

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4439

Appeal PA21-00405

Ministry of the Solicitor General

September 21, 2023

**Summary:** The requester and another individual were involved in an incident to which the Ontario Provincial Police (the OPP) responded and about which police reports were generated. The requester sought access to these reports from the Ministry of the Solicitor General (the ministry) under the *Act*. The ministry claimed the discretionary personal privacy exemption in section 49(b) to deny access portions of the responsive reports.

In this order, the adjudicator upholds the ministry's decision that the information at issue in the police reports is exempt by reason of section 49(b).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information), 21(2)(a), 21(2)(b), 21(2)(f), 21(3)(b), and 49(b).

### OVERVIEW:

[1] The requester and another individual were involved in a dispute to which the Ontario Provincial Police (the OPP)<sup>1</sup> responded and about which police reports were generated. The requester is seeking access to these reports from the Ministry of the Solicitor General (the ministry) under *the Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*).

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<sup>1</sup> The OPP is part of the Ministry of the Solicitor General.

[2] The ministry located 20 pages of responsive records and issued a decision granting partial access. The ministry denied access under the discretionary exemptions at sections 49(a) read with 14(1)(l) (law enforcement) and 49(b) (personal privacy). The ministry also claimed that certain information in the responsive records is non-responsive to the request.

[3] The requester (now appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[4] During mediation, the mediator confirmed that the appellant is not disputing the ministry's decision to deny access to information under sections 49(a) with 14(1)(l). Accordingly, sections 49(a) with 14(1)(l) are no longer at issue in the appeal.

[5] The appellant also confirmed that he is not disputing the ministry's decision that some of the information is non-responsive to the request. Accordingly, the information the ministry claimed is non-responsive is no longer at issue in the appeal.

[6] The mediator sought consent from two of the affected persons to allow the ministry to disclose their statements given to the police to the appellant, however, consent could not be obtained.

[7] The appeal could not be fully resolved at mediation and moved to adjudication, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the representations of the ministry and three affected persons, identified in the disclosed portions of the records as the neighbour and two park employees.

[8] The ministry provided representations, which were shared with the appellant. The appellant provided representations in response.<sup>2</sup> The appellant then provided representations in response to the ministry's representations and narrowed the information sought to that provided by his neighbour to the OPP.

[9] In this order, I uphold the ministry's decision that the information at issue is exempt from disclosure by reason of section 49(b).

## **RECORDS:**

[10] The records are described in the following table and relate to an altercation on June 4 of a specified year between the appellant and his neighbour,<sup>3</sup> both of whom complained to the OPP about being assaulted by the other. Neither the appellant nor

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<sup>2</sup> One of the park employees responded and objected to the disclosure of their information in the records.

<sup>3</sup> The OPP characterize the altercation to which the records relate as a "neighbour dispute." The appellant disagrees that the incident in the records is about a dispute between neighbours as the appellant and this other individual do not live adjacent to each other, but in the same vicinity. Nevertheless, in this order, I will refer to the other individual whose information is at issue in the records as the neighbour.

the neighbour were charged with assault by the OPP as a result of this altercation.

<b>Record #</b>	<b>Description of record</b>	<b>Number of pages</b>
1	Occurrence Summary dated June 4	1
2	General Report dated June 17	3
3	Supplementary Occurrence Report dated June 17	1
4	Supplementary Occurrence Report dated June 17	1
	Supplementary Occurrence Report dated June 17 (disclosed to the appellant, not at issue)	
5	Supplementary Occurrence Report dated June 24	2
6	Written transcript of Audio Statement of Appellant dated June 23	3
7	Supplementary Occurrence Report dated June 28	1
8	Statement of Complainant	2
9 and 10	Written transcripts of Audio Statements of the two park employees	6 (3 pages each)

[11] The appellant is only interested in receiving access to the undisclosed information provided to the OPP by the neighbour, less this individual's date of birth, home address, and personal phone number. Therefore, the date of birth, home address, and personal phone number of the neighbour, as well as the information of the two park employees, is not at issue in this order.

[12] Based on my review of the records, this means that the only information remaining at issue is in records 1, 2, 7 and 8. The withheld information in the remaining records (records 3, 4, 5, 6, 9 and 10) does not contain information about statements made by the neighbour and it is therefore not sought by the appellant. I will not consider access to this information in this order. This information should not be disclosed to the appellant.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- C. Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[13] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates.

[14] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.”

[15] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.<sup>4</sup>

[16] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>5</sup>

[17] 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.<sup>6</sup>

[18] Section 2(1) of the *Act* gives a list of examples of personal information:

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

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

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<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

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

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name 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.

[19] 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."<sup>7</sup>

[20] 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.<sup>8</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>9</sup>

### ***Representations***

[21] As indicated above, I am considering only whether the appellant should receive access to the personal information of his neighbour.

[22] The ministry states that the records contain the personal information of the appellant and his neighbour, which was compiled in relation to an incident investigated by the OPP involving the appellant.<sup>10</sup>

[23] Of the information at issue, the ministry states that the personal information includes the statement provided by the neighbour, and their opinions and actions, collected as part of an OPP investigation.

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<sup>7</sup> Order 11.

<sup>8</sup> 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.

<sup>9</sup> See sections 21(1) and 49(b).

<sup>10</sup> In addition, the records contain a Workplace Identification Number (WIN) belonging to an OPP Computer Aid Dispatch operator, which the ministry submits is the personal information of this individual. The appellant is not interested in receiving this information and I will not consider it further in this order.

[24] The appellant's representations focus on what happened in his altercation with the neighbour. The appellant did not address directly whether the records contain personal information, other than submitting that, in his view, the neighbour was acting in an official, not personal, capacity in his interaction with him.

### ***Findings***

[25] Based on my review, I find that records remaining at issue include information that qualifies as both the personal information of the appellant and the neighbour. This information includes their names, which appear with other personal information about them. The personal information of the neighbour includes views and opinions and other details of a personal nature about him.

[26] I disagree with the appellant's submission that his neighbour was acting in an official, not a personal, capacity in his interaction with him. It is clear from the records at issue and the appellant's representations that the appellant and the neighbour have been involved in a longstanding and antagonistic personal dispute.

[27] Therefore, as the records contain both the personal information of the appellant and his neighbour, I will consider the application of section 49(b) to the personal information at issue in the records.

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

[28] Because I have found that the records at issue contain both the personal information of both the appellant and his neighbour, it is necessary to consider the appellant's access right under section 47(1) of the *Act*.

[29] 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.

[30] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[31] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

[32] 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).

[33] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be

an unjustified invasion of the other individual's personal privacy.

[34] If any of the exceptions in paragraphs (a) to (e) of 21(1) or if any of the paragraphs in section 21(4)<sup>11</sup> of the *Act* apply, disclosure of personal information is not an unjustified invasion of personal privacy under section 49(b) and the information is not exempt from disclosure under section 49(b). These paragraphs do not apply in this appeal.

[35] Sections 21(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[36] In deciding whether the disclosure of the personal information at issue would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.<sup>12</sup>

[37] Sections 21(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[38] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.<sup>13</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[39] The list of factors under section 21(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 21(2).<sup>14</sup>

### ***Representations***

[40] The ministry states that the records were created pursuant to a law enforcement investigation conducted by the OPP related to a neighbour dispute. Based on the contents of the records, the ministry submits that personal information was clearly compiled by the OPP and is identifiable as part of its investigations of potential violations of the law, referring to the presumption at section 21(3)(b).

[41] The ministry also claims that the personal information is highly sensitive and relies on the factor that favours privacy protection in section 21(2)(f) in withholding access to the information at issue in the records.

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<sup>11</sup> 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.

<sup>12</sup> Order MO-2954.

<sup>13</sup> Order P-239.

<sup>14</sup> Order P-99.

[42] The ministry relies on the IPC orders<sup>15</sup> which have found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the police is "highly sensitive" for the purpose of section 21(2)(f). The ministry submits that the reasoning in these orders apply to this appeal, because the OPP were also investigating highly sensitive issues related to the dispute involving the appellant; and, it is reasonable to expect that significant distress would result if the personal information of the neighbour was disclosed.

[43] The appellant states that the records are about what he believes to have been an assault that occurred on public lands under section 265(1) of the *Criminal Code of Canada*. The appellant disputes who assaulted who in the records.

[44] The appellant is requesting disclosure to ensure public confidence in the OPP. He states that the neighbour has a pattern of assaults against other neighbours, with the assault against the appellant not being the first one against him. The appellant states that the public and his neighbours could well see an escalation of harm if the neighbour's pattern of assaults continue and his conduct is swept under the rug.

### ***Findings***

[45] The records relate to one incident in which the appellant and the neighbour were involved in a dispute and an investigation into a possible assault occurred. Both the appellant and the neighbour provided statements to the OPP complaining about the other and their behaviour during the incident. The OPP investigated and decided not to lay charges and the matter was closed.

[46] As noted above, the ministry relies on the presumption in section 21(3)(b), which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

[47] Section 21(3)(b) requires only that there be an investigation into a possible violation of law.<sup>16</sup> So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.<sup>17</sup>

[48] I find that the personal information at issue was compiled and is identifiable as

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<sup>15</sup> Orders P-1618, PO-3301, MO-3649.

<sup>16</sup> Orders P-242 and MO-2235.

<sup>17</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).



part of an investigation into a possible violation of law, being an alleged assault. The OPP investigated an alleged involving the appellant and the neighbour.

[49] Therefore, I find that the presumption that weighs against disclosure at section 21(3)(b) applies to the information at issue.

[50] Considering the circumstances and the information itself, I also find that the personal information of the neighbour relates to a highly sensitive situation involving the neighbour's interaction with the OPP.

[51] Therefore, I find that the factor that weighs against disclosure in section 21(2)(f) applies as the personal information of the appellant's neighbour is highly sensitive. Section 21(2)(f) is intended to weigh against disclosure when the evidence shows that 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.<sup>18</sup> For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.<sup>19</sup>

[52] The appellant indicated he wants the information to protect the public from further assaults by the neighbour, who he says is a public official employed by the ministry. It appears that he is relying on the factors that favour disclosure in sections 21(2)(a) and (b) that read:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety.

[53] Section 21(2)(a) supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.<sup>20</sup> It promotes transparency of government actions.

[54] In my view, based on my review of the records, the appellant and the neighbour are involved in a longstanding personal dispute, where each has an animus towards the other. I do not agree with the appellant that disclosure of his neighbour's personal information is desirable for the purpose of subjecting the activities of the ministry to

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<sup>18</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>19</sup> Order MO-2980.

<sup>20</sup> Order P-1134.

public scrutiny. As noted above, the neighbour was acting in his personal capacity in the records and the records concern both parties' personal lives.

[55] Section 21(2)(b) is intended to weigh in favour of disclosure where disclosure of the information would promote public health and safety.

[56] As explained above, it is my view that the dispute between the appellant and the neighbour is a private matter. I am not persuaded that disclosure of the records could promote public safety. I therefore find that the factor at section 21(2)(b) is not relevant to my determination of whether disclosure of the information at issue would constitute an unjustified invasion the neighbour's personal privacy.

[57] Based on my review of the records at issue and the parties' representations, I find that there are no other relevant factors favouring disclosure.

[58] I have considered and weighed the applicable factor in section 21(2)(f) and the presumption in 21(3)(b), both of which weigh against disclosure of the other individuals' personal information at issue. After balancing the interests of the appellant in receiving access to his own personal information and the interests of the neighbour whose personal information is in the records, I find that disclosure of the neighbour's personal information in the records would be an unjustified invasion of his personal privacy under section 49(b). Therefore, I find the withheld information is exempt under section 49(b).

[59] I will now consider whether the ministry exercised its discretion regarding the responsive information that I have found exempt under section 49(b).

**Issue C: Did the ministry exercise its discretion under section 49(b)? If so, should the IPC uphold the exercise of discretion?**

[60] The section 49(b) exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[61] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[62] In either case, the IPC may send the matter back to the institution for an

exercise of discretion based on proper considerations.<sup>21</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>22</sup>

### ***Representations***

[63] The ministry submits it has exercised its discretion properly in not releasing the records that are the subject of this appeal. The ministry states that it has exercised its discretion based on the following considerations:

- The public's expectation that their personal information will be protected when it forms part of a law enforcement investigation, especially as in this instance where affected third party individuals ... have not consented to its disclosure; and,
- The concern that disclosure of the records may subject affected third party individuals who are witnesses or a complainant to harm.

[64] The appellant did not address the ministry's exercise of discretion directly. Instead, he repeats his allegations already summarized above.

### ***Findings***

[65] I find that in denying access to the exempt information in the records, the ministry exercised its discretion under section 49(b) in a proper manner taking into account proper considerations and not taking into account improper considerations. I uphold the ministry's exercise of discretion.

### **ORDER:**

I uphold the ministry's decision to withhold the personal information at issue because it is exempt from disclosure under section 49(b) and I dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

September 21, 2023 \_\_\_\_\_

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<sup>21</sup> Order MO-1573.

<sup>22</sup> Section 54(2).