

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4295

Appeal PA21-00124

Ministry of the Solicitor General

August 29, 2022

Summary: This appeal is about access to two witness statements describing a motor vehicle accident in which the appellant was involved. In response to a request under the *Freedom of Information and Protection of Privacy Act*, the Ministry of the Solicitor General located the two statements but denied access to them in full. The ministry withheld some portions of the witness statements as non-responsive to the request, and denied access to the remainder pursuant to the mandatory and discretionary personal privacy exemptions in section 21(1) and 49(b).

In this order, the adjudicator finds that some of the information withheld by the ministry on the basis that it is non-responsive is responsive to the request, and orders the ministry to issue a decision to the appellant regarding access to that information. The adjudicator also finds that disclosure of the substance of the witnesses' statements would not be an unjustified invasion of the witnesses' personal privacy under section 49(b) and orders the ministry to disclose those portions of the statements to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1) and 49(b).

Orders Considered: Orders P-1618, MO-2890 and PO-3712.

OVERVIEW:

[1] This appeal is about access to two witness statements provided to the Ontario Provincial Police (OPP) about a motor vehicle accident in which the appellant was

involved. The appellant made a request to the Ministry of the Solicitor General under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “all Field Notes, Remarks and Witness Statements” regarding the accident. In her request, the appellant explained that she was a passenger in one of the vehicles involved in the accident that was driven by one of the witnesses to whose statement she seeks access.

[2] The ministry located responsive records and issued a decision denying access to them on the basis of the mandatory personal privacy exemption in section 21(1) and the discretionary personal privacy exemption in section 49(b) of the *Act*.

[3] The appellant appealed the ministry’s decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution.

[4] During mediation, the ministry issued a supplementary decision letter revising its decision. In the supplementary decision, the ministry removed its claim that the information is exempt under section 49(b) and added that some information in the records is not responsive to the request.

[5] The mediator notified two affected parties about the request. The affected parties did not consent to disclosure of information in the records relating to them.

[6] The appellant confirmed that she seeks access to the withheld records, including those portions withheld as not responsive.

[7] With no further mediation possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I conducted a written inquiry, during which I sought and received representations from the appellant and the ministry that were shared between them in accordance with the IPC’s *Practice Direction 7* on the sharing of representations.

[8] I also invited the affected parties – the witnesses whose statements are at issue – to submit representations in response to Notices of Inquiry setting out the issues in this appeal and questions for their consideration regarding the ministry’s claim that the records are exempt. Neither affected party submitted representations.

[9] In her representations, the appellant submits that she does not seek access to the witnesses’ “identifying information,” which she says can be removed from the records. Accordingly, the witnesses’ names as they appear in the records are not at issue in this appeal.

[10] In this order, I find that the records contain the personal information of both the appellant and other identifiable individuals. Because I find that the records contain the appellant’s personal information, the request must be considered under section 47(1) of the *Act*, which deals with the right of an individual to access records of their own personal information. Because the records also contain other individuals’ personal

information, the relevant personal privacy exemption to consider is section 49(b), which allows an institution to deny access to records that contain the personal information of both the requester and other identifiable individuals.¹

[11] I find that some of the information withheld by the ministry from both records on the basis that it is non-responsive is, in fact, reasonably related to the appellant's request and is therefore responsive. I order the ministry to issue a decision regarding access to that information.

[12] I also find that disclosure of the remaining withheld portions of the witnesses' statements would not constitute an unjustified invasion of their personal privacy under section 49(b) and I order the ministry to disclose that information to the appellant.

RECORDS:

[13] The records are two single-page motor vehicle collision reports prepared by the OPP, numbered 00001 (record 1) and 00002 (record 2) by the ministry. I refer to these collectively as the witness statements in this order.

ISSUES:

- A. What is the scope of the request? What information is responsive to it?
- B. Do the witness statements contain "personal information" as defined in section 2(1), and, if so, whose personal information is it?
- C. Does the discretionary personal privacy exemption in section 49 (b) apply to the personal information at issue?

DISCUSSION:

Issue A: What is the scope of the request and what records are responsive to it?

[14] The ministry has withheld some portions of the witness statements on the basis that they are not responsive, meaning that the ministry believes the information is not responsive to the request. Specifically, the ministry has withheld portions at the top (header) and along the bottom (footer) of both records, claiming that this information is administrative information that includes generic information such as a copyright notice.

[15] To determine whether these portions have been properly withheld as non-

¹ The exemption in section 21(1) applies to records that do not contain a requester's own personal information, but only the personal information of individuals other than the requester.

responsive requires consideration of section 24 of the *Act*. Section 24 imposes certain obligations on requesters and institutions when submitting and responding to access requests. It states, in part, that:

1. A person seeking access to a record shall,
 - a. make a request in writing to the institution that the person believes has custody or under the control of the record;
 - b. provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
2. If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[16] Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in a request should be resolved in the requester's favour.²

[17] To be considered responsive to the request, records must "reasonably relate" to it.³

Representations

[18] The ministry submits that the appellant's original request was clear and sufficiently detailed to allow ministry staff to identify the responsive records. The ministry says the request did not require clarification and the ministry did not seek clarification. The ministry submits that it interpreted the request broadly.

[19] The ministry says that portions withheld from the top of each page are not responsive to the request because they do not contain the "Field Notes, Remarks and Witness Statements" requested. It submits that this information is administrative information associated with the preparation of the motor vehicle collision reports. The ministry says the information withheld from the bottom of each page is non-responsive because it includes administrative information such as a copyright notice.

[20] The appellant's representations did not specifically address the scope of the request or the responsiveness of the records. The appellant states that, without having seen the records, she is unable to comment on what portions may or may not be responsive.

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

Analysis and findings

[21] The bottom line on each record withheld by the ministry contains pre-printed information such as a Queen's Printer copyright notice and an alphanumeric form identifier code. I find that this information is not responsive to the request. I therefore accept the ministry's position that the information withheld from the bottom of each record is non-responsive and I uphold the ministry's decision to withhold it.

[22] However, I do not accept the ministry's position that the information withheld from the top of each record is not responsive. The top portions, or headers, of both witness statements contain fields that were completed using information collected by the investigating officer. These include fields for the officer to input information about the collision such as the day, date and time, collision number, the officer's name and badge number and the time the officer arrived on the scene. In my view, this is information that is reasonably related to the request. It is information the investigating officer would have collected 'in the field', that is, on arriving at the scene and/or during the investigation of the accident. I find that this information is therefore responsive to the appellant's request for field notes, and that it relates to the collision identified by the appellant in the request. I find that the ministry's exclusion of this information as non-responsive represents a narrow interpretation of the request.

[23] Because I have found that the records contain information at the top of each page that is responsive to the request, I will order the ministry to issue another access decision to the appellant regarding access to this information.

Issue B: Do the records contain personal information "personal information" as defined in section 2(1), and, if so, whose personal information is it?

[24] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.⁴ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁵

[25] The appellant argues that the witness statements contain her personal information. The ministry submits that the witness statements contain only the affected parties' personal information. I must therefore determine whether the witness statements contain personal information, and if so, whose.

[26] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."⁶ Information is "about" the individual when it refers to

⁴ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁵ See sections 21(1) and 49(b).

⁶ Recorded information is information recorded in any format, including paper and electronic records.

them in their personal capacity, meaning that it reveals something of a personal nature about them.⁷ Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them, and the *Act* contains provisions for this type of information.⁸

[27] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁹

[28] Section 2(1) of the *Act* gives a list of examples of personal information. The examples relevant to this appeal are the following:

“personal information” means recorded information about an identifiable individual, including,

(e) the personal opinions or views of the individual except where they relate to another individual,

...

(h) the individual’s name if 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.

[29] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.”¹⁰

Representations

The ministry’s representations

[30] The ministry submits that the records contain the names of affected third party individuals and the witness statements they provided to the OPP officer in connection with the officer’s investigation of the accident. It says that, although there is relatively little information at issue (the statements are two lines each) what is at issue contains information that is likely to identify the affected parties and is therefore their personal information.

⁷ Generally, information about an individual in their professional, official, or business capacity is not considered to be “about” the individual if it does not reveal something of a personal nature about them. The Act contains provisions for this type of information, which is not at issue in this appeal and therefore not addressed in this order (see, for example, orders P-1409, R-980015, PO-2225 and MO-2344).

⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

¹⁰ Order 11.

The appellant's representations

[31] The appellant submits that, since she was involved in the accident, information relating to her, the other vehicle or driver, observations of the accident, its consequences and its preceding events constitutes her personal information under section 2(1).

[32] The appellant also submits that she has "no interest in any identifying information of the third part[ies] who provided the Statements, nor any of their personal information that may be contained therein." The appellant submits that the views or opinions of an individual about other individuals does not constitute their personal information under paragraph (e) of the definition of personal information in section 2(1).

Analysis and findings

[33] I have reviewed the witness statements and find that they contain the personal information of identifiable individuals (the affected parties or witnesses) as well as the personal information of the appellant.

[34] Both witness statements contain the names of the affected parties. They also contain their respective observations of how the accident occurred, including the location of their vehicles in relation to each other in the collision. I find that their names, if disclosed, would reveal something of a personal nature about them, namely, their involvement in a motor vehicle collision. In this context, I find that their names qualify as their personal information under paragraph (h) of section 2(1) of the *Act*. I further find that their observations about the accident are their personal information within the meaning of paragraphs (e) of section 2(1).

[35] I also find that the records contain the appellant's personal information. The statements in the records describe the collision from the perspective of two drivers. According to the request and the appellant's representations, the appellant was a passenger in one of the vehicles involved in the collision, of which one of the affected parties was the driver. I find that the records contain information that is the appellant's personal information because it is "recorded information about an identifiable individual," which includes the appellant as a passenger in one of the vehicles involved in the collision.

[36] The appellant submits that she is not seeking access to "identifying information." I therefore find that this information is no longer at issue in this appeal, and on this basis will uphold the ministry's decision to withhold only the affected parties' names. I note that, even if the affected parties' names are withheld, the remaining information would still be recorded information about identifiable individuals (the affected parties' personal information). Based on the circumstances in this appeal, I find that the appellant would still be able to discern the identities of the affected parties from the

remaining information, given that she was involved in the accident which is the subject matter of the request.

[37] Next, I will consider whether disclosure of the remaining portions of the witness statements would constitute an unjustified invasion of their personal privacy under section 49(b).

Issue C: Does the discretionary personal privacy exemption at section 49(b) apply to the personal information at issue?

[38] Because I have found that the witness statements contain the appellant's personal information, I find that section 49(b) is the appropriate exemption to consider in this case. I must therefore determine whether disclosing the information at issue to the appellant would constitute an unjustified invasion of the affected parties' personal privacy under section 49(b).

The personal privacy exemption in section 49(b)

[39] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this right.

[40] Under section 49(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an unjustified invasion of the other individual's personal privacy, the institution may refuse to disclose that information to the appellant. Section 49(b) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[41] Under section 49(b), where a record contains personal information of both the requester and another individual, as is the case here, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Because the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[42] This determination involves weighing the appellant's right of access to her own personal information against the other individual's right to protection of his or her privacy. If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[43] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 21(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b). In the circumstances, none of the section 21(1) exceptions apply, and are not addressed further in this order.

[44] Sections 21(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 21(2) or (3) apply. The parties do not rely on section 21(4), and I find that it does not apply in this appeal.

[45] In deciding whether the disclosure of personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the IPC will consider and weigh the factors and presumptions in section 21(2) and (3) and balance the parties' interests.¹¹

[46] The ministry relies on the presumption against disclosure in section 21(3)(b), which states that disclosure of personal information of individuals other than the appellant is presumed to be an unjustified invasion of personal privacy if the personal information was compiled during an investigation into a possible violation of law. The ministry also argues that that the factor in section 14(2)(f) applies to weigh against disclosure because the information at issue is highly sensitive.

[47] The appellant, meanwhile, relies on the factor in section 14(2)(d), which weighs in favour of disclosure in circumstances where the information is relevant to a fair determination of rights affecting the person who made the request. The appellant claims she needs access for an existing tort claim she commenced for damages arising from the accident.

Representations

The ministry's representations

[48] The ministry submits that disclosure of the affected parties' personal information would presumptively constitute an unjust invasion of their personal privacy pursuant to section 21(3)(b) because it was collected as part of an investigation into a potential violation of law.

[49] The ministry also submits that the information at issue is highly sensitive, so that

¹¹ Order MO-2954.

the factor in section 21(2)(f) applies to weigh against disclosure.¹² The ministry argues that personal information of “witnesses or suspects,” as part of their contact with the OPP, is highly sensitive (the factor at section 21(2)(f)), and that access should be denied where affected parties do not consent to disclosure of highly sensitive information in law enforcement records.

[50] The ministry submits that “fair determination of the appellant’s rights” (the factor at section 21(2)(d)) is a relevant consideration in determining whether the personal information of affected parties ought to be disclosed. However, the ministry argues that this factor does not apply in this case because the appellant may obtain the information through the civil litigation system.

The appellant’s representations

[51] The appellant disagrees that the presumption at section 21(3)(b) applies, arguing that the application of section 21(3)(b) relates specifically to the disclosure of the personal information of an individual, not to the disclosure of documents in general. She also disputes that the information is highly sensitive and submits that the ministry has not provided particulars of any expectation of significant personal distress if the statements were to be disclosed.

[52] The appellant submits that the factor at section 21(2)(d) applies to weigh in favour of disclosure. She submits that she is currently involved in litigation regarding the accident and that the observations made in the records are relevant to a fair determination of her rights to claim reparations. She says she has no knowledge of any witnesses to the accident other than herself, the defendant, and other persons in the involved vehicles.

[53] The appellant says that there is little to no possibility for her to obtain the information at issue within the litigation. She submits that she has no knowledge of who, other than the ministry, would be in possession of the records or the information contained in them. She says that the defendant (in the tort claim) has not produced the records in an Affidavit of Documents, so she can only assume that the records are not the defendant’s. She says that, “other than from the Ministry itself, the Appellant is entirely unable to request the Court’s assistance in obtaining the withheld statements. She has no way of identifying to the Court who is in possession of the information, what the information is, or how it is relevant to her claim.”

[54] The appellant also submits that she is at a stage in the litigation where the trial record has been filed, meaning that she would require leave from the court to bring a motion pursuant to the *Rules of Civil Procedure* for production of this information.

¹² The ministry submits that it relies on the factor at section 21(2)(f) as an alternative argument. However, section 21(2)(f) is not a stand-alone exemption. Rather, it is a factor to be considered when weighing whether disclosure of personal information would constitute an unjust invasion of personal privacy.

[55] The appellant says that the witness statements and the observations surrounding the accident contained therein are vital to her ability to make an informed decision on how to proceed with her tort claim. She says that the defendant has not admitted liability and has threatened her numerous times with its costs in defending the claim.

[56] The appellant submits that the witness statements were provided to the police voluntarily and made with the understanding that they may be used publicly in a court of law, and may even require the witness to testify in court. She says that other factors listed in section 21(2) do not apply to weigh against disclosure and do not outweigh the factor in section 21(2)(d).

Analysis and findings

The presumption against disclosure in section 21(3)(b): investigation into possible violation of law

[57] Under section 21(3)(b), a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

...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.

[58] Even if no legal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹³

[59] I have reviewed the records and find that the personal information in them was compiled and is identifiable as part of an investigation into a possible violation of law. The OPP collected information as part of an investigation into a collision that could have resulted in charges being laid against one or more drivers or individuals. It is immaterial that no charges were laid, since the presumption only requires that there be an investigation into a possible violation of law. As a result, I find that the presumption against disclosure in section 21(3)(b) applies.

Section 21(2)

[60] 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.¹⁴ The following are relevant to this appeal:

¹³ Orders P-242 and MO-2235.

¹⁴ Order P-239.

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;

...

(f) the personal information is highly sensitive;

[61] The factor in paragraph (d) section 21(2) generally weighs in favour of disclosure, while the factor in paragraph (f) weighs in favour of privacy protection.¹⁵

[62] 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).¹⁶

Section 21(2)(d): fair determination of rights

[63] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 21(2)(d) requires the ministry to consider whether the personal information is relevant to a fair determination of rights affecting the person who made the request. If found to apply, this factor weighs in favour of disclosing the personal information.

[64] The ministry submits that the fact that the appellant may obtain the information through the civil litigation system undermines the notion that the personal information is "required" to prepare for the lawsuit or to "ensure" an impartial hearing.¹⁷ The ministry submits that, although section 21(2)(d) is a consideration in determining whether the information at issue ought to be disclosed, it is outweighed by the affected parties' right to protection of their personal privacy in this case. For the reasons that follow, I disagree.

[65] As noted above, the appellant submits that she has brought a tort action that is underway, and that the witness statements are crucial to a determination about liability. She submits that the defendant did not produce the witness statements at issue in an Affidavit of Documents, suggesting the witness statements are not the defendant's.

[66] The IPC has found that for section 21(2)(d) to apply, the appellant must establish that:

¹⁵ Order PO-2265.

¹⁶ Order P-99.

¹⁷ The Ministry cites Order PO-3883.

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; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information to which the appellant seeks access has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.¹⁸

[67] There is no dispute that the appellant seeks the witness statements to assist with her tort claim arising from the accident. I am satisfied that she has met the four-part test in section 21(2)(d) because:

1. her right to sue is drawn from common law;
2. the right is related to an existing civil claim for damages arising from an accident in which she was involved as a passenger;
3. the witness statements have a direct bearing on findings of fact in the civil claim; and,
4. the witness statements are required to ensure an impartial hearing because the witnesses' respective observations about the accident can reasonably be expected to assist the court in making findings of fact and fault and therefore damages.

[68] I therefore find that disclosing the affected parties' statements in the circumstances is relevant to a fair determination of the appellant's rights under section 14(2)(d) and that this factor weighs in favour of disclosing this information to her.

[69] The ministry argues that the factor at section 21(2)(d) does not apply because the appellant has discovery mechanisms available to her as part of the litigation process and which would give her access to the requested information to ensure a fair determination of her rights. As noted above, the appellant submits that the discovery stage of the tort action is completed and the records at issue in this appeal were not identified in the tort defendant's Affidavit of Documents or produced.

[70] Adjudicator Colin Bhattacharjee dealt with a similar question in Order MO-2980. In that case, the appellant sought access to the name of the owner of a dog that bit her

¹⁸ 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.).

so that she could bring a civil claim for damages. On the subject of discovery mechanisms available within the litigation process, Adjudicator Bhattacharjee wrote:

In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

[71] Although the personal information at issue in Order MO-2980 consisted of names, I find that the reasoning applies to the personal information at issue before me contained in the witness statements because it is information that relates to the appellant's exercise of her legal right to seek redress for damages she alleges she suffered as a passenger in a car involved in an accident. I therefore agree with and adopt this reasoning. The mere existence of a discovery mechanism within litigation may reduce the weight given to the factor in section 21(2)(d), but I find that it should still be given considerable weight in the circumstances of this appeal, where the witness statements were not produced despite the existence of discovery mechanisms within the litigation.

[72] Because the records contain witness accounts of the accident, and because they have not been produced in the context of the litigation, I accept and agree with the appellant's position that the witness statements are required to prepare for the litigation and to ensure an impartial hearing. In my view, in addition to being directly related to the appellant's legal right to claim damages, available witness accounts are required to assist the court in making findings of facts at trial, including making findings regarding liability.

[73] For these reasons, I find that the factor at section 21(2)(d) applies to weigh in favour of disclosure of the witness statements in this case.

Section 21(2)(f): highly sensitive

[74] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 21(2)(f) requires the ministry to consider whether the personal information is highly sensitive.

[75] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the personal information at issue is disclosed.¹⁹ If the personal information is highly sensitive, then the factor in section 21(2)(f) weighs against disclosing it.

¹⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[76] In relying on the factor at section 21(2)(f), the ministry relies on Order P-1618, in which the IPC held that personal information of complainants, witnesses or suspects collected by the police was highly sensitive. The ministry also relies on Order PO-3712, arguing that in that order, the IPC “upheld the application of section 21(2)(f) where consent had not been provided by [affected parties] in respect of the disclosure of their personal information contained in law enforcement investigation records.”

[77] The ministry relies on orders that set out the general principle that information provided by witnesses as part of their contact with police may be highly sensitive for the purpose of section 21(2)(f), and that it ought not to be disclosed in certain circumstances where consent has not been obtained. Order PO-3712 involved information described as being of an “extremely sensitive nature” and involved 80 pages of police records, while Order P-1618 dealt with access to voluminous occurrence reports and a complaint to the police complaints commission.

[78] In my view, the records at issue in the orders referred to by the ministry differ from the records at issue before me, and I must consider the nature of the information at issue and the possible effect on the affected parties of its disclosure. The test in section 21(2)(f) requires the affected parties²⁰ to demonstrate that the information is such that its disclosure would reasonably be expected to cause them significant personal distress. The statements in this appeal were provided to the OPP to describe a car accident, and neither the ministry nor the affected parties have provided me with any basis to conclude that the disclosure of the statements could reasonably be expected to cause the witnesses significant personal distress in the circumstances.

[79] Based on my review of the statements, and in the absence of any evidence of a reasonable expectation of personal distress in the event of disclosure, I find that the two witness statements are not highly sensitive for the purpose of section 21(2)(f). Record 1 is a two-line statement that contains the location and direction the driver’s car was travelling, a statement about the traffic, and the impact. Record 2 is a single-sentence statement that contains similar details. Despite the opportunity to do so, neither witness submitted representations to say that they could reasonably expect to experience any distress, much less significant personal distress, if their descriptions of the collision were disclosed. Even if I were to find that disclosure of this information may allow for conclusions about fault in relation to the accident (and I make no finding that it does), given the brevity of the statements and the lack of representations from the witnesses themselves to suggest that the information in the statements is highly sensitive, I find that it is not, and that this factor does not apply to weigh against disclosure.

[80] I find that no additional listed or unlisted factors apply to weigh against disclosure or to outweigh the factor at section 21(2)(d) favouring disclosure.

²⁰ And/or the ministry, in relying on this factor.

[81] In summary, I find that the presumption in section 21(3)(b) is relevant and ought to weigh in favour of withholding the information. I also find that the factor in section 21(2)(d) – fair determination of rights – is applicable and weighs heavily in favour of disclosure.

[82] Taking the factor and the presumption into account and balancing the interests of the parties, including the appellant's right to her own personal information, I find that disclosure of the witness statements would not constitute an unjustified invasion of their personal privacy under section 49(b) in this particular case. I have reached this conclusion on the basis of the nature of the information at issue and because I have concluded that the factor favouring disclosure outweighs the presumption that favours withholding in this case.

[83] For these reasons, I order the ministry to disclose to the appellant the witness statements on records 1 and 2.

ORDER:

1. I order the ministry to issue an access decision to the appellant regarding the information in records 1 and 2 that I have found to be responsive to the appellant's request, treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*.
2. I order the ministry to disclose a severed version of the record to the appellant by October 4, 2022 but not before September 29, 2022. I have enclosed a copy of the records with the ministry's copy of this order and have highlighted the parts that must be disclosed to the appellant. Only the highlighted parts of the records must be disclosed.
3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant.

Original Signed by: _____
Jessica Kowalski
Adjudicator

_____ August 29, 2022