

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3685

Appeal MA16-620

The Greater/Grand Sudbury Police Services Board

November 14, 2018

Summary: The Greater/Grand Sudbury Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information about marijuana grow operations. The police located a responsive record, a chart listing dates, property addresses, and the number of marijuana plants seized. The police disclosed the chart, in part, withholding the column that set out the property addresses, claiming that the mandatory personal privacy exemption at section 14(1) applies. In this order, the adjudicator finds that the exemption at section 14(1) does not apply and orders the property addresses disclosed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1)(f), 14(2)(a), (b), (c), (e), (f), and (i), 14(3)(b) and 18(2).

Orders Considered: Orders MO-2019, PO-2265 and PO-3547.

OVERVIEW:

[1] The City of Greater Sudbury (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

List of [marijuana] grow operations and/or [clandestine] labs, including the date of seizure, plant # seized (if provided) and full civic address from August 1, 2006 to present. These properties would be disclosed to the

local municipality per the *Municipal Act, 2001*, section 447.2 from the local police for the purposes of an inspection.

[2] The city forwarded the request to the Greater/Grand Sudbury Police Service (the police) pursuant to section 18(2) of the *Act*, as the police have custody or control of the requested information.

[3] The police contacted the requester advising that they had received the request from the city and pursuant to section 20 of the *Act*, they were extending the time to respond to the request to 45 days.

[4] The police subsequently located the responsive record and issued a fee estimate of \$90.00 to the requester, requesting payment of the fee prior to disclosure. On receipt of payment, the police issued an access decision granting partial access to the responsive record. The police denied access to portions of it pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[5] The requester, now the appellant, appealed the decision.

[6] During mediation, the police clarified that the information that has been withheld from the record consists of the property addresses of 82 marijuana grow operations. The police advised that they notified 48 affected parties¹ at those addresses pursuant to section 21 of the *Act* and, based on the affected parties' responses, they decided to withhold the information.

[7] As a mediated resolution was not reached, the file was transferred to the adjudication stage for an inquiry. As the adjudicator assigned to the file, I began my inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the police and the 48 affected parties who had been notified by the police, seeking representations.

[8] The police provided representations in response. Eight affected parties responded to the Notice of Inquiry. All of them objected to the disclosure of the property address related to them. Twelve Notices of Inquiry were returned to this office indicating that the affected party no longer resides at that address. The remaining affected parties did not respond to the Notice of Inquiry.

[9] I then sent a Notice of Inquiry to the appellant, seeking representations. I shared the police's representations with him in accordance this office's sharing practices set out in the *Code of Procedure*. I also provided him with a summary of the representations of

¹ Based on a review of the occupants of the 82 addresses at the time of notification, the police notified 48 individuals. Some of the addresses had duplication amongst the occupants and for others the identity of the occupants could not be located.

the eight affected parties who responded to the Notice of Inquiry. The appellant chose not to submit representations.

[10] In this order, I find that the property addresses do not qualify for exemption under the mandatory personal privacy exemption at section 14(1) of the *Act*, and order the police to disclose them to the appellant.

RECORD:

[11] The record at issue consists of two pages and is a three-column chart entitled "Marihuana Grow Operations – 01 Aug 06 to Jul 16." It lists 82 addresses, the number of plants seized at each address and the date on which they were seized. The police have disclosed the date and the number of plants seized. The property addresses were not disclosed and they remain at issue.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom does it relate?

[12] The police claim that the property addresses are exempt from disclosure pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. In order to determine whether section 14(1) applies, I must first consider whether the records contain personal information and, if so, to whom it relates. In the circumstances of this appeal, I find that the records contain the personal information of identifiable individuals.

[13] Personal information is defined, in part, under section 2(1) as follows:

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

...

(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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

[14] 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

[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.³ 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

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[17] The police submit that the addresses relate to properties where marijuana plants were located and seized. They submit that the adjudicator in Order PO-3547 held that addresses recorded in similar circumstances were personal information within the meaning of the definition of that term in section 2(1) of the *Act*.

[18] In Order PO-3547, Senior Adjudicator Frank DeVries found that addresses relating to properties where alleged illegal marijuana grow operations were located by the Ontario Provincial Police (OPP) constitute personal information of identifiable individuals. He stated:

In Orders MO-2019 and PO-2265, this office determined that in certain circumstances, a “reasonable expectation of identification” arises when addresses are disclosed, because an address may be linked, using various methods or tools such as reverse directories or municipal property

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.

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

assessment rolls, with an owner, resident, tenant, or other *identifiable* individual. As in order MO-2019, the records at issue in this appeal would reveal an identifiable individual's involvement with an alleged criminal activity, whether as an accused or as an unfortunate but "innocent owner" of the property in question. [Emphasis in original]

[19] I agree with the reasoning expressed by Senior Adjudicator DeVries in Order PO-3547, and I find it to be relevant to the circumstances before me.

[20] Although the record before me does not include any names of individuals who are associated with the listed addresses, I accept that there are various methods to link an address with an owner, tenant or resident. As a result, I accept that disclosure of the addresses as they appear in the record at issue could reasonably be expected to result in an individual being identified. Therefore, I find that the property addresses amount to the personal information of identifiable individuals as contemplated by the introductory wording of the definition of personal information in section 2(1) and paragraph (d). I also agree that the property addresses, as they appear in the records, could reveal an individual's involvement with alleged criminal activity. Criminal history is described as personal information under paragraph (b) of the definition.

[21] Accordingly, I find that the property addresses of the marijuana grow operations on the responsive record constitute personal information, as that term is contemplated by section 2(1) of the *Act*.

B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[22] In the circumstances of this appeal, for the reasons that follow, I find that disclosure of the addresses of alleged grow operations would not be an unjustified invasion of the personal privacy of identifiable individuals under section 14(1)(f), and therefore, that the exemption at section 14(1) does not apply.

[23] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In the circumstances, it appears that the only exception that could apply is section 14(1)(f), which permits disclosure if it would not be an unjustified invasion of the personal privacy of an identifiable individual.

[24] The factors and exceptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

[25] Section 14(2) provides considerations for the institution to take into account when determining whether disclosure of the information would result in an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose

disclosure is presumed to constitute an unjustified invasion of personal privacy.

[26] If none of the presumptions in section 14(3) applies, the institution must consider the possible disclosure of the information by weighing and balancing the considerations listed in section 14(2), as well as any unlisted considerations that are relevant in the context of the individual request.

[27] If a section 14(3) presumption is established, no factor or combination of factors in section 14(2) may overcome it. A presumption can only be overcome if the personal information in question falls under section 14(4) or a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.⁶ In the circumstances of this appeal, none of the circumstances in section 14(4) apply and, giving my findings below, it is not necessary for me to consider the possible application of the public interest override provision.

Analysis and findings

Presumptions: Section 14(3)

[28] Aside from stating that Order PO-3547 is applicable to the present circumstances, the police have not made representations on whether any of the considerations or presumptions at sections 14(2) and (3) might apply. However, in its decision the police identified the presumption at section 14(3)(b) in support of its decision to withhold the addresses under section 14(1). From my review, it is the only presumption that might apply. Section 14(3)(b) reads:

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

Was compiled and is 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.

[29] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁸ Section 14(3)(b) also does not apply if the records were created after the completion of

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

⁷ Orders P-242 and MO-2235.

⁸ Orders MO-2213, PO-1849 and PO-2608.

an investigation into a possible violation of law.⁹

[30] By submitting generally that the information at issue in Order PO-3547 is similar in nature to that which is before me, it appears that the police are suggesting that I treat the information at issue in this appeal in the same manner, and find it to be subject to the presumption against disclosure at section 14(3)(b). I disagree.

[31] In Order PO-3547, Senior Adjudicator DeVries found that portions of four occurrence summaries related to incidents involving alleged grow operations in a particular municipality, including the addresses where the alleged illegal grow operations were located by the OPP, were subject to the presumption against disclosure at section 21(3)(b) of the *Freedom of Information and Protection of Privacy Act*.¹⁰ He found that as occurrence summaries, the records were compiled by the OPP, and are identifiable as part of an investigation into a possible violation of law.

[32] While I acknowledge that the information at issue in the two appeals is similar (in both cases, the police withheld property addresses of alleged grow operations), the records in which it is found are distinctly different in nature.

[33] In Order PO-3547, the addresses were found in police reports, specifically OPP occurrence summaries, general occurrence reports and supplementary occurrence reports that detailed specific incidents relating to alleged grow operatives and included information, such as the number of marijuana plants seized at a particular address on a particular date. As occurrence reports for specific incidents, I agree with Senior Adjudicator DeVries' finding that the records in Order PO-3547 were compiled by the police and are identifiable as part of investigations into possible violations of law with the meaning of section 14(3)(b).

[34] However, as previously described, the record before me is not an occurrence report or a police report but a chart held by the police entitled "Marihuana Grow Operations" which sets out the number of marijuana plants that were seized from identified addresses on particular dates. In my view, the chart that is before me is more accurately described as similar to the records considered by Commissioner Brian Beamish in Order MO-2019. He considered four charts, one for each of four years, which set out, in chronological order, a summary of police involvement with "grow labs." He described the information at issue as appearing in "columns" with the date, address, occurrence number, charges and number of plants seized.

[35] In Order MO-2019, Commissioner Beamish addressed the characterization of the records themselves and determined that the charts before him were created to

⁹ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹⁰ Section 21(3)(b) of the *Freedom of Information and Protection of Privacy Act* is the provincial equivalent of section 14(3)(b) of the *Act*.

summarize the police's activity relating to grow operation seizures and provide an overview to members of the unit assigned to that task. Commissioner Beamish found that the charts were not "investigatory" in nature and "were not *compiled for the purpose of* the individual investigations themselves, but rather to inform members of the Unit and select other members of the police about the Unit's own activities" [emphasis in original]. He found that as summaries of investigations, the charts were not compiled as part of any specific investigation and, as a result, the presumption against disclosure at section 14(3)(b) of the *Act* did not apply.

[36] Commissioner Beamish's approach to the application of section 14(3)(b) to the records before him reflects, in my view, the appropriate approach with respect to the application of section 14(3)(b) to the record at issue in the current appeal.

[37] As previously described, the chart entitled "Marihuana Grow Operations" lists 82 addresses, the number of plants that were seized at each address and the date on which they were seized. There is no further information on the record that describes what type of record it is, or how it is used by the police. However, as with the records before Commissioner Beamish in Order MO-2019, on its face it appears to be a summary of the outcome of a number of investigations into individual alleged grow operations. In the absence of further evidence, I do not accept that the police have established that the record is "investigatory" in nature, or can be described as having been "compiled as part of an investigation into a possible violation of law."

[38] Accordingly, as it has not been established that the record was compiled as part of an investigation into a possible violation of law, I find that section 14(3)(b) does not apply. As none of the other presumptions against disclosure appear to apply in the context of this appeal, in order to determine whether disclosure would amount to an unjustified invasion of personal privacy under section 14(1), I must now weigh and balance the factors listed in section 14(2), as well as any other considerations that might be relevant.

Considerations: Section 14(2)

[39] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more considerations favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory exemption at section 14(1) applies.

[40] Previous orders of this office have established that the considerations in paragraphs (a), (b), (c) and (d) of section 14(2) weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.¹¹

¹¹ Orders PO-2265 and MO-2019.

However, the list of considerations in section 14(2) is not exhaustive and the Head is to consider all the relevant circumstances in determining whether or not the disclosure of personal information could reasonably be expected to result in an unjustified invasion of privacy.¹²

[41] Based on my review of the records and the representations of the parties, I find that the considerations identified in sections 14(2)(a), (b), (c), (e), (f) and (i) should be considered in the circumstances of this appeal. Those sections read:

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

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

...

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

(f) the personal information is highly sensitive;

...

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

[42] I have also considered the impact of a consideration that is not listed in section 14(2), namely, consumer protection.

Considerations in favour of privacy protection

Section 14(2)(e): pecuniary or other harm

[43] Section 14(2)(e) is a consideration favouring privacy protection that contemplates that the individual to whom the information relates will be exposed

¹² Order 99.

unfairly to pecuniary or other harm. Some of the affected parties who responded to the Notice of Inquiry objected to the disclosure of their address on the basis that they would suffer some type of harm.

[44] In order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. Having considered the information before me, including the representations of the affected parties, I do not accept that any of the harm suggested by the affected parties is more than speculative and, if it were to be determined to be present or foreseeable, I do not accept that it could be considered to be "unfair" to the individual.

[45] One affected party submits that the disclosure of his address would result in pecuniary harm as it would have a negative impact on the sale of his house. He submits such harm would result because he could not provide a prospective owner with a certain guarantee that the house would "not be listed in the same bundle as houses determined to be grow operatives." He submits that having his property identified as a "grow operative" has negative connotations as it suggests that it could be affected by faulty wiring and mould. This affected party states that he is not certain what the implications of this could be, but suggests that the financial implications that he may suffer "could be upwards of \$10,000." He states that this would be unfair because when he himself purchased the property, there were a small number of dead marijuana plants left there, and he requested the police deal with them. He further states that the police have informed him that his house is not listed as a grow operation but merely a location where there was a seizure of plants at the owner's request.

[46] With respect to this specific example of how an affected party might be exposed to pecuniary harm from the disclosure of the addresses, I do not accept that I have been provided with sufficient evidence to conclude that it is a consideration that should carry much weight against disclosure. I acknowledge that the former existence of a marijuana grow operation in a property could reasonably be expected to result in pecuniary harm on resale resulting from physical damage to the property or more obliquely from its alleged association with criminal activity. In my view, however, the unfairness of such harm must be assessed on a case-by-case basis. In the circumstance before me, the affected party indicates that only three dead plants were seized, they were not his own, the police have informed him that his house is not "listed" as a grow operation and he himself acknowledges that he is not certain of the financial implications that he might suffer on resale. This suggests that the suspected harms are speculative in nature and not necessarily present and foreseeable. Additionally, even if I accept the possibility that this affected party might be exposed to pecuniary or other harm from the disclosure of his address and such harm may be somewhat unfair, I do not afford this consideration against disclosure very much weight. While it is unfortunate that he was not aware of the presence of marijuana plants before he purchased the property, as the current owner these are his costs to incur.

[47] I acknowledge that this particular affected party submits that the police have assured him that his house is not characterized as a "Grow Op" but merely a seizure of plants at the owner's request. I cannot speak to how the police characterize particular properties where seizures of marijuana plants were made. As mentioned previously, the record at issue is a chart entitled "Marihuana Grow Operations" and the only matter before me is whether the property addresses, as they appear on that record, are exempt from disclosure under the *Act*.

[48] Accordingly, with respect to the specific circumstance presented by this affected party regarding pecuniary harm on resale of his property, I find that the factor at section 14(2)(e) is relevant, but carries little weight in favour of privacy protection.

[49] The other affected parties who submit that harm would result from the disclosure of their addresses submit generally that if their property is identified as a grow operation, it could result in harm to them or their family because people might come to steal their crop. They submit that they would suffer pecuniary harm from the marijuana being stolen and also perhaps suffer physical harm in the process. Some of these affected parties submit that this would be unfair as they have a legal licence to grow marijuana.

[50] The evidence before me describing the possibility that were the property addresses disclosed, the affected parties could be harmed by people coming to steal their crop of marijuana plants is purely speculative in nature and unsupported by evidence. Moreover, owners of such operations, whether legal or illegal, are likely already aware of the need to take necessary precautions against theft.

[51] In these circumstances, I find that the factor at section 14(2)(e) is relevant, but carries little weight in favour of privacy protection.

Section 14(2)(f): highly sensitive

[52] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹³

[53] In Order MO-2019, Commissioner Beamish also considered whether the disclosure of the information in the case before him, including addresses of locations where marijuana plants were seized, amounted to highly sensitive personal information under section 14(2)(f) and if so, how much weight should be accorded to that consideration in the circumstances. He accepted that the disclosure of the requested information could potentially reveal certain details about alleged criminal activity on the part of individuals who may be identified through disclosure and that allegations of criminal activity could be categorized as sensitive information about an individual and

¹³ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

that disclosure of such information could reasonably be expected to cause significant personal distress. However, despite finding that section 14(2)(f) was a relevant consideration, he found that it carried low to medium weight in favour of disclosure, stating:

I accept that information about criminal charges is highly sensitive. In the circumstances of this case, however, there is an element of remoteness in that a connection must be made between the information disclosed and the individuals charged with criminal offences. Given the possibility that the owner is not the occupier, for example, the connection will be difficult to make with any degree of certainty.

[54] I agree with Commissioner Beamish's reasoning and find it to be relevant to my consideration of section 14(2)(f).

[55] I accept that the disclosure of the property addresses in the chart before me could potentially identify individuals connected to those addresses and in turn potentially reveal details about an identifiable individual's alleged criminal activity, which I accept is highly sensitive in nature. However, in my view, in the circumstances before me the connection between the disclosure of the addresses and the disclosure of personal information that could be considered to be highly sensitive is even more remote than in Order MO-2019.

[56] First, as in Order MO-2019, as the information at issue is addresses there is an overarching element of remoteness between their disclosure and the disclosure of highly sensitive personal information. I agree with Commissioner Beamish's observation in Order MO-2019 that with no names attached to the addresses on the chart, identification of the individual or individuals who might be linked back to any alleged activity related to the seized marijuana plants cannot be made with any degree of certainty. The individual involved in any alleged illegal activity could be any one or combination of an owner, a tenant, a resident, a relative or even an unknown individual if the property is abandoned or plants were located outside of a dwelling.

[57] Second, unlike the chart before Commissioner Beamish in Order MO-2019, the chart before me contains no information about whether charges were laid or whether any other ramifications resulted from the seizure of the plants.

[58] In my view, the element of remoteness between the property address and an identifiable individual connected to the seized marijuana plants, coupled with the lack of definitive information about any alleged criminal activity relating to those plants, renders the possibility of the disclosure of highly sensitive personal information relatively remote. Accordingly, although I accept that the consideration at section 14(2)(f) favouring privacy protection is relevant, I find that it carries low weight.

Section 14(2)(i): unfair damage to reputation

[59] This section considers whether disclosure of the information at issue might

unfairly damage the reputation of any person referred to in the record. The majority of the affected parties who responded to the Notice of Inquiry raised concerns that the disclosure of the property addresses, which could associate them with a grow operative, would unjustly stigmatize them as dealers or users and have negative repercussions on their reputations in the communities in which they live. Some affected parties state that because they live in a small town, it is easy to identify them by their address and disclosure of the fact there were marijuana plants on their property might have an impact on their employment. Other affected parties suggest that it would be unfair for them to be stigmatized as a result of the disclosure of their addresses for reasons including that the plants were not theirs, that they hold a legal licence to grow marijuana which is "no one's business but theirs," that they did not reside at the property at the time the plants were seized, or because the listed property is a rental property.

[60] As with section 14(2)(e), for this factor to be considered to be relevant, the evidence must demonstrate that the envisioned damage or harm must be present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.¹⁴

[61] When considering this factor in Order MO-2019, Commissioner Beamish found that the consideration at section 14(2)(i) carried medium weight in favour of protecting the privacy of the individuals who could be identified by the disclosure of the information at issue. He stated:

The harm or damage to the reputations of individuals who may be identified by disclosure would flow from either the alleged commission of unlawful acts by persons accurately identified or, in the case of the "innocent owner", inaccurate identification as a person charged with criminal wrongdoing. I accept that in those circumstances any harm or damage to reputation would be unfair: in the first situation because the criminal charges have not been subject to proof; and, in the second situation, because of the possibility that "innocent owners" have been misidentified as being charged, or in some way involved, with alleged criminal activity.

[62] Although I agree with Commissioner Beamish's reasoning in Order MO-2019 regarding section 14(2)(i) as it relates to the information that was before him, I find that with respect to the information that is at issue in the current appeal, the consideration at section 14(2)(i), although relevant, carries significantly less weight.

[63] As previously discussed, unlike the information at issue in Order MO-2019, the

¹⁴ Orders P-256 and M-347.

chart before me does not include any information about whether or not charges were laid in relation to the plants seized at the identified addresses. Therefore, if an address were able to be linked back to an individual, it is even less certain than in Order MO-2019 whether that individual (or any individual, who could be associated with that address) was involved in the alleged commission of unlawful acts or more specifically, the illegal possession of marijuana plants.

[64] As found by Commissioner Beamish in Order MO-2019, I do not accept that any harm or damage to the reputations of individual who were actually charged, or in some way involved in the harbouring of illegal marijuana plants can be described as “unfair.” I do acknowledge however that unfair harm could arise when an individual who can be linked back to a listed address can be, as stated by Commissioner Beamish, misidentified as having been charged or in some way involved with alleged criminal activity. However, given that the chart before me does not indicate whether charges were laid in connection with the seizure of the marijuana plants at the listed addresses, in my view, disclosure of the property addresses is even less likely to result in unfair damage to an individual’s reputation than it was in Order MO-2019.

[65] As discussed above in my consideration of section 14(2)(f), there is a fairly significant element of remoteness between the disclosure of the addresses on the record at issue and disclosure of the identity of any individual or individuals who could definitively be identified as alleged to have been involved or implicated in the police’s seizure of marijuana plants. Additionally, given that the chart does not identify any particular individual, there is a further level of remoteness between the identification of an individual associated with the listed addresses and their involvement in the illegal harbouring of marijuana plants.

[66] Accordingly, while I accept that the consideration at section 14(2)(f) is relevant to a determination of whether the addresses at issue should be disclosed, I accord it little weight in favour of privacy protection.

Considerations in favour of disclosure

Section 14(2)(a): public scrutiny

[67] This section contemplates disclosure in order to subject the activities of public institutions to public scrutiny.¹⁵

[68] Commissioner Beamish considered section 14(2)(a) in Order MO-2019 and found it carried “significant weight” in favour of the disclosure of the information that was before him, which included the addresses of identified marijuana grow operations. He considered the fact that issues surrounding illegal grow operations were the subject of

¹⁵ Order P-1134.

considerable public discussion and the actions taken by police forces in Ontario to combat such operations were routinely featured by the media. He also considered the enactment of the *Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005*¹⁶ which increased enforcement powers relating to electrical, fire safety and municipal matters and expanded Crown authority to deal with property forfeited as a consequence of illegal activities. Commissioner Beamish found that given the ongoing public debate over grow operations and the actions taken by the provincial government and law enforcement authorities in attempting to counter such illegal operations, clearly pointed to a strong interest in ensuring an appropriate degree of scrutiny of law enforcement institutions and their activities by the public. He asserted that the primary objective of section 14(2)(a) is "to assist in facilitating this scrutiny." He concluded his consideration of this factor by stating:

One of the vehicles for this scrutiny is the provision of the greatest amount of information about law enforcement activities possible in the circumstances. In my view, the criminal charges laid, along with accompanying details about the money and/or plants seized at the time of each of the grow operation seizures, are part of full disclosure about police activity in this high interest area.

[69] Commissioner Beamish's reasoning is similarly applicable to the circumstances before me. In my view, the disclosure of any information about law enforcement's response to illegal grow operations is important in order to instill public confidence with respect to the issue, which is a matter of great public concern, even and perhaps more so, following the recent enactment of the *Cannabis Act*.¹⁷ This development does not alter my view that disclosure of the addresses of properties where marijuana plants were harbored illegally and ultimately seized by the police is desirable for the purpose of subjecting the police's enforcement response to illegal grow operations to public scrutiny.

[70] Accordingly, I accept that the consideration at section 14(2)(a) weighs significantly in favour of disclosure of the information at issue.

Section 14(2)(b): promote public health and safety

[71] Section 14(2)(b) is a relevant consideration if the disclosure of the information at issue can be said to promote public health and safety. In my view, this factor is both a relevant and significant consideration weighing in favour of the disclosure of the addresses at issue.

¹⁶ S.O. 2005, c.33 – Bill 128.

¹⁷ S.C. 2018 Ch. 13. While the *Cannabis Act* legalizes the recreational use of marijuana, it also creates a strict legal framework for controlling production, distribution, sale and possession of cannabis across Canada.

[72] In Order MO-2019, Commissioner Beamish addressed this consideration and found that properties that have harboured illegal marijuana grow operations give rise to a host of potential threats to the health and safety of their inhabitants, including electrical hazards or house fires due to problems with the wiring, and undetected mould in houses where the ventilation system has been modified. The health and safety of neighbours can also be affected by marijuana grow operations in a number of ways, from health issues due to noxious fumes or mould, to unexpected power surges or “brown-outs” from large draws on the hydro-electric system, to increased vandalism or more from the introduction of a criminal element to the community.

[73] As a result, Commissioner Beamish accorded section 14(2)(b) significant weight, taking the position that “the threat to public health and safety posed by grow operations must be taken very seriously.” He took the view that it is far better for homeowners to know about potential hazards or threats to health and safety than not to know and although there might be alternate methods to acquire information about the historical use of a property, the information should be widely available and accessible.

[74] I agree with the Commissioner’s reasoning in this respect and follow it to accord the consideration at section 14(2)(b) significant weight in favour of the disclosure of the information. Although I acknowledge that the chart provides limited information, it does identify properties that harboured marijuana plants that were seized by the police, the number of plants seized and the date on which they were seized. In my view, only if the addresses are disclosed does the chart provide sufficient and important information to those whose health and safety might be impacted by the presence of marijuana plants or grow operations at or around those properties. Disclosure of the addresses, coupled with the number of plants seized, reveals the scale of the operation, and would enable those who might be potentially affected to make an initial determination as to whether further, more in-depth inquiries, about whether the property and surrounding area were negatively impacted by the grow operation, might be desirable or necessary.

[75] Accordingly, in my opinion, section 14(2)(b) is a consideration that weighs strongly in favour of the disclosure of the addresses at issue.

Section 14(2)(c): informed choice in the purchase of goods and services and the unlisted consideration of consumer protection

[76] Section 14(2)(c) is a factor favouring disclosure relating to the promotion of informed choice in the purchase of goods and services. This factor relates closely to the unlisted factor of “consumer protection” that was considered by Commissioner Beamish in Order MO-2019, which I will also consider here.

[77] In Order MO-2019, Commissioner Beamish found that consumer protection was a relevant circumstance carrying medium weight in favour the disclosure of the information that was before him. He stated that expanding upon the health and safety consideration addressed by section 14(2)(b), members of the public should be informed

about potential hazards posed as a consequence of purchasing and owning a house formerly used for an illegal grow operation.

[78] I accept that the disclosure of the addresses listed on the record at issue could assist a potential purchaser of any one of the identified properties (or even the potential purchaser of a neighbouring property) to make an informed choice about the property that they are considering purchasing. I also accept that, given the potential health and safety concerns arising from the purchase of such a property, disclosure is desirable for the issue of consumer protection. Together with the information that has already been disclosed which reveals the size and scale of an alleged grow operative identified by the police, disclosure of the addresses could be necessary and valuable to promote informed choice in the purchase of goods and services set out in section 14(2)(c) and for the purpose of the unlisted consideration of "consumer protection." As a result, I find both these considerations are relevant and should be afforded medium weight in favour of disclosure of the information at issue.

[79] I acknowledge that there are alternative methods for prospective homeowners to make inquiries about the prior use of the properties that they are interested in purchasing. However, in my view, the greatest amount of disclosure and availability of information about properties that harboured illegal marijuana plants is desirable both for the purpose of consumer protection as well as promoting an informed choice in the purchase of a property which, as stated by Commissioner Beamish, is one of the most significant purchases an individual can make. Without the addresses, the disclosure of the remaining information is useless in this respect.

[80] Accordingly, I find section 14(2)(c), and the unlisted factor of consumer protection, to be a considerations that weigh strongly in favour of the disclosure of the addresses at issue.

Conclusion

[81] Having considered and weighed the considerations favouring disclosure of the property addresses against those which favour the protection of privacy of those individuals who may incidentally identified by its disclosure, I find the balance to be tipped in favour of disclosure. My finding in this regard rests primarily on the factors weighing in favour of disclosure, specifically, the desirability of promoting public health and safety and the public scrutiny of police activities in relation to illegal grow operations. I also believe that disclosure is important for the promotion of consumer protection and the informed choice in the purchase of goods and services.

[82] With respect to the factors weighing against disclosure, although I acknowledged that in the case of the individuals who were unaware of a small number of marijuana plants on their property any pecuniary harm might be somewhat unfair, in my view, it would be more unfair for any such harm to be passed onto future unwitting buyers. I also found that the element of remoteness between the property addresses and an identifiable individual reduces the highly sensitive nature of any information that could

result from disclosure and reduces the likelihood of an identifiable individual suffering unfair damage to their reputation.

[83] Accordingly, based on my analysis above, I find that the exception at section 14(1)(f) has been established in relation to the property addresses identified on the chart at issue in this appeal, as disclosure would not constitute an unjustified invasion of personal privacy. As a result, I find that the property addresses are not exempt under section 14(1) of the *Act*.

[84] I also note that in Order MO-2019, Commissioner Beamish stated that even if he had found the information at issue (which included the property addresses of grow operations) exempt under section 14(1), he would have ordered its disclosure under section 16, the public interest override.

[85] I agree with Commissioner Beamish's reasoning in this respect and find it to be equally applicable in the case before me. Section 16 mandates disclosure of information otherwise exempt under section 14(1) (among other exemptions), where a "compelling public interest in disclosure of the record clearly outweighs the purpose of the exemption." Without making a finding in this respect, for the same reasons as those set out above in my analysis of whether section 14(1) applies to exempt the information from disclosure, if it were necessary for me to address section 16, in the circumstances of this case a compelling public interest in disclosure that outweighs the purpose of the personal privacy exemption could be established.

ORDER:

1. I order the police to disclose to the appellant the chart column that identifies the property addresses of grow house seizures by **December 19, 2018** but not before **December 14, 2018**.
2. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the information disclosed to the appellant pursuant to Provision 1, upon request.

Original Signed by: _____

Catherine Corban
Adjudicator

November 14, 2018
