCPC's head "is of the opinion that, pursuant to section 23 of [the Act], there is a compelling public interest in the disclosure of the records that clearly outweighs the

purpose of the section 21 exemption for personal privacy.”

[17] The OCPC advised that, as a result of its revised decision, it was providing notice under section 28 of the *Act* to the affected party and the board “to give them the opportunity to make submissions” prior to making a final decision on access.

The current appeal

[18] The OCPC notified the affected party and the board that it “intends to release [the two records at issue] to the requester” and invited their representations pursuant to section 28(5) “as to why the records should not be disclosed.” The OCPC also informed the requester of its revised decision.

[19] The OCPC initially issued a final decision on January 16, 2017, indicating that it had not received representations from the board or the affected party, and that it had decided to release the records to the requester. The affected party advised the OCPC that the earlier section 28 notification had not come to his attention prior to receiving the January 16 decision and that, in the absence of the reasons why the OCPC had revised its decision, he did not agree with the OCPC’s decision. The affected party also provided the OCPC with a copy of the representations he had provided to this office in Appeal PA13-542.

[20] In its decision letter issued to the affected party dated February 6, 2017, the OCPC stated that the public interest in disclosure of the records outweighs the purpose of the section 21(1) exemption for personal privacy, and that it intended to disclose the records to the requester.

[21] The affected party then appealed the OCPC’s decision to this office. Appeal PA17-102 was opened and, because of the connection with earlier Appeal PA13-542, it was immediately transferred to the inquiry stage of the process and assigned to me.

[22] In his appeal letter, the affected party identified the reasons why he was appealing the OCPC’s decision to disclose the records. I have confirmed with the affected party that his reasons set out in that appeal letter and the attachments thereto, along with the representations he has provided in the context of Appeal PA13-542, constitute his representations.

[23] In making this decision, I have had reference to the OCPC’s revised decision and the affected party’s representations, as well as the representations received from the parties in Appeal PA13-542.

[24] In this order, I uphold the OCPC’s decision to disclose the records because of the application of the public interest override.

RECORDS:

[25] The records at issue are two letters from the OCPC.

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

DISCUSSION:

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

[26] The affected party takes the position that the records contain his personal information. The OCPC's decision indicates that the public interest in the records "outweighs the purpose of the section 21 exemption for personal privacy," suggesting that the OCPC also takes the position that the records contain personal information.

[27] The term "personal information" is defined in section 2(1) of the *Act* 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;

[28] 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.²

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

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

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

[30] 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.³

[31] 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.⁴

[32] To qualify as personal information, it must be reasonable to expect that an

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

individual may be identified if the information is disclosed.⁵

[33] The affected party takes the position that the records contain recorded information about an identifiable individual which meets the definition of personal information under the *Act*. The affected party states that the records contain the views and opinions of OCPC members about the affected party's conduct, and that the information fits within the definition in paragraph 2(1)(g). The affected party also states that, even if his name was redacted from the records, he would nevertheless be identifiable.

[34] In its representations in PA13-542, the institution maintained that the two records relate to allegations made against a member of the police services board that were investigated by the OCPC, and that it is in this context that the records contain the name of the board member and others. The institution then states that this information "qualifies as personal information even though it relates to named members of a police services board acting in their professional capacity. The names appear in the context of allegations of wrongdoing." The institution then refers to Order PO-2778 as an order which held that information about an employee, where it relates to allegations of wrongdoing, should be considered personal information.

[35] On my review of the records, I am satisfied that they contain the personal information of the affected party. The records relate to allegations made against the affected party and the results of the investigation by the OCPC of the affected party's conduct. Previous orders have found that information in records relating to a complaint about the conduct of an individual contains the individual's personal information under the definition of section 2(1). For example, in Order MO-1577-I, the adjudicator found that information in records relating to a complaint made to the Special Investigations Unit contained the personal information of the subject officer. Order PO-2516 made a similar finding. I adopt the approach taken in these decisions, and find that the records include information which fits within the definition of personal information in paragraphs 2(1)(g) and (h) of the *Act*.

[36] I am also satisfied that even if the name of the affected party were to be redacted, the affected party would still be identifiable.

[37] I also find that, although the records also name other identifiable individuals, the records do not contain the personal information of those other identifiable individuals. Although these other individuals are named in the records, their names appear in a professional capacity, and disclosure would not reveal something of a personal nature about the individuals.⁶

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

[38] Where a requester seeks the personal information of another individual, as is the case in this appeal, section 21(1) prohibits an institution from releasing this information unless one of the exemptions in paragraphs (a) to (f) of section 21(1) applies. Under section 21(1)(f), if disclosure of the information at issue would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[39] Sections 21(2), (3) and (4) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the institution to consider in making its determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[40] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.⁷

[41] The affected party takes the position that the factors in sections 21(2)(e), (h) and (i), and the presumption in section 21(3)(b), apply to the information in the records. In its representations in Appeal PA13-542, the institution referred to the factors in sections 21(2)(f), (h) and (i), and the presumption in section 21(3)(b). Those sections read:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

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

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

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

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[42] The requester's representations focus primarily on his position that there is a public interest in the disclosure of the records. I address this issue below. With respect to the factors identified by the other parties, the requester submits that some of the factors favouring non-disclosure do not apply. The requester does not specifically refer to any factors that may apply, although he appears to indirectly refer to the unlisted factor that disclosure would assist in ensuring public confidence in an institution.⁸ He also takes the position that it should be possible to sever any portions of the records which may contain personal information, and to disclose other portions of the records to which the public interest may apply.

[43] I have reviewed the factors and the presumption referenced by the parties. Based on my review of the information contained in the records, I find that the factor in section 21(2)(h) may apply to some information in the records. I also find that the unlisted factor that disclosure "would assist in ensuring public confidence in an institution" applies to some information. I am not satisfied that the other factors referenced by the affected party in his confidential representations apply. With respect to the presumption in section 21(3)(b), it is not clear to me that this would apply in the particular circumstances of this appeal. I note that some previous decisions of this office have confirmed that investigations that may lead to charges under the *PSA* have been found to fit within the presumption in section 21(3)(b);⁹ however, investigations for disciplinary purposes or possible breaches of a code of conduct have not been found to fit within the presumption.¹⁰

[44] In any event, given my finding below that the public interest override applies to override the exemption in section 21(1), it is not necessary for me to identify specifically which portions of the records would qualify for exemption under section 21(1) on the basis of the presumption or any of the factors. I will proceed to review the application of the public interest override on the basis that at least some portions of the records qualify for exemption under section 21(1).

⁸ That institution being the Hamilton Police Services Board.

⁹ See, for example, Order M-757.

¹⁰ See, for example, Orders M-327 and P-1117.

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

General principles

[45] Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

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

[47] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of a requester who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by a requester. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.¹¹

Representations

[48] In his representations provided in Appeal PA13-542, which were shared with the parties, the requester took the position that the public interest override in section 23 applies to the records. The requester identified his interest in answers to specific questions about the complaint and the resulting investigation and findings of the OCPC. He argued that issues relating to the conduct between a member of the board and other board members or members of the police service relate to the conduct of public officials, and should not be withheld. The requester also refers to public concerns raised about the actions of the board relating to a variety of issues. He then states:

An informed public is entitled to a thorough airing of the nature and activities of [the] local police governance body, warts and all, if there is to be improvement. ...

We agree the public's right to know does not override every circumstances. In this instance, however, the mere presence of information that can be construed as personal by broad application of the *Act* should not be allowed to justify a blanket refusal. ...

¹¹ Order P-244.

[49] As noted above, after receiving the requester's representations in Appeal PA13-542 and being asked to reply to them, the OCPC revised its decision. In its decision letters addressed to each of the parties, the OCPC stated that it intended to release the records responsive to the request as there is a compelling public interest in disclosure of the records, which clearly outweighs the purpose of the section 21(1) personal privacy exemption.

[50] In its subsequent decision letter to the affected party, the OCPC refers to the records in some detail and then states:

The OCPC is aware of its obligations to protect the privacy of individuals and their personal information under [the *Act*]; however, the OCPC also has an obligation to keep its actions accountable and transparent to members of the public. Informing the public of the outcome of an investigation sheds light on the activities of the OCPC and ensures the public that the OCPC is fulfilling its statutory mandate. Given that there is still interest in the disclosure of the OCPC's decision in this investigation, [the Head of the OCPC] is of the opinion that the public interest in the disclosure of these records outweighs the purpose of the section 21 exemption for personal privacy.

[51] The board did not provide representations on this issue in Appeal PA13-542, and did not appeal the revised decision of the OCPC to disclose the records.

[52] The affected party takes the position that there is no public interest in the disclosure of the records. In his initial representations filed in Appeal PA13-542, the affected party's non-confidential representations state that the records "shed limited light on the [OCPC's] activities" given what is contained in them. The affected party also argues that there is a public interest in non-disclosure of the records, stating:

Knowing that [OCPC] findings and evaluations that do not meet the level warranting a hearing may be disclosed can only be considered a deterrent to serving for current and potential board members. A wider impact could be expected, negatively affecting entities similar to police services boards and investigations of this type generally. ... Accordingly, the cost of disclosure far outweighs any benefit.

[53] The affected party also provides confidential representations supporting his position that the public interest override does not apply.

[54] In his reply representations, the affected party addresses the public interest override arguments raised by the requester, and takes the position that, based on the arguments raised by the requester and the information contained in the records, there

is no public interest in the disclosure of the records.¹²

[55] The affected party also provided me with a copy of the representations he made to the OCPC objecting to disclosure of the records and disagreeing with the OCPC's decision that there is a public interest in the disclosure of the records. Because the affected party's representations to the OCPC were made in confidence and refer to the information contained in the records, I cannot refer to these representations in detail. However, I have considered them, as well as the affected party's confidential reply representations, in making my finding in this appeal.

Analysis and Findings

Compelling public interest

[56] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.¹³ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹⁴

[57] A public interest does not exist where the interests being advanced are essentially private in nature.¹⁵ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁶

[58] A public interest is not automatically established where the requester is a member of the media.¹⁷

[59] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".¹⁸

[60] Any public interest in *non*-disclosure that may exist also must be considered.¹⁹ A public interest in the non-disclosure of the record may bring the public interest in

¹² The affected party asked that his reply representations remain confidential. As I did not seek sur-reply representations, it was not necessary to share the reply representations. I have considered the affected party's reply representations in making my decision in this order, but do not refer to them in detail.

¹³ Orders P-984 and PO-2607.

¹⁴ Orders P-984 and PO-2556.

¹⁵ Orders P-12, P-347 and P-1439.

¹⁶ Order MO-1564.

¹⁷ Orders M-773 and M-1074.

¹⁸ Order P-984.

¹⁹ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

disclosure below the threshold of "compelling".²⁰

[61] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation²¹
- the integrity of the criminal justice system has been called into question²²
- public safety issues relating to the operation of nuclear facilities have been raised²³
- disclosure would shed light on the safe operation of petrochemical facilities²⁴ or the province's ability to prepare for a nuclear emergency²⁵
- the records contain information about contributions to municipal election campaigns²⁶

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

- another public process or forum has been established to address public interest considerations²⁷
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations²⁸
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding²⁹
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter³⁰

²⁰ Orders PO-2072-F, PO-2098-R and PO-3197.

²¹ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²² Order PO-1779.

²³ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.

²⁴ Order P-1175.

²⁵ Order P-901.

²⁶ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

²⁷ Orders P-123/124, P-391 and M-539.

²⁸ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

²⁹ Orders M-249 and M-317.

³⁰ Order P-613.

- the records do not respond to the applicable public interest raised by the requester³¹

[63] On my review of the OCPC's revised decision, the representations of the parties and the records at issue, I am satisfied that there is a compelling public interest in the disclosure of the records.

[64] To begin, I am satisfied that disclosure of the information in the records serves the purpose of "informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices."³² The records relate to the decision made by a public body, the OCPC, regarding formal complaints into the conduct of a member of another public body, the Hamilton Police Services Board. In that regard, I am satisfied that the records inform the public about the activities of both of those bodies, and add in some way to the information the public has in reviewing or commenting on the activities of those bodies.

[65] I also find that the OCPC's decision to disclose the records pursuant to the public interest override is an important consideration in this appeal.³³ I find that the institution is in a strong position to assess whether there is a compelling public interest in disclosure, given its familiarity with these types of records and the issues addressed in the records.

[66] I am also satisfied that the interest engaged is a public, and not a private interest. The requester is a member of the media and, although this in itself does not establish a public interest,³⁴ I am satisfied that the nature of the request and the records establishes a public interest in the information in the records.

[67] I have also considered whether the public interest in the records is "compelling." In making my decision, I acknowledge that the records are a few years old, and that the specific complaint resulting in the incident may not have been the subject of continued public discussion since then. However, I also acknowledge the requester's reference to concerns raised about the actions of the board, and also note that the requester has maintained his interest in the records at issue in this appeal. In the circumstances, given the nature of the records requested and that they relate to the review by the OCPC of the actions of a board member, I am satisfied that the public interest in these records is compelling.

³¹ Orders MO-1994 and PO-2607.

³² Orders P-984 and PO-2556.

³³ See Order MO-3295, where Commissioner Brian Beamish found that an institution's decision to disclose a record in the public interest was an important consideration favouring a finding that there was a compelling public interest in disclosure.

³⁴ Orders M-773 and M-1074.

[68] With respect to whether there is a public interest in non-disclosure, I have considered the factors set out above, including the fact that, as a result of its investigation the OCPC decided not to proceed to a public hearing under section 25(1) of the *PSA*, and that this result is known to the public. I have considered whether this sufficiently addresses the public interest considerations, and whether or not the records would shed further light on the matter. On my review of the records and the information contained in them, I find that the records contain information that is not otherwise publically available, and that disclosure would shed further light on the matter. As a result, the possible public interest in non-disclosure is not sufficient to find that the section 23 override does not apply.

[69] I have also considered the affected party's position that disclosing OCPC findings that do not meet the level warranting a hearing may be a deterrent for others to serve on police boards or other similar entities. I do not find this argument persuasive. I am not satisfied that disclosing the records at issue, relating to the conduct of a board member and in which a decision was made not to proceed to hearing, would dissuade individuals from serving on boards or similar entities.

[70] As a result, I find that there is a compelling public interest in disclosure of the records at issue.

Purpose of the exemption

[71] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[72] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³⁵

[73] I have found that the records contain the personal information of the affected party, and have proceeded on the basis that at least some portions of the records qualify for exemption under section 21(1) of the *Act*. Section 21(1) is a mandatory exemption with the fundamental purpose of ensuring that the personal privacy of individuals is maintained except where infringements on this interest are justified.³⁶ The exemption reflects one of the two key purposes of the *Act*: to protect the privacy of individuals with respect to personal information about themselves held by institutions.³⁷ Therefore, it is important to carefully balance the public interest against the privacy interests of the individual identified in the record.

³⁵ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

³⁶ Order P-568.

³⁷ Order PO-2805.

[74] After reviewing the parties' representations, as well as the records at issue, I am satisfied that the compelling public interest in disclosure of the records clearly outweighs the purpose of the section 21(1) exemption in these circumstances. Although the public is aware that, as a result of the OCPC investigation, a decision was made not to proceed to a public hearing under section 25(1) of the *PSA*, the records contain information that is not otherwise publically available and that would shed further light on the matter. The public has an interest in knowing this additional information.

[75] I acknowledge the importance of the personal privacy exemption at section 21(1), and that it protects against unjustified invasions of personal privacy. However, I also note that members of police services boards hold public positions which require them to be accountable to the community. I have also considered the specific nature of the information contained in the records to decide whether any portions of the records ought to be withheld under section 21(1). I find that there is a compelling public interest in disclosure of the records in their entirety.

[76] Accordingly, I find that the public interest override in section 23 of the *Act* applies to the records, and I uphold the OCPC's decision to disclose them.

ORDER:

1. I uphold the OCPC's decision to disclose the records to the requester under section 23, and I dismiss this appeal.
2. I order the OCPC to disclose the records at issue to the requester by **August 8, 2017** but not before **August 1, 2017**.

Original Signed by: _____
Frank DeVries
Senior Adjudicator

_____ June 30, 2017