Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4375

Appeal PA19-00321

Ministry of the Solicitor General

March 30, 2023

Summary: This appeal is about access under the *Freedom of Information and Protection of Privacy Act* to a high-profile killer's probation file stemming from his 2003 conviction for assault. The interest in the probation file results from the individual's subsequent murder of eight men between 2010 and 2017.

The ministry denied access to the probation file on the basis of the discretionary law enforcement exemption in section 14(2)(d) (correctional record), and the mandatory personal privacy exemption in section 21(1). The appellant, a member of the media, raised the possible application of the public interest override in section 23.

In this order, the adjudicator rejects the ministry's section 14(2)(d) claim and only partially upholds the ministry's decision to deny access under section 21(1). The adjudicator finds that disclosure of portions of the probation file, except where it contains the personal information of individuals other than the probationer, would not constitute an unjustified invasion of personal privacy under section 21(1)(f) because disclosure is desirable for subjecting the activities of government agencies to public scrutiny. The adjudicator also finds that the public interest override in section 23 of the *Act* applies to some information that would otherwise be exempt under section 21(1). The adjudicator orders the ministry to disclose a severed version of the record to the appellant, by removing some of the probationer's personal information and the personal information of individuals other than the probationer.

Statutes Considered: *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(2)(d), 21(1), 21(2)(a), 21(2)(f), and 23.

Orders Considered: Orders 98, P-460, PO-3407, PO-3461 and MO-4222.

OVERVIEW:

Background

[1] This appeal is about access to a high-profile killer's probation file. In 2003, this individual (the probationer) pled guilty to assault with a weapon and assault causing bodily harm after going to his victim's home in 2001 and beating him with a metal pipe. During his guilty plea, the probationer admitted details of the assault. He was convicted and received a conditional sentence of two years less a day, followed by three years' probation which ended in 2008. The probationer was assessed during this time as presenting a low risk for violence. Conditions of his probation included a ban on associating with male sex workers and frequenting the Village neighbourhood in Toronto (the Village).[1]

[2] In 2010, two years after the probationer completed his probation for the assault, men began disappearing from the Village. In 2013, police questioned the probationer in connection with the disappearances of three men who were later confirmed to be dead, but released him without follow-up.[2]

[3] By the time of the 2013 interview, the probationer had murdered the three men, and went on to murder five more before police apprehended him in 2018 while he was attempting to kill a ninth victim. In 2019, the probationer pled guilty to eight counts of first-degree murder for murders committed between 2010 and 2017. He was sentenced to life in prison and is currently incarcerated in a federal correctional facility.

[4] The probationer's crimes have received a great deal of media attention, as has the quality of the police investigation into the murders he committed.[3] The 2001 assault is his first known assault. The probation file at issue relates to that assault.

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[1] The Village refers to a neighbourhood in downtown Toronto in the area of Church and Wellesley streets.
[2] The probationer was questioned as part of a police investigation into, among other things, the disappearance of three men in the Village between 2010 and 2012.
[3] See, for example, https://www.thestar.com/news/crime/2018/01/31/lgbtq-community-wonders-why-arrest-took-so-long-after-racialized-men-had-been-disappearing-for-years.html; https://theglobeandmail.com/opinion/article-eight-ment-went-missing-from-torontos-gay-village-the-police-went/; as cited by the appellant. The police's investigation was reviewed by The Independent Civilian Review of Missing Person Investigations. The Review's report, authored by the Honourable Gloria J. Epstein and titled *Missing and Missed – The Independent Civilian Review into Missing Person Investigations*, was released on April 13, 2021 and resulted in 151 recommendations. The review considered how the Toronto Police Service conducted missing person investigations, particularly concerning the LGBTQ+ and other vulnerable or marginalized communities, and the adequacy of related policies. The review's terms of reference were expended in 2019 to include the probationer's crimes and the investigative and systemic failures that resulted in police missing several opportunities to link the probationer to missing men in the Village.

The request and appeal

[5] A member of the media made a request to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the probation file. The request sought the following:

> Requesting access to [probationer's name, date of birth] probation file from 2003 assault conviction, which is housed at [a specified address] in Toronto. This includes a 7-page document authored by [the probationer] detailing his life up to 2003, and a psychological report. Request made by media, in the public interest.

[6] The ministry issued a decision denying access to the probation file. In its decision, the ministry claimed that the probation file is exempt under the discretionary law enforcement exemption in section 14(2)(d) (correctional record), as well as the mandatory personal privacy exemption in section 21(1).

[7] 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. The appeal was not resolved in mediation and was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry.

[8] I conducted an inquiry during which I received representations from the ministry and the appellant that were shared between them.[4] I also made efforts to locate individuals whose interests might be affected by disclosure of some of the information contained in the probation file (affected parties) that were ultimately unsuccessful. Given the age of the record, I was unable to obtain current contact information for affected parties except for the probationer. I notified him of the appeal by sending a Notice of Inquiry describing the request and the issues in this appeal, and gave him the opportunity to submit representations regarding the potential disclosure of some or all of his personal information in the probation file. The probationer did not submit any representations.

[9] In this order, I do not uphold the ministry's decision to rely on the section 14(2)(d) exemption for correctional information.

[10] I find that the probation file contains personal information that belongs to the probationer and to other individuals.

[11] Regarding the probationer's personal information alone, I make two findings based on the type of information at issue.

[12] First, I find that disclosure of some of the probationer's personal information is

[4] In accordance with the IPC's *Practice Direction 7* on the sharing of representations.

presumed to be an unjustified invasion of his personal privacy because of the presumptions against disclosure in sections 21(3)(a) (medical, psychiatric or psychological history), 21(3)(d) (employment or educational history), and 21(3)(h) (sexual orientation, religious beliefs or associations), and that this information is therefore exempt under section 21(1). However, I find that there is a compelling public interest within the meaning of section 23 in disclosure of this information, and that this compelling public interest outweighs the purpose of the section 21(1) personal privacy exemption. I therefore order this information disclosed.

[13] Second, regarding the probationer's remaining personal information standing alone, I find that its disclosure would not be an unjustified invasion of his personal privacy because of the factor in section 21(2)(a) (public scrutiny). Applying this factor, I find that disclosure of the probationer's remaining personal information is desirable for the purpose of subjecting the activities of government agencies to public scrutiny (in this case, as they relate to the probationer's supervision by correctional authorities).

[14] As regards the personal information of individuals other than the probationer, including where it is mixed with that of the probationer's, I find that disclosure of this information would be an unjustified invasion of these individuals' personal privacy. I find that this information is exempt under section 21(1), and that there is no compelling public interest in its disclosure that outweighs the purpose of the section 21(1) exemption.

[15] I therefore uphold the ministry's decision in part: I order it to disclose a severed version of the probation file to the appellant, by removing the personal information of individuals other than the probationer, including where that information is intertwined with the probationer's personal information.

RECORD:

[16] The record at issue is a 143-page probation file consisting of case notes; a psychological report; an incident report discussing the probationer's 2018 arrest for murder; offender tracking information system records; a pre-sentence report and records before the court, or prepared by the court; a municipal police occurrence report; various correspondence; and a letter authored by the probationer.

ISSUES:

A. Does the discretionary exemption for correctional records at section 14(2)(d) apply to the probation file?

B. Does the probation file contain "personal information" as defined in section 2(1) and, if so, whose?

C. Does the mandatory personal privacy exemption at section 21(1) apply to the probation file?

D. Is there a compelling public interest in disclosure of any portion of the probation file that clearly outweighs the purpose of the section 21(1) personal privacy exemption?

DISCUSSION:

Issue A: Does the discretionary law enforcement exemption for correctional records at section 14(2)(d) apply to the probation file?

[17] The ministry submits that the entire file is exempt from disclosure under section 14(2)(d). Section 14(2)(d) states that:

> A head may refuse to disclose a record,
>
> > (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Representations

The ministry's representations

[18] The ministry submits that the record is exempt under section 14(2)(d) because the probationer is currently incarcerated.

[19] The ministry says that the record was collected or created by the ministry's Correctional Services Division (CSD) while the probationer was under their supervision, and therefore contains information about his history and details of his supervision by the CSD. The ministry says that because of the probationer's current incarceration in a federal correctional facility, the Correctional Service of Canada (Corrections Canada) is the appropriate agency to comment about potential disclosure of the record, including about whether there may be any potential security concerns associated with disclosure.

The appellant's representations

[20] The appellant notes that the record does not relate to the probationer's present term of correctional supervision, but to an expired term of correctional supervision and submits that section 14(2)(d) cannot apply to the record of an individual whose term of correctional supervision has expired.

Analysis and findings

[21] I find that the record is not exempt under section 14(2)(d) because the relevant

term of the probationer's supervision by a correctional authority has expired.

[22] Section 14(2)(d) exempts a record that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

[23] In Order 98, former Commissioner Sidney B. Linden considered the interpretation of section 14(2)(d). He found that "the purpose of subsection 14(2)(d) is to allow an appropriate level of security with respect to the records of individuals in custody" and that section 14(2)(d) does not apply to the record of an individual whose term of correctional supervision has expired.[5] In Order P-460, Adjudicator Holly Big Canoe found that the overall purposes of the *Act* should be considered in interpreting the section 14(2)(d) exemption.

[24] I agree with and find former Commissioner Linden's and Adjudicator Big Canoe's reasoning relevant to this appeal. Although the probationer is under the control or supervision of Corrections Canada, it is for different crimes than the assault that led to the period of supervision reflected in the probation file. In my view, the fact that the probationer is now under the control of a different correctional authority for different convictions militates against the application of section 14(2)(d) to the probation file.

[25] Section 1 of the *Act* sets out the *Act's* purposes. Section 1(a) provides for a right of access to information under the control of institutions in accordance with the principles that information should be available to the public, and that necessary exemptions from the right of access should be limited and specific.[6] In this case, the conclusion to be drawn from the ministry's argument is that there can be no access to the record of an expired period of supervision because the probationer is now, some 16 years later, under the supervision of a different correctional authority for different crimes. I find this interpretation of section 14(2)(d) to be inconsistent with the principle that necessary exemptions from the right of access should be limited and specific. I also agree with former Commissioner Linden that section 14(2)(d) applies only to records relating to contemporaneous supervision by a correctional authority.

[26] Following former Commissioner Linden's reasoning, I find that the relevant term of correctional supervision has expired and that, because the record relates to a correctional term that has expired, it is not exempt under section 14(2)(d).

[27] I will next consider the ministry's claim that the record is exempt under section 21(1). This requires me first to consider whether the record contains personal

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[5] Order P-352. A judicial review application in respect of Order P-352 was dismissed in *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information & Privacy Commissioner*), [1993] O.J. No. 998. Although the decision of the Divisional Court was reversed at [1993] O.J. No. 3556 (Ont. C.A.), the reversal was solely on the basis of the Commissioner and the lower court to apply the exemption in section 14(1)(f) correctly.

[6] Section 1(a) at paragraphs i and ii.

information.

Issue B: Does the probation file contain "personal information" as defined in section 2(1) and, if so, whose?

[28] The personal privacy exemption in section 21(1) can only apply to "personal information" as that term is defined in the *Act*. I must therefore first decide whether the record contains personal information, and if so, whose.

[29] Section 2(1) defines personal information as "recorded information about an identifiable individual." Recorded information is information recorded in any format, including paper and electronic records.

[30] Information is "about" an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Information is about an "identifiable individual" if it is reasonable to expect that they can be identified from the information either by itself or combined with other information.[7]

[31] Generally, information about an individual in their professional, official or business capacity is not considered to be "about" them, and the *Act* also contains specific provisions for information about an individual in such a capacity.[8] Specifically, sections 2(2.1) and (2.2) provide that the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity is not personal information.[9]

[32] Section 2(1) of the *Act* gives a non-exhaustive list of examples of personal information. It states that:

> "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

[7] Order PO-1880, upheld on judicial review in *Ontario* (*Attorney General*) *v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[9] 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. Section 2(2) also states that a personal information does not include information about an individual who has been dead for more than thirty years.

> 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 where 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 where the disclosure of the name would reveal other personal information about the individual.

Representations

[33] The ministry submits that the record contains considerable personal information belonging to the probationer, to the assault victim and other individuals, and that it contains detailed information about the probationer's relationships with various identifiable individuals.

[34] The ministry submits that its monitoring of the probationer included the collection of an extensive amount of personal information belonging to him and to other affected parties, including the victim. This information includes names appearing with dates of birth, ages, addresses and telephone numbers, and appears with other personal information about affected parties. The ministry says the record also contains information about a crime and individuals' interactions with the police and justice system; medical information (including diagnoses, prescribed medications and psychological assessments); information about the probationer's family background, educational history, employment-related information; and the probationer's personal views.

[35] The appellant does not dispute that the record contains personal information of various individuals, but does not comment on what type of personal information it contains or to whom the personal information may belong. She submits that, to the

extent that the record contains information about ministry staff or other personnel, this information does not relate to those individuals in their personal capacities and its disclosure would not reveal anything personal about them.

Analysis and findings

[36] I have reviewed the record and find that it contains the probationer's personal information as well as the personal information of other individuals. I also find that it contains information about individuals acting in a business or professional capacity that is not those individuals' personal information.

[37] First, the record is about the probationer and his conviction for assault in 2003. It contains his date of birth, sex, race, address and other contact information, his offender tracking information system number, other individuals' views or opinions about him and details of the assault. The record contains a pre-sentence report and a letter the probationer wrote that describes his family history and includes his own views about his upbringing, relationships and background, others' views about the probationer, and other personal information about him. The record contains information about his medical and psychological history, and education and employment history. Collectively, I find that this is the probationer's personal information within the meaning of paragraphs (a) through (h) of section 2(1) of the *Act*.

[38] The record also contains information about other identifiable individuals with whom the probationer interacted, including the victim. This includes their, sex, race, occupations, home addresses, telephone numbers, dates of birth, and the probationer's views about them, as well as their names which, if disclosed in the context of the record, would reveal other personal information, such as their interactions or involvement with the probationer, whether because of the crime or otherwise. I also find this to be their personal information within the meaning of section 2(1) of the *Act*.

[39] The record contains information pertaining to various professionals employed or retained by the ministry, or who dealt with the probationer in a professional, official or business capacity during the course of events leading up to his conviction and throughout the period of his probation. This includes the names and titles of probation officers, a psychologist, police or court officers and staff, and legal counsel. I find that information that identifies these individuals or that is about them in the context of their professional dealings with the probationer is not their personal information but rather is information about them acting in a business or professional capacity. I am satisfied that disclosure of these individuals' information, such as their names and positions, or comments and observations about the probationer, would not reveal anything of a personal nature about them, given that their contact with the probationer was limited to assessing and/or dealing with him in their official roles, including monitoring the probationer during meetings mandated by the terms of his probation. As this information is not personal information as it is defined in section 2(1), it is not exempt

and cannot therefore be withheld under section 21(1).[10]

[40] Finally, I note that the record contains information about the probationer's deceased parents and grandparents in the pre-sentence report and as described by the probationer in his letter about his background and upbringing. Based on my review of the probation file, these individuals have been dead for more than thirty years. Section 2(2) of the *Act* states that personal information does not include information about an individual who has been dead for more than thirty years. I therefore find that information about the probationer's parents and/or grandparents in the record is not personal information as that term is defined in the *Act*, and will order the ministry to disclose it, except where it is inextricably intertwined with the personal information of living individuals other than the probationer.

[41] Having found that the record contains the personal information of multiple individuals, including the probationer, I will next consider the ministry's position that the probation file is exempt under section 21(1) because disclosure of any portion of it would result an in unjustified invasion of personal privacy.

Issue C: Does the mandatory personal privacy exemption at section 21(1) apply to the record?

[42] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.[11] The mandatory personal privacy exemption in section 21(1) creates a general rule that prohibits an institution from disclosing another individual's personal information to a requester. The *Act* also allows for exceptions to this general rule, which are set out in sections 21(1)(a) to (f). If any of the exceptions exist, an institution is required to disclose the information.

[43] The parties did not raise any exception other than section 21(1)(f) and I find that this is the only exception that is relevant in the circumstances. This exception allows for disclosure of personal information where the disclosure is not an unjustified invasion of personal privacy. For the following reasons, I find that this exception applies to some of the personal information in the probation file and that it must, therefore, be disclosed.

Section 21(1)(f): disclosure is not an unjustified invasion of personal privacy

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

[45] Sections 21(2), (3) and (4) give guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy:

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[10] Order PO-2225.
[11] Section 1(b) of the *Act*.

- section 21(2) sets out a list of considerations, or factors, that help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 21(1)(f);

- section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and,

- section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3). None of the circumstances listed in section 21(4) is relevant to the information at issue in this appeal.

[46] As for the relevant sections, section 21(3) should generally be considered first. If any of the presumptions in section 21(3) apply, disclosure of personal information is presumed to be an unjustified invasion of personal privacy. This means that the personal information cannot be disclosed unless there is a compelling public interest in disclosure that outweighs the purpose of the mandatory personal privacy exemption (the "public interest override" in section 23, discussed later).[12]

[47] Where no presumption against disclosure in section 21(3) applies to the information, the factors listed in section 21(2) are considered. To find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances described in section 21(2) favouring disclosure must exist. The list of factors under section 21(2) is not exhaustive. This means that the ministry must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[13]

[48] Accordingly, I will first consider whether any presumptions against disclosure in section 21(3) exist. Although neither party has argued that any of the presumptions apply, I have considered them because of the mandatory nature of the section 21 personal privacy exemption. If any presumptions apply, that information is exempt under section 21(1).

[49] Then, for the personal information that is not subject to a presumption, I will consider whether any factors in section 21(2) apply to weigh in favour or against disclosure of that personal information, and will make a finding about whether the information is exempt under section 21(1).

Representations

The ministry's representations

[50] The ministry says that the record contains disturbing and highly sensitive

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[12] *John Doe v. Ontario* (*Information and Privacy Commissioner*), (1993), 13 O.R. (3d) 767 (Div. Ct).
[13] Order P-99.

personal information and that the factor in section 21(2)(f) applies to weigh against its disclosure. The ministry submits that disclosure, and especially publication in the media, would be personally distressing to all affected individuals.

[51] The ministry says that its historic practice is to not disclose probation files, and that the information in the probation file was never collected in anticipation that it would be disclosed to a media requester to be published and widely disseminated to the world at large. Rather, it was collected as part of the discharge of the CSD's duties under the *Ministry of Correctional Services Act*.[14]

[52] The ministry submits that the personal information is very detailed because of the CSD's mandate; it includes case notes, a psychological report, a pre-sentence report, records stored on the offender tracking information system database and other law enforcement information, employment information, details of a crime and other details about the psychology and private lives of identifiable individuals.

[53] The ministry also says that disclosure would be highly distressing given the record's age and the difficult memories that disclosure would conjure. The ministry says that because the information was compiled starting as far back as 2003, the individuals identified in the record (especially other than the probationer) have resumed their lives and tried to put the time period captured in the record behind them.

[54] Finally, the ministry relies on the *Victims' Bill of Rights, 1995* (the *VBR*) as an unlisted factor, which it says disclosure would "arguably violate" because one of the affected parties is a victim of crime. The ministry says that any consideration of section 21(1) must consider disclosure to be an unjustified invasion of victims' personal privacy because it would contravene a key principle of the *VBR*.

[55] The ministry cites the preamble to the *VBR* which states, in part, that victims of crime should be treated with compassion and fairness, and that the justice system should operate in a manner that does not increase their suffering. The ministry also cites paragraph 1 of section 2, which sets out the principle that "[v]ictims of crime should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials." The ministry argues that this provision binds the CSD as "justice system officials" and that any consideration of section 21(1) must include the VBR. The ministry says that in at least one order, Order PO-3407, the IPC recognized the *VBR* as a relevant factor favouring privacy protection.[15]

The appellant's representations

[56] The appellant submits that the factor in section 21(2)(a) applies and weighs in favour of disclosure because it would allow for public scrutiny of the actions of

[14] R.S.O. 1990, c. M.22.
[15] Order PO-3407 also involved a request for probation records. The adjudicator upheld the ministry's decision to deny access to records at issue.

government agencies.

[57] The appellant submits that, given the Crown's concerns about the probationer's proclivity of violence toward male sex workers articulated at his 2003 sentencing hearing, and the "strict" conditions placed on him at the time, the fact that it took seven years and eight deaths to apprehend him raises serious questions. The appellant says that such questions merit public scrutiny, including about the probationer's compliance with the conditions of his probation and whether probation officers or other individuals knew about the probationer's ongoing risk to the LGBTQ+ community, and to male sex workers in the Village in particular, and whether the probation file could have provided police with information that may have led to the probationer's earlier apprehension.

[58] The appellant says that this is a clear case where the integrity of the criminal justice system and the ability of government agencies to adequately respond to known threats and protect the community have been called into question. She submits that disclosure could shed light on what the government and correctional services in particular did or did not know about the probationer's risk and how these risks were handled.

Analysis and findings

[59] In considering the exception in section 21(1)(f), I must determine whether disclosure of all or any portion of the probation file would constitute an unjustified invasion of the personal privacy of any individual whose personal information is in the record.

Do any presumptions against disclosure in section 21(3) apply?

[60] Based on my review of the probation file, I find that it contains information to which three presumptions against disclosure in section 2(1)(3) apply.

[61] The record contains discussion about the probationer's upbringing and employment, contains his résumé (and therefore information about his educational and employment history), and information about his medical history (discussed in the probation file case notes and in the psychological report identified in the request, for example). The record also contains discussion about various individuals' sexual orientation and religious associations, and describes an individual's ethnic origin. I find that disclosure of this information is presumed to be an unjustified invasion of personal privacy pursuant to sections 21(3)(a), (d) and (h), which state that:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

> …
>
> (d) relates to employment or educational history;
>
> …
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious beliefs or associations.

[62] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by any factors or circumstances under section 21(2).[16] As a result, I find that medical information (including psychological and medical history, diagnoses, medications and treatment), information about employment or educational history, or sexual orientation of the probationer and/or any other identifiable individuals in the record is exempt because disclosure of these types of personal information is presumed to be an unjustified invasion of the probationer's or those individuals' personal privacy.

[63] Although I find this information is exempt under section 21(1), I will later consider whether it is subject to the public interest override at Issue D, below.

Section 21(2): factors that weigh in favour of or against disclosure

[64] I will next consider whether the remaining information is exempt under section 21(1) by considering the possible application of factors in section 21(2), under which an institution is required to consider "all the relevant circumstances" in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. As I have already described above, the ministry relies on the factor in section 21(2)(f) (highly sensitive) and the *VBR* as weighing against disclosure, while the appellant relies on the factor in section 21(2)(a) (public scrutiny) as weighing in favour of disclosure. These provisions state that:

> 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 Government of Ontario and its agencies to private scrutiny;
>
> …
>
> (f) the personal information is highly sensitive;

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

Section 21(2)(a): public scrutiny

[65] The purpose of section 21(2)(a) is to promote transparency of government actions. It contemplates disclosure of information where it is desirable for the purpose of subjecting the activities of the government (as opposed to the views or actions of private individuals) and its agencies to public scrutiny.[17] In applying this factor, an institution should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.[18]

Section 21(2)(f): highly sensitive

[66] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 14(2)(f) requires the ministry to consider whether the personal information is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[19]

Unlisted factor: Victims' Bill of Rights, 1995

[67] The list of factors is not exhaustive. This means that the ministry must also consider any circumstances that are relevant, even if they are not listed in section 21(2).[20] As I have noted above, the ministry cites the *VBR* as an unlisted factor weighing against disclosure.

Analysis and findings

[68] As noted above, my consideration of the factors in section 21(2) relates only to personal information that is not presumed to be exempt by operation of sections 21(3)(a), (d) and (h).

[69] Below I find that the factor in section 21(2)(f) applies to the entire record, insofar as the record arises from a violent assault and the probationer's resulting conviction and sentence. I have also considered whether the factor in section 21(2)(a) applies and find that it does, in part.

[70] For the reasons set out below, I find that section 21(2)(a) outweighs the factor in section 21(2)(f) as regards the probationer's personal information standing alone, because disclosure of the probationer's information is desirable for the purpose of scrutinizing the activities of government agencies in their supervision of the probationer. This personal information is, therefore, not exempt under section 21(1)

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[17] Order P-1134.
[18] Order P-256.
[19] Orders PO-2518, PO-2617, MO-2262 and MO-2344.
[20] Order P-99.

and must be disclosed.

[71] On the other hand, for the personal information of other individuals, including where it is inextricably intertwined with that of the probationer, I find that the section 21(2)(f) factor outweighs section 21(2)(a). Their personal information is therefore exempt under section 21(1) and must be withheld.

[72] For the purpose of further fleshing out my analysis below, I have grouped the personal information at issue into three categories: the personal information of the probationer where it appears alone; the personal information of individuals other than the probationer and whose personal information can reasonably be severed from the record; and the personal information of individuals other than the probationer where it is intertwined with the probationer's such that it cannot reasonably be severed.

The probationer's personal information standing alone

[73] The probation file is primarily about the probationer. It reveals him to be the perpetrator of a violent assault, and contains details of the crime. The probation file describes the reasons for the assault from the probationer's perspective, contains medical information about him, including a psychological assessment, and contains other details about the probationer's life and work. Although I find that this information is highly sensitive (and that the factor in section 21(2)(f) applies to it), I find that, as far as the probationer's personal information is concerned, the factor in section 21(2)(f) is outweighed by the factor in section 21(2)(a), which weighs in favour of disclosure of personal information where it is desirable for the purpose of public scrutiny of government agencies.

[74] The underlying circumstances of this appeal are highly unique: as the appellant points out, only two Canadian serial killers have been convicted of killing more people than the probationer.[21] Accordingly, in my view, the appellant's request ought not to be regarded as a routine request for a probation file, such that ordering disclosure could be seen as paving a way for access to probation files for other people under correctional supervision.

[75] This appeal presents the unusual circumstance where a correctional authority had under its supervision an individual who was assessed to present a minimal risk for violence but who, two years after completing his probation for a violent offence, began an escalation to homicide that would earn him infamy as one of Canada's most notorious serial killers. His killings were connected to a neighbourhood he was expressly prohibited from frequenting under the conditions of his probation.

[76] According to the appellant's representations, although the Crown did not seek

[21] The appellant identifies in her representations the two convicted Canadian serial killers convicted of murdering more people than has the probationer, and the two convicted of murdering eight people, like the probationer.

incarceration for the 2001 assault, conditions placed on him reveal that the Crown expressed some concern about the probationer's apparent proclivity of violence toward male sex workers. This is reflected in the probation conditions, which included bans from attending the Village, from frequenting male sex workers and from using illicit drugs, and requirements that the probationer see his family doctor, seek counseling and submit a DNA sample.

[77] According to the appellant's further representations, the probationer was assessed as presenting a low risk for violence. Meanwhile, excerpts provided by the appellant from the probationer's sentencing for murder in 2018 reveal that the court described the probationer as someone who "has [been] and continues to be a highly dangerous serial killer" and is "morally bankrupt."[22] It is in those intervening years that the probationer murdered eight men whom he encountered in the Village, murders for which he gained infamy, and was not apprehended by police until attempting to murder his ninth victim in 2018.[23]

[78] In these circumstances, I accept the appellant's submission that this is a clear case where the integrity of the criminal justice system and the ability of government agencies to respond to known threats to a community and to protect that community have been called into question. I find that the desire for public scrutiny in this case stems not only from the probationer's identity and the notoriety of his crimes, but from a concern in understanding how he could go on to become a serial killer starting a short time after being assessed as a low risk to the very community that he targeted in his murders. I accept that the purpose of disclosure is desirable to scrutinize what correctional authorities knew about the probationer that informed their treatment of and supervision of him.

[79] It may be that scrutiny of the record will reveal no lapses in his supervision. But this cannot happen without the disclosure that I am satisfied section 21(2)(a) contemplates in these circumstances. I therefore find that the factor in section 21(2)(a) applies and weighs in favour of disclosure of the probationer's personal information because it is desirable for subjecting the actions of government agencies, and specifically correctional authorities, to public scrutiny. In the circumstances, I find that this factor outweighs the factor in section 21(2)(f) which favours privacy protection of the probationer.

[80] I find, therefore, that disclosure of the probationer's personal information where it appears alone would not be an unjustified invasion of his personal privacy. Accordingly, it is not exempt under section 21(1) and the ministry must disclose it to the appellant.

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[22] *R. v. [the probationer]*, 2019 ONSC 963, at para. 19.
[23] *R. v. [the probationer]*, 2019 ONSC 963, at para. 19.

Personal information of individuals other than the probationer

[81] While the record is primarily about the probationer and contains highly sensitive personal information belonging to him, including details about his supervision while under probation, his work, family and home life, and the motivations for the crime as recounted by the probationer, it also contains the personal information of other individuals. In addition to details of the crime, the record contains information about the victim, information about various individuals' sexual orientation and activities, and personal information belonging to individuals not involved in the crime, including the probationer's business clients and others whose lives intersected with the probationer's. Regarding the latter, I find that disclosure of this information could reasonably be expected to cause these individuals significant personal distress, given the probationer's notoriety and later crimes, and the circumstances under which these individuals' personal information came to appear in the record. I find that this is especially so given that the record relates to the probationer's first known offence before he gained notoriety as a serial killer.

[82] Considering the circumstances and the context in which the information in the probation file was collected, I find therefore that the factor in section 21(2)(f) (highly sensitive) ought to be given significant weight when balancing the appellant's rights of access against the privacy interests of individuals other than the probationer.

[83] Regarding the ministry's argument about the application of the *VBR*, I note that the *Act* prevails over any other Act unless the *Act* or the other Act state otherwise.[24] I therefore find that the *VBR* has no direct application in the circumstances. However, I agree with the ministry that victims of crime should be treated with compassion and with consideration for their privacy interests. In the particular circumstances of this appeal, however, I find that disclosure of sensitive information about a crime and the victim, including the nature of the victim's interactions with the probationer, could reasonably be expected to cause the victim significant personal distress and that the factor in section 21(2)(f) therefore applies to this information with all the more reason to favour protection of the victim's privacy interests.

[84] I have also considered whether the factor in section 21(2)(a) applies to weigh in favour of disclosure of the personal information of individuals other than the probationer and I find that it does not. I have already found that disclosure of the probationer's personal information is desirable for the purpose of subjecting the activities of government agencies to public scrutiny because it may shed light on what agencies entrusted with his supervision knew about the probationer at the time, and how well he was supervised in the circumstances. However, from my review of the materials before me, including the record, I am not persuaded that disclosure of other people's personal information which appears in the record simply because their lives crossed with the probationer's would assist any ongoing discourse about or scrutiny of

[24] Section 67(1) of the *Act*.

the probationer's supervision by a government correctional authority. Moreover, the appellant has herself indicated that severing these individuals' personal information from the probation file would satisfy the protection of their privacy interests.

[85] In sum, I find that the factor in section 21(2)(f) favouring privacy protection applies to the personal information belonging to individuals other than the probationer and that no factors favouring disclosure apply to this information.

[86] I therefore find that disclosure of the personal information of individuals other than the probationer would be an unjustified invasion of their personal privacy. Accordingly, it is exempt under section 21(1) and the ministry must withhold it from the appellant.

Mixed personal information of the probationer and other individuals

[87] For similar reasons, I find that, where the personal information of individuals other than the probationer is intertwined with the probationer's personal information such that it cannot reasonably be severed, the factor in section 21(2)(f) protecting these individuals' personal privacy outweighs the section 21(2)(a) factor favouring disclosure of the probationer's personal information. I find that this is especially so because, by its nature, this information includes descriptions of the assault and the probationer's interactions with others, whether by fate, fortune or family. It includes information contained in the letter authored by the probationer and submitted to court describing his upbringing and family. In the circumstances, the distress that disclosure could reasonably be expected to cause these individuals outweighs any public scrutiny consideration favouring disclosure of those portions containing the affected parties' personal information mixed inextricably with the probationer's.

[88] I have already found that disclosure of the probationer's personal information is desirable for scrutinizing what correctional authorities knew about the probationer while under their supervision that informed their treatment of him, and whether he complied with the terms of his supervision. However, based on the contents of the record and considering the purpose of section 21(2)(a), I find that, where these individuals' personal information is inextricably mixed with the probationer's personal information, its disclosure would not serve to appreciably add to the scrutiny of a correctional authority's supervision of the probationer, given my conclusion that the probationer's personal information appearing alone must be disclosed.

[89] I therefore find that the factor in section 21(2)(f) applies to favour protecting the privacy interests of individuals other than the probationer where it is inextricably intertwined with the probationer's personal information, and outweighs the factor in section 21(2)(a) because disclosure of these individuals' personal information would not meaningfully further the goal of subjecting the activities of government to public scrutiny.

[90] For these reasons, I find that disclosure of the personal information of individuals other than the probationer, where it is intertwined with that of the probationer, would be an unjustified invasion of the other individuals' personal privacy. Therefore, it is exempt under section 21(1) and the ministry must withhold it from the appellant.

Summary

[91] In summary, I find that the probationer's personal information, standing alone, is not exempt under section 21(1) and must be disclosed.

[92] I find that the following information is exempt under section 21(1):

- the personal information of individuals other than the probationer,
- the personal information of others mixed with the probationer's, and
- the probationer's personal information that is presumed exempt.

[93] Next, I will consider whether the personal information I have found to be exempt under section 21(1) must be disclosed to the appellant because of the public interest override in section 23.

Issue D: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 21(1) personal privacy exemption?

[94] The final issue before me is whether the public interest override at section 23 applies to the exempt information so as to outweigh the purpose of the section 21 exemption.

[95] Section 23 of the *Act* provides for the disclosure of records that would otherwise be exempt under certain other sections of the *Act*. Section 23 states that:

> 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.

[96] For section 23 to apply, two requirements must be met: there must be a compelling public interest in disclosure of the records, and this interest must clearly outweigh the purpose of the exemption. The existence of a compelling public interest is not sufficient to trigger disclosure under section 23; the interest must also clearly outweigh the purpose of the exemption. 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.[25]

[97] 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 an appellant who has not had the benefit of reviewing the requested records before making submissions that section 23 applies. To find otherwise would be to impose an onus which an appellant could seldom, if ever, meet. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of an exemption.[26]

Compelling public interest

[98] In considering whether there is a public interest in disclosure of the probation file, the first question to ask is whether there is a relationship between it and the *Act's* central purpose of shedding light on the operations of government.[27]

[99] The IPC has stated in previous orders that, in order to find a compelling public interest in disclosure, the information in the record must inform or enlighten the population 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.[28]

[100] The IPC has defined the word "compelling" as "rousing strong interest or attention."[29] Any public interest in not disclosing a record that may exist must also be considered.[30] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[31]

[101] A compelling public interest has been found to exist where, for example, the integrity of the criminal justice system is in question.[32] A compelling public interest has not been found where, for example, a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[33] where there has already been wide public coverage or debate of the issue and the records would not shed further light on the matter,[34] or the records do not respond to

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[25] Order P-1398, upheld on judicial review in *Ontario* (*Ministry of Finance*) *v. Ontario* (*Information and Privacy Commissioner*), cited above.
[26] Order P-244.
[27] Orders P-984 and PO-2607.
[28] Orders P-984 and PO-2556.
[29] Order P-984.
[30] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)
[31] Orders PO-2072-F, PO-2098-R and PO-3197.
[32] Order PO-1779.
[33] Orders P-123/124, P-391 and M-539.
[34] Order P-613.

the applicable public interest raised by the appellant.[35]

Outweighs the purpose of the exemption

[102] The existence of a compelling public interest alone is not enough to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances. 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.[36]

[103] A public interest is not automatically established because the requester is a member of the media.[37]

Representations

The ministry's representations

[104] The ministry submits that a significant amount of information about the probationer is already in the public realm, including the requested psychological report, as a result of the court case relating to the probationer's more recent crimes. It submits that, to the extent that there are any public interest considerations, these have already been addressed through this release of information.

[105] The ministry also says that the records were created more than a decade ago, and that, "[g]iven their age, we cannot think of a reason why there is a compelling public interest in ordering them out now."

[106] The ministry submits that there is no compelling public interest that would override the interest in protecting such highly sensitive personal information (including personal information belonging to a victim), and that the appellant's assertion that "the public has a right to know as much as possible" does not acknowledge the privacy protections enshrined in the *Act* and is therefore insufficient to meet the test for application of the override in section 23.

The appellant's representations

[107] The appellant submits that the probationer's interactions with law enforcement and correctional services during his probation are matters of "utmost public concern." The appellant says that, in addition to the number of his victims, the probationer is believed to be the first serial killer in Canadian history to target the LGBTQ+ and

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[35] Orders MO-1994 and PO-2607.
[36] Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.
[37] Orders M-773 and M-1074.

immigrant communities.[38]

[108] The appellant says that any privacy interests the probationer may have had in his 2003 probation file were relinquished when he decided to murder eight vulnerable people; she notes he will not be eligible for parole until age 91 and is "highly unlikely" to ever be released.[39]

[109] The appellant argues that the core of the probation file relates to the probationer himself, not to third parties or to the victim, and she does not dispute that much information relating to the 2003 assault conviction has already been made public, including the probationer's psychological assessment, pre-sentence report, and court recordings of the guilty plea and sentencing hearing.

[110] The appellant argues that, on a broader level, the probationer is a notorious serial killer who will form a part of Canada's and Toronto's history, and that there is therefore a general public interest in obtaining and preserving as much relevant detail about him as possible. She submits that disclosure is important not only for subjecting the activities of the government and its agencies to public scrutiny, but for preserving and creating an accurate, publicly-available record in relation to what the appellant describes as "one of Canada's most horrible tragedies." The appellant argues that in our democratic society, openness and transparency are the rule, not the exception, and that this should remain true when it comes to notorious murderers who will spend the rest of their lives in jail. The appellant submits that redacting the personal information of individuals other than the probationer would appropriately balance the compelling public interest in disclosure against the purpose of the personal privacy exemption.

Analysis and findings

[111] As I have already discussed, section 21(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.[40] The exemption reflects one of two key purposes of the *Act*, which is to protect the privacy of individuals with respect to personal information about themselves held by institutions.[41] Therefore, the public interest in disclosure must be balanced against the privacy interests of the individuals identified in the record.

Section 23 and the probationer's personal information

[112] Because I have already found that some of the probationer's personal information is not exempt and must be disclosed, my consideration of the public interest override applies only to the probationer's personal information that I have

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[38] *R. v. [the probationer]*, 2019 ONSC 963.
[39] *R. v. [the probationer]*, supra, at para. 28.
[40] Order P-568.
[41] Order PO-2805.

found to be exempt – that is, the information that is subject to the presumptions in sections 21(3)(a), (d) and (h). Specifically, this means the portions of the record that discuss the probationer's medical or psychological history (including the psychological report identified in the request); his education and employment history (including his résumé and other work history); and discussion of the probationer's sexuality.

[113] Although I need only consider the public interest override in respect of these specific portions of the record, I find, for the reasons set out below, that the public interest override would apply to all of the probationer's personal information standing alone. In other words, although I have found above that some information about the probationer is not exempt under section 21(1) (because disclosure is desirable for the purpose of public scrutiny), even if that information were exempt under section 21(1), I am satisfied that the public interest override applies to it for similar reasons that follow.

[114] I reiterate that, based on the circumstances surrounding the probationer and questions regarding the handling of investigations into his homicides, the appellant's request ought not to be seen as a routine request for a probation file and that, as the appellant points out, only two Canadian serial killers have been convicted of killing more people than has the probationer.[42]

[115] The circumstances are unique because they relate to an individual who was convicted of a violent offence and who was afterwards assessed as presenting a minimal risk of violence, but who went on to murder eight people. Based on the materials before me, media interest in the probationer remains high given those later offences and the unanswered questions that continue to permeate discussion of the probationer, not the least of which is whether he could have been apprehended before killing eight men and attempting to kill a ninth. Although I am mindful that those offences are not the subject of the probation file, I find that the public interest in the probation file is compelling because of the circumstances that followed the completion of the probationer's conditional sentence.

[116] The probationer's later offences provide a context for a need to understand the totality of what was before the correctional authority that supervised him. In other words, what did correctional authorities know (or not know) about the probationer after his 2003 conviction and by the time his probation was completed? And, was the authority's supervision sufficient? Disclosure may serve to shed some light on these questions, including the manner in which the probationer was supervised, what was known by the correctional authority that led to the conclusion that the probationer presented a low risk for violence, and whether the probationer complied with the terms of his probation.

[117] Questions surrounding delays in apprehending the probationer which allowed

[42] The appellant identifies in her representations the two Canadian serial killers convicted of murdering more people than the probationer, and the two convicted of murdering eight people, like the probationer.

him to continue killing undetected are compounded by concerns that are already part of the public record regarding the conditions of his probation, which specifically prohibited him from attending the part of Toronto where the probationer sought out his victims.

[118] In Order MO-4222, Adjudicator Daphne Loukidelis considered a request for access to the police's 2013 videotaped interview of the probationer. She found that substantial public discussion of the interview had already been made possible by a report of The Independent Civilian Review of Missing Person Investigations titled *Missing and Missed*.[43] That report undertook an expansive review of and identified flaws in the police's investigation of the probationer and its "serious deficiencies," which included the 2013 interview at issue in that appeal. Adjudicator Loukidelis found that the *Missing and Missed* report had already described and scrutinized the interview in detail. She found that the brief portions of the interview that contained only the probationer's personal information were already comprehensively described in the public report so that the public interest override did not apply.

[119] The same is not true of the 2003 probation file. The probation file relates to the probationer's first known offence. That offence and his probation have not had the same level of scrutiny as his later crimes. Because of outstanding questions about the delays in apprehending the probationer and the associated failures of law enforcement that have dominated discussion about him, I am satisfied that disclosure of the probationer's personal information can shed light on the question of 'what did the government know' and the related question of 'was the government's supervision adequate given what it knew'.

[120] As I have already noted, the probation file may reveal no gaps in the probationer's supervision after the 2003 conviction. However, I am satisfied that the public interest in understanding the incongruity between the probationer's level of risk assessment and his subsequent killings is compelling and that the whole of what was before the government during the time of the probationer's supervision serves the purpose of shedding light on the activities of government agencies who were entrusted with supervision of the probationer in the context of the ongoing discussion about him because of his later crimes. Further, I find that the information that speaks directly to his supervision also sheds light on these matters.

[121] Given the apparent continued interest in the probationer,[44] and, in particular, in

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[43] See footnote 3, supra. According to Order MO-4222, after a 31-month investigation and responsive, a report titled *Missing and Missed – Report of the Independent Civilian Responsive into Missing Person Investigations* was released in April 2021. This report has provided the public with a significant source of information regarding the probationer's homicides after its Terms of Reference were expanded to include them in the review's probe of the shortcomings of multiple missing person investigations. The review prepared a report with its findings and recommendations "in a form appropriate for release to the public pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*."

[44] The appellant's representations cite articles published about the probationer by various media outlets, even during the course of this inquiry.

whether he could have been apprehended sooner, I am satisfied that the public has an interest in knowing whether or not correctional agencies involved acted effectively, especially in light of what is known about the subsequent crimes. Disclosure may provide a potentially meaningful connection to what is already known because of the homicides, and may also assist in potentially understanding whether or not there was indeed any information in the custody of law enforcement that could have assisted in apprehending the probationer before he killed eight people.

[122] Finally, I find no basis in the *Act* to support the ministry's position that there can be no public interest in the record because any wrongs may have happened over a decade ago. Based on the appellant's representations, there continues to be current media coverage regarding the probationer. In this case, I find that disclosure is warranted under section 23 despite the record's age because the probationer was arrested in 2018 and sentenced in 2019, and there remain unanswered questions about the handling of his case. I find that there is compelling public interest in disclosure because concerns remain about the information that law enforcement agencies and public institutions had about the probationer for more than ten years when it took seven years and eight deaths for him to be apprehended on murder charges. In these circumstances, I accept the appellant's submission that unanswered questions remain about the handling of his case and that the passage of time has only exacerbated those questions because of what has already been made public.

[123] I find, therefore, that there is a compelling public interest in disclosure of the probationer's information where it appears alone in the record.

[124] The next question is whether this compelling public interest outweighs the purpose of the section 21(1) exemption in the circumstances.

[125] The probationer's personal information can be classed into two broad categories: the information about him that was before the government, and information relating specifically to the probationer's supervision. I have already explained above why there is a compelling public interest in the disclosure of both types of information.

[126] The purpose of section 21(1) is to protect individuals against unjustified invasions of their personal privacy. In the circumstances, I find that the public interest in disclosure of both types of information clearly outweighs the purpose of the section 21(1) exemption for the reasons discussed above. These include a desire to shed light on how the probationer's supervision was conducted and what information the correctional agency entrusted with his supervision had before it, including the assessment of the probationer as not having violent tendencies before he killed eight people; the apparent ongoing interest in the probationer because of the killings that began a short time after his probation ended; and the relative lack of information about the probationer's supervision after his first known assault compared with the scrutiny given to the later investigation into the murders for which the probationer was eventually convicted.

[127] Having found that the public interest in disclosure of both types of information clearly outweighs the purpose of the section 21(1) exemption, I need not consider the appellant's additional argument that any personal privacy rights the probationer has in respect of the probation file were relinquished when he decided to murder eight people.

[128] However, I would note that in Order MO-4222, Adjudicator Loukidelis did consider whether an individual's right to privacy is diminished because of the nature of their crimes. As noted above, at issue before Adjudicator Loukidelis was the 2013 police interview of the probationer during their investigation into the Village homicides. In considering whether the probationer had a diminished privacy interest in the 85-90 seconds of the 16.5-minute video that contained his personal information alone, she stated that:

> In my view, this argument has considerable merit and has support in past Canadian court decisions in other areas of the law. In particular, the courts have recognized – in the context of section 8 of the *Canadian Charter of Rights and Freedoms* (search and seizure) – that a convicted offender has a substantially reduced expectation of privacy, particularly when the individual is incarcerated.[45]

No compelling public interest in disclosure of personal information of individuals other than the probationer, including where that information is intertwined with the probationer's

[129] At the outset, I find that there is no compelling public interest in disclosure of any of the personal information of individuals in the record other than the probationer. This includes the probationer's victim, his family members,[46] and other individuals whose personal information appears in the record because their interactions or contact with the probationer are recorded in the probation file. This includes information that would identify the probationer's clients, or individuals to whom the probationer refers in correspondence submitted to the court discussing his life, including those with whom he had or says he had relationships.

[130] Neither the appellant nor the ministry has identified a compelling public interest in disclosure of this information and I find that there is none. I accept that there may be some interest in this information, but find that it does not rise to the level of compelling. I find no basis to conclude that disclosure of this information would inform

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[45] Order MO-4222, citing *R. v. Stillman*, 1997 CanLII 384 (SCC) at para 61, and *R. v. Sutherland (J.D)*, 1997 CanLII 22990 (MB QB). In the access context, Order MO-4222 notes Order P-679: In that decision (where no presumption against disclosure in section 21(3) applied), former Assistant Commissioner Irwin Glasberg found that the factor weighing against disclosure in section 21(2)(i) (unfair damage to reputation) did not apply because disclosure of personal information about an individual who had been convicted of a criminal offence and subsequently served a prison term would not "unfairly" damage his reputation.

[46] Except those who have been dead for more than 30 years, as discussed under Issue B.

or enlighten the continued discourse about the probationer or the activities of government in relation to him, particularly given my finding that all of the information about the probationer standing alone must be disclosed. I will therefore order the ministry to sever others' personal information in the copy of the probation file that is being ordered disclosed. I also find that disclosure of the probationer's personal information where it is mixed with that of others would not meaningfully add to the information I am already ordering the ministry to disclose, which is all of the probationer's personal information standing alone. I will also therefore order the ministry to sever this information from the record to be disclosed.

CONCLUSION:

[131] For all of these reasons, I will order the ministry to disclose a severed version of the probation file to the appellant by removing the personal information of individuals other than the probationer, including where that information is intertwined with the probationer's personal information.

ORDER:

1. I uphold the ministry's application of section 21(1) to the record, in part.

2. I order the ministry to disclose to the appellant a severed version of the record, in accordance with the copy of the record being provided with the ministry's copy of this order. The ministry shall disclose a copy of the severed record to the appellant by **May 8, 2023** but not before **May 3, 2023**.

3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the record disclosed to the appellant.

Original signed by: March 30, 2023

Jessica Kowalski
Adjudicator